

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN
aka Darion Muhammadcoleman

Appellant,

vs

THE STATE OF NEVADA,

Respondent

Electronically Filed
Oct 09 2017 02:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
CASE NO.: 72867

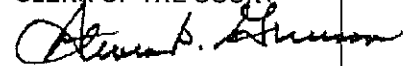
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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 DARION MUHAMMAD-COLEMAN,

9 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

10
11 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

12 FRIDAY, JANUARY 6, 2017

13
14 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4**

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16
17
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19 For the State:

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CHRISTOPHER S. HAMNER
Deputy District Attorney

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 6, 2017, 10:15 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: Okay anybody have anything outside the presence?

5 MR. SCHWARZ: No, Your Honor.

6 MR. SCHWARTZER: Not by the State, Your Honor.

7 MR. HAMNER: No, Your Honor.

8 THE COURT: Thank you.

9 Officer Porter, if you'd go ahead and get everybody and get 'em in
10 and we'll get started. Thank you.

11 THE MARSHAL: Do you want the jury?

12 THE COURT: Yeah, please.

13 THE MARSHAL: All rise for the jury.

14 [In the presence of the jury panel]

15 THE COURT: You guys can be seated. Thank you.

16 Good morning, folks. All right. We will be back on the record.
17 Mr. Muhammad-Coleman's present with his attorney; State's attorneys are
18 present; our jurors are present. We're going to continue on with the State's
19 case-in-chief.

20 So Mr. Hamner, Mr. Schwartzer, you-all can call your next witness.

21 MR. HAMNER: Thanks a lot. The State's going to call Tahir Shahab to
22 the stand.

23 THE COURT: Good morning, sir. If you could raise your right hand.
24 Thank you.

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TAHIR SHAHAB,

[having been called as a witness and being first duly sworn testified as follows:]

THE CLERK: You may be seated. Will you please state and spell your name for the record.

THE WITNESS: My name is Tahir. Middle name is Mohammad. And Shahab is my last name.

THE COURT: How do you spell your first name, sir?

THE WITNESS: Tahir.

THE COURT: How do you spell it?

THE WITNESS: T-A-H-I-R.

THE COURT: And your middle name.

THE WITNESS: Mohammad.

THE COURT: M-U --

THE WITNESS: M-O --

THE COURT: M-O?

THE WITNESS: Yeah.

THE COURT: H?

THE WITNESS: H.

THE COURT: And then what?

THE WITNESS: M-A -- A-E-D.

THE COURT: A-E-D. Thank you. And how do you spell your last name?

THE WITNESS: S-H-A -- S-H-A-H-A-B, Shahab.

THE COURT: Thank you. All right, sir, Mr. Hamner's going to ask you some questions, okay.

///

1 **DIRECT EXAMINATION OF TAHIR SHAHAB**

2 BY MR. HAMNER:

3 Q Good morning, sir.

4 A Good morning.

5 Q Sir, are you familiar with an address of 1712 Fairfield here in
6 Las Vegas, Clark County?

7 A Yes, sir, I do.

8 Q Okay. How do you -- how are you familiar with that particular
9 property?

10 A We -- we own that place.

11 Q And when you say "we," who else are you referring to?

12 A Well, it's me and John Fazil.

13 Q Okay.

14 A And Collette la Noori [phonetic] and Wasi Amar [phonetic].

15 Q Okay. So four of you own this particular property; is that right?

16 A We do.

17 Q Do you share it kind of equally, a quarter each, something like that?

18 A Quarter each.

19 Q Okay. Why don't you describe to the jury what -- describe that
20 particular address. What's located at 1712 Fairfield?

21 A It's -- it's a -- it's a eight-unit building, one bedroom all of them.
22 And we -- we own it quite a while. And unfortunately sometime we -- we have
23 this problem with the breaking in.

24 Q Okay. You mentioned that. I want to show you what's been
25 admitted as State's 88. It's a little dark.

1 THE COURT: Is this screen on right here, sir?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 THE WITNESS: Yes, I can see.

5 BY MR. HAMNER:

6 Q Do you see what we're looking at here?

7 A Yes. That's the building.

8 Q Okay. So that's the building. And so there's eight units; is that

9 right?

10 A It is.

11 Q Okay. Are they -- are there multiple bedrooms in each unit or is it

12 one bedroom; how does it work?

13 A It's one bedroom all of them.

14 Q Okay.

15 A One bedroom and one bath.

16 Q Okay. And I want to talk about, did you own it back in 2013?

17 A Yes, we did.

18 Q How many years have you owned the unit?

19 A I'm not sure. I think it's nine years we own it.

20 Q Okay. Now, back in 2013, let me take one step back.

21 Do you live here in Las Vegas?

22 A No. We don't, none of us.

23 Q Okay. You live -- where do you live? What state do you live in?

24 A I live in California.

25 Q Okay. Did you have a property manager in 2013 kind of working to

1 kind of manage the property while you guys lived out of state?

2 A Yes, we -- yes, we did.

3 Q All right. Now, I want to turn your attention to April -- April 2013,
4 and probably about a week before April 29th, around there, did you -- did you
5 get some information or contacted by your property manager about an issue
6 that was going on with one of the units?

7 A Yes, we did.

8 Q And in particular did you -- did this property manager alert you to an
9 issue that was going on in Unit Number 7?

10 A Right.

11 Q Okay. What was -- what was the issue? What did the property
12 manager kind of discover about Unit Number 7?

13 MR. SCHWARZ: Well, Judge, I'll object. It's hearsay I believe.

14 MR. HAMNER: It's not being offered for the truth but the effect on the
15 listener.

16 THE COURT: Hold on. Hold on. Why don't you guys approach the
17 bench real quick.

18 [Bench conference -- not transcribed]

19 THE COURT: I will overrule the objection.

20 MR. SCHWARZ: Thank you, Your Honor.

21 THE COURT: So you can go ahead and answer the question, sir.

22 BY MR. HAMNER:

23 Q So, Mr. Shahab, what happened? What did they kind of tell you
24 was going on with Unit Number 7?

25 A They told us that there is somebody living in this unit which is not

1 familiar.

2 Q Okay, so.

3 A Nobody knew him.

4 Q And let me clarify, did you -- had you -- was that apartment
5 technically vacant?

6 A Yes, it was.

7 Q So you didn't have technically a renter?

8 A That's right.

9 Q Explain -- explain this to me, you -- you rent -- you're obviously a
10 landlord, when you have a situation where there is someone who's not renting
11 a unit, do you have to take maybe steps with the police to maybe see if you
12 can take their items out or things along those lines?

13 A That's right. That's what we did.

14 Q Okay. Did you -- did you fly to out --

15 A We fly out here and then we -- and we check the unit from the
16 window. We saw there is stuff on the floor.

17 Q Okay. Did you contact then police to maybe get permission to
18 remove those items?

19 A Yes, we did.

20 Q Did the police give you permission to do so?

21 A Yes, they did.

22 Q I want to show you State's -- what's been admitted as State's 89.
23 What are we looking at there?

24 A That's the Unit Number 7.

25 Q Okay. So that's kind of the front door to it?

1 A That's right.

2 Q All right. And to be clear is this unit at Fairfield, is this kind of
3 located nearby the Stratosphere?

4 A It is.

5 Q In that area of town kind of behind the Stratosphere?

6 A Yes, it is. Yes, it is.

7 Q Okay. So when you started removing items out of the -- out of Unit
8 Number 7 was there any particular thing that you -- that you picked up that kind
9 of caught your attention?

10 A While we were cleaning and I saw this, the bottom of thing, there
11 was a toaster or oven, whatever, I don't know what you call it, but it was a
12 toaster, so when I pick it up something fell down.

13 Q Okay. And what -- what -- did you take a look to see what it was?

14 A So when -- and I -- when I looked there was a gun and I thought a
15 small gun. I thought it was a toy gun. So I pick it up, it was heavy, so I put it
16 back inside the toaster.

17 Q All right.

18 A And that's why we call the police.

19 Q Okay. And so you reach out to the authorities about that?

20 A Yes, we did.

21 Q All right. Do police come out to the property?

22 A They did.

23 Q All right. And do you -- do you show them this toaster or some sort
24 of device with the microwave or with the --

25 A Right.

1 Q -- with the gun in it?

2 A The gun inside.

3 Q Okay. And then where -- where are you kind of instructed to put it?

4 A The police told us to bring it outside and that's what they was
5 taking pictures of the toaster with the gun.

6 Q Okay. So you actually -- it was left outside?

7 A Yes.

8 Q For photographs to be taken of it?

9 A That's right.

10 Q Okay. I want to show you State's 90. What are we looking at
11 there?

12 A That's -- that's the toaster.

13 Q Okay. Is that kind of a fair and accurate depiction of what it looked
14 like on April --

15 A Yes. Yes, it does.

16 Q -- 29th, 2013?

17 A Yes.

18 Q All right. I'm going to show you State's 91. What are we looking
19 at there?

20 A That's -- that's the one.

21 Q Same thing just a --

22 A Yes.

23 Q -- little bit closer up?

24 A Yes.

25 Q Publishing 92, State's 92.

1 A Same thing.

2 Q Publishing State's 93.

3 A Here it is inside.

4 Q All right. Now, and let me publish State's 94. What are we looking
5 at there?

6 A We -- we couldn't see the -- the gun inside.

7 Q Okay. So now this monitor's kind of interesting, you can actually
8 take your finger --

9 A Yes.

10 Q -- and if you touch it, it can make a mark. Why don't you circle
11 where you see the gun in State's 9 -- take your finger and just circle it.

12 THE COURT: If you just use your finger on the --

13 MR. HAMNER: It will make a mark.

14 THE COURT: Hold on just second, sir. Okay. Go ahead.

15 THE WITNESS: On the gun, okay.

16 BY MR. HAMNER:

17 Q Go ahead just circle where you see the gun.

18 MR. HAMNER: All right. Let the record reflect that the witness in State's
19 94 circled the black object, what appears to be inside some type of white
20 plastic bag inside this, appears to be a microwave oven possibly, maybe a
21 toaster, but looks --

22 THE COURT: Okay.

23 MR. HAMNER: -- possibly like a microwave.

24 THE COURT: Record will reflect.

25 ///

1 BY MR. HAMNER:

2 Q Okay. So you brought this to their attention, they came out,
3 photographed it, and that's pretty much the last time you saw that item?

4 A That's -- that's the one.

5 Q Okay.

6 MR. HAMNER: I have no further questions at this time.

7 THE COURT: Mr. Schwarz.

8 MR. SCHWARZ: Yes.

9 **CROSS-EXAMINATION OF TAHIR SHAHAB**

10 BY MR. SCHWARZ:

11 Q How are you, sir?

12 A Yes, sir. Thank you. Fine. Thank you.

13 Q So when you arrive at the unit do you have to wait for the police to
14 come?

15 A We -- when we arrive, we -- we call the police to give the
16 permission to enter the unit.

17 Q Anybody in the unit when you got there?

18 A Nobody was in the unit.

19 Q Now, did you just start -- once the police arrived you got permission
20 to clear out the unit?

21 A Yes, sir.

22 Q Did you just start picking stuff up and taking it outside?

23 A Yes, we did.

24 Q How many people were helping you do that?

25 A Me and my colleague, excuse me, two to three people, we were

1 cleaning up.

2 Q Did they all come --

3 A Myself, John Fazil and Mr. Noori.

4 Q Okay. And were these -- are these people that live here locally that
5 met you there?

6 A No, we -- none of us live in Las Vegas.

7 Q So all three of you came?

8 A Yes.

9 Q From California?

10 A Yes.

11 Q Who actually handled the toaster oven?

12 A I, unfortunately, me that was me first, you know, because when I
13 pick it up the thing, the door opened and the gun fell down and --

14 Q Okay.

15 A -- that's what I pick it up.

16 Q Now, in the photograph that's still on the screen the gun is in a
17 bag.

18 A Yes.

19 Q Did it fall out that way in a bag?

20 A Yes. It fall down on the floor. Somehow when I pick it up maybe,
21 you know, it just twisted and the gun fall down on the floor.

22 Q Okay. My question is was it in a bag when it fell on the floor?

23 A I'm not sure. I don't remember that, sir.

24 Q Okay. Do you remember if you actually, when you picked the gun
25 up did you actually touch the gun or did you touch a bag?

1 A No, I touched the gun.
2 Q Okay. So you handled the gun?
3 A Yes, I did.
4 Q You don't know if it was you or the police who put the gun in the
5 bag?
6 A I -- I don't remember.
7 Q Okay. Could have been you?
8 A Could have been me or my friends.
9 Q Okay. Could have been the police?
10 A Or could have been the police.
11 Q Were you wearing gloves when you handled the gun?
12 A No, we didn't.
13 Q Okay. You were not responsible for, like, collecting rents and so
14 forth, right?
15 A No, we didn't.
16 Q So you didn't know any of the tennants, did you?
17 A I did. We -- we -- we -- we signed contract with them, of course.
18 Q Okay. Do you know my client?
19 A No, I didn't.
20 MR. SCHWARZ: I have nothing further. Thank you.
21 THE WITNESS: Thank you sir.
22 THE COURT: Thank you.
23 Mr. Hamner.
24 MR. HAMNER: Just very, very briefly.
25 ///

1 **REDIRECT EXAMINATION OF TAHIR SHAHAB**

2 BY MR. HAMNER:

3 Q When you found this gun in the toaster oven had you gotten really
4 far in the process of kind of emptying out this apartment?

5 A Yes, we did. We cleaned the whole unit.

6 Q Well, I know that you cleaned the whole unit, I know you ultimately
7 did that, but at the time that you found this gun is the unit completely clean or
8 is there still some stuff still?

9 A No, it was still some stuff there.

10 Q And I -- I just for clarification purposes, have you ever met someone
11 by the name of Darion Muhammad-Coleman?

12 A No, sir, we never did.

13 Q Okay. So you don't have any relationship with him?

14 A Never.

15 Q Let me ask you this --

16 A Never saw him.

17 Q -- have you ever been asked to keep -- keep charge or keep care of
18 any of his personal effects?

19 A The police told us -- there was -- there's a lady came, a young lady
20 came.

21 Q Uh-huh.

22 A African-American, and he -- she pick up a lot of the stuff and she
23 said that they're related to the man that was living in there.

24 Q Well, I just want to focus on you for a second. I know that you
25 cleared things out but just to be clear you never put anything, as far as you

1 know, belonging to Darion Muhammad-Coleman inside Unit Number 7, would
2 that be right?

3 A No, sir. No, never.

4 Q All right. Okay. Thank you very much.

5 A You're welcome.

6 THE COURT: Mr. Schwarz, anything further?

7 MR. SCHWARZ: I don't have anything further, Judge.

8 THE COURT: Anything from our jurors? No?

9 All right, Mr. -- do I pronounce it Shashab?

10 THE WITNESS: Shahab.

11 THE COURT: All right. Thank you very much for coming in.

12 THE WITNESS: Thank you.

13 THE COURT: I appreciate it. You are excused.

14 THE WITNESS: Thank you. I appreciate it.

15 THE COURT: All right. State may call their next witness.

16 MR. HAMNER: State's going to call Rachel Bishop to the stand.

17 THE COURT: Good morning. Could you raise your right hand for me,
18 please. Thank you.

19 **RACHEL BISHOP,**

20 [having been called as a witness and being first duly sworn testified as follows:]

21 THE CLERK: You may be seated. Will you please state and spell your
22 name for the record.

23 THE WITNESS: Rachel Bishop, R-A-C-H-E-L; Bishop, B-I-S-H-O-P.

24 THE COURT: Thank you.

25 Mr. Hamner.

1 **DIRECT EXAMINATION OF RACHEL BISHOP**

2 BY MR. HAMNER:

3 Q Good morning, Rachel. How are you?

4 A I'm well, thank you.

5 Q How about yourself?

6 A I'm good.

7 Q Your voice sounds good today?

8 A Thank you.

9 Q Okay. Sorry, she had a little bit of a laryngitis yesterday.

10 I want to talk to you about a particular location. Are you familiar
11 with the Travelers Inn located 2855 Fremont?

12 A Yes.

13 Q Okay. Now, back in 2013 were you living there?

14 A Yes.

15 Q Okay. Who were you living there with?

16 A My boyfriend and his brother and my two kids.

17 Q All right. And tell me what your boyfriend's name is.

18 A Jermaine Grace.

19 Q And his brother's name?

20 A LeCory Grace.

21 Q Okay. And your kids, how old are they?

22 A My son was 2 and my daughter was 7.

23 Q Okay. And when you're saying "was," let's talk about back in
24 2013, that was their age at that time?

25 A Uh-huh.

1 Q About -- tell us a little bit about the Travelers Inn kind of, what's
2 kind of the set-up, is it, like, a weekly? It is just a regular motel? What's the
3 se-up there?

4 A They do day-by-day but they also do weekly and monthly as well.

5 Q Okay. So how were you kind of set up with them? Was it week to
6 week? Day to day? Month to month?

7 A Day to day, week to week.

8 Q Okay. And around April of 2013, in particular April 19th of 2013,
9 how long had you been living at the Travelers Inn?

10 A Not that long, maybe about a month with my boyfriend.

11 Q Okay. And -- and around that time as of April 19th, LeCory was
12 also living with you as well?

13 A Yes.

14 Q All right. I want to show you what's been already admitted as
15 State's 8, do you know what we're looking at there?

16 A That's the hotel.

17 Q Okay. Were you living on the first floor or the second floor?

18 A The second floor.

19 Q And what unit number were you living in; do you remember?

20 A I don't recall. It was toward the end.

21 Q Okay. All right.

22 A Or the stairs.

23 Q Now, when -- are there other people there that kind of live there for
24 extended periods of time at Travelers?

25 A Yes.

1 Q All right. Now, did you -- did you know a guy named Dale Borero?

2 A Not personally.

3 Q Not personally? But the name sounds familiar?

4 A Yes.

5 Q You remember someone by the name of Dale?

6 A Yes.

7 Q Where did Dale live in relation to you?

8 A In between, like, the next door over.

9 Q Okay. Up on the second level?

10 A Yes.

11 Q Okay. So you had seen him around before?

12 A Yes.

13 Q Had you talked to him before in the past?

14 A Not, like, deep conversation but hello.

15 Q I want to talk about April 19th, 2013, particularly around that
16 evening, maybe around 8:00 o'clock, 9:00 o'clock. Kind of what was the plan
17 for your boyfriend, Jermaine and LeCory that night? What were they going to
18 do?

19 A We were going to camp out. I had gotten a separate room.

20 Q Okay.

21 A On the other side of Dale because Dale was in between us.

22 Q Uh-huh.

23 A So they put me on the other side of that so that me and my kids
24 could do, like, a movie night.

25 Q Okay. And what was -- what -- so you were going to do movie

1 might with the kids, what was Jermaine and LeCory going to do?

2 A I'm not sure. I think they were going to run some errands, but they
3 were coming right back to meet with me and the kids.

4 Q All right. Did you notice around that time that kind of caught your
5 attention?

6 A Yeah.

7 Q What did you notice?

8 A There was a car with three gentlemen downstairs parked next to
9 my car and they were just kind of hanging out there and they kept looking up at
10 the balcony.

11 Q Let's talk about that car for a second. What type of car was it?

12 A I don't recall. It was an older model.

13 Q Older car. Four doors? Two doors?

14 A It was a four-door.

15 Q Big car? Small car?

16 A I would say midsize.

17 Q Midsize?

18 A Uh-huh.

19 Q Do you remember if it was light or dark?

20 A I want to say it was, like, a greenish, like, a greenish brown.

21 Q Okay. I want to show you -- I want to show you what's been
22 admitted as State's 15. Do you look at -- do you recognize what we're looking
23 at here?

24 A Yeah. That's the parking structure.

25 Q And just to familiarize the jury for a little bit, this kind of, this set-up

1 I know we looked at over here in State's 8, is it kind of like a long rectangle
2 with just a series of units that just goes straight?

3 A Yeah. It's just that way right there, just that wall.

4 Q And it leads all the way out to Fremont; is that right?

5 A Yes.

6 Q Okay. And when we're looking -- when we're back looking at
7 State's 15, again, you mentioned you saw this car.

8 A Yes.

9 Q Do you see the area in which the car was parked here? Can you --
10 and if you look --

11 A Yeah.

12 Q -- in this photo can you see where it is?

13 A Yeah. My car was where the cones are.

14 Q All right. So --

15 A And then the car was parked in the second spot next to mine.

16 Q All right. So let's --

17 A And it was backed in.

18 Q I'm going to -- the monitor's kind of interesting. You can take your
19 finger, and if you touch it, it can draw lines and stuff. So what I'd like you to
20 do first is why don't you draw a circle where your car was parked.

21 A My car was in this spot.

22 Q Okay. And where do you remember this other car being parked?

23 A It was parked right next to mine in the second spot.

24 Q Okay. So what stands out to you is you remember this car being
25 parked right next to yours?

1 A Right next to me, uh-huh.

2 Q Okay. Now did you and Jermaine and LeCory all kind of share the
3 same car?

4 A Yes, well, it was my car but, yeah.

5 Q They can borrow it?

6 A Yes.

7 Q And when you mentioned that Jermaine and LeCory were going to
8 kind of go out that night, were they planning on taking your car?

9 A Yes.

10 Q Okay. So you remember that car being down there right next to
11 yours to the left in this photograph; would that be accurate?

12 A Yes.

13 Q Okay. Now, said you noticed some guys downstairs. How many
14 did you notice kind of standing around outside?

15 A It started off with two. There was two black guys and a white guy.
16 There was a heavysset black guy in the driver's seat. And then there was two
17 standing out on the driver's side --

18 Q So you remember a heavysset black guy?

19 A -- on the passenger side.

20 Q In the -- in the driver's seat?

21 A Yes.

22 Q And then there was another African-American guy also?

23 A And a Caucasian male.

24 Q And a Caucasian male. When -- let's talk about the
25 African-American guy, not the heavysset driver, but -- but the other male. Was

1 he stand -- he was standing outside of the car?

2 A He was standing outside on the passenger --

3 Q Where do you remember him standing, in relation to that other car,
4 where do you remember him standing at least initially?

5 A On the passenger side by the passenger door.

6 Q Okay. Front passenger side?

7 A I don't recall.

8 Q Okay. What type of clothing was he wearing? Was it light? Or
9 dark?

10 A T-shirt, jeans.

11 Q Okay. And then you remember a white guy out there as well?

12 A Uh-huh.

13 Q Is that right? Okay. And so they were -- they were standing there?

14 A Uh-huh.

15 Q Okay. How long were they standing out there?

16 A Quite a while.

17 Q Okay. So did they go to any of the rooms or anything like that?

18 A No.

19 Q They were just kind of standing out there?

20 A Yeah.

21 Q All right. And could you notice them from that upstairs vantage
22 point? Is that where you could see -- I know that there's -- it looks like there's
23 a walkway up there. Is that how you were noticing them?

24 A Yeah. But this -- this balcony goes all the way and I was leaning on
25 the balcony.

1 Q I'm going to show you --

2 A Yeah, here.

3 Q I'm going to show you State's 8. Why don't you circle, do you see
4 your room? I don't know if you can see it, but do you see your unit? I know
5 these are -- are these the stairs that we were seeing?

6 A Yeah. These are the stairs. Jermaine and Cory are here.

7 Q Why don't you --

8 A And I'm all the way back here.

9 MR. HAMNER: All right. And so let the record reflect that in this exhibit
10 the witness has circled the first door on the second level as being the unit
11 where her boyfriend was staying with her brother and then circles the door all
12 the way to the left-hand side of the picture as being as indicating the unit
13 where she was staying.

14 THE COURT: Is that correct?

15 THE WITNESS: Uh-huh.

16 THE COURT: Okay.

17 BY MR. HAMNER:

18 Q And so you could see from that vantage point up there what was
19 kind of going on?

20 A Yes.

21 Q Okay.

22 A I was leaning on the rail.

23 Q Did you ever see Dale up on that second level where you were kind
24 of standing?

25 A Yeah. He was standing next to me.

1 Q And was he screaming or yelling up on that second level?

2 A No.

3 Q Okay. What -- did he ever make eye contact with those people that
4 were down there?

5 A Yes.

6 Q Okay. What did you notice about when the two of them were
7 looking at each other?

8 A They weren't really talking to each other, it was more gestures, like,
9 head movements, like, what's up.

10 Q Okay.

11 A Hands.

12 Q Okay. Did you ever see, up on the second level, Dale waving
13 around a weapon or anything like that?

14 A No, sir.

15 Q Waving a knife or anything like that?

16 A No, sir.

17 Q Did you ever hear Dale yell out any death threats?

18 A No.

19 Q Any physical threats to hurt anyone?

20 A No.

21 Q Okay. Were they screaming anything of that same kind of nature at
22 Dale?

23 A No.

24 Q Okay. Now you mentioned Jermaine and LeCory are planning to go
25 out; is that right?

1 A Yes.

2 Q Do eventually they kind of make their way out?

3 A Yes.

4 Q Okay. So where do they go? I mean, can you, from leaving the
5 unit, where do they walk to?

6 A We always use the stairs on this side by the parking lot.

7 Q Okay.

8 A So before he left I asked him to come fix my window in my unit
9 because I also wanted to talk to him about the gentleman by the car.

10 Q Were you concerned about them?

11 A Yeah.

12 Q Okay. And so -- and I want to publish State's 15, again. Are these
13 the stairs that you're talking about?

14 A Yes.

15 Q And they're all -- and for the record, that's the stairwell all the way
16 to the left in State's 15 -- so those are the ones you typically walk down to to
17 get your car?

18 A Yes.

19 Q Is that the pathway that LeCory and Jermaine took?

20 A Yes.

21 Q And do they ultimately get into their car?

22 A Yes.

23 Q Into your car?

24 A Yes.

25 Q And do they leave?

1 A Yes.

2 Q All right. At that time as they're kind of making their way down are
3 either Dale or these men threatening to hurt anyone or anything like that?

4 A No.

5 Q Okay. No one's waving any weapons or anything like that as far as
6 you can see?

7 A No.

8 Q Okay. So your boyfriend and LeCory, they leave?

9 A Yes.

10 Q All right. Where do you go at that point?

11 A I turned around to go ahead and go back into my unit to be with the
12 kids.

13 Q Okay. Now, you mentioned that you saw Dale up on that second
14 level.

15 A Yeah.

16 Q Did you -- before you went inside, did you see where he went, if at
17 all?

18 A He was actually still on the patio, like, on the railing because we
19 were both leaning on the railing at the same time.

