

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN
aka Darion Muhammadcoleman

Appellant,

vs

THE STATE OF NEVADA,

Respondent

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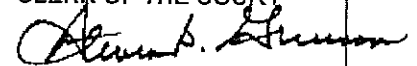
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VOLUME 5

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1 RTRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

CASE NO. C-13-293296-2

6 Plaintiff,

7 vs.

DEPT. NO. III

8 DARION MUHAMMAD-COLEMAN,

9 Defendant.

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

12 MONDAY, JANUARY 9, 2017

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14 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

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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, MONDAY, JANUARY 9, 2017, 10:20 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: Do you guys have anything outside the presence?

5 MR. SCHWARZ: I do not, Judge.

6 THE COURT: State?

7 MR. SCHWARTZER: No, Your Honor.

8 THE COURT: Okay. Joel, you can go ahead.

9 [In the presence of the jury panel]

10 THE MARSHAL: Jury's present, Your Honor.

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

12 All right. Good morning, ladies and gentlemen. We are back on the
13 record. Mr. Muhammad-Coleman's present with his attorney. State's attorneys
14 are present. Our jurors are present. We're going to continue on this morning
15 with the State's case-in-chief.

16 So, the State, you-all may call your next witness.

17 MR. HAMNER: Okay. The State's going to call Khushboo Narechania to
18 the stand.

19 THE COURT: Thank you.

20 Good morning. Raise your right hand. Thank you.

21 **KHUSHBOO NARECHANIA,**

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

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

25 THE WITNESS: Yes. First name Khushboo, spelled K-H-U-S-H-B-O-O,

1 last name Narechania, N-A-R-E-C-H-A-N-I-A.

2 THE COURT: Thank you. Mr. Hamner.

3 MR. HAMNER: Thank you very much.

4 **DIRECT EXAMINATION OF KHUSHBOO NARECHANIA**

5 BY MR. HAMNER:

6 Q Good morning.

7 A Morning.

8 Q Could you please explain to the jury what you do for a living.

9 A Yes. I am currently employed as a forensic scientist with the Las
10 Vegas Metropolitan Police Department's forensic laboratory in the chemistry
11 detail.

12 Q Okay. And how long have you been doing that for?

13 A Since June of 2005.

14 Q And prior to working for Metro what did do you?

15 A Well, it was my first job out of college.

16 Q Okay. So where did you go to college?

17 A I have a bachelor's of science degree in biology with a minor in
18 chemistry and a master's of science degree in forensic science all from the
19 University of Illinois.

20 Q Okay. So you come out here to Metro and what are your
21 responsibilities in that particular position?

22 A I analyze physical evidence for the presence or absence of a
23 controlled substance and I testify to those findings in a court of law.

24 Q Okay. On average how many times do you kind of do this sort of
25 analysis a year?

1 A On average, I would say I do maybe about 150 cases a year.

2 Q Okay. How often do you testify?

3 A I've testified on average, it's been running about six times a year.

4 Q Okay. Well, let me -- let me ask you this, have you -- were you kind
5 of asked to analyze kind of a package in an event number under 130419-4147?

6 A Yes.

7 Q Okay. And were you asked to analyze some sort of substance that
8 the police impounded that they believed possibly to be narcotics?

9 A Yes.

10 Q Why don't you explain to the jury a little bit about what that
11 process is like, you know, you get this request, how do you test it?

12 A I receive a request from my supervisor, after the requests have been
13 approved, and once I receive the request I can order the evidence from our main
14 evidence vault. Every item of evidence that comes through the department is
15 given a bar code and that bar code is scanned into a system. So I can very
16 easily pick and choose which items of evidence I want to be delivered and I
17 click and drag into a list. The evidence technicians at the main evidence vault
18 can access that list and then they bring us the evidence the next day.

19 Q And those requested items, the specific items, can they be made by
20 the either the police officer or maybe the district attorney or even -- even
21 yourself? Would that be accurate?

22 A The request can be submitted by a district attorney or an officer,
23 but the items of evidence that are booked into the system are generally booked
24 by an officer.

25 Q Okay. So after you kind of click and drag, do they bring them to

1 your -- your lab?

2 A Yes.

3 Q Okay. What do you do then?

4 A Once they bring it to the laboratory I go and receive it and the
5 transaction is tracked through our electronic system called ACE, it's Active
6 Control of Evidence, and that tracks all of the -- that is the official chain of
7 custody for the department. So that will track all the transactions within
8 department members. And once I bring the evidence back to my lab bench I
9 can begin my analysis.

10 Q Okay. And in this case did you request or have brought to your lab
11 an item under impound package number 6, impound item number 20?

12 A Yes, I did.

13 Q All right. And explain just to the jury what's a package and what's
14 an item?

15 A Sometimes for a specific case or event there may be several items
16 of evidence, so when the officers book the items they may need multiple
17 packages and the packages are numbered sequentially 1, 2, 3, 4, and so on and
18 then items are the same. So in this case the item that was requested of me
19 was package 6, item 20.

20 Q Okay. So there were 20 items in package -- well, at a minimum
21 there were 20 items in package 6, right, and you just picked that 20th item,
22 right, would that be accurate?

23 A In this case there was only one inside this package.

24 Q Okay.

25 A The previous 19 items may have been scattered through packages

1 1 through 5.

2 Q Okay. So you did that in this case. So now you get your -- you get
3 your item out of your package. What do you do next?

4 A First, before I even open the package, I'll make sure that the seals
5 and the markings on the package are in tact and that there's no evidence of
6 tampering which in this case there was not. So then I'll go ahead and open the
7 package and I'll take an inventory and compare the contents of the package to
8 what's listed on the outside booking label.

9 Q All right. So on the booking label does it indicate kind of the gross
10 weight of what the substance may be?

11 A At times it might.

12 Q Okay. In this case what was the gross weight of this package and
13 item?

14 A The gross -- excuse me, the gross weight that was listed on the
15 envelope was 8.3 grams.

16 Q And if you could explain to the jury, what is a gross weight mean in
17 terms of what you do?

18 A A gross weight is the weight of the substance inside whatever
19 packaging it's received in.

20 Q So the gross weight includes the weight of whatever the substance
21 is packaged in as well as the substance itself?

22 A Correct.

23 Q Okay. So 8.3, with this particular item, what do you do next?

24 A I'll then begin to note the physical appearance of the evidence,
25 whether it's a white powder or crystalline substance or a green leafy substance.

1 In this case it was an off-white crystalline substance. I'll then proceed to
2 measure the gross weight measure of the substance as received so I can
3 compare it to what was listed on the package and then I'll remove the
4 packaging and measure the net weight of the item and then I can begin my
5 chemical analysis.

6 Q And what was the net weight of the item?

7 A The net weight of this item was 7.15 grams.

8 Q Okay. And then you said you begin kind of your analysis at that
9 point?

10 A Yes.

11 Q Or chemical analysis possibly. All right. Explain what that process
12 is like to the jury.

13 A In this case I performed two chemical color tests which gave me an
14 indication of what the substance might contain and that helped me to prepare
15 the sample for injection on to our gas chromatograph mass spectrometer or
16 G.C.M.S. for short.

17 Q Now, you mentioned that you did kind of a color test first to kind of
18 help guide you, is that kind of the purpose of it to kind of give you a sense of
19 maybe what potential narcotic you may be dealing with?

20 A Yes.

21 Q Okay. And then you sent it over to some machine with a very
22 fancy name and I can't even attempt to pronounce at this point. What was that
23 again?

24 A It's G.C.M.S. for short.

25 Q Okay, G.C.M.S. What does that instrument do?

1 A The -- it's actually a two-part instrument. It's two instruments that
2 are coupled together. The first part will separate mixtures of compounds and
3 the second part will help to identify those isolated compounds.

4 Q Why do you want to separate them?

5 A If the compounds, if there's a mixture, then the data that you
6 receive from the second part of the instrument will be a mixture of two
7 compounds and it will be very difficult to identify and isolate those two
8 compounds. So the first part of the instrument separates it for us, so the
9 second part can give you better information on each individualized component.

10 Q Okay. So let's talk about the second part. How does the second
11 portion of that instrument work of the G.S.M.? Did I do that right?

12 A G.C.M.S.

13 Q G.C.M.S. Tell us about the second portion of that instrument, how
14 does that function?

15 A So the second portion of the instrument, once it receives each
16 individualized component, it subjects that component to a very high energy
17 beam which then fragments that molecule up into separate pieces and those
18 pieces are plotted on a graph and that gives us structural information about the
19 molecule. So if you think of the molecule like a jigsaw puzzle, when you drop a
20 jigsaw puzzle, say, from a certain height, it's always going to break at the same
21 points, it's always going to break at the weakest links and our molecule is the
22 same way. When you hit it with the same amount of force, a constant amount
23 of force, it's always going to break the same way. So we can compare our
24 spectrum to a spectrum of a known material and make an identification.

25 Q Okay. So you're kind of matching the structure of the item that

1 you have with -- with known structures?