20 Q Okay.

21 A And he had his door open.

22 Q Okay. So he still had his door open?

23 A Yeah. He had some music.

24 Q Did you ever see him walk down those stairs?

25 A No.

1 Q Okay. So you go back in your -- in your -- in your unit?

2 A Uh-huh.

3 Q So what do you do once you get inside?

4 A The kids were jumping on the bed and I asked them if they wanted
5 to find a movie.

6 Q Okay.

7 A And they said "yes."

8 Q All right. And what happened after that?

9 A Literally, within maybe minutes, I heard gunshots.

10 Q How many?

11 A A lot.

12 Q Okay.

13 A I would say about five to six, continuous.

14 Q Okay. Prior to hearing those gunshots do you hear any one
15 screaming out death threats or physical threats at anyone?

16 A No.

17 Q Do you hear, like, a physical fight or a scuffle outside before you
18 hear those gunshots?

19 A No.

20 Q Do you hear any kind of senses of people maybe panicking outside
21 before you hear those gunshots?

22 A No.

23 Q Did you have any reason to expect to hear gunshots at that point
24 while you were back in that area trying to get your kids to watch a movie?

25 A Not gunshots, no.

1 Q Okay. So what do you do? You hear these gunshots, what
2 happens inside that room?

3 A I tell my kids to get down in between the two beds and to lay on
4 the floor. I grabbed my Taser and I peeked out the window to see what was
5 going on.

6 Q And what did you see when you looked out your window?

7 A I saw Dale in the parking lot firing shots back toward the car that
8 was just parked next to mine. It was pulling out of the lot.

9 Q And let me ask you about that car. Do you remember how was
10 positioned, if the front of the car was facing that wall there in State's 15 or if
11 the front of the car was facing out?

12 A No. It was backed in. It was backed in so that they could pull right
13 out.

14 Q So it's, like, a straight shot out?

15 A Yeah, like a straight shot out.

16 Q And so you're familiar with that area. I want to talk a little bit
17 about, in State's 15, I want to talk a little bit about this wall here. How high is
18 that wall?

19 A It's definitely taller than myself, so I would say about six feet or
20 more.

21 Q Okay. Is it -- is there any room? Is there anywhere to go beyond
22 that? Or are you cut off?

23 A I'm not sure.

24 Q You're not sure? Okay. As far as you know have you ever seen
25 anyone kind of going in any way, like, is there any exits far as you know back

1 towards that wall? Or is the only way out forward?

2 A The only way out is forward.

3 Q Okay. So if you're standing with your back to that wall, there's
4 nowhere to back up as far as you know?

5 A As far as I know, no.

6 Q Okay. So now you see Dale on the ground out in the parking lot.
7 Do you see in this picture roughly where he probably was laying? Or where he
8 was?

9 A Yes.

10 Q Why don't you make a circle in State's 15.

11 A He was right here on the ground.

12 MR. HAMNER: Okay. Let the record reflect the witness has made kind
13 of a small circle just to the right of three diagonal orange cones, kind of to the
14 center right of the photograph in State's 15.

15 THE COURT: So you're kind of indicating in that third parking spot from
16 the left?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 BY MR. HAMNER:

20 Q So you see Dale, what do you -- what do you decide to do, Rachel?

21 A I ran out of my unit to help.

22 Q Okay. And what did you see when you got there?

23 A He was laying on the ground moaning.

24 Q Okay.

25 A So I started to talk to him and ask him if he was okay and if he

1 could talk to me and tell me his name.

2 Q Was he -- was he able to answer your questions?

3 A No. He just kept moaning.

4 Q Okay. How did his eyes look?

5 A He had them closed. But it was more like in pain.

6 Q Okay. So you're trying to talk to him, he's not really responding;
7 what do you do then?

8 A Before I even made it downstairs, I had already called 9-1-1 when I
9 saw the commotion in the parking lot.

10 Q Okay. So you --

11 A So, by the time I made it down the stairs I was asking them to send
12 an ambulance and telling them that he had been shot in his abdomen.

13 Q Okay. And do you place any other phone calls to anyone around
14 that time?

15 A No. I just, I stayed on the phone with them until the ambulance
16 came.

17 Q Do you ever remember calling Jermaine to tell him what had
18 happened.

19 A I called him after when --

20 Q Okay. So you called him after talking to the police?

21 A Yes.

22 Q Okay.

23 A After everything was done.

24 Q And what did you -- all right. And what did you tell -- what did you
25 relay to him?

1 A I said those guys that were downstairs by that car shot the guy
2 next to us.

3 Q Okay. So you let them -- let him know as well?

4 A Yeah, I said, They just shot him.

5 MR. HAMNER: All right. Court's indulgence.

6 Your Honor, there is a stipulation that State's Proposed Exhibit 122
7 will be admitted --

8 THE COURT: Okay.

9 MR. HAMNER: -- by the parties.

10 MR. SCHWARZ: That's fine, Judge.

11 THE COURT: Thank you.

12 **[STATE'S EXHIBIT 122 ADMITTED]**

13 MR. HAMNER: Permission to publish State's 122?

14 THE COURT: You may.

15 For the record, is that the 9-1-1 call?

16 MR. HAMNER: Yes. Yes, it is.

17 THE COURT: Okay.

18 [9-1-1 call played]

19 BY MR. HAMNER:

20 Q Did you -- did you recognize anyone's voice on that call?

21 A Yes.

22 Q Who's voice did you recognize?

23 A Mine.

24 Q Okay. And I heard in that call you mentioned things like an
25 Oldsmobile or a Cadillac blue in color, does that help refresh your memory?

1 A Yeah.

2 Q Maybe about what it -- so -- so does that -- does that sound about
3 right?

4 A Yes.

5 Q Okay. And as far as you remember was it kind of a larger Cadillac
6 or --

7 A It was a larger. It was one of the -- it looked like an Oldsmobile.

8 Q Okay.

9 A Like the old school.

10 Q Okay. Kind of old school one? All right. And that's the one you
11 saw those guys kind of nearby?

12 A Uh-huh.

13 Q That particular? And is that the type of vehicle you saw speeding
14 out as well?

15 A Uh-huh.

16 Q Couple other follow-ups. When you got down the stairs was there
17 anyone out there kind of helping Dale?

18 A There was a Caucasian woman that was in the room with him.

19 Q Okay. Let me ask you this, did any of the -- any of the men who
20 you saw arrive in that vehicle, stand around that vehicle, did any of them stick
21 around?

22 A No.

23 Q Did any of them stick around to offer an explanation as to why
24 something even happened in the first place?

25 A No.

1 Q Okay. So did any of them come back at any point in time?

2 A No.

3 Q Okay. Did you ever see any of those guys ever again?

4 A No.

5 MR. HAMNER: Okay. Court's indulgence.

6 I have no further questions for this witness.

7 THE COURT: Thank you.

8 Mr. Schwarz.

9 MR. SCHWARZ: Yes, thank you, Your Honor.

10 **CROSS-EXAMINATION OF RACHEL BISHOP**

11 BY MR. SCHWARZ:

12 Q Good morning, Ms. Bishop, how are you?

13 A I'm well. Thank you. And yourself?

14 Q I'm -- I'm actually dandy. Thank you.

15 A Good.

16 MR. SCHWARZ: Is Number 8 here, Chris?

17 MR. HAMNER: 8 and 15, the ones I was using, are sitting on the
18 overhead.

19 MR. SCHWARZ: Okay. All right, great. Thank you. And I don't want to
20 knock these --

21 MR. HAMNER: I didn't know if you needed them or not so I just left
22 them.

23 MR. SCHWARZ: No, I'm good. Thank you.

24 MR. HAMNER: Okay.

25 MR. SCHWARZ: Thank you very much.

1 BY MR. SCHWARZ:

2 Q So Mr. Borero, Dale, is in Room 17?

3 A Uh-huh.

4 Q And your boyfriend and his brother are in Room 18?

5 A I think they are one more over.

6 Q Okay. And you're in Room 16?

7 A And I'm next to Dale, yeah.

8 Q Okay. So you're three together; is that I'm getting at?

9 A Uh-huh.

10 Q All right. Now, you indicated that there was a point when you
11 saw -- did you see the vehicle pull up?

12 A No, it was already there.

13 Q It was already there and then you were looking down at them?

14 A Uh-huh.

15 Q Okay. And you said they were looking up at you?

16 A Yeah. They were looking up at the railing.

17 Q Right. And you were looking down at them?

18 A Uh-huh.

19 Q And you didn't know them?

20 THE COURT: Is that a "yes"?

21 THE WITNESS: No, I don't know them.

22 THE COURT: Is that -- Ms. Bishop, is that a "yes"?

23 THE WITNESS: Yes, it was a "yes."

24 THE COURT: Okay. Thank you.

25 MR. SCHWARZ: Sorry, Judge.

1 BY MR. SCHWARZ:

2 Q And Dale was also there?

3 A Yes.

4 Q While you were looking down?

5 A Yes.

6 Q So the two of you were looking down at them?

7 A Yes.

8 Q And they were looking up at you?

9 A Yes.

10 Q And then your boyfriend, well, LeCory and Jermaine were also out
11 on the balcony around that same time?

12 A They were in the room. They were getting ready to leave.

13 Q But they came out at some point?

14 A Yeah, Cory went down stairs first and stood by the car to wait for
15 Jermaine because I asked him to come help me with my window.

16 Q So everybody was out on the balcony at some point?

17 A Yes.

18 Q Okay. And nobody knows each other?

19 A Not that I know of.

20 Q Okay.

21 A I think they've just seen each other.

22 Q All right.

23 THE COURT: Nobody whom knows each other?

24 MR. SCHWARZ: I heard it as soon as I said it, Judge.

25 ///

1 BY MR. SCHWARZ:

2 Q All right. So to the best of your knowledge, you know, there's
3 three guys downstairs, you don't know them, you know, doesn't appear that
4 Jermaine and LeCory know them, I know you can't tell me whether or not Dale
5 knew 'em; but basically it's just, you know, three people looking up, four
6 people looking down?

7 A Yeah.

8 Q Fair enough?

9 A Yeah.

10 Q Okay. All right. And then did you see Dale go down the stairs?

11 A No.

12 Q Okay. Now, do you remember giving the police a voluntary
13 statement?

14 A Yes.

15 Q In preparation for your testimony have you had an opportunity to
16 review your voluntary statement?

17 A No.

18 Q Did anyone come to your room that night looking for Dale?

19 A The night that he was shot?

20 Q Yes.

21 A I don't believe so, no.

22 Q Okay. So you were interviewed relatively soon after this incident
23 occurred, correct?

24 A Yes. I believe they came the next day, the next morning.

25 Q Okay. And you were actually interviewed on the 20th and this

1 happened on the 19th?

2 A Yeah. It was the next morning.

3 Q Of April, the very next day. And so do you remember telling the
4 detective that you saw the victim, presumably Dale, walking down the stairs?

5 A No.

6 Q And do you remember telling the detective, He came down the
7 stairs and he went over to the Cadillac and he was talking to the white male?

8 MR. HAMNER: What page number?

9 MR. SCHWARZ: I'm sorry, page 5.

10 MR. HAMNER: Thank you.

11 THE WITNESS: No.

12 BY MR. SCHWARZ:

13 Q If I showed you that page of your statement would that refresh your
14 recollection about this?

15 A Possibly.

16 MR. SCHWARZ: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. SCHWARZ:

19 Q So I'm talking about one, two, three, four lines down from the top.

20 THE COURT: You can just read that to yourself for a minute.

21 MR. SCHWARZ: Yeah, just read it to yourself.

22 THE WITNESS: Okay.

23 THE COURT: Ms. Bishop. Okay.

24 BY MR. SCHWARZ:

25 Q Okay. Does that refresh your recollection of what you told the

1 detectives?

2 A Yeah. Uh-huh.

3 Q So did you see him walking down the stairs?

4 A Honestly, as of right now, I'm not sure.

5 Q But you would agree with me?

6 A I can't really remember.

7 Q You would agree with me you told the detective that?

8 A Yes.

9 Q Okay. Now, you indicated that before any shots were fired you
10 went into your house?

11 A Yes.

12 Q All right. Do you recall telling the detective that after the shots you
13 grabbed your Taser, grabbed your phone, squatted down and open the
14 bottom --

15 A I opened the door.

16 Q Okay.

17 A And peeked out the crack of the door.

18 Q But looked down the bottom?

19 A Uh-huh.

20 Q Okay. And do you recall telling the detective that you saw the
21 victim standing and returning fire?

22 A Yes.

23 Q Okay. And is that your recollection today?

24 A Yes.

25 Q Okay. Give me a moment.

1 Do you recall the detective asking you if you could describe the
2 white male that you said you saw Dale talking to and your response to that
3 question?

4 A I do not recall my response.

5 MR. HAMNER: Page number?

6 MR. SCHWARZ: I'm on page 10.

7 MR. HAMNER: Thank you.

8 BY MR. SCHWARZ:

9 Q Do you recall telling the detective that the while male who was
10 talking to Dale seemed to be the most hostile?

11 A I would say so, yes.

12 Q Okay. Do you remember saying that he had -- well, do you
13 remember telling the detective, And then the victim came down stairs and was
14 talking to him, I mean, they were talking?

15 A I mean, they were talking?

16 Q I mean, they were talking. If you don't, I can show you the page
17 and refresh your recollection.

18 This is page 10.

19 And I'm just going to ask her to read about one-third of the way
20 down to two-thirds of the way down, so from here to there. Once you get to
21 there you can stop.

22 A Yeah.

23 Q Do you recall saying that to the detective?

24 A Yes.

25 Q Do you recall what you meant when you said, I mean, they were

1 talking?

2 A A heated discussion.

3 Q Heated discussion?

4 A Uh-huh.

5 Q Between Dale and the white male you saw?

6 A Uh-huh.

7 Q Okay. And you also -- did that refresh your recollection about
8 whether or not --

9 A Yeah.

10 Q -- Dale looked like he didn't want to hear it?

11 A Yeah.

12 Q Can you tell me what you meant by that?

13 A Like he wasn't trying to hear nothing that he had to say. He,
14 obviously, he had a complaint or he was upset about something and Dale just
15 didn't want to hear it.

16 Q Okay. Do you remember saying that -- that Dale's body language
17 said I don't like you and we've got some problems here?

18 A I don't recall using those words, but --

19 MR. SCHWARZ: Page 11.

20 BY MR. SCHWARZ:

21 Q And perhaps you're referring to the other white male.

22 MR. SCHWARZ: May I reproach, Judge.

23 THE COURT: You may.

24 BY MR. SCHWARZ:

25 Q Would it refresh your recollection to look --

1 A Sure.

2 Q -- at the statement?

3 MR. SCHWARTZER: Your Honor, I would ask her to read the end of page
4 10 into page 11 for the complete statement.

5 MR. SCHWARZ: You know what, I agree with you and so I have page 10
6 in my hand.

7 MR. SCHWARTZER: Thank you, Mr. Schwarz.

8 MR. SCHWARZ: Thank you, Mr. Schwartzer.

9 BY MR. SCHWARZ:

10 Q And so read from here.

11 Now, who -- so does this refresh your recollection about whether or
12 not you told the detective his body language said I don't like you and we've got
13 some problems here?

14 A Yeah.

15 Q Who was that in reference to? The white male or Dale?

16 A That was the white male.

17 Q Okay. All right.

18 MR. SCHWARZ: And I will just need a brief indulgence.

19 THE COURT: Okay.

20 BY MR. SCHWARZ:

21 Q You couldn't tell what they were talking about though, right?

22 A No.

23 Q And do you recall, and I'm on page 19, do you recall telling the
24 detective that Dale had his arms crossed and he had that I'm not trying to hear
25 what you -- what you're saying kind of face?

1 A Yes.

2 Q Okay. What did you mean by that?

3 MR. HAMNER: Page?

4 MR. SCHWARZ: I'm sorry, page 19.

5 MR. HAMNER: Thank you very much.

6 THE WITNESS: I don't know if I'm allowed to, but, you know, when
7 someone just, you know, they cross their arms and they're, like, shaking their
8 head, like, nope, I'm not -- I'm not listening, I'm not about to hear this.

9 BY MR. SCHWARZ:

10 Q Okay.

11 A Like, I'm not listening to nothing you're saying.

12 Q And so it would be fair to say that you did actually observe the --
13 the white guy and Dale?

14 A Uh-huh.

15 Q Having a heated conversation?

16 A Yes.

17 Q Okay. They appeared to be arguing with each other? Yes?

18 A Yes.

19 MR. SCHWARZ: I don't have anything further. Thank you?

20 THE COURT: Thank you.

21 Mr. Hamner.

22 MR. HAMNER: Thank you.

23 **REDIRECT EXAMINATION OF RACHEL BISHOP**

24 BY MR. HAMNER:

25 Q Yeah, let's talk about -- about this white male for a second, was

1 Dale with anybody when he went down and had that conversation or was he
2 alone?

3 A He was alone.

4 Q By himself? So you remember seeing a black male out there?

5 A Yes.

6 Q And there was a white male out there as well?

7 A Yes.

8 Q And you believe there was even more people in the car?

9 A There was one other guy in the car. He was the driver.

10 Q Okay. There are three people out there and Dale was by himself?

11 A Yes.

12 Q And the person that you notice who's angry amongst all these
13 people, was it Dale or was it the white male?

14 A The white guy.

15 Q So the white male, one of these multiple men, is angry at Dale; is
16 that right?

17 A Yes.

18 Q Okay. So he's angry?

19 A Yes.

20 Q And he's agitated?

21 A Yes.

22 Q Okay. And you said that Dale was standing there with his arms
23 crossed?

24 A Yes.

25 Q Did you ever see Dale shove the white male in response to the

1 angry, agitated nature?

2 A No.

3 Q Did you ever see him pull out a weapon or a knife and try to attack
4 the white male?

5 A No.

6 Q Did you ever see him put his hand on him in any way?

7 A No.

8 Q So Dale was just standing there?

9 A Yes, with his arms crossed.

10 Q Okay. So were you seeing Dale verbally kind of jaw back at him
11 and point in his face or was he just kind of --

12 MR. SCHWARZ: Well, Judge, I'm going to object. I think this is about
13 the fifth time. Asked and answered.

14 THE COURT: Well, overruled.

15 You can answer the question, or he hadn't actually finished the
16 question. So go ahead and ask the question.

17 BY MR. HAMNER:

18 Q So when you're watching this angry white male upset with him
19 having a conversation is Dale just kind of standing there with his arms crossed
20 not saying much or is he kind of jawing back and pointing in his face? What are
21 you seeing?

22 A No. His hands are crossed. He's kind of nonchalant.

23 Q Okay. And additionally there's a black male out there as well?

24 A Yes.

25 Q Is Dale jawing at -- at this black male?

1 A No.

2 Q Is he waving any weapon, as far as you could see when you were
3 out there, at the black male?

4 A No.

5 Q Was he putting his hands on him, pushing at him, pointing his finger
6 in his face, doing anything like that?

7 A No.

8 Q So he was doing nothing of the sort?

9 A No.

10 Q Okay. And so when -- when -- when Mr. Schwarz asked you, well,
11 it appears there's kind of an argument, does it sound like it's a two-way, angry
12 conversation or is it one person angry and the other person just kind of standing
13 there?

14 A I think one person's angry and the other person is -- doesn't care.

15 Q And let's be clear, who's the person who's not saying anything
16 and --

17 A Dale doesn't care.

18 Q -- doesn't appear to not care? Who is that?

19 A Dale.

20 Q Dale. Thank you?

21 MR. HAMNER: I have no further questions.

22 THE COURT: Mr. Schwarz.

23 **RECROSS-EXAMINATION OF RACHEL BISHOP**

24 **BY MR. SCHWARZ:**

25 Q Well, Ms. Bishop, I -- I -- I hate to suggest this, but I just asked you

1 a few minutes ago, if it appeared that they were having a heated discussion and
2 you said yes.

3 A Yeah, they were arguing.

4 Q Yes.

5 A But it wasn't Dale, it was the white guy that was upset.

6 Q Okay. And you said Dale had his arms folded in front of him.

7 A He didn't care.

8 Q And he had an expression on his face like he didn't care.

9 A Yeah. He was nonchalant.

10 Q And then I asked you if it appeared that they were arguing and you
11 said yes?

12 A Yeah, it was an argument. But it wasn't like Dale was the one, like,
13 going in, putting his fingers in his face. He was nonchalant.

14 Q Okay. So --

15 A It was more like the other guy may have been arguing with himself.

16 Q The guy was having an argument with himself; is that what you
17 meant?

18 A Yeah. Because he was upset. Dale didn't care.

19 Q Okay. And all Dale did was stand there with his arms folded?

20 A He had his arms crossed and you can read body language, of
21 course, the demeanor that was just, like, okay, and? Okay. Whatever his
22 problem was Dale obviously didn't care.

23 Q Okay. All right. Thanks.

24 THE COURT: Mr. Hamner, anything further?

25 MR. HAMNER: No, Your Honor.

1 THE COURT: Anything from our jurors?

2 Ms. Bishop, thank you very much for your time. I appreciate you
3 coming.

4 State may call their next witness.

5 MR. SCHWARTZER: Can we check to see who's out there?

6 MR. HAMNER: Court's indulgence. I think he's out here but --

7 THE COURT: Okay.

8 MR. HAMNER: State's going to call Sergeant David Rose to the stand.

9 THE COURT: Okay.

10 Good morning, Sergeant. You can raise your right hand for me
11 please. Thank you.

12 **DAVID ROSE,**

13 [having been called as a witness and being first duly sworn testified as follows:]

14 THE CLERK: You may be seated.

15 THE WITNESS: Thank you.

16 THE CLERK: Will you please state and spell your name for the record.

17 THE WITNESS: Sergeant David Rose, R-O-S-E.

18 THE COURT: Mr. Hamner.

19 MR. HAMNER: Thank you so much.

20 **DIRECT EXAMINATION OF DAVID ROSE**

21 BY MR. HAMNER:

22 Q Sir, what do you do for a living?

23 A I'm currently a sergeant with the Las Vegas Metropolitan Police
24 Department.

25 Q Okay. And how long have you been here with Metro?

1 A I've been employed with them a little over eight years.

2 Q Okay. So you're currently a sergeant. Tell us what area command
3 you're a part of.

4 A I currently work the Convention Center Area Command which is
5 responsible for patrolling the Strip.

6 Q Okay. Have you worked any other area commands around town?

7 A I have. Previously to this I worked Southeast which is responsible
8 for Boulder Highway. And then prior to that I was downtown which is
9 encompasses Fremont Street and the surrounding areas.

10 Q All right. Now, I want to turn your attention all the way back to
11 2013, about four years ago, particularly April 19th, 2013, what area command
12 were you a part of then?

13 A I was part of the Downtown Area Command.

14 Q Were you a sergeant at that time or something else?

15 A I was a patrol officer.

16 Q Okay. And on that particular evening, probably at around, you
17 know, 9:30 at night, were you working, on duty that night?

18 A Yes, I was.

19 Q All right. Were you in uniform on that night?

20 A Yes, I was.

21 Q Were you in a marked vehicle? A black-and-white vehicle? Or an
22 unmarked vehicle?

23 A A marked, black-and-white patrol vehicle.

24 Q Okay. And what was your kind of responsibilities on that night?

25 A My responsibilities that night is respond to calls for service. When

1 somebody calls 9-1-1 a call gets generated, I respond to those calls, and then I
2 also respond conduct proactive enforcement in the area.

3 Q Now, on that night were you working alone or did you have a
4 partner?

5 A I was alone.

6 Q All right. And do you remember around that time, around 9:00,
7 9:30-ish, something around that time, a call coming out, a call for service for
8 Travelers Inn at 2855 East Fremont here in Las Vegas, Clark County?

9 A I do.

10 Q Okay. And what was the general gist of the type of call you were
11 responding to?

12 A The call was, it came out coded as a 415A which means an
13 assault, battery with a gun. Somebody was either shot or shot at.

14 Q Okay. And as you kind of drive there, tell -- tell the jury a little bit
15 about kind of what your duties as a patrol officer are when you kind of respond
16 to that type of call, when you get to a scene like that, what are the sort of
17 things you're supposed to be doing as a patrol officer?

18 A First and foremost, as a patrol officer as we go to the call we're
19 listening for suspect description to see if maybe as we're going there the
20 suspect drives by us and we can kind of apprehend the person at that point.
21 And if that's not the case when we respond, we try to locate anybody who's
22 injured. Our number one priority is life safety, life preservation. So our number
23 one mission is to save a life.

24 So once we get on scene, we see if we can save a life and then we
25 work on scene preservation. We work on locking it down, nobody in or out.

1 We make sure that people don't destroy any evidence. That way in case
2 somebody is hurt, we can -- we can piece together what happened and find the
3 perpetrator.

4 Q The Travelers Inn, is that a motel here in town?

5 A Yes.

6 Q Okay. Tell us about kind of the entrance-exit of that place. How
7 many entrance, exits are there to the Travelers Inn?

8 A It's a small -- small property. It has a very small footprint. So
9 there's only one entrance in and out, right on to Boulder Highway, Fremont area
10 right as it transitions.

11 Q And is the -- is the motel kind of shaped like a long rectangle
12 alongside that kind of entrance and exit?

13 A Yes.

14 Q Okay. Now, when you arrived at that -- at that location, and I want
15 to show you what's been admitted as State's 8, do you recognize kind of what
16 we're looking at there?

17 A I do. So when you -- when you pull in there is a parking lot on this
18 side of the building, so the parking lot is right next to and faces that side of the
19 building.

20 Q And so is that -- are we looking at the Travelers Inn in that
21 photograph?

22 A Yes.

23 Q All right. And I'm publishing State's 10. Is that a better kind of far
24 out vantage point?

25 A Yes, it is.

1 Q Okay. And so when you pull in, are you one of the first officers to
2 arrive?

3 A I am.

4 Q Okay. Are there any other officers kind of arriving essentially at the
5 same time as you?

6 A Another officer arrives and starts walking up into the parking lot as
7 I'm pulling up, and so that car in the middle of the picture is mine because I see
8 him walking up, we know that somebody potentially has a firearm, so I wanted
9 to get close to make sure he wasn't going into a dangerous situation alone.

10 Q Okay. I want you to circle your vehicle. And the way you do that,
11 take your finger, touch the screen, make a circle.

12 MR. HAMNER: All right. Let the record reflect has, and I believe this is
13 State's 10, circled the police vehicle that's just to the right of the -- of the
14 structure and along a red curb.

15 THE COURT: The record will reflect.

16 BY MR. HAMNER:

17 Q Okay. So you get out of your vehicle. What do you see?

18 A We get out, we start approaching, we're -- we have a lot of
19 responsibilities at this point because we don't really know if the suspect went
20 inside, is waiting to ambush an officer as well. We see somebody down, we're
21 clearing cars as we walk by to make sure somebody's not in there laying off
22 waiting for us as well. And as we start walking up there's a subject down
23 towards the back of the parking lot.