2 A Correct.

3 Q Kind of also like maybe comparing fingerprints in a way?

4 A Yes.

5 Q Okay. So were you able to make a determination about what this --
6 the chemical structure was of this particular substance?

7 A Yes, I was.

8 Q And what was the determination that you made within a degree of
9 scientific certainty?

10 A I found that this substance tested positive for methamphetamine.

11 Q Okay. So it was meth and the net weight of that was 7.15 grams?

12 A Correct.

13 Q Okay.

14 MR. HAMNER: Court's indulgence. No further questions at this time.

15 THE COURT: Mr. Schwarz.

16 MR. SCHWARZ: Yes, very, very briefly.

17 **CROSS-EXAMINATION OF KHUSHBOO NARECHANIA**

18 BY MR. SCHWARZ:

19 Q You would only be responsible for testing the chemical compound?

20 A Correct.

21 Q So, for example, fingerprinting the bag or that kind of stuff that
22 would be somebody else?

23 A Correct.

24 MR. SCHWARZ: All right. I have nothing further. Thank you.

25 THE COURT: Anything further?

1 MR. HAMNER: No, Your Honor.

2 THE COURT: Anything from our jurors?

3 Narechania?

4 THE WITNESS: Yes.

5 THE COURT: All right, Ms. Narechania, thank you very much for your
6 time. I appreciate it. You can excused.

7 THE WITNESS: Thank you.

8 THE COURT: State mate call their next witness.

9 MR. SCHWARTZER: State calls Anya Lester, Your Honor.

10 THE COURT: You said Lester, right?

11 MR. SCHWARTZER: Yes, Your Honor.

12 THE COURT: Good morning.

13 **ANYA LESTER,**

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

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

17 THE WITNESS: My name is Anya, A-N-Y-A; Lester -- L-E-S-T-E-R.

18 THE COURT: Mr. Schwartzer.

19 MR. SCHWARTZER: Thank you, Your Honor.

20 **DIRECT EXAMINATION OF ANYA LESTER**

21 BY MR. SCHWARTZER:

22 Q Ms. Lester, how are you currently employed?

23 A I am a forensic scientist with the Las Vegas Metropolitan Police
24 Department, forensic laboratory in the firearms and toolmarks analysis unit.

25 Q What are some of the responsibilities of a forensic scientist in the

1 firearm and tool department?

2 A What I do is I examine firearms, ammunition, and ammunition
3 components and any other firearm's related evidence, particularly the
4 microscopic comparisons of ammunition components to determine if they were
5 fired by a particular firearm.

6 Q Now, how long have you been doing that for Las Vegas
7 Metropolitan Police Department?

8 A I joined the forensic lab in December of 2008 as a forensic lab aide
9 and I promoted into the forensic scientist position in December of 2009.

10 Q Did you have to go through any type of training in order to get that
11 position as a forensic scientist?

12 A Yes. I have a bachelor of science degree in forensic science and
13 since joining the firearms and toolmarks analysis unit in 2009, I completed a
14 comprehensive training program which consisted of about 2500 hours of
15 training. It included classes both internal to the lab and external agencies. I
16 also toured various firearm and ammunition manufacturing facilities. I took a
17 variety of manufacturer's armors courses. I did a series of mock cases
18 underneath an experienced examiner and also supervised casework underneath
19 an experienced examiner. And upon completion of that training I was required
20 to pass a series of competency tests which allowed me to begin my own
21 casework and that was in the spring of 2011.

22 Q How many cases on average do have you a year?

23 A I complete anywhere from 250 to 350 cases a year.

24 Q Are you often called to testify in court or in a grand jury regarding
25 your findings?

1 A Yes, I am.

2 Q About how many times do you think you've testified in the Eighth
3 Judicial District Court here in Clark County?

4 A In District Court, approximately 20 times.

5 Q And how about in court in general?

6 A Approximately 25 times.

7 Q Okay. On top of the 20?

8 A Correct. That would be 20 in District and maybe a handful of times
9 in Justice and Federal Court.

10 Q Okay. Now, when you're asked to look at a firearm what are you --
11 what are some of the roles you're asked to do regarding the observation of a
12 firearm?

13 A When I look at a firearm, the first thing I do is I just do a general
14 overall inspection of it. I gather what the manufacturer is, what the model is. I
15 like at the serial number. I check the safetys. I generally look at it, make sure
16 that I think it's safe enough for me to test fire it and --

17 Q Let stop you there.

18 A Sure.

19 Q I want to actually direct your attention to this event number,
20 130419-4147, were you asked to look at certain items in this case?

21 A Yes, I was.

22 Q Specifically, two specific firearms?

23 A Yes, sir.

24 Q That would be a Ruger .40 caliber, correct?

25 A Ruger model P94, .40 Smith and Wesson caliber semi-automatic

1 pistol was the first one, yes.

2 Q And then an LC 9 millimeter, again, a Ruger, correct?

3 A Yeah. Ruger model LC 9, 9 millimeter Luger caliber semi-automatic
4 pistol.

5 Q And that also -- and you were also asked to look at some casings
6 and bullets as well?

7 A Yes, that's correct.

8 Q Can you actually explain to the ladies and gentlemen of the jury
9 what a casing is versus a bullet?

10 A Sure. I have a model if I may use it?

11 MR. SCHWARTZER: Mr. Schwarz.

12 MR. SCHWARZ: I have no objection.

13 THE COURT: Go ahead.

14 MR. SCHWARZ: As long as there is going to be no firing.

15 THE WITNESS: No firing, just plastic model.

16 THE COURT: A big model.

17 THE WITNESS: So we refer to a cartridge, this is a single unit of
18 ammunition. Some people call this a round and sometimes it's erroneously
19 referred to as a bullet, like, people say I load my gun with bullets, but the whole
20 thing is actually called a cartridge. It has several components. Part of it is the
21 bullet or the projectile, that's the part that actually goes down the barrel and
22 comes out of the muzzle of the firearm and flies through the air. Everything is
23 held together by what we call a cartridge case.

24 And this case, it consists of here on this headstamp or this
25 breechface area, a little area called the primer, this is a chemical compound

1 that's shock sensitive so that when you pull the trigger you get a firing pin or a
2 striker that goes forward and it strikes that little chemical compound and makes
3 a spark. What that spark does is it ignites what's inside here which is the
4 powder and when that powder burns it liberates a large amount of gas and
5 that's what actually propels the bullet down the barrel and out of the muzzle of
6 the firearm.

7 BY MR. SCHWARTZER:

8 Q Thank you. Now, so when you're asked -- when I say you were
9 asked to look at some bullets and some casing, those are two separate items?

10 A Yes.

11 Q The projectile and the casing, right?

12 A Yes, that's correct.

13 Q And each of those things are something that you can compare to
14 the firearm, correct?

15 A Yes.

16 Q Okay. And now, again, referring to 130419-4147, where do you
17 get these items in order to do your analysis? Where do you get these firearms?
18 These casings? What have you?

19 A The -- the request comes into our laboratory usually by a detective
20 or it could be from the D.A.'s office or another officer, we get a request. When
21 that request comes in it goes to our manager and then the manager assigns it to
22 a particular analyst. Once that case is assigned to me I go into our evidence
23 management system and I, on my computer, I pull up those pieces of the
24 evidence that were requested from the case to be analyzed and then that goes
25 on to a list and then someone from our evidence vault does a run everyday,

1 they bring that evidence to our laboratory. It is secure moved from the person
2 who does the run to the evidence tech that's at our laboratory. And then the
3 evidence is secure moved from the evidence tech to me so I can do my
4 analysis.

5 Q Now, obviously, you're not the person going out there gathering the
6 evidence, that's the crime scene analyst's job, sometimes the detective's job,
7 correct?

8 A Correct.

9 Q But are you able to see on your forms where this evidence comes
10 from? Where the casings come from? Bullets come from? Guns come from?

11 A Yes. While I'm not the one who gathers the evidence out there at
12 the scene I have a impound form and also I have the container that the evidence
13 comes in and on there, it says where it was impounded from.

14 Q Okay. First I want to talk about the P94 .40 caliber Ruger. Is that
15 a Ruger?

16 A Ruger, yes.

17 Q Thank you. Now you said you test fired that, made sure the safety
18 worked, all that?

19 A Yes.

20 Q Okay. When you test -- tell the ladies and gentlemen of the jury
21 what you do when you test fire these weapons?

22 A When we test fire it, we have an indoor shooting range and we
23 have a shooting tank that's stainless steel. It's filled with about 600 gallons of
24 water. It has a pneumatic lid and a port that we're able to shoot through. So
25 when we test fire, we what we do is after I've done the initial exam that I

1 spoke about earlier making sure the gun is safe enough for me to actually fire it,
2 I go into that room where that shooting tank is and I close the lid and I test fire
3 into that port. The bullets go right into the water. Since water is denser than
4 air, the bullets slow down in the water and then they just fall down into the
5 bottom of the tank and then we have a vacuum tube to retrieve those out of
6 water.

7 What that allows me to do is it allows me to maintain pristine
8 samples from that particular firearm, test fires from that gun that I know came
9 from that gun because I fired them myself. The same thing, in conjunction with
10 that, we have a net that surrounds that shooting port and when the cartridge
11 cases are extracted and ejected they get caught inside that net and it allows me
12 to obtain those cartridge cases, test fires from that firearm that I know came
13 from that gun because again I fired them myself.

14 Q Okay. And in your experience with this P94, when the casing's
15 ejected from the firearm where do they tend to go to?

16 A In general if you hold the firearm upright the way it's supposed to
17 be held, not sideways, and if you hold the muzzle parallel with the ground, not
18 up or down, in general they eject back and to the right-hand side.

19 Q Now, were you asked to compare some casings and possibly bullets
20 to this -- to the P94?

21 A Yes, I was.

22 Q Okay. Where did the casings come from?

23 A If I may refer to my case file?

24 Q And that would refresh your memory?

25 A Yes, thank you.

1 MR. SCHWARTZER: And for the record, Your Honor, Ms. Lester does
2 have her -- her complete forensic file with her which has been provided to the
3 defense in discovery.

4 THE COURT: Okay.

5 MR. SCHWARZ: Judge, and with all due respect, I have no objection to
6 the witness refreshing her recollection when she needs to.

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

8 THE WITNESS: So I was asked to examine ten .40 Smith and Wesson
9 caliber cartridge cases and per the paperwork and the box those were retrieved
10 from 2855 Fremont Street.

11 BY MR. SCHWARTZER:

12 Q Okay.

13 A I was also asked to look at four Speer 9 millimeter Luger cartridge
14 cases and those came from that same location.

15 Q Okay. Let me ask you this, the nine mill -- the four 9 millimeters
16 you were asked to look at, would they -- would you expect them to be fired
17 interest this .40 caliber?

18 A I would not. They're a different caliber.

19 Q Okay. Were you able to compare the 40 -- the ten .40 caliber
20 casings that was found at that the Fremont Street address to that P94?

21 A Yes, I did compare those ten cartridge cases to the Ruger model
22 P94.

23 Q Can you tell the ladies and gentlemen of the jury how you go about
24 making that comparison?

25 A Sure. Once I've done the test firing, like I talked about earlier, and I

1 have the pristine samples that I shot from the gun myself, what I do is I take
2 those and I take two of the known samples and I put them on my comparison
3 microscope. What it is, it's like two microscopes that are hooked together by
4 what we call an optical bridge. It's a series of lenses that allows me to look
5 through the eyepieces and to see the two things simultaneously side by side in
6 my field of vision.

7 So what I do first is I take the two knowns, the test fires that were
8 from gun, the ones that I fired, and I compare those to each other. And I kind
9 of start broad, I look at the overall class characteristics. Those are the things
10 that help me narrow it down. Like I look at this firing pin impression, like, is it
11 circular in shape; is it square; is it rectangle. Then I look at the characteristics
12 of the marks that I see are they arced; are they circular; are they straight and
13 parallel; and I compare those to each other. Once I've seen that those are all
14 the same, then I go down on to the microscopic level and look at the individual
15 manufacturing marks to make the determination on the tests if I have sufficient
16 quality and quantity of marks for me to be able to use those test fires to
17 compare to the evidence item.

18 Once I have made that comparison, I have my comparison
19 microscope, I have the two knowns, one on each side, I'll remove one of the
20 knowns from one side and then I put the evidence one on the other side and I
21 do the same direct comparison, this time of the test fire to the evidence in order
22 for me to make a determination as to whether both of those things originated
23 from the same firearm.

24 Q Okay. And you did that in this case?

25 A Yes, I did.

1 Q As -- first off, that firearm, the P90, .40 -- .40 caliber, did that
2 come -- do you know where that came from?

3 A That also, per the paperwork and the box, that came from 2855
4 Fremont Street.

5 Q So the same place?

6 A Yes.

7 Q Those ten casings of .40 caliber casings, when compared to your
8 exam -- to your test fired casings, were you able to make a comparison?

9 A Yes, I was.

10 Q Were you able to make a conclusion in your opinion?

11 A Yes, I was.

12 Q And what was your opinion?

13 A I concluded that those ten cartridge cases were identified as having
14 been fired by that submitted Ruger P94 pistol.

15 Q Okay. Additionally, did you also look at bullets as well or a bullet?

16 A Yes.

17 Q For the -- for the .40 caliber?

18 A I look at several bullets, yes.

19 Q Okay. Several bullets in this case and a couple bullets for -- how
20 many bullets for this specific .40 caliber?

21 A I had two bullets that were consistent with . 40 caliber.

22 Q Okay. Do you do a comparison with the test fire -- bullet, to be
23 clear, is the projectile part of the --

24 A Of the cartridge.

25 Q Correct?

1 A Correct.

2 Q And you're holding up, for the record, you were just holding up the
3 projectile part of your model?

4 A Yes.

5 Q Were you able to compare the bullet portion from your test fired
6 bullet with those that were found at the -- that scene, at that Fremont Street
7 address?

8 A Yes. And I do that comparison the same way. I take those test
9 fired bullets that I test fired into the water tank from that water, I compare
10 them to each other on my comparison microscope. Once I've determined I have
11 sufficient quality and quantity of those microscopic marks, that that test fire's
12 sufficient for me to make a comparison, I take one off and then I put the
13 evidence on the other side of my microscope and I do the comparison.

14 Q And were you able to make any type of -- were you able to give any
15 type of opinion regarding the bullet found at the scene?

16 A The --

17 Q Or the --

18 A -- the two .40 caliber bullets?

19 Q Correct.

20 A Yes.

21 Q And what was -- what was your opinion?

22 A Let me make sure I have the numbers correct.

23 Q Please.

24 A So the bullet that was impounded by 8427, package 4, item 18
25 was consistent with .40 caliber and it did have a similar general overall

1 appearance as the bullets that I test fired from the Ruger P94. However, I
2 could not identify or exclude it because of the damage to that particular bullet.
3 So that one was inconclusive.

4 Q How about the second one?

5 A And then I had one other one that was from the same package and
6 that was impound item number 21 and that one was consistent with .40
7 caliber. And per my comparison, I identified that bullet as having been fired by
8 that Ruger P94.

9 Q Okay. So you were able to match one of the bullets to that firearm
10 that was found at the same scene?

11 A Yes, that's correct.

12 Q Thank you. Okay. Let's move on to that second firearm, the Ruger
13 model LC 9 millimeter firearm. Were you asked to look at that as well?

14 A Yes.

15 Q Okay. And when it comes to you in your lab does it come in a box
16 like this?

17 A Yes.

18 Q Now --

19 THE COURT: Bless you.

20 BY MR. SCHWARTZER:

21 Q -- at some point we're going to have you open this, so I could -- do
22 you want gloves or scissors?

23 A No. I'm -- I'm all right with it.

24 MR. SCHWARTZER: And, Your Honor, do you happen to have -- after we
25 have this open, do you want to make sure with your bailiff make sure it's safe.

1 THE COURT: Ms. Lester can tell us if it's secured in the fashion that it
2 needs to be.

3 MR. SCHWARTZER: May I approach?

4 THE COURT: Yeah.

5 BY MR. SCHWARTZER:

6 Q Now, I want to you to explain to the ladies and gentlemen of the
7 jury what these seals are and what we're looking at over here.

8 A These seals up here?

9 Q Well, first off, let me do this, do you recognize this item?

10 A Yes, I do.

11 Q Okay. How do you recognize this item?

12 A It has my name, my signature here signed on the chain of custody,
13 along with my personnel number and my assigned package number, along with
14 the date and time that I resealed the package after I examined it.

15 Q Do you also see your initials anywhere?

16 A And my initials are here on this blue tape on this side, here and
17 here. And when I sealed this here at the laboratory, we use the blue tape. It
18 says LVMPD forensic laboratory. And I use my initials and my personnel
19 number as well as the date sealed on the those seals.

20 Q Additionally, is there an event number on here as well?

21 A There is.

22 Q And is that the event number for the event number that you were
23 subpoenaed for today?

24 A Yes, it is.

25 Q And that's a unique number that would only be associated with this

1 specific case?

2 A Yes. It consists of the year, also the month and date of the event,
3 and then the last four are automatically assigned consecutively starting at
4 midnight and a computer generated as the events go throughout the day.

5 MR. SCHWARTZER: Move to admit Exhibit 1, Your Honor, and contents.

6 THE COURT: Any objection?

7 MR. SCHWARZ: No, Your Honor.

8 THE COURT: That will be admitted. Thank you.

9 **[STATE'S EXHIBIT 1 ADMITTED]**

10 BY MR. SCHWARTZER:

11 Q Now, Ms. Lester, you will see from the sheet here where this item
12 came from?

13 A Yes, it is written, the location on the evidence impound label.

14 Q Okay. And what's that location?

15 A Looks like 1712 Fairfield Avenue, Number 7.

16 Q Okay. And now can you -- and you can see what's in this package,
17 correct?

18 A Yes.

19 Q And what's -- what's listed in this package?

20 A Ruger model, LC9, 9 millimeter, semi-automatic pistol; also one
21 Speer 9 millimeter cartridge and one pistol magazine with seven FC 9 millimeter
22 Luger cartridges.