24 Q Okay. And I want to talk about that subject for a second. Male or
25 female?

1 A A male.

2 Q Okay. Can you give us some descriptors about this particular male?

3 A He was covered in tattoos. He had on a white tank top. And he
4 was laying on the ground.

5 Q Okay. Was he -- was he saying anything or making any sounds at
6 the very least?

7 A He was moaning. He wasn't responding to any questions and
8 wasn't answering anything intelligibly. He just moaning and groaning.

9 Q Of the officers, and you mentioned there are multiple officers who
10 are arriving at this kind of scene at the same time, who's the officer that ends
11 up tending to this shooting victim?

12 A I did.

13 Q Okay. So what do you do?

14 A As I was approaching I put on latex gloves, that way in case there's
15 anything on me and there's an open wound I don't make anything worse.

16 Q Okay.

17 A I started, there's two people nearby, I don't really talk to them,
18 other officers are talking to them. Ultimately, I started telling him it's going to
19 be okay, it's going to be okay. I lay him flat on his back. I lift up his shirt and I
20 see a bullet wound just under his rib cage, a bullet hole. So I apply direct
21 pressure to that to help stop the bleeding. While I'm doing that he's moaning.
22 I'm like come on, it's going to be okay. We have medical coming, they're going
23 to help you out. He's not really responding. And as I have direct pressure on
24 him he stops breathing and his heart stops.

25 Q So what do you do?

1 A At that point I started chest compressions for about 15 seconds or
2 so, 20 seconds, and he regained consciousness, he started breathing again, his
3 heart rate picked up. Shortly after that, and I kept holding him, medical
4 responded, picked him up, and transported him to the hospital.

5 Q Did you get a chance to kind of look at him in his eyes when you
6 were there?

7 A I did.

8 Q How responsive was him from an eye contact perspective?

9 MR. SCHWARZ: Judge, I'm going to object as to foundation.

10 THE COURT: Well, you can go ahead and lay a little foundation, back up.

11 BY MR. HAMNER:

12 Q Did you -- did you look at him in the face?

13 A I looked at him in the face.

14 Q Okay. Are you trained when you're dealing with maybe someone
15 who's been injured to try to make eye contact with the victim, interact with the
16 victim?

17 A Yes.

18 Q Okay. Did you do that in this situation?

19 A I did. I was trying to get his focus on me because a lot of injuries,
20 if you can get the focus off of them, if you can get the person to focus on you
21 and they're not focusing on the injury, it helps alleviate some of the pain. It
22 helps distract them a little bit.

23 Q Were you able to make contact with this particular person as you
24 were trying to provide assistance?

25 A I was trying to but he wasn't responding to me. He was just

1 groaning.

2 Q Okay. You mention that then an ambulance came and took this
3 person away?

4 A Yes.

5 Q Now, were there other things that you did at that scene or helped
6 out or assisted with? I mean, I know that appears to be your primary
7 responsibility at that time, but what other things did you do maybe after that
8 fact?

9 A We made sure that the scene was secure. We had any -- other
10 officers had witnesses or people who called in, they had those people separated
11 so that detectives could talk to them. We looked around the ground. We saw
12 casings from firearms. We saw a firearm on the ground. And we saw a bag of
13 what appeared to be narcotics on the ground as well.

14 Q Okay. Let me do this, now, did -- did you find anything on his
15 person, this person's person that was of interest that was inventoried and
16 logged?

17 A I did. Before he got transported to the hospital we removed
18 everything from his pockets to make sure that if he regains consciousness, if
19 you're in a fight and you lose consciousness, when you regain consciousness
20 your first thought is to go right back to what you were doing, so if he was in a
21 fight he was going to wake up and start fighting again.

22 Q Okay.

23 A So we remove everything that way paramedics, hospital staff are all
24 safe. And in his pocket was a little over \$3300 cash.

25 Q All right. I'm going to publish what's been already admitted as

1 State's 42. Do you recognize what we're looking at there?

2 A I do. That is money that I removed from the subject's pocket.

3 Q That's how much money that guy on the ground had on him?

4 A Yes.

5 Q Publishing 41, what are we looking at here?

6 A In the pocket we have the money that we removed. He also had a
7 cell phone, a lighter, and a pack of cigarettes.

8 Q And what's all this writing here on the hood of the car?

9 A That writing is actually for the count for our impound for -- we take
10 an inventory of how much money and it's broken down in 100s, 20s, 10s, 5s,
11 and 1s. So we had --

12 Q So you write it on your car?

13 A We wrote it down on the car with dry erase markers that way an
14 officer counts it, I count it, and then because of the amount of money, another
15 officer verifies it and then a sergeant had to verify it as well.

16 Q Okay. So there's all that cash. You mentioned that had you
17 noticed that there was a firearm out there as well. Publishing State's 20. Do
18 you see that firearm in this photograph?

19 A I do. It's at the bottom of the picture.

20 Q Okay. You also -- did you -- did you ever also notice anything that
21 appeared to be, at least based on your training and experience, to be narcotics?

22 A I did, a bag of what appeared to be illegal narcotics.

23 Q Okay. And was that near -- was that near his body?

24 A Yes.

25 Q Okay. Now, in the case of when -- when someone passes away

1 and it kind of becomes a homicide, do other members of Metro kind of come to
2 the scene to kind of take over an investigation or is it all pretty much patrol at
3 that point?

4 A At this point, and this was before we decentralized, so at this point
5 Violent Crimes, Major Crimes would come out because the subject was still
6 alive when he got transported to the hospital. So a set detectives comes out
7 and we brief those detectives. And then once it turns into a homicide and the
8 subject passes away, then Homicide responds.

9 Q So in this case did Violent Crimes come out first?

10 A Yes.

11 Q Okay. And then are you alerted that it becomes the person has
12 passed away a little, a couple hours later or an hour and a half later or so
13 something along those lines?

14 A Yes.

15 Q Okay. And then Homicide comes out?

16 A Yes.

17 Q And then do you help brief the Homicide decks as well about the
18 things that you observed and things that you did?

19 A Yes. I helped brief both set of detectives as they came out.

20 Q Additionally, did crime scene analysts also come to the scene?

21 A Yes.

22 Q And did you assist them in briefing the things that you observed,
23 noted, things of that nature?

24 A I did.

25 Q Okay?

1 MR. HAMNER: Court's indulgence.

2 I have no further questions for this question.

3 THE COURT: Thank you.

4 Mr. Schwarz.

5 MR. SCHWARZ: Yes, thank you, Your Honor.

6 **CROSS-EXAMINATION OF DAVID ROSE**

7 BY MR. SCHWARZ:

8 Q Sergeant, how are you doing?

9 A Very well, sir. How about yourself?

10 Q I'm good. I'm good.

11 So, listen, when you got the initial call, did you get a description of
12 a vehicle or anything?

13 A At that point all I knew was that a subject was down and we were
14 really close. I was on scene very quickly, so I didn't have all that information
15 going forward at that point.

16 Q Okay. I guess my question is do you recall if they gave a
17 description of a vehicle or -- or not?

18 A I don't know if it was broadcast before I arrived or if we broadcast
19 it as we arrived.

20 Q Okay. All right. Fair enough. Now, you said that you go through
21 his pockets to make sure that there's nothing dangerous in there, right?

22 A Correct.

23 Q Because if he went down in a fight, if he comes to he's going to
24 think he's still in the same fight.

25 A Correct.

1 Q All right. So as you see this, you know, unfortunate man with a
2 gunshot wound laying on the ground, you don't know what he's got in his
3 pockets, correct?

4 A Correct.

5 Q Okay. And not until you actually put your gloves on and go in there
6 that you're going to discover what he has in his pockets?

7 A Correct.

8 Q And so when you went in his pockets, he had a bunch of money,
9 yes?

10 A Yes.

11 Q There were narcotics on the ground near his body, correct?

12 A Correct.

13 Q He had all of his personal effects in his pockets, yes?

14 A He had a lighter, cell phone, and some cigarettes, yes.

15 Q Okay. Did he have any jewelry on?

16 A Not that I recall. I didn't -- I don't remember any jewelry.

17 Q If he had --

18 A I didn't take any off.

19 Q -- if he had a neck chain?

20 A I'm not sure.

21 Q If he had neck chains on, would it have been your responsibility to
22 remove them?

23 A No.

24 Q Okay. That's not the type of personal inventory you're there to do?

25 A Correct.

1 Q And so he had all this stuff still on his body?

2 A Correct.

3 MR. SCHWARZ: All right. I don't have anything further. Thank you,
4 Sergeant.

5 THE COURT: Mr. Hamner.

6 MR. HAMNER: Just very briefly.

7 **REDIRECT EXAMINATION OF DAVID ROSE**

8 BY MR. HAMNER:

9 Q There were those questions about items found in his pockets, the
10 money was found in his pocket, correct?

11 A Yes.

12 Q What about the narcotics, were those found in his pocket or were
13 those found on the ground nearby his body?

14 A They were on the ground near his body.

15 Q Thank you.

16 MR. HAMNER: No further questions.

17 MR. SCHWARZ: I have nothing further, Judge.

18 THE COURT: Thank you.

19 Anything from our jurors?

20 Sergeant Rose, thank you very much for your time, sir. You are
21 excused.

22 THE WITNESS: Thank you, sir.

23 THE COURT: State may call their next witness.

24 MR. SCHWARTZER: Your Honor, could we approach briefly?

25 THE COURT: Yep.

1 [Bench conference -- not transcribed]

2 MR. SCHWARTZER: State calls Officer Kyle Downie.

3 THE COURT: Or actually, hold on a second, we're going to take a quick
4 recess before you put that officer on the stand.

5 Ladies and gentlemen, we'll take a quick recess. During the recess
6 you are admonished not to talk or converse among yourselves or within anyone
7 else on any subject connected with the trial or read, watch, or listen to any
8 report of or commentary on the trial -- its okay. You know what, now I forgot
9 where I was in that thing. Once I start saying that, if I stop then I can't
10 remember. But you guys remember it. You can't do any investigation, don't
11 talk to anybody, don't do any kind of recreations, and don't communicate by
12 Internet or watch any radio or television news reports.

13 All right. We'll be in recess. Go ahead. Like, 10 minutes, guys.

14 [Outside the presence of the jury panel]

15 THE COURT: So apparently, gentlemen, they have another inmate
16 downstairs that's going to be a witness, so we need to bring him up, and that's
17 one of the reasons we were going to take a break. So I don't know who needs
18 to communicate with who about getting him up here now. So we're going to --
19 we're going to -- there's an inmate witness downstairs, so we need to get him
20 up here and into the courtroom before we bring the jurors back up.

21 THE MARSHAL: So, it'll be longer than ten minutes, I'm sure?

22 THE COURT: Yeah, well, it shouldn't be too long. I think they've already
23 got him down there, they're just waiting for us to tell them they can go ahead
24 and bring him up.

25 THE MARSHAL: I'm going to take a quick restroom room myself then.

1 [Recess at 11:24 a.m.; proceedings resumed at 11:44 a.m.]

2 [In the presence of the jury panel]

3 THE COURT: You all can be seated. Thank you.

4 All right. We are back on the record. Mr. Muhammad-Coleman's
5 present with his attorney. State's attorneys are present. We're going to
6 continue on with the State's case-in-chief.

7 And your next witness, gentlemen, is?

8 MR. HAMNER: The State's going to call LeCory Grace to the stand.

9 THE COURT: All right. Mr. Grace, could you raise your right hand for
10 me, please, sir? Thank you.

11 **LeCORY GRACE,**

12 [having been called as a witness and being first duly sworn testified as follows:]

13 THE CLERK: Will you please state and spell your name for the record.

14 THE WITNESS: My names LeCory Grace, L-E-C-O-R-Y, G-R-A-C-E.

15 THE COURT: Okay. Thank you, Mr. Grace.

16 Mr. Hamner.

17 MR. HAMNER: All right.

18 **DIRECT EXAMINATION OF LeCORY GRACE**

19 BY MR. HAMNER:

20 Q Morning, Cory, how are you?

21 A All right.

22 Q All right. Fair to say you don't want to be here today, right?

23 A No.

24 Q Okay. You didn't come here voluntarily?

25 A No.

1 Q We made you come?
2 A Yes.
3 Q Right? You had no choice in the matter?
4 A No.
5 Q All right. Before we get started I just want to get a couple quick
6 things out of the way. You got a prior for burglary in 2016, correct?
7 A Yes.
8 Q And a prior for an attempt burglary in 2013; is that right?
9 A Yes.
10 Q Okay. What I want to talk though about is back in April of 2013
11 were you -- were you staying over at the Travelers Inn?
12 A Yes.
13 Q Okay. And that's located, like, 25 -- 2855 Fremont, right?
14 A Yes.
15 Q Okay. Were you there with other family members of yours?
16 A Yes.
17 Q Okay. And who were you kind of living with or sharing multiple
18 rooms with? Who was there?
19 A My brother and his girlfriend.
20 Q Is that Jermaine?
21 A Yes.
22 Q Jermaine Grace and is his girlfriend Rachel Bishop?
23 A Yes.
24 Q And their kids?
25 A Yes.

1 Q Or her kids?

2 Okay. I want to talk about April 19th, 2013, in particular. Okay?
3 Did you guys kind of live up on the -- staying up in rooms on the second level?

4 A Yes, sir.

5 Q All right. What were you planning on doing that night with your
6 brother?

7 A Going to the casino.

8 Q Okay. Now, there -- was there -- did you recognize a guy at that
9 kind of stayed in a room kind of between you and Rachel?

10 A Yes.

11 Q Okay. What did he kind of look like?

12 A Tatted, his skin, Puerto Rican, I don't know what race.

13 Q Okay. Hairstyle? Long? Short?

14 A Short.

15 Q Okay. You remember him being kind of tatted and looking kind of
16 Puerto Rican, tan of some sort. On that night before you decided to go out did
17 you see him?

18 A Yes, sir.

19 Q Okay. Was he kind of up on that second level with you guys
20 initially?

21 A Yes, sir.

22 Q All right. And where were you and your brother just planning on
23 going and hanging out that night?

24 A Fremont Street.

25 Q Okay. How were you going to get there?

1 A In Rachel's car.

2 Q Okay. And was Rachel's car parked in the parking lot?

3 A Yes, sir.

4 Q All right. And so it was just you and Jermaine who were going to
5 go out that night, right?

6 A Yes, sir.

7 Q Is that right? All right. I just want to show you just a couple of,
8 like, quick pictures. I want to just show you State's 15, do you recognize what
9 we're kind of look at there?

10 A Yes, sir.

11 Q What is that?

12 A It's the parking lot.

13 Q Okay. And was -- was Rachel's car -- do you see these kind of
14 three parking spots that are here in the picture?

15 A Yes, sir.

16 Q Was Rachel's car picked in the first spot? The middle spot? Or the
17 one to the right? As far as you can remember.

18 A The one to the right.

19 Q Okay. So the one over here?

20 A Yes, sir.

21 Q That's what you remember? Now, when you -- when you and your
22 brother kind of started making your way downstairs did you notice another car
23 parked next to Rachel's car?

24 A Not right next it, but, yes, sir.

25 Q Okay. If Rachel's car was here, do you remember this other car

1 being here in this first spot to the left or the spot next to it?

2 A In the first spot to the left.

3 Q So this one right here?

4 A Yes, sir.

5 MR. HAMNER: Okay. And let the record reflect that that's the parking
6 spot all the way to the left of the picture in State's 15.

7 THE COURT: Record will so reflect.

8 BY MR. HAMNER:

9 Q What type of car was it; do you remember?

10 A Dark Cadillac.

11 Q Okay. Older? Newer model?

12 A Older model.

13 Q Four doors? Two doors?

14 A Four-door.

15 Q Okay. Was there anybody standing out there?

16 A Yes, sir.

17 Q Were there a couple of people? One person?

18 A It was two people on the outside of the car.

19 Q Okay. And had you ever met those people before?

20 A No, sir.

21 Q All right. Tell me one of the guys, white? Black? Hispanic?

22 A Hispanic, white.

23 Q What about the other guy? White? Black? Hispanic?

24 A Black.

25 Q Okay. And were -- were they going anywhere? Were they just kind

1 of standing there?

2 A They were just kind of standing there.

3 Q All right. And -- and they were standing near the -- near this
4 Cadillac; is that right?

5 A Yes, sir.

6 Q Did you notice anyone sitting inside the car?

7 A Yes, sir.

8 Q Guy? Girl?

9 A Guy.

10 Q Black? White? Hispanic?

11 A Black.

12 Q What about the build of that guy?

13 A I don't --

14 Q You don't really remember? That's okay.

15 So when you guys, you make your way down, as you're making
16 your way down, do you see that guy who's living kind of in between you also
17 out up on that second level?

18 A Yes, sir.

19 Q Now, when you walk down, did the guy who lived up on that
20 second level, was he screaming or yelling at those people down by the Cadillac?

21 A No, sir.

22 Q Were they screaming or yelling at him?

23 A No, sir.

24 Q Was the guy up on the second level waving any weapons or trying
25 to go after them or attack them as far as you could see when you were out

1 there?

2 A No, sir.

3 Q And were those guys down there, were they attacking him in any
4 way?

5 A No, sir.

6 Q Okay. So there was no screaming or yelling or an argument going
7 on as far as you could see?

8 A As far as I could see.

9 Q All right. So then you and your brothers, you guys you make your
10 way down to your car; is that right?

11 A Yes, sir.

12 Q Do you get in your car and start heading out?

13 A We didn't head out right then. We sat for like two, three minutes.

14 Q Okay.

15 A That's when the neighbor came downstairs.

16 Q Okay. And so you saw the neighbor come -- make his way
17 downstairs?

18 A Yes, sir.

19 Q And when he came downstairs was he cursing or yelling at those
20 guys?

21 A No, sir.

22 Q Were they cursing and yelling at him?

23 A No, sir.

24 Q Was he waving around any kind of gun or a weapon at these guys?

25 A No, sir.

1 Q Were they doing the same thing to him?

2 A No, sir.

3 Q Okay. So he -- he went down there and what did you see him do
4 when he walked down there?

5 A Him and the white -- white guy were talking.

6 Q Okay. So they were just kind of talking?

7 A They were having a conversation.

8 Q Was the guy who lived upstairs, was he kind of pointing in his face
9 or yelling or doing anything like that?

10 A No, sir.

11 Q Do you remember kind of how he was standing or what he was
12 doing?

13 A He was standing closer to the -- the Dumpster-like thing right there.

14 Q Okay. So you remember him -- you see this Dumpster, this is that
15 red Dumpster here in State's 15?

16 A Yes, sir.

17 Q He was kind of standing there and he was having a conversation
18 with the white guy?

19 A Yes, sir.

20 Q And the black guy is a having a part of that conversation or is he
21 just kind of standing off?

22 A He's just standing off.

23 Q Was he kind of nearby the car or somewhere else?

24 A Close to the car.

25 Q Okay. As far as you could tell, was -- was the guy who came down

1 the stairs putting his hands on anybody?

2 A No, sir.

3 Q Threatening to fight anybody?

4 A No, sir.

5 Q So did he seem upset or really angry as he was talking with him?

6 A No.

7 Q Okay. So you get in your car and you guys leave?

8 A Yes.

9 Q And as you're pulling out do you see anything happen between
10 these guys?

11 A No, sir.

12 Q Okay. When you get in your car and you're kind of driving for a
13 couple minutes, does your brother get a phone call?

14 A Yes, sir.

15 Q Okay. And who's on the other end?

16 A Rachel.

17 Q And after kind of having -- and who's she talking to? Jermaine?

18 A Jermaine.

19 Q Okay. And then what is kind of relayed to you just as you're
20 driving?

21 A That it was a shooting.

22 Q Okay. And after you kind of get that relayed, do you see anything
23 that you had just seen back at the Travelers Inn?

24 A Yes, sir.

25 Q What did you see?

1 A The Cadillac.

2 Q You saw the Cadillac?

3 A Yes, sir.

4 Q Where are you kind of -- I know this is on Fremont, where are you
5 driving, whereabouts of town are you driving when the Cadillac starts driving by
6 you guys?

7 A A little past Charleston right before Eastern.

8 Q Okay. And so how many minutes do you think you'd been gone
9 for?

10 A Five.

11 Q Five minutes? Okay.

12 MR. HAMNER: Court's indulgence.

13 BY MR. HAMNER:

14 Q Which way was that Cadillac going? Which direction of travel was
15 it going?

16 A Towards Fremont.

17 Q Towards Fremont?

18 A Yes, sir.

19 Q Okay.

20 MR. HAMNER: We're going to publish Exhibit 7. Permission to publish
21 Exhibit 7.

22 THE COURT: Okay.

23 MR. HAMNER: If we could queue over.

24 BY MR. HAMNER:

25 Q So do you recognize what we're looking at here?

1 A Yes, sir.

2 Q Okay. Do you see Rachel's car?

3 A Yes, sir.

4 Q Which one is it?

5 A Green car.

6 Q Is it the green car facing -- facing -- having its rear kind of facing
7 towards the exit?

8 A Yes.

9 Q Is it -- is it up along kind of that parking spot in the middle of the
10 screen?

11 A Yes, sir.

12 Q All right.

13 THE COURT: You're indicating this car?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 BY MR. HAMNER:

17 Q And what about that car to the right, do you recognize that car to
18 the right?

19 A Yes, sir.

20 Q What's that?

21 A The Cadillac.

22 Q That's the one you were telling us about?

23 A Yes, sir.

24 Q Okay.

25 MR. HAMNER: We're going to play it.

1 THE COURT: And for the record the video started playing at about
2 21:15.

3 MR. HAMNER: I apologize, Your Honor.

4 THE COURT: That's okay.

5 MR. HAMNER: Could we stop it right there at 21 -- 21:21.

6 BY MR. HAMNER:

7 Q Do you see the individual coming downstairs?

8 A Yes, sir.

9 Q Do you recognize that individual?

10 A Yes, sir.

11 Q Who's that?

12 A That's the neighbor.

13 Q Okay. That's the guy you were saying was kind of tatted up kind
14 of Puerto Rican looking?

15 A Yeah.

16 Q Okay. Let's resume playing at 21:21.

17 I want to stop right now at 21:21:55. Now there's an individual in
18 an orange shirt with dreads. Who's that?

19 A That's me.

20 Q Okay. And the individual walking behind you, who's that?

21 A That's Jermaine.

22 Q Okay. So is this kind of around the time you're making your way to
23 your car so you guys can go out?

24 A Yes, sir.

25 Q Okay. Let's resume playing.

1 All right. Can we stop here at 21:22:53?

2 Now, do you see the neighbor in that screen?

3 A Yes, sir.

4 Q "Yes" or "no"?

5 A Yes, sir.

6 Q Okay. Where -- where is he?

7 A Standing by the little Dumpster thing.

8 Q And you know what, if you can even reach and you can touch that,
9 do you see him in the bottom corner? It makes marks when you touch it. So
10 he's right down there. Who is he talking to; do you remember? You mentioned
11 there was a white guy there --

12 A Yeah.

13 Q -- is that -- is that the -- is that kind of what your recollection of
14 what's happening there?

15 A That's my recollection is.

16 Q So that's kind of the white guy there chatting and talking with him?

17 A Yes.

18 Q That you remember. And do you see the black guy that you were
19 talking about, you said he was kind of hanging out by the car? If you could
20 just --

21 A He's still leaning on the car right there.

22 MR. HAMNER: Okay. Let the record reflect the witness made a mark all
23 the way on the left-hand side of the screen to indicate the neighbor and the
24 white guy having a conversation, that's just to the left of this car in the middle
25 frame which is a dark sedan and he indicated the black male sitting on the back

1 of the Cadillac and he made a mark right here to the driver's side near the trunk
2 area of the vehicle at 22 -- 21:22:53.

3 THE COURT: Yes.

4 MR. HAMNER: Okay. Could you resume playing? You can stop it now.

5 BY MR. HAMNER:

6 Q So, LeCory, I mean, you got a chance to watch that, does that kind
7 of refresh your memory, is that kind of what you described, the things that you
8 saw?

9 A Yes, sir.

10 Q And so when you left these guys weren't beefing or fighting as far
11 as you could tell?

12 A As far as I could tell, no.

13 Q Okay.

14 Now, after this happened you get -- you get -- the police come to
15 speak to you; isn't that right?

16 A Yes, sir.

17 Q Okay. And they come to speak to you about on April 25th, about
18 six days later; is that right?

19 A Yes, sir.

20 Q Okay. Do you remember them showing you a series of photographs
21 of people to see if you could pick someone out?

22 A Yes, sir.

23 MR. HAMNER: Okay. At this time showing opposing counsel what have
24 been previously marked as State's Proposed Exhibits 116A and B and 117 and
25 117 A. And I'm sorry if I misspoke, it's 116, 116A, 117, 117A.

1 THE COURT: Thank you.

2 MR. SCHWARZ: Okay.

3 THE COURT: Are you going to be moving their admission?

4 MR. HAMNER: Yes. Any objections or do you want to lay some
5 foundation?

6 MR. SCHWARZ: No, no, no.

7 THE COURT: Okay. Those'll be --

8 MR. SCHWARZ: I mean, you know, I'd like him to look at them first.

9 MR. HAMNER: Sure. I can do that. No problem.

10 Permission to approach.

11 THE COURT: You may.

12 MR. HAMNER: Let the record reflect I'm showing the witness State's
13 Proposed Exhibits 116, 116A, and 117 and 117A.

14 BY MR. HAMNER:

15 Q Let's start with 116. Do you recognize whose handwriting's on
16 there?

17 A Yes, sir.

18 Q Whose handwriting is that?

19 A Mine.

20 Q Is that your handwriting up here? Is that your signature?

21 A That's my handwriting.

22 Q Here? Is that your signature in the middle?

23 A Yes.

24 Q And do you remember kind of being shown at least these
25 photographs at that time?

1 A Yes, sir.

2 Q Okay. And that's in 116 and 116A. I want to show you 117. Do
3 you recognize whose signature that is?

4 A Yes.

5 Q Whose is that?

6 A That's mine.

7 Q And how about this handwriting?

8 A Mine.

9 Q And showing you 117A. Whose kind of handwriting is that?

10 A Mine.

11 Q Okay. So you remember -- at this we're going to -- and these are
12 fair and accurate representations of these pictures and your handwriting; is that
13 right?

14 A Yes, sir.

15 MR. HAMNER: Okay. At this time we're going to ask for the admission
16 of State's Proposed Exhibits 116, 116A, 117, 117A.