23 Q Now after all of that, there's, in red ink, chemical processed, what
24 does that mean?

25 A Normally when the crime scene analyst or whoever it is that

1 impounds this item, they may either swab this item for DNA or process it for
2 potential latent prints and that's the markings that they put on there when they
3 have processed it.

4 Q Okay. And that's to ensure that stuff is done before you start
5 doing your test fires?

6 A Right. So that I know before I actually go ahead and handle this
7 that it's already been swabbed for DNA and also processed for latent prints.

8 Q Ms. Lester, can you open?

9 A Certainly.

10 Q Can you ensure that the contents are safe for use in court?

11 Before you do that, that yellow package right there --

12 A Uh-huh.

13 Q -- it says specifically item 1; is that correct?

14 A Yes.

15 MR. SCHWARTZER: And we'll mark this as item 1, Exhibit 8.

16 THE COURT: Okay.

17 BY MR. SCHWARTZER:

18 Q And that would be specifically the pistol, correct?

19 A That should be the pistol.

20 Q Okay.

21 A If I could just open this? And this pistol, after we examine it at the
22 laboratory, we put a orange safety strap in here. So the pistol is open. I verify
23 that there is not a cartridge in the chamber and there is no magazine here in the
24 magazine well.

25 Q Okay. Is there --

1 MR. SCHWARZTER: So we'll mark that 1A and then 1 will that -- okay.

2 BY MR. SCHWARTZER:

3 Q So the envelope would be 1A, the firearm would be 1B. So this is
4 the firearm that you examined?

5 A Yes.

6 Q Okay. Specifically there's also -- is there a magazine in this as well?

7 A Yes.

8 MR. SCHWARTZER: We'll mark that as 1C.

9 THE COURT: Okay.

10 BY MR. SCHWARTZER:

11 Q And what's the capacity of that magazine?

12 A It's a seven round magazine.

13 Q Okay. So you can have seven in the magazine, plus one in the
14 chamber?

15 A Yes. If you have the firearm fully loaded, you could have seven
16 cartridges in here and one in this chamber.

17 Q Okay. Now, did you do -- you were asked to compare that firearm
18 from 1712 Fairfield Avenue to four -- to casings found at that Fremont Street
19 address, correct?

20 A To four cartridge cases, yes.

21 Q Okay. Specifically the 9 millimeters found at that Fremont Street
22 address, correct?

23 A Yes, that's correct.

24 Q Okay. You did the same comparison, the same testing that you did
25 that -- we talked about with the .40 caliber?

1 A Yes. I follow the same process every time I do a comparison. So
2 for this particular firearm, I did the same process as far as the test firing goes
3 and then comparing the test cartridge cases to each other before comparing
4 them to the evidence.

5 Q Okay. Specifically, what kind -- what was the brand on the
6 casings -- the cases found at the Fremont Street address?

7 A The four, 9 millimeter Luger cartridges cases were Speer brand.

8 Q Okay. And that magazine at one point were there casings involve --
9 were there casings in that -- in that magazine?

10 THE COURT: Cartridges or casings?

11 BY MR. SCHWARTZER:

12 Q Cartridges, excuse me, in the magazine?

13 A When I received it the cartridges were not in the magazine.

14 Q Okay. Were cartridges part of that package that you received?

15 A I believe they're in these two packages here, yes.

16 Q Okay. Can you open -- one would be 1D, one would be 1E. Could
17 you open which ever one?

18 A Sure. So I'll open the one that just has one first. This is from
19 item 2.

20 THE COURT: All right. The one with one will be marked as 1D.

21 THE WITNESS: So this is one Speer, 9 millimeter Luger cartridge.

22 BY MR. SCHWARTZER:

23 Q Okay. So the same --

24 THE COURT: It's going to be bag and contents. So 1D will be the bag
25 and the one cartridge.

1 MR. SCHWARTZER: Thank you, Your Honor.

2 THE COURT: Thank you.

3 BY MR. SCHWARTZER:

4 Q That's still the same brand that you were asked to compare from
5 the scene?

6 A Yes.

7 Q Okay. And then what about that 1E and contents?

8 A The second?

9 Q Which would be the multiple cartridge.

10 A So in here we have seven, 9 millimeter Luger cartridges and the
11 headstamp says FC which is consistent with being manufactured by Federal
12 Ammunition.

13 Q And can you hold one of them up so that the jury can see?

14 A Uh-huh. It's not unlike this. This is a larger version.

15 Q Okay. And for the record you held up both the model and one from
16 package 1E?

17 A Yes.

18 Q Okay.

19 THE COURT: So that's bag and contents, 1E is the bag and seven
20 Federal cartridges.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 BY MR. SCHWARTZER:

23 Q So you did your comparison regarding the test fired shots for this 9
24 millimeter with the casings found at this Fremont Street address, correct?

25 A Yes, I did.

1 Q Okay. And what was your opinion based on your review of the
2 evidence?

3 A I determined that those four, 9 millimeter Luger cartridges cases
4 shared similar general overall characteristics with test fires that I fired from the
5 Ruger LC 9, 9 millimeter Luger caliber pistol. However, I was not able, due to
6 lack of microscopic marks, I was not able to identify or eliminate them from
7 that particular firearm.

8 Q Okay. So it has similar marks, but you can't say for sure whether it
9 was fired from that gun or not?

10 A That's correct.

11 Q Okay. Were you also asked to look at bullets, the actual projectiles
12 of a -- from nine -- of a 9 millimeter?

13 A Yes, I was.

14 Q That would be two specific bullets, correct?

15 A Yes. Just to make sure with the numbers, it was impound package
16 8167, package 4, numbers 7 and 8.

17 Q Okay. Where did those two bullets come from?

18 A Those were, per the paperwork and package, impounded from the
19 C.C.O.C.M.E., which is the Clark County Office of Coroner and Medical
20 Examiner.

21 Q Okay. And does it say specifically on 7 and 8 how they came in
22 contact, like, how did Metro actually receive them?

23 A I just know that they were impounded by Crime Scene Analyst,
24 P number 8167.

25 Q Okay. That would be and do you have her initials there as well?

1 A That's J. Reiner.

2 Q Okay. So impounded by -- at the Clark County Medical Examiner's
3 Office by Jennifer Reiner on April 20th of 2013?

4 A And let me just check that date. Yes.

5 Q Okay. Do you actually get the evidence impounded as part of your
6 package ?

7 A It's available in our computer system. I don't always receive it. It's
8 something that I can look up if I need to.

9 Q Do you have it in your file?

10 A Let me see.

11 Q Let me -- let me know if you have it in your file.

12 A Certainly. Just one moment.

13 Yes, I do have the evidence impound report of from Ms. Reiner.

14 Q Okay. And so does Ms. Reiner list where the bullets came from?

15 A Yes, she does.

16 Q And where does she list them from?

17 A Per the evidence impound report, item 7 says, From the hands of
18 Dr. Simms, from the left leg of the victim; and item 8 says, From the hands of
19 Dr. Simms from the spine of the victim.

20 Q Now, did you do, similar to what you did with the .40 caliber
21 firearm, did you do test firings and compare the bullets from your test fire with
22 the bullets from this impound?

23 A Yes, I do the exam in the exact same way, test firing, comparing
24 the knowns to each other, and then removing one and comparing the evidence
25 item to the known to make a determination as to whether or not it came from

1 that particular firearm.

2 Q And that, and before we get into your conclusion, we didn't -- I
3 didn't ask, I'm just going to go back the LC 9, is that similar to the .40 caliber
4 where the ejections typically go from the back to the right?

5 A Yeah. So if you held this particular firearm, again, in its normal
6 upright fashion with the muzzle parallel to the ground, in general the cartridge
7 cases would eject back and to the right.

8 Q So after you made the comparison with the test fire bullets with the
9 bullets from evidence impound from the autopsy or from Dr. Simms, from the
10 coroner's office, what was -- were you able to make any kind of opinion or
11 conclusion regarding the bullets?

12 A Yes, I was.

13 Q And what was your conclusion regarding the bullets found from the
14 medical examiner's office?

15 A Those two bullets -- yeah, those two bullets, items 7 and 8, were
16 identified as having been fired by the submitted Ruger, model LC9,
17 semiautomatic pistol.

18 Q So that gun fired those two bullets?

19 A That's correct.

20 MR. SCHWARTZER: No further questions, Your Honor. I'll pass the
21 witness.

22 THE COURT: Mr. Schwarz.

23 MR. SCHWARZ: Yes, thank you.

24 ///

25 ///

1 **CROSS-EXAMINATION OF ANYA LESTER**

2 BY MR. SCHWARZ:

3 Q Hi, Ms. Lester, how are you today?

4 A Hi, I'm good. How are you?

5 Q I'm good.

6 A Good.

7 Q I'm not trying to be snarky or anything, but --

8 A No problem.

9 Q -- how -- how, I mean, I'm listening to you testify and apparently
10 you received the evidence.

11 A Uh-huh.

12 Q You conduct your own test where you test fire the bullets, let's
13 say.

14 A Uh-huh.

15 Q And collect the cartridges and collect the bullets.

16 A Correct.

17 Q And then you sit at a microscope and make a comparison?

18 A Yes, that's correct.

19 Q Okay. So what I'm getting at is how conclusive are your
20 conclusions?

21 A Well, I can't compare the cartridge case or the bullet to every
22 firearm in the world. So I have this limited universe here of what was
23 submitted to me. So what I rely upon is what I call or what we firearms
24 examiners call the AFTE, which is the Association of Firearm and Toolmark
25 Examiner, theory of identification. And what I look for is agreements in all

1 those class characteristics, those general characteristics that I talked about, and
2 then sufficient agreement in those individual microscopic characteristics for me
3 to make the opinion that this item came from this particular firearm. And how
4 much that agreement is based on my education and experience, but it's also
5 based on that comparison I do with the two knowns and I look for how much
6 matching information is on those two knowns and I expect to see that amount
7 of information consistent from my known to my unknown.

8 I also expect that amount of agreement to be greater than what I
9 would expect to find on two items that I know did not come from the same
10 gun. And from looking at guns for a number of years, I've test fired guns,
11 looked at items to each other, and I have an idea, you know, in my head of how
12 much matching information I see on two things that didn't come from the same
13 gun versus two things that did.

14 So I'm meeting that threshold right there. And when I've met that
15 threshold in my mind, I say in my opinion that's an identification to that
16 particular firearm. Then before it's reported out, it is also verified by a second
17 independent examiner and they also say that in their opinion that they agree
18 that that came from that particular firearm.

19 Q Okay. That was my next question, does anybody review your
20 work.

21 A Uh-huh.

22 Q So you come to your conclusions and before you generate a report
23 you have someone review it?

24 A Correct. It's -- the actual evidence is verified on a microscope, so
25 they do actual microscopic comparison verification and they do note, and I do

1 have those notes in my case file, that they agreed with that conclusion. Then
2 once the case is completed, the entire case is technically reviewed and that's
3 by another experienced analyst to make sure that when did I my exam I
4 followed the correct technical procedures, the ones that we have written down
5 for our laboratory and for our department. Then after that review, it's reviewed
6 by another person who does an administrative review and that's just looking for
7 numbers, typos, page numbering, spellings, things like that.

8 Q Is that all usually down before you show up in court here to testify?

9 A Absolutely, yes.

10 Q Okay. And I'm guessing if there's some kind of problem down the
11 road you revise your report or so forth?

12 A Yes. If I had to make a revision, I would have a supplemental
13 report.

14 Q Okay.

15 A With the revision.

16 Q I just want to -- I'm looking at I think which is the first page of your
17 report.

18 A Sure.

19 Q You testified that that magazine from that Ruger held seven
20 cartridges?

21 A The one from the Ruger LC 9 held seven cartridges.

22 Q Okay. But correct me if I'm wrong, under your results and
23 conclusions on the first page of your report, doesn't it say that the magazine
24 has a capacity of ten cartridges?

25 A That's for the magazine that goes with the Ruger model P94.

1 Q Okay.

2 A And then the one that goes with the LC 9, that one holds seven.
3 That's in the next paragraph down or the next bullet point.

4 Q Okay. All right. Well, I guess I was confused because I thought
5 when Mr. Schwartzer was asking you questions about the -- the Ruger, the .40
6 caliber weapon, you said it was a seven. So to clarify, the magazine connected
7 with the Ruger .40 caliber weapon has a capacity of ten cartridges?

8 A That's correct, sir.

9 Q And that would be ten plus one?

10 A That's correct, sir.

11 Q If -- in other words, just -- how -- let me -- maybe you can explain to
12 the ladies and gentlemen of the jury --

13 A Sure.

14 Q -- how you would make it ten plus one.

15 A Uh-huh.

16 Q What that means.

17 A If I may use this one as an example, the cartridges, how you load
18 this firearm, you load cartridges here into the magazine, this is inserted here
19 into the magazine well. And then the thing is to shoot this, I still have to get
20 one of these into this gun. So to do that, normally what you do is you manually
21 pull back the slide and then when it goes forward it takes the top one off of
22 there and moves it into the chamber which is the rear part of this barrel, and
23 then it's ready for it to be fired.

24 So technically you could have no cartridge in there, you could have
25 seven in here and that would be seven. But if I took the seven in here,

1 manually cycled this back, had one here in the chamber, removed this, top this
2 off with one more, and put it in, I would have seven in here and then one in the
3 chamber.

4 In the same vein with the other firearm, the Ruger P94, the .40
5 caliber one, you could do the same thing with the exception of that magazine
6 held ten, so that could be ten plus one for maximum capacity.

7 Q Okay. And again there were ten cartridges submitted to you?

8 A Ten cartridge cases of .40 caliber.

9 Q From the .40 caliber?

10 A Correct.

11 Q Did you measure the .40 caliber Ruger?

12 A Like as far as its length?

13 Q Yes.

14 A Yes.

15 Q How big it is?

16 A The Ruger model P94, .40 caliber, has a barrel length of four and
17 one-quarter inches and an overall length of approximately seven and
18 five-eighths inches.

19 Q So that's just shy of eight inches?

20 A Seven and five-eighths is just shy of eight, yes.

21 Q Thank you.

22 A You're welcome.

23 MR. SCHWARZ: I have nothing further.

24 THE COURT: Mr. Schwartz.

25 MR. SCHWARTZER: No, Your Honor. Thank you.

1 THE COURT: Anything from our jurors? No?

2 Ms. Lester, thank you very much for your time.

3 THE WITNESS: Thank you, sir.

4 THE COURT: I appreciate it. You are excused. And you can just hand
5 me --

6 THE WITNESS: Certainly, let me just put it back in here.

7 Thank you, Your Honor.

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

9 MR. SCHWARTZER: State calls Eric Sahota.

10 THE COURT: Sir, if you could just remain standing and raise your right
11 hand for me please.

12 **ERIC SAHOTA,**

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

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

16 THE WITNESS: Eric Sahota, E-R-I-C; Sahota, S-A-H-O-T-A.

17 THE COURT: Thank you, Mr. Schwartz.

18 MR. SCHWARTZER: Thank you, Your Honor.

19 **DIRECT EXAMINATION OF ERIC SAHOTA**

20 BY MR. SCHWARTZER:

21 Q Mr. Sahota, can you tell the ladies and gentlemen of the jury how
22 you're employed?

23 A I'm employed as a forensic scientist in the latent print detail in the
24 Las Vegas Metropolitan Police Department, forensic laboratory.

25 Q Okay. Do you gotta do any type of special training to do -- to be a

1 forensic scientist in the latent print fingerprint department?

2 A Quite a bit, actually.

3 Q Can you tell the ladies and gentlemen what your background is?

4 A So I have a bachelor's of arts degree in the natural sciences from
5 the Johns Hopkins University. And following -- after receiving my degree, I
6 spent just over a year with the department of neuroscience at the Kennedy
7 Krieger Institute which is in Baltimore, Maryland. As part of the department of
8 neuroscience I did benchwork in cell biology and biochemistry, mostly D.N.A.
9 subcloning and expression.

10 After that I spent year and a half with the Baltimore City Police
11 Department as a crime lab technician. The job duties are very similar to what
12 you would call a crime scene investigator here in Las Vegas. My duties were to
13 respond to crime scenes, document and recover evidence. And my training
14 there included photography as well as the development and recovery of latent
15 prints. After I left Baltimore City in 2007, I came out to Las Vegas as a
16 forensic scientist trainee and I spent 18 months in an intensive training program
17 which consisted of both academic and practical exercises. I took a variety of
18 tests along the way and at the end of my training program I took my final
19 qualification exam and began doing benchwork. And I've been doing that
20 almost ten years now.

21 Q Okay. So for those ten years that you've been doing that, about
22 how many cases per year have you -- do you average that you look at prints?

23 A Well, it can vary from -- it can vary from year to year, but in a
24 typical year anywhere from 100 to 150 cases.

25 Q Okay. So you would say you've looked at, you try to make

1 comparisons in over 1,000 cases?

2 A I would say easily. And each case can have -- could have a few
3 dozen comparisons or it could have a few hundred.

4 Q Okay. Now, Mr. Sahota, have you testified in District Court before
5 here in the Eighth Judicial District Court?

6 A I have. I've -- I've testified in the Eighth Judicial District. I've also
7 testified in Federal Court for the district of Nevada.