17 MR. SCHWARZ: No objection.

18 THE COURT: All right. Those will be admitted. Thank you. You can
19 publish.

20 **[STATE'S EXHIBITS 116, 116A, 117, AND 117A ADMITTED]**

21 BY MR. HAMNER:

22 Q With -- I'm going to publish --

23 MR. HAMNER: Permission to publish 117 and 117A.

24 BY MR. HAMNER:

25 Q When you were shown pictures in 117 you actually were able to

1 make an identification and I think it says you picked picture number 5; is that
2 right?

3 A Yes, sir.

4 Q And you said that this was the person standing behind the blue car
5 talking to the victim?

6 A Yes, sir.

7 Q All right. Publishing 117A. And this is the picture in number 5 you
8 picked; is that right?

9 A Yes, sir.

10 Q And that's about six days afterwards, right?

11 A Yes, sir.

12 Q And that's the white guy?

13 A Yes, sir.

14 Q Okay. Now, when you were shown 116, you weren't -- you kind of
15 indicated you weren't sure, but you thought maybe 4 or maybe 5 looked
16 similar, right? Didn't really make an ID, but you thought maybe 4 or 5 were the
17 closest?

18 A Yes, sir.

19 Q Okay. I want to publish 116 A.

20 So you thought either this picture or this picture may have been one
21 of them, right?

22 A Yes, sir.

23 Q But you didn't pick anybody in particular there?

24 A Yes, sir.

25 Q Okay. But you knew that was -- that was the guy?

1 A Yes, sir.

2 MR. HAMNER: Okay. I have no further questions for this witness.

3 THE COURT: Just for the record, the last one when you said you knew
4 that was the guy, you were pointing at the Exhibit 116A with the gentleman.

5 MR. HAMNER: That is absolutely correct. Thank you, Your Honor.

6 Or it's is 117A.

7 THE COURT: 117, I'm sorry.

8 MR. HAMNER: Thank you.

9 THE COURT: Okay.

10 MR. HAMNER: And I have no further questions of this witness.

11 THE COURT: Mr. Schwarz.

12 MR. SCHWARZ: Yes. Thank you, Judge.

13 **CROSS-EXAMINATION OF LeCORY GRACE**

14 BY MR. SCHWARZ:

15 Q Mr. Grace, I don't have a lot to ask you, I just want to nail
16 something down. Now at some point --

17 MR. HAMNER: Sorry, sir.

18 MR. SCHWARZ: That's all right.

19 BY MR. SCHWARZ:

20 Q At some point you and your brother and -- did you know this guy's
21 name that lived up there? Dale Borero, did you know his name?

22 A I didn't know him at the time. No, sir.

23 Q Okay. All right. But you know who I'm talking about?

24 A Yes, sir.

25 Q All right. At some point all three of you were out on the balcony?

1 A Yes, sir.

2 Q And all three of you were looking down, right?

3 A Yes, sir.

4 Q Do you recall giving a voluntary statement to the police?

5 A Yes, sir.

6 Q Do you recall discussing with the police that there was a concern
7 that all three of you were together?

8 A No, sir.

9 Q Okay.

10 MR. HAMNER: Just page number?

11 MR. SCHWARZ: Yeah, yeah, I'm -- just give me a minute, as you know
12 I'm old.

13 So I'm looking at page 8 about in the middle.

14 MR. HAMNER: Okay. Thank you .

15 BY MR. SCHWARZ:

16 Q All right. Do you recall telling the police, Because both of them
17 were on the phone and the white guy was on the phone, so I was thinking they
18 were having a conversation together because he -- the victim was telling him,
19 well, nobody up here with him, he was by himself; do you remember that?

20 A Yes, sir.

21 Q Okay. And did you have that same concern?

22 A I didn't.

23 Q Okay. You were not concerned at all? Your brother wasn't
24 concerned at all?

25 A He was concerned. I wasn't.

1 Q Oh, I see. And so it would be fair to say that the three of you are
2 up on the balcony, you can see the people by the blue Cadillac.

3 A Yes, sir.

4 Q And your brother had a concern that maybe they would think that
5 you two were together.

6 A Yes, sir.

7 Q Why would that be a concern if everybody was just, you know,
8 behaving nicely and, you know, basically not mad and not yelling or anything?

9 A At the time my brother, he's like a paranoid person, so he always
10 thinks the worst of people. So at the time he just thought it was -- it looked
11 strange.

12 Q Okay. Now, you saw the tape, you saw Dale go down first,
13 correct?

14 A Yes, sir.

15 Q And then you went down right after him?

16 A Yes, sir.

17 Q Okay. And you didn't know these people and they didn't know
18 you?

19 A No, sir.

20 Q Okay. And you two went directly to your car?

21 A Yes, sir.

22 Q Did you exchange any words with anybody?

23 A I didn't.

24 Q Did your brother?

25 A Not that I know of.

1 Q Okay. Why did you take a minute?

2 A Because he felt like they were -- they were giving us the eye, like,
3 they intimidating, like, he just didn't feel the vibe -- a good vibe at the time. He
4 told me when we got in the car that I should have been watching my
5 surroundings because he just didn't like the guys. He just didn't like them.

6 THE COURT: Is he older brother?

7 THE WITNESS: Older brother.

8 BY MR. SCHWARZ:

9 Q Yeah, so maybe he's not thinking that everybody's getting along?

10 A Yes.

11 Q And then you guys pulled out?

12 A Yes, sir.

13 Q All right. And you didn't hear any gunshots?

14 A I didn't hear anything.

15 MR. SCHWARZ: I don't have anything further. Thank you?

16 THE COURT: Mr. Hamner.

17 **REDIRECT EXAMINATION OF LeCORY GRACE**

18 BY MR. HAMNER:

19 Q Yeah, I want to, first, I'd like to, at least for completeness
20 purposes, kind of read out that full answer on page 8?

21 Permission to do so, Your Honor.

22 THE COURT: Okay.

23 MR. SCHWARZ: I have no objection to that, Judge.

24 THE COURT: Thank you.

25 MR. HAMNER: Thank you.

1 BY MR. HAMNER:

2 Q So the full answer was, Cuz both of them was on the -- he was on
3 the phone --

4 THE COURT: Well, for context, can you read what the question was as
5 well.

6 MR. HAMNER: Okay.

7 THE COURT: Thank you.

8 MR. HAMNER: The question was, Okay.

9 THE COURT: Oh, it was one of those. Okay.

10 MR. HAMNER: Earlier, Your Honor, to give context, there was a question
11 that was asked, Could you tell if they were arguing?

12 THE COURT: Okay. Thank you.

13 BY MR. HAMNER:

14 Q And you do you remember telling them, You know, they seemed to
15 be having a conversation?

16 A Yes, sir.

17 Q Okay. You didn't say arguing, but they were having a conversation.
18 And then you provided the following answer, Cuz both of them was on the -- he
19 was on the phone and the white guy was on the phone, so I was thinking they
20 were having a conversation together because he, uh, the victim was telling him,
21 well, nobody up there with him, he was by himself -- hisself, like, I mean,
22 that -- that -- that was the only part I heard, quote, I'm by myself and then he --
23 then he, uh, he -- he -- he passed me, walked down the stairs, and met the
24 white guy.

25 Do you remember kind of telling the police that?

1 A Yes, sir.

2 Q So the one part of the -- of the conversation was you heard Dale tell
3 who you believed to be the men downstairs or at least the white guy on the
4 phone, I'm by myself; is that right?

5 A Yes, sir.

6 Q And as far as you could tell was he alone?

7 A Yes, sir.

8 Q Okay. Then there were some cross-examination questions from
9 Mr. Schwarz about your brother not getting a good vibe; remember that?

10 A Yes, sir.

11 Q Did he tell you that he didn't get a good vibe from Dale, the
12 neighbor, or a good vibe from the guys at the Cadillac?

13 A The guys from the Cadillac.

14 Q Okay. Was he telling you, you know, watch yourself around Dale
15 or was he telling you watch yourself around the guys by the Cadillac?

16 A The guys around the Cadillac.

17 Q Okay. And then I think Mr. Schwarz kind of asked a follow-up
18 question of, like, oh, they weren't, well, they weren't getting along; do you
19 remember that kind of statement being asked to you on cross-examination?

20 A Yes, sir.

21 Q Okay. I think you had said yes. I just want to get a couple things
22 clarified. Your brother was more concerned about the Cadillac guys not --

23 A Dale.

24 Q -- Dale? Okay. And as far as you could tell from what you saw
25 from their conversations, were they fighting or in some heated argument from

1 what you could see?

2 A From what I could see, no, they wasn't.

3 Q Okay. It was just brother was more concerned about how those
4 guys at the Cadillac were looking at you because of the timing in which you
5 kind of follow --

6 A Dale down.

7 Q -- Dale down the stairs because you guys come right after them,
8 right?

9 A Yes, sir.

10 MR. HAMNER: Okay. I have no further questions.

11 **RECROSS-EXAMINATION OF LeCORY GRACE**

12 BY MR. SCHWARZ:

13 Q Well, I'm sorry, Mr. Grace, but I thought I asked you if your brother
14 expressed those concerns because of the entire situation?

15 A No.

16 Q Because of everybody?

17 A No, not Dale.

18 Q It was only the guys at the Cadillac?

19 A Only the guys at the Cadillac.

20 Q But there is only one guy at the Cadillac?

21 THE COURT: Whoa, whoa, we you got to let him finish the answer,
22 Michael, you keep going together.

23 MR. SCHWARZ: Okay.

24 THE WITNESS: Only the guys at the Cadillac, it's two guys at the
25 Cadillac on the trunk.

1 BY MR. SCHWARZ:

2 Q Okay.

3 A He felt like the two guys on the trunk were watching me or
4 something. But I was not paying attention to anything going around at that
5 time. If you watch the video, I was looking the opposite way when I walked to
6 the car.

7 Q Okay.

8 A That kind of made my brother mad and so that's why we sat in the
9 car for -- sat right there for as long as we did.

10 Q Okay. So --

11 A He was --

12 Q -- the white guy that you identified --

13 A Yes.

14 Q -- was not by the Cadillac, was he?

15 A At the time, yes.

16 Q But when you got in your car he wasn't, he was talking to Dale,
17 wasn't he?

18 A To Dale, yes.

19 Q And the black guy was by the Cadillac?

20 A Yes.

21 Q And he was leaning on the Cadillac?

22 A On the Cadillac, yes.

23 Q And Dale and the white guy were having a conversation?

24 A Yes, sir.

25 MR. SCHWARZ: Okay. I don't have anything further.

1 THE COURT: Anything, Mr. Hamner?

2 MR. HAMNER: No, Your Honor.

3 THE COURT: All right. Anything from our jurors? No? All right.

4 Can you guys approach the bench real quick?

5 [Bench conference -- not transcribed]

6 THE COURT: Okay. Folks, we need to take a quick break. We're not
7 taking lunch yet. But we're going to take a quick recess.

8 During the recess you are admonished not to talk or converse
9 among yourselves or with anyone else on any subject connected with the trial
10 or read, watch, or listen to any report of or commentary on the trial by any
11 medium of information including, without limitation, to newspaper, television,
12 the Internet, and radio or form or express any opinion on any subject connected
13 with the case 'til it's finally submitted to you.

14 If you all would step outside for just a couple of minutes. Okay.

15 [Outside the presence of the jury panel]

16 THE COURT: Okay. Officers, however you guys want to do it, go right
17 ahead.

18 [Recess at 12:11 p.m.; proceedings resumed at 12:18 p.m.]

19 [In the presence of the jury panel]

20 THE COURT: All right. You all can be seated. We will be back on the
21 record. Mr. Muhammad-Coleman's present with his attorney. State's attorneys
22 are present. Our jurors are all present. We'll continue on with the State's
23 case-in-chief.

24 And your next witness, gentleman.

25 MR. SCHWARTZER: Officer Kyle Downie, Your Honor.

1 THE COURT: Thank you.

2 Good morning, sir.

3 THE WITNESS: Good morning.

4 THE COURT: Thank you.

5 **KYLE DOWNIE,**

6 [having been called as a witness and being first duly sworn testified as follows:]

7 THE CLERK: You may be seated. Will you please state and spell your
8 name for the record.

9 THE WITNESS: Kyle Downey, K-Y-L-E, D-O-W-N-I-E.

10 THE COURT: Thank you.

11 Mr. Schwartzer.

12 MR. SCHWARTZER: Thank you, Your Honor.

13 **DIRECT EXAMINATION OF KYLE DOWNIE**

14 BY MR. SCHWARTZER:

15 Q Officer Downie, how are you currently employed?

16 A I'm a police officer with the Las Vegas Metropolitan Police
17 Department.

18 Q How long have you been doing that?

19 A Eight years.

20 Q And back in 2013 were you doing the same thing?

21 A Yes.

22 Q Just four years less?

23 A Yes.

24 Q Directing your attention to April of 2013, what was your capacity
25 with the Las Vegas Metropolitan Police Department?

1 A I was assigned as a patrol officer in Downtown Area Command.

2 Q Okay. Specifically, did you have -- as a patrol officer, did you have
3 a certain role at that time?

4 A Yeah. That evening I went out as a directed patrol unit.

5 Q Okay. Let me stop you there, by "that evening" you're talking
6 about April 29th, 2013?

7 A Yeah, that shift.

8 Q Okay. "That shift"? Okay. So you were subpoenaed, you saw the
9 name on the subpoena, so you're aware of the incident that you were
10 subpoenaed for, correct?

11 A Yes.

12 Q And referring to something that occurred to you in your capacity as
13 a patrol officer on April 29th of 2013?

14 A Yes.

15 Q Okay. What was that capacity on that shift on April 29th, 2013?

16 A Basically as a directed patrol unit that evening I was not responsible
17 for calls for service. So any 9-1-1 or 3-1-1 call that came in to dispatch, when
18 you're a directed patrol unit you would not respond to those types of calls.
19 Instead you would just focus your efforts on high crime areas or problem
20 neighborhoods or any identified hot spots within our area command.

21 Q Before you go off on your patrol do you have what's known as
22 briefings?

23 A Yes, every shift.

24 Q And can you tell the ladies and gentlemen of the jury what a
25 briefing is?

1 A Briefing takes place at the beginning of every shift. It's generally
2 15 to 20 minutes, sometimes a full half hour. And we just go over information
3 that occurs within our sector beat and we talk about possible suspects that we
4 may be looking for, vehicles that we may be looking for, or anything that's
5 recent and currently trending within our area that we may stumble upon during
6 your shift.

7 Q During your briefing on April 29th, did you have any information
8 regarding a homicide on Fremont Street?

9 A Yes. There was a homicide that occurred on Fremont Street ten
10 days prior to that.

11 Q And specifically was Homicide asking for officers' help in trying to
12 locate a suspect?

13 A Yes. We had information that there was a suspect possibly related
14 to that homicide that occurred on Fremont, we had information that he went by
15 a moniker or an alias of Money. He was a black male and that he possibly
16 frequented the area of Chicago and Fairfield.

17 Q And Chicago and Fairfield is that located in an area that's known to
18 you?

19 A Yes.

20 Q And what's that area called?

21 A Well, it's basically in the neighborhood just west of the
22 Stratosphere known as Naked City. A lot of the streets are named after major
23 U.S. cities like New York, Chicago, Philadelphia. And they all are basically just
24 west of the Stratosphere Hotel.

25 Q I'm going to show you an exhibit, this has been already admitted as

1 Exhibit 5. It's a map. Do you recognize this area?

2 A Yes, I do.

3 Q So you have the Stratosphere right here; is that correct?

4 A Yes.

5 Q And for the record we are talking about Clark County, Nevada, as
6 well, right?

7 A Yes.

8 Q And so this area would be -- would this be the area, and I'm now
9 putting my hand around the entire left part of the photograph, is that what you
10 would consider Naked City?

11 A Yes.

12 Q Basically running from Industrial Road, I guess it would be Main
13 Street running towards Industrial Road?

14 A Yes.

15 Q Okay. And then you said major city street, so it's New York,
16 Chicago, Philadelphia, St. Louis, Boston, Baltimore, and Cleveland?

17 A Yes.

18 Q Okay. You mentioned it was a high crime area. What -- is that
19 correct?

20 A Yes.

21 Q Okay. And it's an area you're familiar with that?

22 A Yes.

23 Q So that night on April 19th, 2013, you were not responding to
24 calls, correct?

25 A That's correct.

1 Q So what did you and your partner decide to do that night?

2 A Well, based on the information that we had from briefing and
3 knowing that we possibly had a suspect that frequented the area of Chicago
4 and Fairfield, we basically focused our efforts in that area just to try and gather
5 any intelligence on who might know a subject named Money or where he may
6 be hanging out at or anything. So different times throughout that shift we
7 would go down there and try to make contact with people to just try to further
8 our investigation and maybe -- maybe stumble upon a lead or something for
9 him.

10 Q Okay. So during that time, did you -- when you were running
11 around the Chicago-Fairfield Avenue area, and then let's actually circle that area
12 for the ladies and gentlemen of the jury you're talking about -- why don't you
13 circle it for us?

14 A Well, Chicago and Fairfield's right here. Chicago's an east-west
15 street. Fairfield is --

16 THE COURT: You can go ahead and just draw on the screen with your
17 finger.

18 THE WITNESS: Oh, I can? Oh, okay. This is basically the inter --

19 THE COURT: Well, now you broke it.

20 THE WITNESS: Just pulled up a little menu.

21 THE COURT: There you go. Okay.

22 THE WITNESS: I'm going to circle the area. This intersection right here
23 is Chicago and Fairfield. Fairfield's a major northwest south street that cuts
24 through all of those city streets. Chicago is a east-west street right there.

25 THE COURT: Thank you.

1 BY MR. SCHWARTZER:

2 Q And so for the record you circled Chicago and Fairfield intersection.

3 A Yes.

4 Q That's on the top part of the photograph.

5 A Yes.

6 Q Exhibit 5. Okay.

7 So when you were -- one of those times you were in that area, did
8 something happen in which you decided to stop your vehicle or go to an
9 apartment?

10 A Yes. We were flagged down by a few individuals in the driveway of
11 1712 Fairfield, which is basically right at that intersection. And there was just
12 a couple people that -- we weren't assigned to a call, we were just kind of in
13 that area and they wanted to speak with us.

14 Q Okay. Could you describe those individuals?

15 A I just remember them being Hispanic descent or American Indian
16 descent or -- yeah.

17 Q Were they older or younger?

18 A I can't remember.

19 Q Okay. That's fine. When they flagged you down did you guys stop
20 your vehicle?

21 A Yeah. We got out of the car and talked to them.

22 Q And then you ended up talking to people?

23 A Yes.

24 Q You eventually did an officer's report in this case?

25 A I did.

1 Q Who were -- do you remember the names of the two people you
2 talked to?

3 A There were actually three. The main individual we spoke to and did
4 most of the speaking to was an individual named Tahir Shahab, if I'm
5 pronouncing that correctly. He was actually the landlord or an owner of that
6 1712 address, 1712 Fairfield address. And he had two of his friends that were
7 part owners as well. Their names are Noori, I'm probably not going to be able
8 to his last name, I apologize, and also John Fazil.

9 Q Okay. I'm just showing you Exhibit 88.

10 THE COURT: Thank you, Your Honor.

11 BY MR. SCHWARTZER:

12 Q And 89, just a close-up of 88. Are those -- is this 1712 Fairfield
13 Avenue?

14 A Yes, it is.

15 Q And this is the place where you were flagged down to?

16 A Yes.

17 Q And when you were flagged down were you informed by these
18 individuals that they found something in the apartment?

19 A Yes.

20 Q And what did they tell you was found?

21 A They were basically there cleaning out apartment 7 in an attempt to
22 make it available for rent and they were -- as they were cleaning out electronics
23 and appliances, Tahir had actually grabbed a toaster oven, like a stainless steel
24 toaster oven, he had waked it outside. He explained to me how he noticed how
25 it was --

1 Q I don't want to get into too much detail what they said.
2 A Okay.
3 Q Because --
4 A No worries.
5 Q But, specifically, was there something that he found in that toaster
6 oven?
7 A Yeah. He found a gun.
8 Q Okay. Did he show you where the toaster oven was?
9 A Yes.
10 Q And did he show you where the firearm was?
11 A Yes.
12 Q Okay. Showing you Exhibit 90. Is that where the toaster oven was
13 when you arrived?
14 A Yes.
15 Q And we see a little pony wall over here on the left part of
16 Exhibit 90.
17 A Yes.
18 Q And then if I move it down a little bit there seems to be, like, a
19 doorway in the back left corner.
20 A Yes.
21 Q Is that -- do you know what place that is?
22 A That's Apartment Number 7.
23 Q Okay?
24 A Yeah.
25 Q So this is basically the pony wall next to Apartment 7?

1 A Yes.

2 Q Where this individual claimed to find the toaster oven with the
3 firearm?

4 A Yes.

5 Q Okay. And then just to be clear, and so you actually looked inside
6 the oven to see if there was a firearm?

7 A Yes.

8 Q Showing you Number 94, does this look familiar to you?

9 A Yes.

10 Q Can you -- what is this?

11 A It's a firearm holstered inside of a bag which was inside of the
12 toaster oven with, like, a closed glass door.

13 Q You said "holster," where is the holster part?

14 A I believe it was, I mean, I never actually touched it, but I believe it
15 was holstered in like a --

16 Q Is that what that brown wrap --

17 A Yeah. I would say that that brown strap was part of the holster. I
18 can't recall exactly what the holster looked like.

19 Q And can you circle the brown strap?

20 A Yeah, right here.

21 Q And that's in the bottom left corner of Exhibit 90.

22 A Yes.

23 Q And then where's the firearm?

24 A The firearm's right here.

25 Q And when you found -- and that's in the middle part of Exhibit 90.

1 A Yes.

2 Q So when you saw this firearm, it was in this oven or toaster oven in
3 this bag?

4 A Yes.

5 Q Did you touch the bag at all?

6 A No.

7 Q Did you touch the gun at all?

8 A No.

9 Q Did someone -- were you informed the gun was actually touched
10 before you got there?

11 A Yes.

12 Q By who?

13 A I believe it was by John because he wanted to take a closer look at
14 it to make sure it was actually a gun after Tahir informed him that he found it.

15 Q Okay. So someone -- one of the people there touched the gun
16 before you were able to secure it for evidence?

17 A Yes.

18 Q Okay. Now, so you found a gun on Fairfield Avenue and Chicago,
19 you said this was a highly -- a high crime area, correct?

20 A Yes.

21 Q That doesn't seem like a huge surprise, right?

22 A No.

23 Q Okay. Eventually when you were talking to people around the --
24 this area did you have reason to contact Homicide?

25 A I did.

1 Q And why is that?

2 A After speaking with a few individuals there, there was a female who
3 came up claiming to be renting Apartment Number 7. She said that she had
4 known an individual named Money and that he may have been frequenting that
5 specific apartment.

6 MR. SCHWARZ: Well, I'm going to object as to hearsay, Judge.

7 MR. SCHWARTZER: It's why he contacted Homicide, Your Honor.

8 THE COURT: Well, I'll sustain the objection. You had -- and I'll strike the
9 statement's reference to the young woman.

10 You had a conversation with a woman and then based upon that,
11 you can follow up and ask what he did.

12 MR. SCHWARTZER: Okay.

13 MR. SCHWARZ: Thank you, Your Honor.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 BY MR. SCHWARTZER:

16 Q So based -- based on your conversation with this woman -- and
17 what was the woman's name?

18 A Tatiana Lee.

19 Q Okay. Tatiana Lee. Based on this conversation you had with this
20 individual, Tatiana Lee, you found out some information that may have
21 connected this apartment to the suspect you were looking for?

22 A Yes, possibly.

23 Q Possibly?

24 A Yeah.

25 Q I mean, you didn't see --

1 A I didn't know for sure.

2 Q You've never seen this guy before?

3 A No.

4 Q Based on that information you then contact Homicide?

5 A Yes.

6 Q Did Homicide come out?

7 A Yes.

8 Q Specifically a Detective Terri Miller?

9 A Yes.

10 Q Did you secure the scene until Detective Miller got there?

11 A We did.

12 Q Did you see any other material getting out of Apartment 7 before
13 Detective Miller got there?

14 A No.

15 Q And then did Detective Miller do a search of the place?

16 A Yeah, I believe he did. I wasn't there for that though.

17 Q You weren't there for that?

18 A No.

19 Q Okay. So by the time that Homicide detectives got there you left?

20 A I basically stayed in the area. I was available to them for
21 questioning, but I was not part of the actual investigation inside the apartment
22 or anything like that.

23 Q Okay. Okay. So you weren't part of the search or anything like
24 that?

25 A No.

1 Q Okay. And that was -- that would end what you did in this case?

2 A No.

3 Q You didn't do anything further in this case?

4 A Oh, no, nothing further, yeah.

5 MR. SCHWARTZER: Thank you, officer. I'll pass the witness.

6 THE COURT: Mr. Schwarz.

7 MR. SCHWARZ: Yes, briefly.

8 **CROSS-EXAMINATION OF KYLE DOWNIE**

9 BY MR. SCHWARZ:

10 Q How are you doing, officer?

11 A Good. How are you, sir?

12 Q I'm fine.

13 So you had a conversation with the person who was cleaning out
14 the apartment?

15 A I did.

16 Q Okay. And he's the one that found the gun?

17 A He did.

18 Q All right. And if you recall, what exactly did he tell you about him
19 handling the weapon?

20 A He basically said that he was just removing the -- his intentions
21 were to clean out the apartment. It was full of electronics and appliances and
22 just random stuff. He wanted to make his unit available for rent. So he started
23 walking items out of the house. As he was holding this toaster oven he noticed
24 that it was unusually heavy or something was kind of rocking inside of it. At
25 which time he put it down, took a closer look, and found a gun inside of a bag.

1 He informed one of his friends that were there helping him clean it
2 out, hey, I -- I found a gun in this toaster oven, we should call the police or
3 notify the police. And it was a short time after that, from what I understood,
4 that we were just in that area and kind of right place, right time, they flagged
5 us down.

6 Q Okay. Now, from the time you got there did they stop taking stuff
7 out?

8 A Yes. Yes.

9 Q Okay. Did you sort of freeze the premises?

10 A Yes.

11 Q Okay. Did you let anybody go in or out of there?

12 A We had actually gone in, but we didn't spend a significant amount
13 of time inside there. I remember stepping in myself briefly just to kind of begin
14 our preliminary investigation of what exactly it was that we were dealing with.
15 And when we stepped inside we noticed what the room was filled like. We -- I
16 observed the room. It was just, like I said, filled with electronics and
17 miscellaneous appliances and small items like a shopping cart and other stuff.
18 And we didn't -- we didn't allow them to move anything else out. We just said,
19 hey, just leave everything as-is. The toaster oven had already been placed
20 outside in the grass area, so we left that as-is and ended up taping that area
21 off.