8 Q Okay. And both those cases or in those cases was it as a latent
9 fingerprint examiner?

10 A It was.

11 Q And how many times do you believe you've testified in court as a
12 latent fingerprint examiner?

13 A I would estimate maybe two dozen times.

14 Q Okay.

15 A Three dozen.

16 Q Now I want you to explain to the ladies and gentlemen of the jury
17 what a latent fingerprint is.

18 A So the easiest way to understand what a latent print is is to really
19 just look at the skin on your fingers and your palm. From far away you can see
20 that there are these dark lines running across the palm of your hand, these are
21 the major creases of the palm. You also have creases along each joint in your
22 finger. If you look at the skin a little bit more closely, you can see that aside
23 from the creases you also see these, you see these ridges, you see these lines
24 running across your skin, we call those friction ridges and they're made of a
25 series of peaks and valleys and it behaves very much like an ink stamp.

1 So with an ink stamp you have some kind of -- you have some kind
2 of an impression, you have a template. It could be your name and address, it
3 could be your important account information or something like that. And with
4 an ink stamp you take that -- take that template, you put it on to the ink pad
5 and then you transfer that on to the sheet of paper and it leaves behind in ink a
6 representation of whatever was on that template, whatever the information
7 was.

8 Well, a latent fingerprint or a latent palm print is basically the same
9 thing except that the template is the ridges on your skin, instead of ink you
10 have sweat or other residue that may be present, and then when you touch
11 something, if you touch a sheet of paper, if you grab a doorknob, or pick up a
12 water glass, you might leave behind some of that residue and it retains the
13 shape and structure of those friction ridges from your skin.

14 We call them latent because it's not visible to the naked eye. We
15 will typically need to use some sort of physical or chemical development
16 procedure to make it visible and then we either have to capture it as a tape lift
17 or as a photograph.

18 Q Okay. So you said you might be able to make a comparison?

19 A Correct.

20 Q So putting my hand -- I'm putting my hand down right here,
21 pressing my fingers down on this banister right here, immediately after doing
22 that, if you went to process -- someone would look for prints on this, would
23 they find any fingerprints for sure?

24 A Not necessarily.

25 Q Okay. Why not?

1 A So, again, if we think about the -- if we think about the ink stamp
2 analogy, creating that impression is the interaction of three different materials.
3 One is the stamp or the template itself, one is the medium, the ink or sweat or
4 residues that's used to make the transfer and the third is the surface upon
5 which the impression is being made. If the template -- if the template is
6 damaged or contaminated, then that's going to -- that's not going to leave a
7 very good recording. If there's not enough -- if there's not enough ink, if
8 there's not enough sweat or residue or if there's too much, then again there will
9 be a transfer, but what gets left behind is not going to look -- is not going to
10 look exactly like what was on the template.

11 And then of course there's the surface that you're leaving the
12 impression on, we talk about, in latent prints, we talk about ideal and non-ideal
13 surface. And so an ideal surface would be something smooth and shiny like
14 clean -- clean glass or, you know, polished -- polished, painted surface. And
15 then, you know, things like the screen of your smartphone, I mean, I'm sure
16 everybody has had that experience either on their television screen, on their
17 tablet, or on their cell phone they see the -- you can see the fingerprint
18 impressions.

19 And then there are non-ideal surfaces which are exactly the
20 opposite. They tend to be the coarse, non-smooth, non-shiny surfaces. You
21 can think of something like coarse wood, sandpaper, any of those things are
22 not going to be very receptive to accepting that latent print impression.

23 Q Okay. So you -- in that -- in that answer you said sometimes a
24 template's damaged. What are some things that can damage the template?
25 Environment?

1 A There can be any -- well, any one of a number of reasons, when we
2 look at the demographics, we know that people say, for example, that work
3 with their hands, if you're a tradesperson, you know, you work in construction
4 or landscaping, you work with your hands, the condition of your skin is not
5 going to be as good. You could have -- you could have a skin condition.
6 There's some medical disorders that can cause problems with the -- with the
7 friction ridge skin and disrupt or destroy the template. Sometimes it's
8 temporary, sometimes it's permanent. You can have scarring, if you have
9 traumatic injury to the hand or to the fingers, there can be scarring and other --
10 other residual components from the traumatic injury that can -- that can distort
11 the template as well.

12 Q Okay. So if I put my hand down on this banister and it wasn't
13 looked at today, it was looked at a week from now, would that affect the ability
14 of getting fingerprints on that banister from myself?

15 A Potentially, so that goes a little bit to the -- the type of medium, the
16 type of transfer medium that we're talking about, what kind of sweat residue.
17 You actually -- the sweat residue on your skin can actually take on two or three
18 different forms and depending on -- and the major components typically of your
19 sweat residue is going to be water, it's going to be fats and oils, fatty acids and
20 oils, and it's going to be various salt compounds. But it's not necessarily going
21 to be always in the same ratio. Many times latent prints tend to be a little bit
22 high on the water content and a little bit low on the fats and oils and maybe on
23 the -- on the salt residues.

24 Every -- every individual is a little bit different. We're all kind of like
25 walking chemistry sets and we're not all secreting the same, the same

1 chemical, the same materials all the time. So depending on the chemical
2 composition of the sweat residue it could be very persistent. We've looked at
3 evidence that's six months, a year, 18 months old and successfully recovered
4 latent prints. We've looked at -- we've looked at evidence that was recovered
5 and submitted within a few weeks and recovered nothing.

6 Q Okay. Now I want to actually talk to you a little bit about how you
7 obtain evidence to look at.

8 A Sure.

9 Q So you said before you don't go out to the scene and take prints,
10 correct?

11 A Correct.

12 Q Okay. Who typically does that in a case?

13 A So generally speaking, the evidence that we're looking at will either
14 come from a crime scene analyst, that's the crime scene investigator who's
15 specific job duties are to go to the crime scenes and to locate, document, and
16 recover evidence. We will sometimes look at evidence that's recovered by
17 investigators, by detectives, and police officers. Typically that'll be actual
18 physical evidence, they'll bring back a -- they'll bring back a gun or they'll bring
19 back a bag of papers or something like that and we'll look at that evidence.

20 Q Okay. So when a crime scene analyst dusts for prints or tries to
21 obtain prints, do they always obtain a print that you can make a comparison to?

22 A No. So basically how that -- how that process is works is the crime
23 scene analysts have a very broad responsibility for identifying, documenting,
24 and recovering physical evidence from a crime scene. So they have very broad
25 parameters. They use a standard of what we call is suitable for recovery

1 meaning that when the crime scene analyst is processing for latent prints, they
2 see something that looks like a latent print, there are some latent print detail,
3 there's some friction ridge skin detail there. They're not going to make a
4 determination as to whether or not that's forensically useful for comparison
5 identification. Their job is to recovery that print, package it up, put it into the --
6 into our evidence system, start the chain of custody, and then it comes to a
7 specialist such as myself.

8 I'm particularly trained to look at these latent prints and then make
9 a decision as to whether they can be manually compared to known prints of
10 individuals, if they can be put in the computer system. The latent print
11 examiner is going to make those determinations.

12 Q Okay. And sometimes the crime scene analyst at the scene is
13 unable to even obtain prints for you to look at?

14 A Correct.

15 Q Okay. But you -- obviously, you wouldn't then get any information?

16 A Correct. And that's actually a rather common outcome.

17 Q Okay. Now, I want to direct your attention to event number
18 130419-4147, were you asked to do some comparisons in this case?

19 A Yes, I was.

20 Q Okay. How do -- how did you go about getting -- well, first off,
21 who makes that request?

22 A Typically the -- typically the laboratory requests come from the case
23 officer, will be a detective -- detective or investigator who's assigned to the
24 case. Occasionally we'll get requests directly from an attorney, from the
25 district attorney's office or another attorney related to the case.

1 Q Okay. Now, I imagine some cases you don't have someone to
2 compare to, cases where it's, I guess, a whodunit and they're trying to figure
3 out who the person is, correct?

4 A Correct.

5 Q Okay. And then in some cases you would have a person they'd ask
6 you to compare to, correct?

7 A Correct.

8 Q Okay. And when you want to make a comparison, not only do you
9 have your item of evidence that you're looking at to see if -- to obtain a latent
10 fingerprint that you can make a comparison to, but then you must have
11 something to compare it to?

12 A Correct.

13 Q And what is that thing you're comparing it to?

14 A So typically what happens, when I get a lab request and a lab
15 request is basically a work order, it's a document or it's an electronic request
16 that gives me the Las Vegas Metro event numbers, it basically tells me where
17 the evidence is, how to find it, and then it'll include a list of -- list of names
18 with their -- with their file numbers or dates of births or some kind of identifying
19 information. And then what I do is I take that -- take that file number, I go into
20 our fingerprint database, so we have a substantial electronic database of
21 fingerprint cards. I will then -- I'll then use that number or use that identifying
22 information to go into the database and collect the known prints of the
23 individual.

24 Q Those cards, they come from everywhere, right? They come from
25 people doing -- getting C.C.W.s, people who are applying for a sheriff's --

1 A Correct.

2 Q -- license?

3 A So most folks are probably familiar, it's -- there aren't that many
4 occupations here in Clark County that you can -- that you can go to work for
5 without going to civil fingerprint and being fingerprinted. So that's why when I
6 say we have a substantial database, most of the people in town are in the
7 fingerprint database. I'm in there, the D.A.s, and most of the people in the
8 courtroom are in that -- are in that database.