22 Q Okay. So I guess my question is this, you received some
23 information which made you think that maybe this, you know, apartment and
24 this weapon might be more interesting than just, you know, a discarded gun?

25 A Yes.

1 Q Okay. From the time you got there, how long did it take before you
2 got that information?

3 A I would say within 20 minutes or half hour, it was relatively quick
4 that we started putting pieces of it together.

5 Q And so that's when you made the decision to freeze the premises?
6 Or was it prior to that?

7 A As far as taping it off or --

8 Q Yeah.

9 A It was -- it was pretty much immediate that we did not allow
10 anybody to touch the microwave. That was -- that was my primary concern
11 more than the apartment because the microwave or the toaster oven had the
12 gun in it. So I wanted to preserve that. It was almost immediate from the time
13 we were there, hey, nobody touch this and we basically just froze that.

14 But we did go inside the apartment and that wasn't froze right
15 away. I would say within the first 15, 20 minutes, like I said, we actually froze
16 the apartment and didn't allow them to move anything.

17 Q And you weren't present when -- or you were present when
18 Detective Miller came?

19 A Yes.

20 Q However, you weren't present when a search of the apartment was
21 conducted?

22 A That's correct.

23 MR. SCHWARZ: All right. I have nothing further, Your Honor.

24 MR. SCHWARTZER: Nothing, Your Honor. Thank you.

25 THE COURT: Anything from our jurors? No? All right.

1 Officer, thank you very much for your time. I appreciate it. You
2 are excused.

3 THE WITNESS: Thank you. No problem.

4 THE COURT: Okay. And with that we will go ahead and take our lunch
5 recess, ladies and gentlemen.

6 During the recess you are admonished not to talk or converse
7 among yourselves or with anyone else on any subject connected with the trial
8 or read, watch, or listen to any report of or commentary on the trial by any
9 medium of information including, without limitation, to newspapers, television,
10 the Internet, and radio and you cannot form or express any opinion on any
11 subject connected with the case 'til it's finally submitted to you. Nor can do
12 you any research investigation or recreations during our recess.

13 I will see you back in an hour. Okay. Thank you. And I will just
14 kind of tell you as you're planning ahead, what I am told by the attorneys is
15 that we are moving along very quickly and we are ahead of schedule in terms of
16 timing of the trial, which is a good thing. So see you back in an hour.

17 [Outside the presence of the jury panel]

18 THE COURT: Okay, guys, we will be in recess. I will see you back at
19 1:30.

20 [Recess at 12:36 p.m.; proceedings resumed at 1:40 p.m.]

21 [In the presence of the jury panel]

22 THE COURT: All right. You all can be seated. We're going to be back on
23 the record. Mr. Muhammad-Coleman's present with his attorney. State's
24 attorneys are present. Jurors are present. We're going to continue on with the
25 State's case-in-chief.

1 Our next witness is going to be?

2 MR. SCHWARTZER: State calls Dr. Olson, Your Honor.

3 THE COURT: Okay. Officer, could you grab Dr. Olson? Could you grab
4 Dr. Olson?

5 THE MARSHAL: Olson?

6 THE COURT: Thank you. Good afternoon, Doctor, thank you.

7 **ALANE OLSON,**

8 [having been called as a witness and being first duly sworn testified as follows:]

9 THE CLERK: You may be seated. Will you please state and spell your
10 name for the record.

11 THE WITNESS: My name is Alane Olson. My first name is A-L-A-N-E.
12 My last name is spelled O-L-S-O-N.

13 THE COURT: Thank you.

14 Mr. Schwartzer.

15 **DIRECT EXAMINATION OF ALANE OLSON**

16 BY MR. SCHWARTZER:

17 Q Sorry about that, Doc. How are you currently employed?

18 A I am employed as a medical examiner at the Clark County Coroner's
19 Office.

20 Q What is that?

21 A A medical examiner is a medical doctor, either M.D. or D.O. and we
22 perform autopsies and other types of examinations with a goal of determining
23 the cause and manner of someone's death.

24 Q And although I'm sure we've all heard what an autopsy -- heard the
25 word autopsy on TV, what is an autopsy?

1 A An autopsy is an examination that has two parts. The first part, we
2 look at the body surfaces and we describe what we see: Hair color; eye color;
3 how tall -- well, how long someone is; how much they weigh; if they marks,
4 scars, tattoos; if they're wearing clothing, what it looks like. We do a general
5 external examination and then we do the internal examination. We start that by
6 making a Y-shaped incision from shoulder to shoulder down on to the chest and
7 then to the bottom of the abdomen. We move the skin away. We use a saw
8 to take off the front of the rib cage and we look at all of the organs as they lie
9 in the body.

10 And the whole goal of doing this type of exam is to document
11 natural disease as well as injuries. So once we've opened up the body cavities,
12 we take the organs out one by one and weigh them and individually examine
13 them. We also take specimens for toxicology as well as other kinds of testing
14 depending on the kind of case that we're doing. Once we look at all of the
15 organs in the body cavity, the main body cavity, we look at the brain.

16 So we make a cut in the scalp across the top of the head, move the
17 skin away, we use a saw to take off the top of the skull, look at the brain as it
18 lies in the head and then take it out, weigh it, and again look at it very carefully
19 on an individual basis.

20 So once an examination that I do is complete, I also look at X-rays
21 and I dictate that examination. I get the results of the testing back, if I've
22 ordered any. And once I've had a chance to edit the report, then I sign it and
23 it's finished.

24 Q And these reports you're trying to determine the cause and manner
25 of the death?

1 A Yes.

2 Q Okay. And in order to do these examinations and make this
3 determination, do you have to go through any type of specialized training?

4 A Yes.

5 Q Can you tell the ladies and gentlemen of the jury your background?

6 A Sure. I actually, I have a bachelor's degree in microbiology from the
7 University of Idaho. I went to school at the University of Nevada, School of
8 Medicine. That's where I got my M.D. degree. Once I finished medical school,
9 I moved to Portland, Oregon, and spent five years at Oregon Health Sciences
10 University in a pathology residency program.

11 Pathologists are the doctors who literally study disease. So if you
12 have a tissue removed at surgery, whether it's your gallbladder or anything else,
13 a pathologist is the one who looks at that under the microscopes and makes a
14 diagnosis. Pathologists are also the doctors who run clinical laboratories. So if
15 you've ever had your blood drawn by and large a pathologist is ultimately
16 responsible for certifying those results. So during my residency I learned how
17 to do all of the things that pathologists do including doing autopsies.

18 Once I finished my residency, which was five years, I moved to
19 Milwaukee, Wisconsin, and spent one year at the medical examiner's there
20 doing a forensic pathology fellowship and that was only doing autopsies in a
21 forensic setting. Once I completed that fellowship I moved to Reno and worked
22 at the coroner's office there for just over five years. And I've been in Las
23 Vegas since September of 2005.

24 Q During that period of time about how many -- I know this is going to
25 be hard number to calculate, but in ballpark, how many autopsies do you

1 believe you've performed?

2 A Somewhere between 3 and 4,000.

3 Q And does that equal 3 to 4,000 reports?

4 A Yes.

5 Q And during that period of time have you been called to court to
6 testify?

7 A Yes.

8 Q Regarding cause and manner of death?

9 A Yes.

10 Q And how many times do you believe you've been called to testify in
11 Nevada courts? Ballpark?

12 A Ballpark, 2 to 300 times.

13 Q And that's just specifically regarding your expertise for cause and
14 manner of death?

15 A Yes.

16 Q Now, I want to direct your attention to April 20th of 2013. There
17 was an autopsy done on a Dale Borero, B-O-R-E-R-O, in a case number
18 13-03901. You weren't the individual, the doctor that performed that autopsy,
19 correct?

20 A I did not. That's correct.

21 Q That would be Dr. Simms?

22 A Yes.

23 Q He's colleague of yours?

24 A Yes.

25 Q Dr. Sims is not in town?

1 A That's correct. He's on vacation.

2 Q Okay. So in preparation for this testimony did -- were you asked to
3 do certain things?

4 A Yes.

5 Q And what things did do you in order to prepare yourself to
6 testimony?

7 A Well, once I received the subpoena I looked at the report that Dr.
8 Simms prepared after he did the autopsy. I looked at the investigator's report
9 that was prepared by a coroner investigator. I looked at the toxicology report
10 and I looked at the photographs that were taken during the course of the
11 autopsy.

12 Q And to be clear there is over 100 photographs in this case?

13 A That sounds about right.

14 Q And these photographs include stuff from the scene as well as
15 internal and external examinations?

16 A Yes.

17 Q Okay. And when you're talking about an investigation report,
18 you're talking about an independent investigation report by your office?

19 A Yes, that's correct.

20 Q Not one done by Las Vegas Metropolitan Police Department?

21 A That's correct. Completely separate reports.

22 Q Okay. And your investigator, their goal is determination of cause
23 and manner as opposed to who did it, right?

24 A Well, yeah, our investigators go to scenes, they gather information
25 that the doctors then look at to help us figure out what was going on.

1 Q Okay. So based on all these items you review, do you think you
2 can make your own independent conclusion regarding cause and manner of
3 death in this case?

4 A Yes.

5 Q Now, going -- I have some photographs -- and you're familiar with
6 all photographs from -- from the autopsy, correct?

7 A I've looked at them, yes.

8 Q Okay. And so again this is April 20th of 2013, showing you
9 Exhibit 100, do you see that on your screen?

10 A I do.

11 Q This is -- it shows like a -- and this has been stipulated and admitted
12 Exhibit 100. Now, there's a blue bag here, correct?

13 A Yes.

14 Q With a lock and a tag. Can you tell the ladies and gentlemen of the
15 jury what they're seeing in this photograph?

16 A Sure. The blue bag that you see in the background is the body bag
17 in which the body is transported. The little tag here, it's actually a little plastic,
18 not quite a lock, but it's kind of like a zip-tie so that you close it. And the only
19 way you can open it is by cutting it. So we can tell if the body bag has been
20 opened after our exam -- after our investigator seals it.

21 Q All right, doctor.

22 MR. SCHWARTZER: And for the record, Dr. Olson put a yellow line
23 underneath a lock on Exhibit 100 in the bottom, middle left portion of the
24 exhibit. Thank you, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: Okay. So also in this photograph, in the center of the
2 photograph is a white tag and it includes information including the coroner's
3 case number which is a unique case number that every individual receives when
4 they come to the coroner's office. It also includes the decedent's name as far
5 as is known at the time and other information about the date of death and time
6 of death and you can read it on the tag.

7 And in the bottom, right corner of this photograph is a gray photo
8 tag. You can't really read it very well, but it contains his full case number and
9 we use that to label the photographs that our techs take during the course of
10 the examination.

11 MR. SCHWARTZER: And for the record, Dr. Olson made a yellow line in
12 the right corner portion of the exhibit underneath a yellow or -- a yellow dot,
13 silver tag.

14 THE COURT: Record will so reflect.

15 MR. SCHWARTZER: Thank you.

16 BY MR. SCHWARTZER:

17 Q So date of death would be April 19th, 2013, and the time of death
18 would be 22:33?

19 A That's correct.

20 Q Okay. So that would be 10:33 p.m. for us lay people?

21 A Yes.

22 Q Okay. And you have your age, sex, and all that, Hispanic male, 40
23 years old; is that correct?

24 A Yes.

25 Q And then his height is 71 inches?

1 A Correct.

2 Q And his weight is that 160 pounds?

3 A Yes.

4 Q Okay. So once you open -- so you have to cut the bag in order to
5 get to do your examination, correct?

6 A Actually, we don't have to cut the bag. We just have to cut the tag
7 off and then we can unzip the bag.

8 Q Thank you. So once you cut the lock and open up the bag, then
9 you have the body as it was at the time of death, correct?

10 A After it's been moved into the bag, yes.

11 Q So there's some medical inter -- a lot of times you'll have medical
12 intervention stuff on -- on the body?

13 A Yes, oftentimes there is.

14 Q Stuff's probably not the technical term?

15 THE COURT: Yeah.

16 THE WITNESS: Usually not, no.

17 THE COURT: Apparatus maybe?

18 BY MR. SCHWARTZER:

19 Q Showing you Exhibit 101. Is this how it looks when you open up
20 the bag?

21 A Yes.

22 Q And this is again one of the photographs you reviewed?

23 A Yes.

24 Q And is this to show the appearance of the individual again at the
25 time of death before they were put into the bag or as they were placed in the

1 bag?

2 A As they're or after they're placed in the bag, yes.

3 Q And this is for ID purposes?

4 A It's for documentation purposes in general.

5 Q Okay. And now we're going to go through some -- some body
6 photographs here. Showing you 102, okay, so this is the mid-portion section,
7 correct?

8 A Yes. This is the front of his body centered on his chest.

9 Q Here do we also see some signs of medical intervention?

10 A Yes.

11 Q And what signs are those?

12 A If you look on the left side of his chest, actually just below his
13 nipple, you can see part of a -- an incision or a surgical cut that has been
14 sutured closed. And on the right edge of the photograph you can see the start
15 of another incision or surgical cut on his abdomen, it's also been sutured. And
16 in the right upper chest there is -- it's called a thoracostomy catheter. It's
17 basically they put a needle in his chest in case he's got air in there and that can
18 help them with their resuscitation efforts.

19 Q So here do you see this is one -- when you're doing your external
20 review is there something here that would catch your eye as a possible
21 indication what his cause of death would be?

22 A Yeah, actually, if you look again towards the right edge of this
23 photograph just below the -- the surgical incision there is a gunshot entrance
24 wound.

25 Q Okay.

1 A Which I've circled.

2 Q There is a circle on the, as described by Dr. Olson, in the bottom,
3 right part of the photograph.

4 Let me get a close-up of that. Showing you Exhibit 104. Now, you
5 said it's a bullet entrance wound. Why do you believe it's a bullet entrance
6 wound?

7 A There are some typical changes that you can see on the skin
8 surface to help you distinguish between an entrance wound and an exit wound.
9 In this particular case it was a pretty easy thing to figure out because he still
10 had the bullet inside him. So it was a no-brainer.

11 But typically a gunshot entrance wound is round or oval and if you
12 try and put the edges back together you can't get the skin to lie smoothly
13 because the because the skin in that defect has actually been bored away by
14 the bullet as it goes through so you can't close it off neatly. That's in
15 distinction to a gunshot exit wound where when the bullet passes through the
16 skin when it exits the body, it actually tears the skin. It doesn't remove any of
17 it. So if you can get the edges together on an exit wound, you can make a nice
18 clean smooth surface again. Whereas, you can't do that with an entrance
19 wound.

20 In addition, sometimes with gunshot entrance wounds you can get
21 an idea of what the range of fire was meaning what the distance was between
22 the skin surface and the end of the barrel when the gun was fired. That can be
23 hampered by clothing that's in the way or any other substance or surface that's
24 in the way. But basically if you have a pretty close distance between the end
25 of the barrel and the skin surface then you see soot on the skin surface and

1 that's -- that represents burned gunpowder.

2 But as you get farther away you see less soot because soot doesn't
3 travel well and -- and you start to see what's called gunpowder tattooing or
4 stippling and that's actual fragments of unburned gunpowder that strike the
5 skin surface.

6 The farther away you get the less you see of those two things that
7 I've mentioned until, depending on the weapon and the ammunition, anywhere
8 from two to three feet away you won't see any of that.

9 Q Okay. Now showing you Exhibit -- I'm going to go even closer,
10 showing you that wound, Exhibit 105, do you see any of that soot you were
11 talking about on this wound?

12 A No, I don't.

13 Q So based on -- on your -- based on your experience that would be a
14 gunshot wound that was inflicted two or three feet away from this -- at least
15 two or three feet away from this individual?

16 A Yes. That's a possibility. It's also possible that he was wearing
17 clothing that prevented the soot or gunpowder from getting to his skin surface.
18 And with these kind of injuries I typically call them indeterminate range simply
19 because I don't have any indication of closer range firing.

20 Q What's the purpose of putting the ruler next to it?

21 A So you can see how large it is.

22 Q Now, that wasn't the only bullet entrance you have in this case,
23 correct?

24 A That's correct. There was another gunshot wound.

25 Q Showing you Exhibit 106. Actually, this would be a better one.

1 Showing you Exhibit 108, are you familiar with this photograph?

2 A Yes.

3 Q Okay. And this is Mr. Borero's leg?

4 A Yes. It's his right leg on the back of his right knee.

5 Q Okay. Is -- what do we see -- and I'll do a close-up of that when
6 it's 109. What are we seeing here, Doctor?

7 A This is a gunshot entrance wound. And, again, it's just below the
8 little tag that has his case number. It's an oval wounds and again it meets the
9 criteria. It's an entrance wound not an exit wound. Another reason that I
10 know that is because the bullet was recovered from his right leg.

11 Q Thank you, Doc.

12 Now, showing you -- back to that photograph I showed you --

13 THE COURT: And I apologize if I missed it, but where on his leg was
14 that?

15 THE WITNESS: The entrance wound was on essentially the back of his
16 knee, behind his knee, towards the center of his leg.

17 THE COURT: Thank you.

18 BY MR. SCHWARTZER:

19 Q Now going back to the initial photograph I showed of Mr. Borero's
20 leg, 106, it looks like there is a little mark here. What are we seeing in this
21 photograph?

22 A This particular photograph is actually a photo of his left leg from the
23 side and he did have some little scrapes, we call them abrasions on his left knee
24 at the outside. So that's what this photograph depicts.

25 Q And now, again, there is an external examination in which you do

1 photographs and you were able to review those photographs, correct?

2 A Yes.

3 Q Was there anything remarkable about Mr. Borero's hands?

4 A No.

5 Q Was there anything like bruising, knuckle bruising, anything like
6 that?

7 A Not that I could see in the photographs, no.

8 Q If someone's in a first fight or a fight in which that their hands were
9 used, would you see -- would you expect to find bruising and such on their
10 hands?

11 A You might.

12 Q You didn't see that in this case?

13 A I did not, no.

14 Q Now, you also, you also testified that there were two bullets, well,
15 one that there was a bullet recovered from the stomach wound and one from
16 the leg wound, correct?

17 A Yes.

18 Q Those are the only two gunshot wounds on this individual; is that
19 correct?

20 A Yes, that's correct.

21 Q Any other gunshot related wounds on this individual?

22 A No.

23 Q Okay. In both cases was the bullet recovered at autopsy?

24 A Yes.

25 Q And was that documented as well?

1 A It was.

2 Q Okay. Showing you 111, this is one of those bullets?

3 A Yes, it is.

4 Q Okay. And this is the one that was taken from his spine?

5 A Yes.

6 Q Okay. And so could you tell the ladies and gentlemen of the jury
7 the path that bullet took in order to get to Mr. Borero's spine?

8 A It went, we describe the paths of bullets referring to the person, so
9 it went from his front towards his back and it went downward. It didn't deviate
10 right or left. So it basically went from his upper abdomen into his spinal
11 column. It did not hit the spinal cord.

12 Q What kind of damage did it do during that path toward his spine?

13 A It went through his diaphragm on the right side, it went through his
14 liver, and it went through what's called the inferior vena cava, it's a large vein
15 that brings blood back to the heart from the abdomen and the legs.

16 THE COURT: When you said a moment ago it went into his spinal column
17 but not his spinal cord, can you kind of differentiate that for the jurors so they
18 know what you're talking about.

19 THE WITNESS: Sure. So your spine column is the bony structure that
20 contains your spinal cord. So you could think of it like building blocks that are
21 stacked up on top of each other and there is a front portion of the spinal
22 column and it's called the body and it's kind of a circular thing. And then in the
23 back there is another arc of bone and that's where the spinal cord is. So it
24 went into the front of his spinal column but it did not hit his spinal cord.

25 ///

1 BY MR. SCHWARTZER:

2 Q So he would have been able to walk? I mean --

3 A Yes.

4 Q He wasn't paralyzed from the damage to the spinal column because
5 it didn't hit the spinal cord?

6 A That's correct.

7 Q Okay. Now, you said -- you described the path and the damage to
8 the bullet did. By hitting that vein did it then cause intensive internal bleeding?

9 A Yes.

10 Q Okay. And then additionally you said there was a bullet found in his
11 leg as well. Showing you Exhibit 112. Do you recognize that bullet?

12 A Yes.

13 Q Okay. And what's -- where do you recognize that bullet from?

14 A Well, it's a photograph of the second bullet in this particular case.
15 And also in Dr. Simms' report he specifically describes the bullet that was
16 recovered from the leg as having a piece of fabric stuck to it. So this is the one
17 that was recovered from his leg.

18 Q Now did that -- what kind of damage did that projectile do?

19 A It went through muscle and soft tissue. Dr. Simms did not open his
20 leg up and describe specifically what damage was done.

21 Q Okay. But he did open up the area toward his abdomen area and
22 had photographs of the internal damage that was done there?

23 A Yes, correct.

24 Q You were able to make your own independent review regarding
25 that?

1 A Yes.

2 Q Okay. Was there also -- you mentioned early on when you were
3 talking about autopsies that you also do look at toxicology reports as well.

4 A Yes.

5 Q And in this case was one done?

6 A It was.

7 Q And was there any findings in there?

8 A Yes.

9 Q And can you tell the ladies and gentlemen of the jury what that
10 was?

11 A The toxicology lab found that in the hospital admission blood he had
12 methamphetamine at a level of 1,800 nanograms per milliliter and amphetamine
13 present at a level of 280, I believe.

14 Q Okay. In your experience as a doctor and having -- is that -- having
15 that amount of methamphetamine, could that make someone act irrationally?

16 A Possibly, yes.

17 Q But you wouldn't know without knowing what that person -- how
18 that person acts on that narcotic?

19 A That's correct.

20 Q Every individual is different?

21 A Yes.

22 Q Okay. In this case you haven't been able to review anything
23 showing the individual right before he passed away, correct?

24 A I don't know what he was doing before he died, no.

25 Q Okay. So you don't know how he was acting one way or the

1 other?

2 A That's correct.

3 Q Okay. So it could, but it's an individual basis?

4 A Yes. You can -- levels of drug suggest possible behaviors, but it
5 doesn't predict for an individual person what they will be like under the
6 influence.

7 Q Did the methamphetamine kill Mr. Borero?

8 A No.

9 Q What killed Mr. Borero?

10 A The gunshot wound to his abdomen.

11 Q And what was the mechanism?

12 A He bled to death.

13 Q And how did you classify the matter of this death?

14 A I personally clarify it as a homicide as does Dr. Simms.

15 MR. SCHWARTZER: Court's indulgence.

16 Pass the witness.

17 THE COURT: Can you just tell the jury from a medical standpoint what
18 you mean when you say homicide, what that means to you?

19 THE WITNESS: Sure. So when I say homicide it is not a legal definition
20 or term. It means that the actions of one person has resulted in the death of
21 another person.

22 THE COURT: Thank you. Dr. Olson.

23 THE WITNESS: You're welcome.

24 THE COURT: Mr. Schwarz.

25 MR. SCHWARZ: Thank you, Your Honor. And thank you for asking my

1 first question for me.

2 May I approach the witness?

3 THE COURT: Yes.

4 **CROSS-EXAMINATION OF ALANE OLSON**

5 BY MR. SCHWARZ:

6 Q Dr. Olson, you testified about the toxicology report.

7 A Yes.

8 Q I'm sure you got all the numbers right, but I want you to look at
9 my -- or the Defense Exhibit A; is that the toxicology report that you reviewed?

10 A Yes.

11 Q Okay. Is that a true and accurate copy of the original?

12 A It appears to be, yes.

13 MR. SCHWARZ: Judge, I'd move to have it admitted.

14 MR. SCHWARTZER: No objection, Your Honor.

15 THE COURT: Okay. That will be admitted. Thank you.

16 **[DEFENSE EXHIBIT A ADMITTED]**

17 THE COURT: You can publish it.

18 BY MR. SCHWARZ:

19 Q I'm guessing because you know a little bit about methamphetamine
20 use and possible side effects and so forth that that's all part of your training or
21 part of your job as a, you know, forensic pathologist?

22 A Yes.

23 Q Okay. So the result of 280 amphetamine, could that be a result of
24 methamphetamine use? In other words, it's not necessarily true he's taking
25 both drugs?

1 A You're correct. Methamphetamine is broken down by the body to
2 amphetamines. So if someone is -- has meth on board, we really do expect to
3 see amphetamine as well.

4 Q As an aside, this is one of the first times someone's told me I'm
5 correct in a week or so.

6 Now, the level of methamphetamine, 1800; is that high?

7 A That's fairly high, yes.

8 Q Okay. Would it be safe to assume he's under the influence?

9 A I would -- I would say it's safe to assume that, yes.

10 Q And is it -- is it true that someone at that level would possibly
11 exhibit aggressive behavior?

12 A It's possible, yes.

13 Q Is it possible that someone at that level might also have irrational
14 reactions?

15 A Yes, possibly.

16 MR. SCHWARZ: I have no further questions. Thank you.

17 THE COURT: Thank you.

18 Mr. Schwartz.

19 **REDIRECT EXAMINATION OF ALANE OLSON**

20 BY MR. SCHWARTZER:

21 Q Doctor, is it possible for someone who's not on methamphetamine
22 to have irrational reactions?

23 A Yes, it is possible.

24 Q Is it possible for someone not on methamphetamine to have
25 aggressive behavior?

1 A Yes.

2 MR. SCHWARTZER: Thank you, Doctor.

3 MR. SCHWARZ: Judge, I just have one question.

4 **RECROSS-EXAMINATION OF ALANE OLSON**

5 BY MR. SCHWARZ:

6 Q Mr. Borero, when you examined him, Doctor, he was not one of
7 those people who was not on methamphetamine, right?

8 A When he was examined? That is a correct statement, he was not.

9 Q Thank you.

10 A Two in one week.

11 MR. SCHWARZ: Thank you. Two in one week, thank you, Doctor.

12 THE COURT: Any questions from our jurors?

13 Dr. Olson, appreciate your time. Thank you very much for coming
14 to court.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: State may call their next witness.

17 MR. SCHWARTZER: Jennifer Reiner is outside. Jennifer Reiner.

18 THE COURT: Good afternoon.

19 **JENNIFER REINER,**

20 [having been called as a witness and being first duly sworn testified as follows:]

21 THE CLERK: You may be seated. Will you please state and spell your
22 name for the record.

23 THE WITNESS: Jennifer Reiner, J-E-N-N-I-F-E-R, R-E-I-N-E-R.

24 THE COURT: Thank you. Mr. Schwartz.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 **DIRECT EXAMINATION OF JENNIFER REINER**

2 BY MR. SCHWARTZER:

3 Q Ms. Reiner, how are you currently employed?

4 A As a crime scene analyst with the Las Vegas Metropolitan Police
5 Department.

6 Q What is a crime scene analyst?

7 A We're actually, we're called out to crime scenes at the request of
8 patrol officers or detectives to process a scene. This entails detailed note
9 taking, photography, the identification, location, and preservation of evidence,
10 fingerprint processing, and recovery; in major cases, the completion of a
11 diagram and final reports are completed and then turned in.

12 Q Okay. So it sounds like you have lots of roles?

13 A Yes.

14 Q In a homicide case such as this one are there often multiple crime
15 scene analysts involved?

16 A Yes.

17 Q If, for example, something happens late at night or even at 9:00
18 p.m. --

19 A Uh-huh.

20 Q -- like this April 19th, 2013, the autopsy wouldn't be done until the
21 next day, correct?

22 A Correct.

23 Q And it would usually be a different crime scene analyst?

24 A Yes.

25 Q And why is that?

1 A Just because the shifts. Usually autopsies are done during the
2 daytime, so it's usually a day shift crime scene analyst going.

3 Q And then if another scene becomes important in the case three or
4 four days later it could be a whole another crime scene analyst taking care of it?

5 A Yes.

6 Q So just because a certain crime scene analyst appears more in the
7 beginning doesn't mean he or she is going to be the analyst all throughout the
8 case?

9 A Correct.

10 Q It's kind of on a rotation basis?

11 A Yes.

12 Q You guys all have about the same training?

13 A Yes.

14 Q And you're trained in kind of the same way, right?

15 A Yes.

16 Q Are there certain -- well, let's go there, what kind of training do you
17 guys go through?

18 A We go through ongoing training. You need to have at least an
19 associate's degree. Most of us have a bachelor's degree. And then you go
20 through ongoing training throughout the whole year and continually.

21 Q So you're constantly being -- taking classes and what have you?

22 A Yes.

23 Q In this case what's your background?

24 A I have a bachelor's of science degree in criminal justice and I've
25 completed over probably about 1,000 hours in crime scene investigations

1 related training.

2 Q I want to direct your attention to April 20th of 2013, did you
3 respond to an autopsy?

4 A Yes, I did.

5 Q An autopsy of a Dale Borerero?

6 A Correct.

7 Q And that was, from your understanding, was that for a homicide?

8 A Yes, it was.

9 Q And why does a C.S.A. have to be at an autopsy?

10 A For documentation.

11 Q Why does a C.S.A. -- why do we have to document an autopsy?

12 A Again, for documentation, to document photos of the decedent,
13 collect any evidence that might be present.

14 Q Okay. So evidence that might be present, what kind of evidence
15 would you expect to be present at an autopsy?

16 A Generally, we'll collect a buccal swab which is basically a DNA
17 swab from the mouth. We'll collect, if there's hand bags on the hands, we'll go
18 ahead and collect those. We may swab the hands for potential DNA evidence
19 off of those as well or collect fingernail clippings. If there's a sheet wrapped
20 around the individual, we might collect that for trace evidence purposes. Any
21 sort of clothing that may be present, any sort of firearms related evidence that
22 might be present.

23 Q Firearm related evidence would that include projectiles found within
24 the body?

25 A Yes.

1 Q Okay. I want to show you some photographs that have been
2 stipulated to. Showing you Exhibit 54, is this Mr. Borero?

3 A Yes, it is.

4 Q Okay. Showing you Exhibit -- showing you Exhibit 56, is this a
5 wound on Mr. Borero?

6 A Yes, it is.

7 Q Apparent gunshot wound?

8 A Yes.

9 Q Now, there is ruler right here with J8167R. Do you know who put
10 that ruler there?

11 A That was my ruler. That's my initials and P number which is a
12 personnel number assigned to each individual on the police department.

13 Q Okay. Okay. So you were documenting where a gunshot wound
14 was on an individual on Mr. Borero?

15 A Yes.

16 Q And going -- and you did that here on Exhibit 58 as well on
17 Mr. Borero's leg, correct?

18 A Yes.

19 Q And Exhibit 57, showing some bruising on his other leg, correct?

20 A Yes.

21 Q Okay. Additionally are there X-rays done during an autopsy?

22 A Yes, there were.

23 Q And did you take some photographs of that autopsy or of those
24 X-rays?

25 A Yes, I did.

1 Q Showing as Exhibit 59, is this one of the X-rays?

2 A Yes.

3 Q And what's -- is there something that kind of stands out in this
4 one? Something of note?

5 A Yes, there's actually a bullet kind of in the spine area.

6 Q Can you circle that for the ladies and gentlemen of the jury? For
7 the record, you circled the middle portion toward the bottom.

8 A Yes.

9 Q And that appears to be a bullet?

10 A Yes.

11 Q Okay. Showing you 60?

12 MR. SCHWARTZER: Thank you, Your Honor.

13 BY MR. SCHWARTZER:

14 Q Is this an X-ray of Mr. Borero's leg?

15 A Yes.

16 Q And is there something of note in this X-ray?

17 A Yes. There is also a projectile in the leg area.

18 Q Okay. And this, for the record, again, middle portion now almost
19 dead center in the photograph.

20 A Yes.

21 Q You circled the projectile?

22 A Yes.

23 Q Now, once these -- were these bullets then recovered from
24 Mr. Borero's body?

25 A Yes.

1 Q And did you see that happen?

2 A No, I did not.

3 Q Okay. Were you given the bullet somehow?

4 A Yes, I was.

5 Q Can you tell the ladies and gentlemen of the jury how that goes
6 about?

7 A Generally, after we get done taking our photographs and collecting
8 any evidence, they'll go into another room at the coroner's office where the
9 medical examiner will perform his examination of the decedent. And at that
10 point if there's any sort of projectiles or firearm related evidence inside the
11 individual, they'll give it to me and then I take possession of it I impound it.

12 Q Now, are Homicide detectives also involved in this process?

13 A Yes.

14 Q And what are they doing during this period of time?

15 A They are observing the autopsy part of it.

16 Q So they would actually be in the autopsy with them?

17 A Yes.

18 Q Okay. You just wait outside?

19 A Yes.

20 Q Okay. When they -- when this -- in this case it would be Dr. Simms
21 came out of that examination room were you given any items of evidence?

22 A Yes, I was.

23 Q And you were given that directly by Dr. Simms?

24 A Yes.

25 Q And what was -- what was given to you?

1 A I was given two different bullets.

2 Q Okay. And did you document those?

3 A Yes, I did.

4 Q Showing you Exhibit 61. Again, we see that ruler with your initials
5 and P number?

6 A Yes.

7 Q And then what's this number right here?

8 A That is the event number.

9 Q Can you tell the ladies and gentlemen of the jury what an event
10 number is?

11 A That number is a number assigned to the case. It starts with the
12 year, so 13 is going to be 2013; the next two digits, 04 is for the month; 19 is
13 for the day; and the last four is the number per calls during that day.

14 Q So this would be the 4,147th call that Metro received on April 19th,
15 2013?

16 A Yes.

17 Q Okay. Showing you Exhibit 62. Again, we see that ruler and is this
18 your handwriting right here?

19 A Yes, it is.

20 Q And you wrote "spine"?

21 A Yes.

22 Q So this would be the bullet recovered from the spine?

23 A Yes.

24 Q Okay. Anything unique about this bullet at all?

25 A I guess that it looks like it's a mushroom pattern.

1 Q Finally after -- when -- you impounded these bullets, correct?

2 A Yes, I did.

3 Q And why do you -- and in order to -- you do so in order to ensure
4 the chain of custody, correct?

5 A Yes.

6 Q And why do you do that?

7 A To show that I'm the one that took possession of it.

8 Q Okay. Do you want to make sure that it's in a secure location in
9 case we want to do further testing in the case?

10 A Yes.

11 Q And you don't know, I mean, once you document it and secure it in
12 an evidence box, does it go into -- where does go to?

13 A We'll secure it at the it C.S.I. section and then a evidence
14 technician will come over and recover the evidence and take it back to the
15 evidence vault.

16 Q And the evidence vault's a secure location?

17 A Yes.

18 Q And so if we wanted to do further testing on these projectiles or
19 bullets, say by a ballistics' expert, they would then get it from this evidence
20 vault?

21 A Yes, they would.

22 Q They would be able to see your initials on this box?

23 A Yes.

24 MR. SCHWARTZER: Okay. No further questions.

25 MR. SCHWARZ: I have no questions.

1 THE COURT: Thank you. Anything from our jurors?

2 Yes, ma'am.

3 JUROR NO. 5: Is there any way they can say which bullet was shot
4 first?

5 THE COURT: Okay, you've got to write it down. Remember? You've
6 got to write it down, but not any more because you already said it. Why don't
7 you guys approach the bench.

8 [Bench conference -- not transcribed]

9 THE COURT: Unfortunately, that is not a question for this particular
10 witness, okay?

11 All right, ma'am, thank you very much for your time. I appreciate
12 it. You are excused.

13 THE WITNESS: Thank you.

14 THE COURT: State may call their next witness.

15 MR. HAMNER: Court's indulgence.

16 MR. SCHWARTZER: Your Honor, we have two witnesses that are
17 supposed to be here at 2:00.

18 THE COURT: All right.

19 MR. SCHWARTZER: They're 15 minutes late. They'll be here in 15
20 minutes.

21 THE COURT: All right. We will take a short recess, ladies and
22 gentlemen, my apologies. During the recess you are admonished not to talk or
23 converse among yourselves or with anyone else on any subject connected with
24 the trial or read, watch, or listen to any report of or commentary on the trial by
25 any medium of information including, without limitation, to newspapers,

1 television, the Internet, and radio or form or express any opinion on any subject
2 connected with the case 'til it's finally submitted to you. We'll be in recess.
3 Thank you.

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We're in recess, guys [Recess at 2:19 p.m.;
6 proceedings resumed at 2:41 p.m.]

7 [In the presence of the jury panel]

8 THE MARSHAL: Rise for the jury.

9 THE COURT: You all can be seated. Thank you. All right.

10 We'll be back on the record. We're going to continue on with the
11 State's case-in-chief. Mr. Muhammad-Coleman's here with his attorney.
12 State's attorneys present, jurors present.

13 Who's your next witness, guys?

14 MR. HAMNER: The State's going to call Adam Felabom to the stand.

15 THE COURT: Thank you.

16 MR. HAMNER: Thank you.

17 THE COURT: Just raise your right hand. Thank you.

18 **ADAM FELABOM,**

19 [having been called as a witness and being first duly sworn testified as follows:]

20 THE CLERK: You may be seated. Will you please state and state and
21 spell your name for the record.

22 THE WITNESS: Adam Felabom, A-D-A-M, F-E-L-A-B-O-M.

23 THE COURT: Thank you.

24 Mr. Hamner.

25 MR. HAMNER: Thank you very much.

1 **DIRECT EXAMINATION OF ADAM FELABOM**

2 BY MR. HAMNER:

3 Q Sir, what do you do for a living?

4 A I'm a crime scene analyst with the Las Vegas Metropolitan Police
5 Department.

6 Q And how long have you been a C.S.A. for?

7 A Over eight years.

8 Q What did you do before that?

9 A Before that I worked in the dispatch center as a P.B.X. operator.

10 Q And before that?

11 A Before that I was a police officer.

12 Q With Metro?

13 A Yes.

14 Q Okay. How long were you a police officer with Metro?

15 A Commissioned? I resigned about a month and a half after I was
16 commissioned.

17 Q Okay. So you were kind in the academy and then decided to
18 switch it up?

19 A It was after I graduated the academy.

20 Q Okay. And then you switched it up and so you've been doing kind
21 of C.S.A. work now for about eight years; is that right?

22 A Correct.

23 Q Okay. How many cases do you go out on a night when you are
24 working as a C.S.A. on a shift?

25 A It can vary drastically, anywhere from none all the way up to six or

1 seven.

2 Q Okay. Is it -- do you typically work alone? Do you work in pairs?
3 Or it just depends on the situation?

4 A It just depends on the situation. Typically it's we're working by
5 ourselves unless it's a larger scene or a major type of crime.

6 Q What about shooting scenes? Homicides? Things of that nature?

7 A On homicides we'll typically take a group of C.S.A.s out.

8 Q Okay. I want to turn your attention back to April 19th, 2013, did
9 you respond as part a C.S.A. team to a 2855 Fremont Street, Travelers Inn,
10 here in Clark County?

11 A I did.

12 Q Okay. Who did you -- who were the C.S.A.s that you went out
13 with to that particular scene?

14 A Another crime scene analyst, Joel Albert, came with me as well as
15 a supervisor, Gary Reed.

16 Q Okay. Now, was that under the event number of 1304194147?

17 A Correct.

18 Q All right. Let's talk a little bit about kind of in general how you do
19 this. So you show up at the scene, some of your teammates are there on the
20 scene, what's the first thing that you typically do?

21 A Typically, the first thing we'll do is we'll get a briefing by some of
22 the first responding officers and the area detectives to get a general sense of
23 what information they have been able to -- to come up with in their initial
24 investigation as well as a briefing on the scope of the scene so we know if we
25 need to bring in more people or if we're -- we have adequate staffing.

1 Q Does that help kind of provide guidance about things to look for,
2 maybe the tasks that you're going to need to do for that kind of assignment?

3 A Correct.

4 Q When you -- and did do you that in this case?

5 A Yes, we did.

6 Q After you get a briefing, what's typically the next step?

7 A The next step we typically do is we'll do a walk-through of the
8 scene, just kind of get eyes on the scene and to be able to maybe find obvious
9 items of evidence, areas that we might want to look in more detail later on.
10 And then after we've done the walk-through we'll typically split up the duties.

11 Q Okay. What sort of things can you do at a scene? What sort of
12 things do you typically do as far as, like, a checklist of things that you're
13 handling?

14 A Typically, it'll vary depending on the type of scene that we're at
15 and what's inside the scene. But typically we'll take photographs and we'll
16 take notes that we can write our reports later. We'll take -- we'll collect items
17 of evidence that we find and we'll, if we need to, we'll process for fingerprints
18 as well.

19 Q So fingerprints, collecting items, how about taking DNA samples?

20 A Correct.

21 Q And photography. Which one of those things usually happens first?

22 A The first thing we'll do is we'll photograph the scene as it is, as we
23 found it before we start moving stuff around, that way we have a accurate
24 representation of how we found the scene.

25 Q Who did the photography that night?

1 A That night it was Joel Albert.

2 Q Joel Albert. I want to show you what has been already admitted as
3 State's 15. Do you recognize kind of what we're looking at there?

4 A Yes. This is the parking lot on the south side of the building.

5 Q Is that a fair and accurate depiction of what it looked like on that
6 evening?

7 A Yes.

8 Q Now, I see a series of orange cones in State's 15, why are those
9 there?

10 A A lot of times on scenes like this, shooting scenes and homicide
11 scenes and major seasons like this, patrol officers will almost always be the
12 first officers there and part of their duty is to preserve the scene to the best of
13 their ability. So what they'll do is if they see evidence that they, without
14 having to search or move stuff around, they'll typically mark it to warn other
15 people to watch out for this area so that you're not kicking evidence or
16 stepping on it or contaminating it in any way.

17 Q Publishing 18, that's kind of what we're seeing here as well?

18 A Correct. They've just moved a little bit around kind of going around
19 in a circle it looks like.

20 Q Now, when you come on the scene with you and your team, do you
21 start to replace those cones with anything else?

22 A Typically we'll eventually put down numbered markers that have
23 scales on them so that when we're taking close-up photographs of the items of
24 evidence you'll get a general sense of how big the item of evidence is.

25 Q So they've got a little rulers --

1 A As well as --

2 Q -- on them, right?

3 A They've got little rulers and little numbers to differentiate between
4 each item.

5 Q And do those numbers also help you in preparing a diagram maybe
6 of a scene?

7 A Yes.

8 Q All right. Publishing State's 44. What are we looking at there?

9 A This is a closer-up view of the -- looking east at the little storage
10 container that was at the east end of the parking lot and you see a lot of little
11 numbered markers that I was just describing.

12 Q And what was kind of marked as number 1?

13 A Number 1 is a Ruger P94 handgun.

14 Q Was that ultimately impounded into evidence?

15 A Yes.

16 Q All right. So that was kind of the number 1. I'm going to show
17 you, publish 46, State's 46. Is that just a close-up view of some of those other
18 numbers?

19 A Correct.

20 Q And what were these items, do you have any independent
21 recollection of kind of what those -- those little items are all marked are?

22 A These are ten cartridge cases that we found.

23 Q Okay. So that's kind of the spent cartridge that holds the bullet
24 after it's been fired?

25 A Correct.

1 Q It ejects out of the gun?

2 A Correct.

3 Q I want to show you State's 47. I know you mentioned 1 being kind
4 of the handgun, is this kind of just to the left of that? Is that a 1 over there?

5 A Yes.

6 Q Okay. So this is just kind of further over, other items that you've
7 marked?

8 A Correct.

9 Q You mentioned the Ruger that you found. Publishing State's 37, is
10 that a more close-up view of that?

11 A It is.

12 Q Publishing 45, same -- same thing as well?

13 A Yes.

14 Q I want to -- I want to show you State's 34 for a second. Do you
15 recognize what's there by that cone? I don't know if you can tell from that
16 angle, if you want me to zoom in that might help. Would that help you?

17 A Yes, please.

18 Q What is that?

19 A That's a baggie containing a white powder and crystal substance.

20 Q Was that also impounded into evidence?

21 A Yes.

22 Q Under the belief that it might possibly be narcotics?

23 A That was our assumption, yes.

24 Q All right. Publishing 35, another more close-up view of that.

25 A Correct.

1 Q And 48.

2 A Correct.

3 Q Is that that little ruler that we're talking about?

4 A Yes.

5 Q Okay. So you impounded this gun, you're noting a lot of spent
6 cartridges out there. You also got that bag that's noted appears to be
7 narcotics, potentially narcotics. I'm publishing 52, State's 52, what's that? Do
8 you remember what that is?

9 A That is a piece of car door molding from, like, the interior kind of,
10 like, the door handle portion of a car door.

11 Q Publishing 40 -- 53. Is that a more close-up view of that item?

12 A Correct.

13 Q Okay. All right. So you took a bunch of photographs, at or at least
14 Adam Felabom did, after you take photographs what was the next thing you did
15 at the scene?

16 A After we take our initial photographs then we'll --

17 Q Not Adam Felabom, Joel Albert.

18 A Yes.

19 Q That would be you. My bad.

20 A After we took our initial photographs we went through and marked
21 the different items of evidence. And we also conducted a search for further
22 evidence at that point.

23 Q Okay. What did -- did you try to process items for fingerprints?

24 A There were a few items that I processed for fingerprints including
25 the Ruger handgun, the magazine that was in the Ruger handgun. We also

1 found a BB gun magazine.

2 Q Is that found in one of the vehicles left at the scene?

3 A No. It was on the ground over by the west stairwell. We weren't
4 sure if it was associated or not, so just -- just to be safe we collected it and
5 processed it for fingerprints and we also processed this piece of molding as
6 well.

7 Q Let's talk about that for a minute.

8 Are there -- is there one way to kind of process for fingerprints? Is
9 there multiple ways to do it ?

10 A There are multiple ways of processing.

11 Q Could you explain to us kind of what are the ways that you could
12 do it.

13 A There are generally two different main methods. One is with
14 fingerprint powder and the second method is with chemicals. Fingerprint
15 powder you're taking a brush, dipping it in -- into a finely ground medium that
16 has turned -- that's in a powder form and lightly brushing it over the item. The
17 powder adheres to any moisture left by fingerprints and then can develop a
18 print that way.

19 And then there is also chemical fingerprint processing which has a
20 bunch of different subsets in there where you're looking for either -- you could
21 also be looking for moisture, you could be looking for amino acids or fats as
22 well.

23 Q Did you use kind of the dusting method with the powder with
24 respect to the wood paneling?

25 A No. I did chemical fingerprint processing with this using Super glue

1 fumes and a dye stain.

2 Q Explain that. How do you -- how do you do all that?

3 A The method I used I took the items that I was going to process, I
4 stuck them inside of an enclosed chamber and subjected them to Super Glue
5 fumes. Those fumes attached to the moisture and fingerprints and after that
6 you apply a dye stain which fluoresces under a laser light and then you can
7 visualize it using the laser light on the dye stain.

8 Q Okay. I'm publishing State's 84. Is that that same kind of view or
9 at least from a different angle of that same piece of wood paneling?

10 A It is. This is after I've gotten it back at the office and I'm
11 processing it for fingerprints.

12 Q Publishing State's 83. What do we see here?

13 A This is actually a fingerprint that I was able to see with just white
14 light without adding any chemicals to it yet and since I could see it without
15 processing, I photographed it before I did anything just in case, by processing
16 it -- there's is always a potential that you will lose the fingerprint or it might get
17 washed out or something like that.

18 Q Okay. So you document it. When you take a paragraph like that,
19 and let me publish also 85, is that another photograph of that same print? Or a
20 different portion? Or a different area?

21 A It's the same print. It's just after I have applied the Super Glue
22 fumes and the dye stain.

23 Q Okay. Publishing 86.

24 A This is -- this is also another photograph after I've processed for the
25 fingerprints.

1 Q And let's just jump back to the dusting for a second. When you
2 dust it and all that dust adheres to an oil, how do you get a print to fingerprint
3 examination?

4 A Typically when you're using powders you can just take a clear piece
5 of tape, lay it down on the object, on the fingerprint, just press it down really
6 well and when you lift the tape off it pulls all that powder off as well. So
7 you've basically got an exact copy of that fingerprint and then you can place it
8 down on a nice white backing which would give good contrast with black
9 powder.

10 Q And you mentioned before that when you've got kind of a physical
11 item there's sometimes a concern that fingerprint could get smudged off so you
12 take fingerprints or you take photographs of that fingerprint, right?

13 A Correct.

14 Q And that's what you did here. So what do you do when you're not
15 using the dust and you're not using the tape, how do you send something or
16 what do you send off to the fingerprint examiner to exam?

17 A In -- in this case when we're finger -- when we're chemically
18 processing for fingerprints, what we'll do is we'll take a photograph of the
19 fingerprint, what you see here and then because you see the scale here in the
20 photograph, when we print that photograph out we can print it at the exact
21 same size as what it is in real life because they just make the scale actually two
22 centimeters long and then the photo comes out at the proper scale.

23 Q Okay. And so when you took these photographs did you send
24 these off under that event number to -- or at least have them impounded under
25 that event number?

1 A Yes.

2 Q You, let's jump back for a second, you talked before about there
3 were ten cartridge casings you found with respect -- some of them were
4 belonging to what type of bullet; do you remember?

5 A We found actually more than ten. We found ten .40 caliber
6 cartridge cases and we found four 9 millimeter cartridge cases.

7 Q And approximately where are all these cartridges located at this
8 scene?

9 A They were all mainly at the west end of the parking lot -- or the
10 east end, I'm sorry.

11 Q Let me -- let's go back. I want to show you again State's 15,
12 where is the west end? Is this the west end?

13 A We're basically standing actually more towards the center of the
14 parking lot, but we're facing east in this photograph. The building is on the
15 north side of the parking lot.

16 Q Okay. So can you circle the area that you -- do you see the east
17 end that you're talking about?

18 A Yes.

19 Q Okay. Can you circle that general area for the jury?

20 MR. HAMNER: All right. Let the record reflect that the witness has
21 circled three kind of cones in the third parking spot if you were going from left
22 to right in State's 15.

23 THE COURT: Yeah.

24 BY MR. HAMNER:

25 Q Okay. So you've got the ten .40 caliber, what were the other four?

1 What type of caliber bullet was it? Or caliber cartilage was it?

2 A They were 9 millimeter.

3 Q Okay. Were there any bullet fragments recovered at the scene?

4 A Yes.

5 Q How many? Or how many bullets and/or bullet fragments were
6 recovered from the scene?

7 A I believe there were four in total.

8 Q And where were they found?

9 A There was one found on the sidewalk or this little paved area in the
10 back along the block wall. There was another one out in the parking stall area
11 at the east end and then there was another bullet we found basically on the
12 west side of the building, further west in the parking lot. And we also
13 recovered one from inside of room 12.

14 Q Okay. Is room 12 up on the upper level or the lower level?

15 A It was on the second floor.

16 Q Okay. So they're actually, one of the bullets actually struck one of
17 the rooms up there?

18 A It went through the window, yes.

19 Q Okay. Talking about that bag, what you believed to be possibly
20 narcotics, what was the gross weight of -- of those narcotics? I don't know if
21 you measured it or you knew.

22 A We -- I measured it and it was 8.3 grams.

23 Q All right. And that's also kind of in that east end area, right?

24 A Yes.

25 Q When you walked that scene, since we have State's 15 up, are

1 there any kind of exit areas back towards that wall? Is there any way to kind of
2 walk out or get away from that angle? If you remember.

3 A No. If I remember correctly, this is a chain-link fence along the
4 south side of the parking lot which connected with the block wall. The block
5 wall goes back a little bit, but and there's a small little gap. But if I recall
6 correctly, it didn't go anywhere. It just kind of butted up against the wall.

7 Q Okay. So it would actually dead ends?

8 A Yes.

9 Q So if -- the only way out is really back towards Fremont?

10 A Correct.

11 Q Okay. You mentioned that you impounded or at least dusted, you
12 know, BB gun magazine; is that right?

13 A Correct.

14 Q And that was impounded as evidence, right?

15 A Correct.

16 Q Were any pellets found?

17 A Yes. There were I believe 18 pellets found inside the BB gun
18 magazine.

19 Q Did you impound any money that was found there?

20 A Yes.

21 Q How much money was impounded?

22 A \$3,308.00.

23 Q Okay. Did you take any DNA swabs when you were out there?

24 A Yes.

25 Q And from what items did you take them from?

1 A I collected DNA swabs from the Ruger pistol, from the magazine
2 inside the Ruger pistol, from the BB gun magazine.

3 Q Okay. And did you collect a couple cigarette butts as well?

4 A And some cigarette butts, yes.

5 MR. HAMNER: All right. Court's indulgence.

6 THE COURT: Okay.

7 BY MR. HAMNER:

8 Q And just to be clear, all this was under event number 1304194147?

9 A Correct.

10 MR. HAMNER: All right. Thank you. I have no further questions at this
11 time.

12 THE COURT: Mr. Schwarz.

13 MR. SCHWARZ: Thank you, Your Honor.

14 **CROSS-EXAMINATION OF ADAM FELABOM**

15 BY MR. SCHWARZ:

16 Q Hello, Mr. Felabom. How are you today?

17 A Doing well. Thank you.

18 MR. HAMNER: Mike, do you want me to leave these photos up here?

19 MR. SCHWARZ: You know what, just the gun. Great. That would be
20 great. Yes, that's what I need.

21 MR. HAMNER: There you go.

22 MR. SCHWARZ: Thank you. And then you can take the rest of them.

23 MR. HAMNER: All right.

24 BY MR. HAMNER:

25 Q So, Mr. Felabom, you photographed the Ruger model P94?

1 A Yes.

2 Q Okay. And that's this photograph here, right?

3 A Yes.

4 Q Okay. How big is that gun?

5 THE COURT: Like, caliber or size?

6 MR. SCHWARZ: No, no, no. Thank you, Your Honor.

7 BY MR. SCHWARZ:

8 Q How -- all right, let me back up.

9 MR. SCHWARZ: Thanks, Judge, you jogged my mind.

10 BY MR. SCHWARZ:

11 Q Did you photograph that gun in the condition you located it in?

12 A Yes.

13 Q In other words, sometimes, and correct me if I'm wrong, but
14 sometimes somebody at a crime scene may make a gun safe, empty -- empty
15 the magazine, pull it back so that, you know, it's not a danger, yes?