9 Q Now that you've scared everyone.

10 A Sure.

11 Q Is in this case, specifically, in event number 130419-4147, were
12 you asked to make -- was this one of the cases where you were asked to make
13 a comparison to certain individuals or was this one of the ones where you were
14 testing against a database?

15 A I was -- I received a work order to look at the latent print evidence
16 and make some comparisons against actually, there were -- there were quite a
17 few people, I think they were four or five subjects I was asked to compare.

18 Q Okay. Are some of those individuals Darion Muhammad-Coleman?

19 A Correct.

20 Q Dale Borero?

21 A Correct.

22 Q Richard McCampbell?

23 A Yes.

24 Q Okay.

25 A Or, no, I think McCampbell came up, McCampbell came up as part

1 of a database search.

2 Q Okay. So he came up in that extensive database you were just
3 talking about?

4 A Correct. Yes.

5 Q Okay. So specifically regarding Darion Muhammad-Coleman, his --
6 his example -- exemplar, the known prints, they came from the database from
7 July 3rd of 2013; is that correct?

8 A That's correct.

9 Q Okay. So those are prints that were taken from him on July 3rd,
10 2013?

11 A That's the date stamp that would be on the -- on the record.

12 Q Okay. And then you were asked to look at certain items, it looks
13 like all the items come from a 1990 Cadillac, Nevada 441YVU, expect for the
14 first item; is that correct?

15 A Correct. Yeah, the Brougham, yes.

16 Q Yeah. The -- did you see pictures of this -- this vehicle?

17 A No. But that information, when I receive the latent -- latent lift
18 cards, the vehicle information is printed on there by the C.S.A.

19 Q And then the first item you were asked to look at was seven
20 photographs from the side of broken piece of a car door molding?

21 A Correct.

22 Q And that was, in your report were you able to tell who obtained
23 those photographs?

24 A If I may refer to my --

25 Q If that will refresh your memory?

1 A It would.

2 Q And for the record, you're looking at your complete forensic file
3 which has been provided in discovery.

4 MR. SCHWARZ: And again, Judge, I have no objection if the witness has
5 to do that from time to time.

6 THE COURT: Thank you.

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

8 MR. SCHWARZ: I thank you as well.

9 THE WITNESS: The photographs were -- photographs were taken by a
10 C.S.A. Adam Felabom.

11 BY MR. SCHWARTZER:

12 Q Okay. Do you remember looking at those photographs?

13 A I do.

14 Q Okay. I'm going to show you what's been admitted to evidence
15 already, 81 through 86.

16 MR. SCHWARTZER: Sorry, Your Honor, may I approach?

17 THE COURT: You may.

18 MR. SCHWARTZER: Thank you.

19 BY MR. SCHWARTZER:

20 Q Let me know when you're done looking at those.

21 A Okay.

22 Q Okay? Are those photographs that were involved in your
23 comparison?

24 A Yes. These are the photographs.

25 THE COURT: Bless you.

1 THE WITNESS: Excuse me. These are the photographs that I looked at
2 that were submitted by the C.S.A., Felabom.

3 BY MR. SCHWARTZER:

4 Q So I'm showing you Exhibit 80, publishing Exhibit 81, 82, 83, 80 --
5 it's actually 85, 86, and this one's 84. Okay. So this is what's been labeled as
6 the car molding?

7 A Okay.

8 Q Correct? That was what that was labeled as in Mr. Felabom's
9 report, evidence impound?

10 A That's the information I received, yes.

11 Q Okay. And it appears in this -- did you actually look at this object
12 itself?

13 A I did not.

14 Q Okay. You just looked at photographs of this object?

15 A Correct.

16 Q And you believe you were able to make a comparison based on the
17 photographs of this object?

18 A Correct. Yes.

19 Q Okay. Can you explain to me how you were able to make a
20 comparison using photos as opposed to the physical evidence?

21 A Well, so it's, actually it's pretty simple, it's a practical matter that if
22 I'm going to be making a comparison to a known print and the cards, the
23 fingerprint cards we print off, they just come off on just a regular 8 1/2 by 11
24 sheet of paper. There's nothing -- there's nothing particularly special or fancy
25 about it. And the comparisons are -- comparisons are typically either going to

1 be done, what we call manually, where I take the -- I take the unknown
2 fingerprint and then I take the known fingerprint card and then I use some kind
3 of magnification tool, magnifying glass or a lens or a loupe and then I'll make
4 a -- I'll make a manual comparison by going back and forth between the two
5 images.

6 It's also actually quite common for us to make digital comparisons.
7 And in the digital comparison what I'll do is I'll take the -- I'll take the known
8 print, I'll take the known exemplar of the subject and I'll take the latent
9 fingerprint, if it's a powder print that's on a fingerprint card, and then I'll scan
10 those -- I'll scan those impressions, excuse me, at high resolution into
11 photoshop. So when the -- when the C.S.A.s photograph latent prints, it's
12 actually kind of saves us a step because the impressions are already in a digital
13 format. We can -- we can calibrate them. They're photographed, if you've
14 seen or if you're going to see again the photographs, there is a little sticker,
15 there is a little tag in there that actually has a calibrated -- calibrated metric
16 ruler. So we're able to calibrate those images one to one, make them life-size,
17 make them true-to-life size.

18 Q Let me stop you there, Mr. Sahota.

19 A Uh-huh, sure.

20 Q Let me put that exhibit up, 86, that will help explain it.

21 A Uh-huh. Sure. So we have the -- and we have this -- we have this
22 little metric ruler right there. We have --

23 Q For the record you're marking the ruler that's in the top portion of
24 the Exhibit 86.

25 A That's correct. And so there are handy tools that are already built

1 into the photoshop that let us take that known measurement, calibrate the
2 image so that it's -- so that it's true to size, or as we refer to it, one to one.
3 And then we can -- we can proceed with our comparison from there.

4 Q Okay. And then specifically with these photographs, you then
5 made a comparison to the people you were asked to make a comparison to?

6 A Correct.

7 Q Do you know when that request was made?

8 A Not specifically, no. If I may refresh my recollection?

9 Q If that will refresh your memory?

10 A That might be -- I don't have the specific date, but I can estimate
11 that the laboratory request was made sometime the beginning of 2014.

12 Q Okay.

13 A More than likely.

14 Q Well, fair to say if you didn't have the exemplar for
15 Mr. Muhammad-Coleman for July -- until July 3rd, 2013, it had to be sometime
16 after that?

17 A Correct.

18 Q Okay. Now, when you make a -- so you were asked to compare to
19 a bunch of people, Mr. Muhammad-Coleman, Mr. Borero, not Mr. McCampbell.
20 Now, when you make -- when you're able to look at a latent print and compare
21 it to the exemplar of a known print and you make a conclusion that that's that
22 print, do you then go through everyone else that you were asked to compare to
23 or do you stop there?

24 A No. When -- let me rephrase that. Once we've made an
25 identification, if I'm comparing the latent print to the known exemplars and I

1 find a match and then that -- I continue the comparison and reach the
2 conclusion that it's an identification, then at that point the comparisons stop.
3 So if I have five subjects to look at and the first person, first subject I look at
4 matches a latent print, it's -- I conclude that it's an identification, then I stop, I
5 don't look at the remaining four subjects.

6 Q Okay. Now, with the -- that first item, the seven photographs from
7 the side of the broken piece car door molding, so you do what you just said,
8 you print it up with the special photo, blow it up, and then compare it to the
9 exemplar prints of the individuals you were asked to compare it to, correct?

10 A That's correct.

11 Q And when you do that, when do you the side-by-side, do you print
12 out photos of doing that side by side?

13 A In most cases.

14 Q Okay. In this case did do you that?

15 A I did.

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

17 THE COURT: Yes.

18 BY MR. SCHWARTZER:

19 Q Showing you Exhibit 1 -- State's Proposed Exhibit 120, do you
20 recognize this item?

21 A I do.

22 Q Okay. You recognize this as what? I mean, not what you're
23 specifically seeing, but is this actually your work?

24 A This is actually my work. It's a pair of side-by-side images. It's one
25 latent print or unknown print, the photograph of unknown print from Q1, that's

1 the photograph that was submitted by C.S.A. Felabom. And then on the
2 right-hand side is a -- is a digital scan of the known print of Darion
3 Muhammad-Coleman. And then you'll see there's some annotations on the
4 photographs that refer to some of the features that I was looking at.

5 Q Okay.

6 A In the comparison.

7 MR. SCHWARTZER: Move for admission of Exhibit 120, Your Honor.

8 MR. SCHWARZ: No objection, Your Honor.

9 THE COURT: That will be admitted. Thank you.

10 **[STATE'S EXHIBIT 120 ADMITTED]**

11 BY MR. SCHWARTZER:

12 Q Publishing 120, show the jury what we're talking about. So this
13 would be the right exemplar of Darion Coleman and this would be the
14 fingerprint from the photograph of the car molding?