16 A Correct.

17 Q That didn't happen on this?

18 A Not to my knowledge.

19 Q So that gun was located by you just the way it looks in the picture?

20 A Yes.

21 Q I noticed that the slide is back?

22 A Correct.

23 Q Does that indicate anything to you?

24 THE COURT: Could you, I'm sorry, could you show the jury what you
25 mean by the slide.

1 MR. SCHWARZ: Yes.

2 THE COURT: So they know.

3 MR. SCHWARZ: Yes. Thank you, Your Honor.

4 BY MR. SCHWARZ:

5 Q For the record, I am pointing to the back, the rear end of the pistol.
6 And would you agree with me, Crime Scene Analyst Felabom, that this is called
7 a slide?

8 A Yes.

9 Q Okay. So I'm suggesting to you that the slide is all the way back.

10 A Correct.

11 Q Okay. Does that have any significance?

12 A The slide on most semiautomatics are designed to lock in this
13 position, as you see in the photograph, when they no longer have any live
14 cartridges in the magazine to load into the chamber.

15 Q And can you tell from -- and just so ladies and gentlemen
16 understand, what is the magazine?

17 A The magazine is what holds all the cartridges. Typically in pistols
18 like this it goes in through the grip where you hold the gun.

19 Q Okay. So other than a revolver, which has a, like, a little barrel that
20 comes out and you stick bullets in holes, this has a magazine, bullets are
21 inserted into, it and then it goes into the handle?

22 A Correct.

23 Q Is the magazine still in the handle?

24 A Yes.

25 Q Okay. Now you indicated that you found ten spent .40 caliber

1 cartridges.

2 A Correct.

3 Q And do you know how many cartridges this gun can hold, this
4 particular gun?

5 A I do not know.

6 Q Okay. Would it be safe to assume, based on the fact that the slide
7 is in the rear position, the magazine is still in the gun, that this gun was fired
8 until it was empty?

9 MR. HAMNER: Objection. Calls for speculation.

10 THE COURT: I'll sustain the objection.

11 MR. SCHWARZ: Okay.

12 BY MR. SCHWARZ:

13 Q You found ten .40 caliber spent cartridges?

14 A Correct.

15 Q And you found this gun in the position that it is in now?

16 A Correct.

17 Q Okay. Now, when this slide, when you're determining how long a
18 handgun is you would close the slide obviously, right? If you wanted to
19 measure a handgun for length you wouldn't just measure it just like this, would
20 you?

21 A Probably not. We don't typically measure length on handguns.

22 Q Okay. Is this a is this a big gun?

23 A It would --

24 THE COURT: Big compared to? I mean --

25 ///

1 BY MR. SCHWARZ:

2 Q Let's put it this way --

3 A There should be a photo with the scale next to it to give a general
4 idea of how big it is.

5 Q Is this -- is this -- do you know what a pocket gun is?

6 A A pocket gun?

7 Q Yeah, you've never heard that term?

8 A No.

9 Q Okay. Is a .40 caliber a large caliber revolver?

10 A Is --

11 Q In other words --

12 A Is it a large caliber revolver?

13 Q In other words, what's the smallest caliber revolver that you're
14 aware of?

15 THE COURT: Revolver or semiautomatic?

16 MR. SCHWARZ: Or, I'm sorry, gun. Thank you.

17 BY MR. SCHWARZ:

18 Q What's the smallest caliber semiautomatic you're aware of.

19 A .22.

20 Q And then they get larger from there?

21 A Correct.

22 Q So, for example, you might go up to a .25?

23 A It's -- yeah.

24 Q Okay. And what does that refer to, by the way, "caliber"?

25 A Caliber is the size and inches of the bullet. So a .40 caliber is .4

1 inches in diameter.

2 Q Okay. And you sort of go up from a .25 to a .32 into a .380, then
3 you get to maybe a .40 caliber?

4 A Correct.

5 Q Okay. So, and you don't know how long this gun measured?

6 A No. We don't typically measure the overall lengths of handguns.

7 MR. SCHWARZ: Judge, Court's indulgence.

8 THE COURT: Okay.

9 MR. SCHWARZ: Because I think there is a picture of a gun with the gun
10 with the -- the gun with the --

11 THE COURT: You did believe there's one that has a ruler by it, correct?

12 THE WITNESS: I know there is.

13 THE COURT: Okay.

14 BY MR. SCHWARZ:

15 Q Is this what you're talking about?

16 A Yes.

17 Q Okay. Does that give you any indication as to how -- how long that
18 gun might be?

19 A Well, each of these marks on the scale, you can see is -- it's really
20 hard to read them because of the flash, but you have centimeter markings
21 along -- along the scale there, so this right here I believe is about three
22 centimeters.

23 Q Okay. All right. Can you tell or would you agree with me that this
24 gun is about seven and a half inches long?

25 A Approximately, sure.

1 Q Okay. Thanks. And how many spent 9 millimeter shells did you
2 find?

3 A Four.

4 Q Okay. So you found ten .40 millimeter shells, four 9 millimeter
5 shells, and this gun in the position that it would be in if it were fired until
6 empty?

7 A Correct. There were 40 or ten .40 caliber cartridge cases, four 9
8 millimeter cartridge cases, and -- and that is what happens when you fire a gun
9 until it is empty. Yes.

10 MR. SCHWARZ: Thank you. I have nothing further. Thank you.

11 THE COURT: Mr. Hamner.

12 MR. HAMNER: I have no questions.

13 THE COURT: Anything from our jurors? Yes, sir.

14 You guys can approach.

15 [Bench conference -- not transcribed]

16 THE COURT: You -- couple questions for you real quick, Mr. Felabom.

17 You didn't have any involvement in examining another weapon in this case, did
18 you?

19 THE WITNESS: No, I --

20 THE COURT: The jury received testimony earlier about --

21 THE WITNESS: -- only dealt with the scene.

22 THE COURT: -- about a gun that was found in a toaster oven at another
23 location. You didn't have any involvement in that?

24 THE WITNESS: No, sir.

25 THE COURT: Okay. But with regard to this particular photo, is there --

1 and this is exhibit number what, Chris?

2 MR. HAMNER: I apologize.

3 THE COURT: That's okay.

4 MR. HAMNER: It is 53.

5 THE COURT: -- 53 which depicts that piece of car molding you described
6 earlier. Is there any reason why the photo doesn't show one of the little -- little
7 numbered cones?

8 THE WITNESS: I -- there's probably another photograph with that and
9 they just didn't pick that photo.

10 THE COURT: Okay. So some photos taken before you place the cones
11 down just depicting how you find evidence?

12 THE WITNESS: Correct. We'll take photos before we mark evidence and
13 after. So we'll have photos with both. So that's why I was kind of going back
14 and forth with some of the photos.

15 THE COURT: Mr. Hamner, any questions based on mine?

16 MR. HAMNER: Just real briefly.

17 BY MR. HAMNER:

18 Q When you guys take a bunch of photos at a scene, they're kind of
19 logged in a database, right? Or something like Metro records, Onbase; is that
20 right?

21 A Yes. When they get uploaded into a computer system, yes.

22 Q And then when the D.A.s get a case we would request all those
23 photos and we get, like, a CD of the photos?

24 A I assume that's what you do.

25 Q You assume so. And you don't really have any kind of guidance as

1 to who's picking and choosing the photos for an actual trial?

2 A No, that's all you.

3 Q Okay. That's right. Okay. Thanks.

4 THE COURT: Mr. Schwarz, anything?

5 MR. SCHWARZ: No, Your Honor, thank you.

6 THE COURT: Mr. Felabom, thank you very much for your time. You are
7 excused, sir.

8 State may call their next witness.

9 MR. SCHWARTZER: State calls Detective Cliff Mogg, Your Honor.

10 THE COURT: Afternoon, Detective.

11 THE WITNESS: Good afternoon, Your Honor.

12 THE COURT: Raise your right hand. Thank you.

13 **CLIFFORD MOGG,**

14 [having been called as a witness and being first duly sworn testified as follows:]

15 THE CLERK: You may be seated. Would you please state and spell your
16 name or the record.

17 THE WITNESS: Clifford, C-L-I-F-F-O-R-D; Mogg, M-O-G-G.

18 THE COURT: Mr. Schwartzer.

19 **DIRECT EXAMINATION OF CLIFFORD MOGG**

20 BY MR. SCHWARTZER:

21 Q Detective, how are you employed?

22 A I'm a detective with the Las Vegas Metropolitan Police Department,
23 Homicide Section. I've been a police officer for over 30 years. I've been with
24 Metro over 20 and assigned to the Homicide Section for 13 and a half years.

25 Q Thank you, detective. So that's fair to say then on April 19th,

1 2013, you were employed as a Homicide detective for Las Vegas Metropolitan
2 Police Department?

3 A That's correct.

4 Q Could you tell the ladies and gentlemen of the jury how you become
5 a homicide detective?

6 A I spent several years in patrol, then I was assigned to a plain clothes
7 unit. After that I was assigned to the Repeat Offender Team, then the Robbery
8 section, then the Homicide section. You have to test and be selected and then
9 he have about a year of a probationary period after which you're off probation
10 and you're a Homicide detective.

11 Q And when a homicide occurs, how does your group go about
12 respond -- how does Homicide go about responding to it?

13 A First thing that happens is patrol officers respond to the scene once
14 they determine that the victim has met a violent death or suspicious death. At
15 the time the supervisors at the scene request the Homicide Section and crime
16 scene investigators respond to conduct a follow-up investigation to their initial
17 investigation. Normally, we will send a sergeant a lieutenant and a couple of
18 detectives to the scene. Another detective will be assigned to respond to
19 whichever hospital, if the victim was transported from the scene to the hospital.

20 Q All right. So when you respond, you respond as a group, correct?

21 A That's correct.

22 Q And do you guys work off of -- guys and ladies -- work off of a
23 rotation?

24 A Yes.

25 Q And that rotation, how does that come about?

1 A Once a homicide occurs in Clark County within our jurisdiction, a
2 team is assigned to that investigation. Once that team determines that the case
3 that they're investigating is a murder, then that team goes down, the next team
4 goes up. Currently we have four teams assigned to the Homicide Section.
5 Each team consists of six detectives and within those six detectives are three
6 teams.

7 Q So, again, directing your attention to April 19th of 2013, were you
8 called out to a scene on Fremont Street, basically Fremont Street and Boulder
9 Highway at a place called Travelers Inn?

10 A I was.

11 Q And that's about, probably about 10:30 at night?

12 A I believe the incident occurred sometime around 9:30 in the
13 evening. Once the victim was determined to be deceased then the Homicide
14 Section was notified. We probably arrived there sometime between 10:00 and
15 10:30 at night.

16 Q Okay. And who responded -- so you said there's usually a group of
17 you who go out there, who -- do you recall who went out there with you from
18 the Homicide Division?

19 A Detective Miller, Detective Wilson, Detective Smith, and I believe
20 Sergeant Fabian went to the scene and I was directed to respond to the U.M.C.
21 Trauma Center where the victim had been transported and pronounced
22 deceased.

23 Q Okay. Now, when you guys go out to a scene as a group, how --
24 does someone take over as a lead detective?

25 A Yes.

1 Q And does someone basically take over the investigation?

2 A That's correct.

3 Q How does that come about? How does one become the lead
4 detective?

5 A Again, it just goes in rotation. Whoever is up to conduct the next
6 investigation, they'll take it. In this case it was detective Terri Miller.

7 Q So when Terri -- so Terri Miller was up in her rotation and she
8 became the lead detective, correct?

9 A That's correct.

10 Q And as lead detective, what was her role?

11 A Her role was to conduct the investigation of the crime scene,
12 document the crime scene, conduct follow-up investigation, and then to kind of
13 coordinate the course that the investigation would take.

14 Q And she basically, she delegates what other detectives will do in
15 order to help her with her investigation?

16 A That's correct.

17 Q Okay. What -- what did she have you do in this case?

18 A Sergeant Fabian that night directed me to respond to the U.M.C.
19 Trauma Center. The victim, Dale Borero, had been transported from the
20 Travelers Inn with a gunshot wound to the U.M.C. Trauma Center where he
21 subsequently was pronounced dead by the doctor.

22 Q Now, why -- why would you want to go out to the hospital? Why
23 would you want to go out to U.M.C.?

24 A Whenever you have a homicide, the body itself is actually a piece of
25 evidence. There is a lot of evidence that can be contained on a body. In this

1 case there were gunshot injuries to the victim. The victim still had his clothing
2 on, which could still be potential evidence. There's always potential evidence
3 that could be underneath someone's fingernails, on the palms of their hands,
4 other types of evidence that could be collected from the body at the hospital.
5 So we always direct a detective to proceed to the hospital along with a crime
6 scene investigator to meet with the coroner's office and make sure that the
7 body is properly documented, that the body is placed into a body bag, sealed,
8 and transported to the coroner's office.

9 Q And, Detective Mogg, did do you that in this case?

10 A I did.

11 Q And initially while you're at the hospital are there times that you try
12 to actually talk to the family members or the people who would check on the
13 person in the hospital?

14 A That's correct. There were several members there I believe his
15 girlfriend, Michelle Klassen, was there. I spoke briefly to her. A woman by the
16 name of Lindquest, I spoke to her. I think I spoke to the victim's brother who
17 was also there. None of them had any direct information as to who was the
18 person that committed the murder that resulted in Borero's death.

19 Q So you didn't have any eyewitnesses to the actual event there at
20 the hospital, correct?

21 A I did not.

22 Q And you didn't have any -- at that point you didn't have any leads
23 generated from the people at U.M.C.?

24 A That's correct.

25 Q So after you took peoples' statements down at U.M.C., made sure

1 everything was done with Mr. Borero's body in order to preserve evidence, did
2 you then go somewhere else that night?

3 A Well, I returned to the scene.

4 Q And that would be the Travelers Inn?

5 A That's correct. While at the scene, I reviewed surveillance video of
6 the shooting. And then on the 20th I conducted additional follow up
7 investigation. I don't remember approximately what time it was, could have
8 been early in the morning, could have been later in the morning.

9 Q Okay. And what was that follow up investigation?

10 A Had some information that a person by the name of Drawers,
11 Joaquin -- or Jaquon Brown, was staying at the Budget Suites at 4855 Boulder
12 Highway in an apartment there. I went to that apartment in an attempt to
13 locate him, but I wasn't able to find him.

14 Q And that would be the brother of Michelle Klassen?

15 A That's correct.

16 Q Okay. And eventually were you guys able to talk to Drawers?

17 A I believe we were.

18 Q And that would be something to ask the lead detective, right,
19 Detective Miller?

20 A I'm sorry.

21 Q Would that be something to ask Detective Miller?

22 A Yes.

23 Q Okay. Now I want to direct your attention, let's first go over the
24 scene a little bit and then we'll go to April 21st. So on April 19th, you
25 responded to the Travelers Inn. I'm going to show a Google map that's

1 Exhibit 6, do you recognize this?

2 A I do.

3 Q This building right here that I'm pointing to, well, it's actually more
4 like this, is this the Travelers Inn?

5 A It is.

6 Q It's right by the Silver State Glass and Mirror?

7 A Yes.

8 Q Okay. And there looks like there's only one way in and one way
9 out?

10 A That's correct.

11 Q And this item over here on the side on -- is that -- so you have the
12 structure right here, correct?

13 A Yes.

14 Q Pointing -- for the record, I'm pointing to the middle of the
15 photograph on Exhibit 6. And then there's a wall on this side or a fence
16 actually on the other side of the parking lot, correct?

17 A I believe it's a concrete wall.

18 Q Okay. And then on -- and then behind there's also a wall as well,
19 correct?

20 A That's correct.

21 Q Okay. Now showing you Exhibit 15, this is -- this is a photograph
22 from actually that night, correct?

23 A It is.

24 Q And you see the con -- you see the cinderblock wall right here in
25 the back?

1 A Correct.

2 Q And then again it's not clearest but there's some type of wall or
3 fence?

4 A Yes.

5 Q On the side. Along with, what would you call that? A storage unit
6 of some sort?

7 A It's a sea-land trailer that they put on semi-trucks and ships.

8 Q Okay. And you went to the -- the manager's office to see the video
9 or how did you view the --

10 A That's correct.

11 Q And then were detectives able to secure the video?

12 A I'm sorry?

13 Q Were detectives able to secure the video?

14 A Yes.

15 Q Maintained as evidence. And you're familiar with that video?

16 A I am.

17 Q Okay. And we'll get into that later in your testimony.

18 So then I want to direct your attention to about 12:00 p.m., 12 to
19 1:00 p.m. on April 21st of 2013, did you come in contact with someone of
20 interest of this case?

21 A I did.

22 Q Okay. And what was that individual's name?

23 A That person was Richard McCampbell.

24 Q Okay. I want to show a photograph here, Exhibit 76, do you
25 recognize that individual?

1 A I do.

2 Q Is that Richard?

3 A It is. It's a photograph taken outside of the transfer and release
4 area of the Clark County Detention Center. It would be on the west side of the
5 facility.

6 Q Okay. Detective, can you tell me how you came in contact with
7 Mr. McCampbell?

8 A I was working with Detective Wilson at the time. I received a call
9 that Mr. McCampbell was over at the Clark County Detention Center on a street
10 that borders the west side of the facility near the transfer and release area, that
11 he wanted to turn himself in in connection with a shooting which had occurred
12 a couple days earlier at the Travelers Inn.

13 I was also told that Mr. McCampbell was driving a white-over-blue,
14 four-door Cadillac Brougham.

15 Q Why was that important?

16 A I'm sorry?

17 Q Why was that important?

18 A That was the same description of vehicle that I saw on a
19 surveillance video arriving prior to the shooting and then departing with the two
20 suspects at the time of the shooting.

21 Q So did you then respond to -- this would be at Clark County
22 Detention Center, did you then respond to that area?

23 A I did. I received the call around 1:00 o'clock in the afternoon.
24 Detective Wilson and I went to the Clark County Detention Center.
25 Mr. McCampbell was detained by patrol officers at that location. I went over to

1 the vehicle, took a quick look around the car, and noticed that there was an
2 apparent bullet impact into the C-pillar which is the pillar on the back of the car.
3 It would be where the rear window is and then as the car wraps around to the
4 back door. Right there in that corner just slightly above the trunk area was
5 where that impact bullet impact was. The driver's window was rolled
6 completely down. The other windows were down slightly. I looked through the
7 driver's window and could see that the simulated plastic wood trim on the
8 passenger door where the controls for the window and door lock is was
9 missing.

10 Q Thank you, Detective.

11 I'm going to show you some photographs, 64, do you recognize
12 that photograph?

13 A I do.

14 Q And is that -- is this the car that we're talking about?

15 A It is.

16 Q The Cadillac that was with Mr. McCampbell?

17 A That's correct.

18 Q And this is with the window, the front driver window down?

19 A Correct.

20 Q I'm showing you a closer up of that would be Exhibit 66, you can
21 then -- you can still see the windows all the way down?

22 A That's correct.

23 Q And there's a license plate on there as well?

24 A Yes.

25 Q Could you read the license plate for the record, please?

1 A 441 Yellow, Victor, Union.

2 Q And that would be a Nevada plate?

3 A Yes, sir.

4 Q And then you mentioned again that -- that bullet mark, defect,
5 showing you Exhibit 67 and then 68, is that what you're talking about?

6 THE COURT: Turn --

7 THE WITNESS: That one's upside down. That's correct.

8 BY MR. SCHWARTZER:

9 Q There we go. Okay. And why was that important?

10 A Well, I knew that multiple -- excuse me -- multiple rounds, shots had
11 been fired by the victim at the time that the shooting at the Travelers Inn
12 occurred.

13 Q Okay. As the vehicle was speeding away?

14 A There were numerous impacts into the Travelers Inn building itself,
15 a concrete wall to the east, and just the trajectory of the bullets that hit the
16 building, one could have possibly hit the vehicle.

17 Q Okay. Showing you Exhibit 69, and then a close-up, Exhibit 70, is
18 this area right here, is that what you were talking about when you said there
19 appear to be damage to the passenger, front passenger side?

20 A That's correct. The right, front passenger door.

21 Q Did you notice any -- and could you circle where the damage was?

22 A It's not damage. It's just a missing piece of trim right around that
23 control assembly.

24 Q Why was that important to you?

25 A I was aware that we had found a piece of simulated wood trim at

1 the crime scene.

2 Q And that was, again, the front passenger seat, correct?

3 A That's correct.

4 Q And then the other parts of the vehicle, such as, like, say, the driver
5 side was that trim still in place?

6 A It was.

7 Q So after you -- so you viewed the vehicle and you also talked to
8 Mr. McCampbell that day; correct?

9 A That's correct.

10 Q And Mr. McCampbell, what was his demeanor like?

11 A He was cooperative.

12 Q And he gave you a statement?

13 A He did.

14 Q You asked him a bunch of questions, he answered them?

15 A I did.

16 Q Did he make himself available to you for different days and times?

17 A On numerous occasions.

18 Q So you talked to him on numerous occasions?

19 A Yes, sir.

20 Q Additionally, let me fast forward now to April 25th of 2013, did you
21 -- did you talk to Mr. McCampbell again?

22 A I did at his residence in the 7600 block of South Rainbow.

23 Q And to be clear, and you've talked to -- you talked to him on April
24 21st of 2013, did you talk to him about other periods between the 21st and the
25 25th as well?

1 A After the interview on the 21st he called me later that evening to
2 provide me with a phone number, albeit what he said was an old phone number
3 for the person he identified to me during the interview as Money.

4 Q Okay. And that was the number that you guys used, or detectives
5 s would use in the investigation?

6 A That's correct.

7 Q And that would be a number that you would provide to Detective
8 Miller?

9 A Yes.

10 Q Okay. Did you talk to him any other time between that period of
11 time and the 25th?

12 A I believe I spoke to him again either the evening of the 20th -- or
13 24th or early in the morning on the 25th to arrange a meeting with him in order
14 to show him some photos.

15 Q Okay. So on the 21st did you have -- did you have any idea who
16 Money was?

17 A I did not.

18 Q Okay. And Money became -- the person, Money, became a suspect
19 based on Mr. McCampbell's statements?

20 A That's correct.

21 Q And was he -- so based on the information he provided you on the
22 21st there was no name that you could -- or true name you could associate
23 with Money at that time, correct?

24 A I could not.

25 Q Eventually during the course of the investigation did a name become

1 developed associated with Money?

2 A Yes.

3 Q And what was that name?

4 A Darion Muhammad-Coleman.

5 Q And based on having that name did you decide to, or you or
6 Detective Miller, decide to create a photographic lineup?

7 A We did.

8 Q And why would you do that?

9 A In order to positively identify the person that Mr. McCampbell
10 identified to us as Money.

11 Q Okay. And by the 25th you were able to develop Darion
12 Muhammad-Coleman as the person associated with Money; is that correct?

13 A That's correct.

14 Q Do you see Darion Muhammad-Coleman in the courtroom today?

15 A What I recall, his hair was a lot shorter at the time, but he's seated
16 next to defense counsel in the brown suit.

17 MR. SCHWARTZER: The identification of the defendant, Your Honor, by
18 the witness.

19 THE COURT: Record will so reflect.

20 BY MR. SCHWARTZER:

21 Q All right, Detective, so on April 25th, 2013, when you went to talk
22 with Mr. McCampbell to do a photographic lineup is there anything you do
23 before you actually show the lineup?

24 A Yes.

25 Q And what's that?

1 A I talked to Mr. McCampbell a little bit first about what he
2 remembers to try to get his memory to go back to that point in time so that he
3 can get the best picture he can of the person he identified to me as Money in
4 his mind. Once he says he has a good idea of what the person looks like,
5 would be able to recall it, then I read him the witness instructions for the photo
6 lineup and after I do that I ask him if he understands them. If he says he does,
7 then at that point I present him with six photographs of suspect and five similar
8 looking African-American males.

9 Q Okay. I'm going to show you what's been marked as Exhibit 114.
10 So, this is the full document right here. Okay. Now -- sorry, showed you --
11 that was Detective Smith's writing, was it not?

12 A That's correct.

13 Q All right. Okay. For the record, I showed Detective Mogg what's
14 been admitted as Exhibit 114 and 114A which is a photo lineup of Mr. Bleak by
15 Detective Smith. Now I'm going to show you Exhibit 113. Do you recognize
16 this right here?

17 A That's my name.

18 Q Okay. And that's the event number associated with this homicide?

19 A That's correct.

20 Q And that's the location of where -- where you did this photographic
21 lineup?

22 A Yes.

23 Q Okay. This instruction right here, this is what you read to
24 Mr. McCampbell before you have him look at photographs?

25 A That's correct.

1 Q And I'm not going to have you read the whole thing, but that's --
2 you read this from the card, I mean, verbatim?

3 A I read this, excuse me, right off the sheet to Mr. McCampbell and
4 this interview was actually audio recorded.

5 Q Okay. And then why do you have him sign right here right after the
6 instructions?

7 A Just indicating that he understood instructions that I read to him.

8 Q Then you do a date and time as well?

9 A That's correct.

10 Q And then in the statement he wrote something down here, correct?

11 A That's correct.

12 Q And -- but you said it was also recorded as well?

13 A It was.

14 Q And did he give more information in that recorded statement?

15 A I believe so.

16 Q Okay. So after you read him the instructions and showed him the
17 photo lineup how -- was he able to make an identification?

18 A Immediately.

19 Q Okay. So you said immediately, so less than a second what -- how
20 much -- how would you time quantify it?

21 A Couple seconds, just time enough for you to take a look at six
22 photographs and identify somebody that you knew.

23 Q Okay. So this is the lineup right here. He picked out number 5,
24 correct?

25 A That's correct.

1 Q And then he signed it and dated it?

2 A That's correct.

3 Q Oka. Is that his signature and his date?

4 A Yes, he did that in front of me. I have them do that that way there
5 can be no question as to which photograph he selected.

6 Q Okay. And so when you do a photo lineup, do you have -- how do
7 you know who's who in that lineup?

8 A When we construct the photo lineup we obviously know who the
9 suspect is. When we pick the five similar looking individuals, we do what's
10 called a master list and that has the name and ID number of each individual on
11 that photo lineup.

12 Q Okay. And did do you that in this case?

13 A We did.

14 Q Did you show Mr. McCampbell that -- that key?

15 A We don't know anyone that one. That is just for internal use. We
16 don't want the person who's viewing the photo lineup to associate a name with
17 a moniker. In this case Mr. Coleman's name with the name money.

18 Q Okay. So is this the key? Detective? That the key for the lineup
19 that you showed Mr. McCampbell?

20 A It is. The ID numbers are underneath each person in their
21 respective position they were in in the photo lineup and then the key below that
22 is their name and ID number.

23 Q Okay. And number 5 would be?

24 A Darion Muhammad-Coleman.

25 Q Which is the person that Mr. McCampbell picked as Money?

1 A That's correct.

2 Q Okay. Now, that same day did you then talk -- did you go, excuse
3 me.

4 The next -- that same day on April 25th, 2013, did you go talk to
5 some additional witnesses that were at the scene on April 19th, 2013?

6 A We did.

7 Q And who was that?

8 A Detective Miller and I met with LeCory and Jermaine -- I can't recall
9 their last name at this point.

10 Q Okay. Would it refresh your memory if you saw the photographic
11 lineup that you did with them?

12 A Yes.

13 Q Okay.

14 MR. SCHWARTZER: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. SCHWARTZER:

17 Q Showing you Exhibit 117 that's admitted.

18 A Grace.

19 Q So you did a interview with LeCory or you did a photographic lineup
20 with LeCory and Jermaine Grace?

21 A That's correct.

22 Q And to be clear, they were actually interviewed earlier in the
23 investigation, this was just for the lineup?

24 A They were.

25 Q Because it took a few days to develop Darion Muhammad-Coleman

1 as the suspect?

2 A That's correct.

3 Q Okay. And, again, you want -- you showed LeCory Grace the same
4 lineup you showed Mr. McCampbell; is that correct?

5 A That's correct.

6 Q Okay. Showing you Exhibit 116, so that's -- that looks like -- 2do
7 you recognize who that person would be?

8 A That's Detective Miller. I was with her when we conducted the
9 photo lineup and she actually read the instructions to Mr. Grace.

10 Q Okay. Were you there when she read the instructions?

11 A I was. I was sitting in the backseat.

12 Q And then he filled out the statement, right here? After the
13 instructions were read, he signed it; is that correct?

14 A That's correct.

15 Q And then he was viewed -- he was shown the lineup?

16 A Correct.

17 Q And after he was shown the lineup, he -- he made his decision?

18 A He did.

19 Q Okay. He was able to pick a specific photograph?

20 A No, he selected photos 4 and 5 of people that he thought looked
21 similar to Money.

22 Q Okay. And -- and that's -- and he basically wrote that in his
23 statement here?

24 A That's correct.

25 Q And then on the very bottom we have both -- it looks like Detective

1 Miller's initials and P number and that would be yours as well?

2 A That's correct.

3 Q Okay. And then you had LeCory Grace sign and date as well?

4 A Yes.

5 Q Okay. And to be clear, just similar to what you showed

6 Mr. McCampbell, 5 would be Darion Muhammad-Coleman?

7 A That's correct.

8 Q Finally, did you show LeCory and Jermaine Grace a photo lineup
9 that included the individual Dustin Bleak?

10 A We did.

11 Q And Dustin Bleak was the person identified as the white male
12 individual in the video, correct?

13 A That's correct.

14 Q Okay. Again, showing you LeCory Grace's photographic lineup,
15 same thing, event number, same date close in time, correct?

16 A Correct.

17 Q And then Detective Miller read him the instructions, he signed that
18 he understood the instructions?

19 A Yes.

20 Q Was he able to pick an individual out?

21 A Number 5.

22 Q Was -- how quick was that identification?

23 A From what I recall, it was fairly quickly.

24 Q Okay. And then he signed and dated as well?

25 A That's correct.

1 Q And that's your name along with Detective Miller's name?

2 A It is.

3 Q Number 5 is right here.

4 A That's correct.

5 Q That's LeCory Grace's initials?

6 A It is.

7 Q Okay. And did you have a key for that photo lineup as well?

8 A We did.

9 Q That's 117A.

10 MR. SCHWARTZER: Okay may. I approach?

11 THE COURT: Yes.

12 BY MR. SCHWARTZER:

13 Q Showing you Exhibit 119.

14 A This is the key for that photo lineup with Dustin Bleak.

15 Q And is this a fair and accurate representation of that document that
16 you used in order to ensure you knew who was who in the photographic lineup
17 with Mr. Grace?

18 A It is.

19 MR. SCHWARTZER: I move for admission of 119, Your Honor.

20 THE COURT: Thank you. Any objection?

21 MR. SCHWARZ: No, Your Honor.

22 THE COURT: That will be admitted.

23 **[STATE'S EXHIBIT 119 ADMITTED]**

24 BY MR. SCHWARTZER:

25 Q And showing you 119, is this the key as you stated, correct?

1 A Correct.

2 Q And number 5 would be Dustin Bleak?

3 A That's correct.

4 MR. SCHWARTZER: Your Honor, may I approach again?

5 THE COURT: You may.

6 BY MR. SCHWARTZER:

7 Q Showing you Exhibit 118. Is this the key that you used in
8 Muhammad-Coleman photo lineups?

9 A That's correct.

10 Q And is this a fair and accurate representation of that lineup that you
11 used to ensure you knew who was who in those lineups?

12 A It is.

13 MR. SCHWARTZER: I move for admission of 118, Your Honor.

14 MR. SCHWARZ: No objection.

15 THE COURT: That will be admitted as well.

16 **[STATE'S EXHIBIT 118 ADMITTED]**

17 BY MR. SCHWARTZER:

18 Q Okay. Let's go back April 19th, 2013, you said you watched the
19 video, correct?

20 A That's correct.

21 Q And detectives were able to secure the video?

22 A Yes.

23 MR. SCHWARTZER: Okay. Could we switch over, please?

24 THE RECORDER: Yes.

25 MR. SCHWARTZER: Thank you, Madam Clerk.

1 BY MR. SCHWARTZER:

2 Q Just ignore this over here because I can't get rid of it. But besides
3 that, do you see -- do you recognize this feature? This video?

4 A I do. This is the monitor system for the video that was located in
5 the office of the Travelers Inn. There are some cameras on here that aren't
6 showing simply because of the way it downloaded. You actually have to click
7 on each box and then hit play to reveal what's on that camera.

8 Q So let's press play. So when we're pressing play we can see from
9 different angles, some of the times aren't moving or they jump sometimes; is
10 that correct?

11 A They're --

12 Q They're all moving right now.

13 A They're actually keeping time.

14 Q Then if you want to fast forward, you actually have to pause; is
15 that correct?

16 A I'm not sure that you can actually even fast forward from this
17 downloaded version.

18 Q Okay. So now you see other camera angles pop up as well?

19 A Correct.

20 Q Okay. Let me ask you this, in camera 3 do you see a car moving
21 into -- into screen?

22 A Yes. This is 9:16 in the evening, approximately, on April 19th,
23 2013. The white-over-blue, four-door Cadillac Brougham that I later identified
24 as belonging to Mr. McCampbell arrives at the parking lot at the Travelers Inn,
25 goes through the main entrance, past the office, all the way over to the east

1 side of the parking lot. He has to turn around, back up a few times, eventually
2 he backs into a parking space near the east stairway. Then he has to
3 renegotiate how he's parked because he doesn't have enough room for the
4 people on the passenger side to get out.

5 Q If you wanted to look at one of these angles in a more blown --
6 blow up one of these angles, you just click on the camera, right?

7 A That's correct.

8 Q So, for example?

9 THE COURT: For the record you just clicked on and expanded camera 3.

10 MR. SCHWARTZER: Camera 3.

11 BY MR. SCHWARTZER:

12 Q And then in order to go back, you would hit the camera again,
13 correct?

14 A Correct.

15 Q So now we're back --

16 THE COURT: Just so you understand, ladies and gentlemen, it may
17 sound a little tedious, but one of the reasons they're explaining that is you get
18 all these exhibits when you go back to deliberate, so to the extent you need to
19 operate and move through these things, that's kind of why the record gets
20 made about that.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 BY MR. SCHWARTZER:

23 Q And then just to show, you can fast forward when you pause by
24 pausing and then fast forwarding. So you can't fast forward when it's playing,
25 but when you pause you can actually fast forward it. Do you see that,

1 Detective?

2 A Yes.

3 Q So we're going to go back to camera -- we're going to blow up
4 camera 4 now or enlarge it.

5 A This is the Cadillac backing into that parking space and you'll see
6 they sit there for a minute. They're pretty close to the wall on the passenger
7 side. And then Mr. McCampbell actually has to renegotiate the vehicle so that
8 the passengers can get out.

9 We're now at 9:18, roughly a minute and a half after the vehicle
10 has arrived.

11 Q Okay. So now we're going to go back to all the camera angles. So
12 we have camera 1, camera 2, camera 3, 4, 5, 6, 7, and 8; is that correct.

13 A That's correct. There was no camera 9.

14 Q Nine being blank.

15 So at this point no one's out of the vehicle and that's at 21:18. So
16 right there I just want to pause it on camera 3, it was at 21:18 that it jumps
17 about 30 seconds. So does that mean the camera basically, it's motion
18 sensitive or appears to be motion sensitive?

19 A It could be that or it could be just the time catching up with the
20 D.V.R. to bring all the cameras into line.

21 Q Okay. And now starting at 21:19, at 22 on camera 4, did you see
22 two individuals just get out of the vehicle?

23 A Yes. A lighter skinned male who we later identified as Dustin Bleak
24 got out of the right, rear passenger seat. And then Mr. Coleman got out of the
25 front passenger seat.

1 Q Okay. And for the record I just enlarged camera 4.

2 A Once they get out of the vehicle, they walk to the area behind the
3 vehicle somewhere around the trunk and out of camera view for a few seconds.

4 Then down here in the lower, left hand corner of the screen, you're
5 looking at it, yes, lower left hand corner of the screen is Mr. Bleak and he has
6 what looks like a can in his left hand and in a moment you'll see the light from a
7 cell phone in his right hand.

8 Mr. Coleman is between the Cadillac and the dark-colored four-door
9 sedan which belongs to the Grace brothers.

10 Q Okay. Right there --

11 A You can see Mr. Coleman is also on his cell phone, that little light in
12 front of him.

13 Q So that's at 21:20:25?

14 A That's correct. At the same time that this is going on the victim is
15 standing on the second floor outside of his apartment looking over the railing
16 down in the direction of the Cadillac.

17 Q Let's -- so camera 1 now at 21:20, which now is enlarged, you
18 can --

19 A These are the Grace brothers that are walking toward you.

20 Q Okay. And once they walk past, before they got out, there was a
21 person standing at the railing, that would be the victim?

22 A That's correct. You can see in the background there up against the
23 railing in a white tank top, dark pants, that's the victim.

24 Q So I'm going to go back to camera 4. So at this point, based on
25 who you see in camera 1, the victim is looking down from the balcony area?

1 A That's correct.

2 Q And Mr. Muhammad-Coleman, the defendant, is between cars and
3 between the blue Cadillac and the four-door sedan and Mr. Bleak who's now
4 out of --

5 A Mr. Bleak is actually right next to Mr. Coleman.

6 Q Thank you. Thank you, Detective.

7 I'm replaying starting at 21:21.

8 A This is Jermaine or this is the victim coming down the stairs right
9 now and he'll walk around the front of the Cadillac, around the back of the
10 Grace vehicle.

11 Q Now he's walking in between cars.

12 A And this is LeCory Grace and Jermaine Grace coming down the
13 stairway.

14 Q Okay. And then the person who was walking in between cars, who
15 would that who would that be with the black hat?

16 A That's Mr. Coleman. Mr. Coleman is still between the two cars.
17 Mr. Bleak is closest to the Grace brother's vehicle.

18 Q Okay.

19 A So this would be Jermaine Grace getting into the driver's seat and
20 his brother getting into the passenger seat.

21 And then Mr. Coleman is back on his phone near the trunk of the
22 Cadillac and you can see the victim over near the front of the Grace vehicle.
23 He's the one wearing the white tank top. And then Mr. Bleak the person who
24 is in front of him wearing the baseball cap and the dark sweatshirt.

25 You will see Mr. Bleak kind of adjust his baseball cap here in just a

1 moment.

2 And that's the victim right there, that you can clearly see. He's got
3 his arms crossed.

4 Q And that would be at 21:23?

5 A Yes. At this point it doesn't appear that the victim has anything in
6 his hands.

7 Q And you can see both his hands on the video at this point.

8 A And there is Mr. Bleak with his baseball cap off scratching his head,
9 puts his cap back on. Mr. Coleman is still standing near the trunk of the
10 Cadillac.

11 Now the victim is taking something out of his pocket. You can't
12 really tell what it is. He's kind of manipulating it with both of his hands.
13 Mr. Bleak is kind in front of him off to his right side. And now you can see Mr.
14 Coleman walking around, pulls a pistol out, the victim has something in his right
15 hand that Mr. Coleman is trying to grab.

16 MR. SCHWARZ: Judge, I'm going to object. I mean, you know, this is
17 speculation at this point. With all due respect, I'm going to object. It's
18 speculation.

19 THE COURT: Approach the bench.

20 [Bench conference -- not transcribed]

21 THE COURT: Thank you.

22 BY MR. SCHWARTZER:

23 Q All right. Detective, we're going to have the video speak for itself
24 right now. And then I'll pause it a few times and ask you some questions.

25 A Okay.

1 Q So that's camera 4's angle, correct?

2 A That's correct.

3 Q I want to go to camera 3. Back it up a little bit.

4 Can you tell the ladies and gentlemen -- we're at 21:23 at 28 --
5 who -- do you see two individuals in this video?

6 A Yes. Yes.

7 Q In the back portion by the -- by that container?

8 A That's correct.

9 Q Okay. Who's who?

10 A The one closest to the trailer is the victim. The one immediately to
11 his right would be Mr. Bleak.

12 Q Okay?

13 THE COURT: On the left in the video, to the gentleman's right in
14 actuality.

15 THE WITNESS: Correct, Your Honor.

16 BY MR. SCHWARTZER:

17 Q And that would be the person wearing the white shirt would be the
18 victim?

19 A Yes.

20 Q Okay. And then who just drove away?

21 A The Grace brothers.

22 Q Okay. Okay. Someone just entered into the screen; do you see
23 that individual?

24 A That's Mr. Coleman.

25 Q Okay. He enters the screen within seconds of the Grace brothers

1 driving off?

2 A Correct.

3 Q And we'll pause it right there. There's another feature on this video
4 too where you can actually go scene by -- screen by screen; is that correct?

5 A Yes.

6 Q And that would be these two arrows right here?

7 A Yes.

8 Q So they go -- so now it's just moving basically screen by screen?

9 A Frame.

10 Q Frame by frame.

11 A Frame by frame.

12 Q Thank you, Detective.

13 We're at 21:24:02 at this point.

14 Now, did you see something?

15 A That was the first shot. That little flash that you saw between the
16 victim wearing the white shirt, Mr. Coleman with the dark clothing on.

17 Q Okay. So I'm going to play it one more time. So we went back?

18 A That's the first shot.

19 Q Okay. Where is it coming from?

20 A It's hard to tell. It could be Mr. Coleman firing the first shot. It
21 could be the victim with his pistol out at this point.

22 There's another shot. That one was Mr. Coleman.

23 Q So, again, we went back. So there's --

24 A That's the first shot.

25 Q Right. And then there's -- let me ask you this, after that first shot

1 what is the person in the white doing?

2 A He's trying to get away and then he falls down.

3 Q So he's falling down after that first shot?

4 A That's correct.

5 Q And then there's the second shot?

6 A Second shot. Third shot.

7 Q Okay. And did you see that fourth shot right there?

8 A Yes.

9 Q Okay.

10 A And then the smoke coming off the side of the building are bullets
11 impacting the stucco on the Travelers Inn and those shots were fired by the
12 victim.

13 Q Okay. Thank you, Detective.

14 MR. SCHWARTZER: I'll pass the witness.

15 THE COURT: Mr. Schwarz.

16 MR. SCHWARZ: Thank you.

17 **CROSS-EXAMINATION OF CLIFFORD MOGG**

18 BY MR. SCHWARZ:

19 Q Detective, I mean, I know you've seen the video a lot, I've seen it a
20 lot; isn't it true they both kind of fall away from each other after that first shot
21 is fired?

22 A The victim actually falls first.

23 Q Well, I mean, within moments they both fall away from each other?

24 A Within moments they --

25 Q Are you telling me Muhammad-Coleman never falls away from the

1 scene?

2 A No, he does. Looks like he trips as he's trying to get back to the
3 vehicle.

4 Q Okay. And in your opinion, right, after reviewing it, you still can't
5 tell who fired the first shot?

6 A I can't tell who fired the first shot.

7 Q Now, I want to go way back, like, three hours ago, when you were
8 at the hospital, you said you were there to see if there were any witnesses to
9 Mr. Borero's murder. You didn't really mean to say "murder," you meant to say
10 shooting death, right?

11 A No.

12 Q I mean, wouldn't you agree with me we are here to determine
13 whether or not what occurred is in fact a murder?

14 MR. SCHWARTZER: Objection.

15 THE WITNESS: I know what I was investigating.

16 BY MR. SCHWARZ:

17 Q You were investigating a shooting death?

18 A I was investigating a murder with the information I had.

19 Q Did you view the body?

20 A I did.

21 Q Do you recall if he had any jewelry? Mr. Borero?

22 A He did.

23 Q Was it your responsibility to recover anything from the body at that
24 time?

25 A I don't recall if we collected the jewelry at that point or not.

1 Sometimes we leave all the clothing and the jewelry on. It's collected the next
2 morning at autopsy by detectives and crime scene investigators. Sometimes
3 we collect the clothing and the jewelry that night.

4 Q Okay. And you don't recall what you did this time?

5 A I don't recall.

6 Q Okay. But he did have jewelry with him?

7 A He did.

8 Q Now, you indicated that you spoke to Mr. McCampbell when he
9 turned himself in which was the 21st.

10 A That's correct.

11 Q That was two days after the incident?

12 A Yes, sir.

13 Q Now, did Mr. McCampbell tell you he tried to call the police to turn
14 himself in earlier than that?

15 A He didn't tell me that during his interview.

16 Q Okay. So as far as you know he waited two days to turn himself
17 in?

18 A That's correct.

19 Q Now, I know you identified Dustin Bleak, we talked about
20 Mr. McCampbell, we talked about my client, there was another individual who
21 was present during all this too, wasn't there?

22 A There was seated in the backseat of the Cadillac behind the driver.

23 Q And who was that?

24 A I would have to refer to the report. I don't recall his name off the
25 top of my --

1 Q I don't think Mr. Schwarzter's going to object if I refresh your
2 recollection.

3 Does Travis Costa sound familiar?

4 A It does.

5 Q Okay. And Mr. McCampbell was never arrested or was never
6 charged in connection with this incident?

7 A He was not.

8 Q Okay. And neither was Mr. Costa?

9 A No, sir.

10 Q Mr. Bleak was and my client?

11 A That's correct.

12 MR. SCHWARZ: Okay. All right. I don't have anything further. Thank
13 you.

14 THE COURT: Thank you.

15 Mr. Schwartz.

16 MR. SCHWARTZER: No, Your Honor.

17 THE COURT: Anything from our jurors? Yes. You all can approach.

18 [Bench conference -- not transcribed]

19 THE COURT: Okay. Couple of questions for you, Detective. First off,
20 the lineups that you-all put together, you guys get photos from D.M.V., work
21 card information, all kinds of sources to get -- to get photos to try and develop
22 similar -- similar lineups for people, correct?

23 THE WITNESS: These photographs were actually collected from LVMPD
24 database and that's what we used to construct the photo lineup.

25 THE COURT: And do you have any idea how close in time to when you

1 did the lineup the photo of Mr. Coleman, Mr. Muhammad-Coleman was taken?

2 THE WITNESS: I don't recall the date on it.

3 THE COURT: And that's okay. Let me ask you just ask you this, his
4 appearance in the photo, was that similar to his appearance at the time as far
5 as you recall from having any interaction?

6 THE WITNESS: That's correct.

7 THE COURT: Okay. And when was it that Mr. Muhammad-Coleman was
8 arrested in this case; do you recall the date?

9 THE WITNESS: I don't recall the date. I wasn't involved in his arrest.
10 That was Detective Miller and other detectives.

11 THE COURT: Okay. Do you recall if it was days? Weeks? Months?

12 THE WITNESS: I don't, Your Honor.

13 THE COURT: Okay. I don't want you to speculate. That's okay.

14 You expressed an opinion, I believe, during the playing of the video
15 that Mr. Muhammad-Coleman was the gentleman that exited the front
16 passenger seat of the vehicle, correct?

17 THE WITNESS: That's correct.

18 THE COURT: I'm assuming that that opinion is based on the totality of
19 information you had available to you not just the watching of the video?

20 THE WITNESS: That's correct.

21 THE COURT: Okay. And there is a point in the video, the question is
22 when Mr. Muhammad-Coleman approaches the area where Mr. Borero is and
23 the question is are we seeing the defendant strike Mr. Borero in some fashion
24 with the gun prior to the first shot occurring?

25 THE WITNESS: That's what it appears to be.

1 THE COURT: Okay. All right. Mr. Schwartz, based on my questions,
2 do you have any questions?

3 MR. SCHWARTZER: Yes, Your Honor, just one.

4 BY MR. SCHWARTZER:

5 Q Who appears to pull out the gun first?

6 A Mr. Coleman.

7 MR. SCHWARTZER: That's it, Your Honor.

8 THE COURT: Mr. Schwarz, anything questions?

9 MR. SCHWARZ: Yes.

10 BY MR. SCHWARZ:

11 Q Detective, just so we're clear, when you're looking at the video you
12 are -- you are representing what appears to be on the video based on your
13 viewing of it, yes?

14 A That's correct.

15 MR. SCHWARZ: Thank you very much.

16 THE COURT: Mr. Schwartz, anything further?

17 MR. SCHWARTZER: No, Your Honor. Thank you.

18 THE COURT: Detective Mogg, thank you very much for your time, sir. I
19 appreciate it. You are excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: State may call their next witness.

22 MR. SCHWARTZER: Your Honor, we're -- we're done for today.

23 THE COURT: Okay. Approach the bench again if you would, guys.

24 [Bench conference -- not transcribed]

25 THE COURT: All right, folks. We're going to go ahead and break early

1 for your weekend. We continue to be substantially ahead of schedule such that
2 the attorneys are telling me they believe they'll be finished with the
3 presentation of evidence on Monday. I don't know if we'll finish in time to be
4 able to actually argue the case on Monday and get it to you for deliberations,
5 but if not, it will be Tuesday morning that you argue and start deliberations. So
6 we're at least a day, if not, more ahead of schedule. Okay?

7 With that, I'll release you for the weekend. I thank you very much
8 for the week. During the recess you are admonished not to talk or converse
9 among yourselves or with anyone else on any subject connected with the trial
10 or read, watch, or listen to any report of or commentary on the trial by any
11 medium of information including, without limitation, to newspapers, television,
12 the Internet, and radio and you cannot form or express any opinion on any
13 subject connected with the case 'til it's finally submitted to you.

14 And again, please, make sure over the weekend that you don't do
15 any kind of independent investigation or recreation or research on your own.
16 Yes.

17 JUROR NO. 12: What -- is it the same time?

18 THE WITNESS: We're going to start at 10:00 o'clock on Monday
19 morning. Okay?

20 JUROR NO. 12: 10:00 o'clock on Monday.

21 THE COURT: 10:00 o'clock, there you go. On Monday, yes. Unless you
22 want to come in over the weekend, no? Okay.

23 [Outside the presence of the jury panel]

24 MR. SCHWARTZER: Your Honor, before we break maybe we should
25 canvass as well --

1 THE COURT: Well, we'll do that tomorrow because we'll break at the
2 end of your case-in-chief. So I'm okay with that.

3 But I did want to make a record of the jury questions. And the
4 earlier ones that were asked there were no objections to those, correct?

5 MR. SCHWARZ: Yes.

6 THE COURT: All right. And then with regard to this witness, there were
7 questions that came in from two jurors. The first question was requesting to
8 ask about when the photo lineup picture was taken and why. So it was agreed
9 at the bench that we would ask about the picture and the similarities that
10 Mr. Muhammad-Coleman may have had at the time that this occurred to the
11 picture but not ask about why the picture was taken, correct?

12 MR. SCHWARTZER: That's correct, Your Honor.

13 MR. SCHWARZ: Yes, Your Honor.

14 THE COURT: Okay. And then the second question was asking about
15 when Mr. Coleman was arrested in the case and there was no objection to that,
16 correct?

17 MR. SCHWARTZER: That's correct.

18 MR. SCHWARZ: Yes, no objection.

19 THE COURT: And then the last question was, quote, "How does
20 Detective Mogg know that Mr. Coleman exited the front seat? I cannot see
21 faces on the video." And it was agreed at the bench to ask him about that with
22 the characterization of his testimony was based on all the information he had
23 not just watching the video and there was no objection to that, correct?

24 MR. SCHWARZ: Yes.

25 MR. SCHWARTZER: Correct, Your Honor.

1 THE COURT: And then finally, the last question that came from another
2 juror, quote, "Are we seeing the defendant pistol-whip Mr. Borero prior to the
3 first shot?"

4 And, Mr. Schwarz, you said that did you not object to the question
5 so long as we eliminated the word "pistol-whip" and replaced it with just that
6 the defendant struck Mr. Borero with the gun, correct?

7 MR. SCHWARZ: That's correct.

8 MR. SCHWARTZER: That's correct, Your Honor.

9 THE COURT: Okay. All right, guys, then I will see you Monday at 10:00
10 o'clock. Please don't forget to get jury instructions to us either over the
11 weekend or Monday morning. Okay?

12 MR. SCHWARTZER: Will do.

13 PROCEEDING CONCLUDED AT 4:12 P.M.

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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio-video recording of this proceeding in the above-entitled case.

21 

22 SARA RICHARDSON
23 Court Recorder/Transcriber
24
25