15 A Correct. Yeah, that's the unknown -- that's the unknown print on
16 the left and that's the -- that's the known print, inked print on the right.

17 Q This isn't the greatest photograph, the photographs you use are a
18 little higher density?

19 A Correct. So what -- what happens is the C.S.A., they photograph
20 the -- they photograph the impressions at high resolution and then in this case,
21 so what happens is I recover that photograph, I use it for the comparison, I then
22 save it again as a digital image, it gets, you know, it gets printed every time --
23 every time you print and rescan an image is lose a little bit of a -- little bit of
24 resolution. And I believe the source for this is actually from a P.D.F. file, so
25 there's been -- there's been some image compression.

1 Q Okay.

2 A In this case.

3 Q So when you're making that comparison between the known print
4 to the unknown print, what do you do?

5 A So typically what's going to happen is any time -- any time I have a
6 latent print as part of my -- part of my analysis, part of my process to determine
7 if I want to compare the print, I'm going to be looking, I'm going to be looking
8 at the -- what information I have in there. So some of it is not as -- not as
9 specific, I look at thing like the shape, the shape of the impression, I look at the
10 general overall flow of the ridges which tells me some different information. So
11 I know here that I can kind of estimate here that the core area is down here.
12 So we're actually, this whole region up here, I can make a good estimate even
13 before looking at any of the known prints. I can make an estimate that the
14 region of the finger that I'm looking at is going to be in the tip area.

15 I'll give you the short version, but the slope and the slant of the --
16 slant of the ridges where you can see more curvature down here and then the
17 ridges tend to flatten and slide down, down and to the right, it's not -- it's not
18 necessarily conclusive, but it's a good indicator that I'm probably looking at --
19 I'm probably looking at a right thumb. So I look for information like that that
20 makes the -- makes my search a little bit more efficient. So if I'm going to start
21 looking at the known subjects for comparison, I'm going to start looking at the
22 right tip area of the right thumbs first and then -- are you able to enlarge a little
23 bit? Do you want to --

24 Q For the record you have made various marks --

25 THE COURT: Do you wish him to enlarge the known or unknown?

1 THE WITNESS: The unknown.

2 THE COURT: Okay.

3 BY MR. SCHWARTZER:

4 Q I can just get closer, if that helps?

5 A That'll -- that'll work too.

6 Q Tell me where to stop.

7 A Thank you. And the reason I asked to enlarge is you'll see, you
8 may or may not be able to see, there are little red dots.

9 THE COURT: Tell you what, hold on a second here.

10 THE WITNESS: Sure.

11 BY MR. SCHWARTZER:

12 Q Well, here I can actually zoom in to that.

13 A Okay. There you go.

14 So this particular impression is actually very good quality. Normally
15 the impressions that we look at are not this clear. So that was -- that was
16 fortunate that we had a -- I had a clear impression that I could -- that I could
17 work with. Now, what I'm -- so what I'm going to do is I'm going to make
18 some markings on to the screen to show you what I'm talking about in terms of
19 ridge path. Ridge paths are actually what we look at. We're not just interested
20 in the areas that are marked by the dots. We're interested in what the entire
21 ridge is doing.

22 So, for example, in this case you have a ridge that just -- that starts
23 there on right side of -- the right side of the impression, it runs all the way
24 across to the left and then if we come down right -- one ridge right below that
25 where one of the red dots is you'll see what we call a bifurcation. Bifurcation

1 just means that one ridge that splits into two and then from the other side we
2 have what we call a short ridge. You can see the -- you can see the beginning
3 and ending of both sides of the ridge and it's sandwiched in between these
4 other two up here and down there.

5 Partly because the impression is so clear, we typically -- or latent
6 print examiners are typically not going to trace the entire -- entire ridge in those
7 cases. We're just going to highlight -- we're just going to highlight these areas
8 where you see the red markings. These are what we call minutiae. So again,
9 we have another bifurcation over here. We have what we call a ridge ending,
10 meaning you can just see one -- one end of the ridge. And you have some
11 different -- different formations.

12 And that's -- and then taken in total, starting from the top or
13 starting from the bottom, I'll just work my -- I'll work my way through the --
14 through the print looking for all those types of features and information. And
15 then typically what I will do is I will pick something, what we call the target
16 area, I'll pick something that looks like a distinctive clustering of ridges of
17 minutiae and then I'll use that to conduct my search against the known prints.
18 If I find the corresponding ridge structure in one of the known prints and then
19 from that point then I expand my comparison out -- and I'm just drawing a
20 couple arrows up and down on the impression -- I'll then expand my -- my
21 region of comparison out from that area to look for additional matching detail.
22 And then I'll either render a conclusion that it's either a match in the
23 identification or it's an exclusion meaning it doesn't belong to that person.

24 Q Okay. For the record you made various marks.

25 A Correct.

1 Q On Exhibit 120.

2 So after going through this process with the unknown print are
3 you -- you're matching it -- are you trying to match it up with the known print,
4 these ridges?

5 A Correct.

6 Q Okay. And you did that -- you did so in this case?

7 A I did.

8 Q Okay. And what was your conclusion regarding the suitable print
9 from the photograph of the broken piece of car door molding?

10 A So with respect to the -- to the latent impression that I marked as
11 Q1A, I identified it to the right thumb of Darion Muhammad-Coleman.

12 Q Thank you. And then you also went through another five potential
13 prints, correct?

14 A Correct. There was another package of latent prints that was
15 submitted by C.S.A. Toeppen, now King.

16 Q Okay. And that's regarding from the 1990 Cadillac?

17 A Correct. Yeah, the Brougham.

18 Q Brougham. And in that case from -- we'll just go in order from your
19 report on your card Q2, lift card from the exterior, rear driver window of the
20 1990 Cadillac, were you able to match that palm print to somebody?

21 A I was. After the -- after comparing all the subjects, the named
22 individuals that have been provided to me in the work order, I wasn't able to
23 make an identification. So I did a computer-based search of our known print
24 database and was able to match that print to Richard McCampbell, I believe is
25 the name.

1 Q Would it be surprising to you that the owner of the vehicle's palm
2 print was on the vehicle?

3 A It would not surprise me. No.

4 Q Going to what you marked as Q3 which is a lift card from the
5 exterior rear drive door of the 1990 Cadillac, you were unable to -- fair to say
6 you weren't able to make a -- anyone you could compared it to was not the
7 person who left that print?

8 A Correct. That's the -- that's simply --

9 Q Roundabout way of saying it? Yeah?

10 A Right. I didn't -- I didn't necessarily have all the known prints I
11 needed to compare all of the subjects. So for the ones that I could compare,
12 there was no match, they were all excluded, conducted a computerized
13 database search as well, but was unable to identify the source of that
14 impression.

15 Q Okay. Q4, which was a lift card from the exterior passenger side of
16 the B-pillar, can you explain to the ladies and gentlemen of the jury what a
17 B-pillar is?

18 A B-pillar, do I have --

19 Q Let me help you with that.

20 A Yeah. Do we have a picture of a car?

21 THE COURT: Why don't you use the picture of the car.

22 MR. SCHWARZ: Your Honor, may we approach?

23 THE COURT: Yep.

24 [Bench conference -- not transcribed]

25 THE COURT: All right. We're going to take a quick recess, ladies and

1 gentlemen.

2 During the recess you are admonished not to talk or converse
3 among yourselves or with anyone else on any subject connected with the trial
4 or read, watch, or listen to any report of or commentary on the trial by any
5 medium of information including, without limitation, to newspapers, television,
6 the Internet, and radio. You cannot form or express any opinion on any subject
7 connected with the case 'til it's finally submitted to you, no research,
8 investigation, or re-creation. Be about 10 or 15 minutes. Okay? Thank you.

9 You can step down as well, Mr. Sahota.

10 [Outside the presence of the jury panel]

11 THE COURT: Okay. We're in recess, guys. Thank you.

12 MR. SCHWARZ: Thank you, Judge.

13 [Recess at 11:42 a.m.; proceedings resumed at 12:03 p.m.]

14 [In the presence of the jury panel]

15 THE MARSHAL: Jury's present, Your Honor.

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

17 All right. We are back on the record. Mr. Muhammad-Coleman's
18 present with his attorney. State's attorneys are present, jurors are all present.
19 We're going to continue on with the direct examination of State's witness,
20 Mr. Sahota.

21 And I will remind you that you're still under oath, okay?

22 THE WITNESS: Understood.

23 THE COURT: Thank you.

24 All right, Mr. Scwhartzter.

25 ///

1 BY MR. SCHWARTZER:

2 Q All right, sir, showing you Exhibit 65, the last question is if you can
3 tell the ladies and gentlemen of the jury what the B-pillar is of the vehicle.

4 A Certainly. The short answer, and I'm going to go ahead and I'm
5 going to mark the vertical support strut that's in the -- in the center of the
6 vehicle, that's your B-pillar. And then you start from the front of the vehicle,
7 and that first vertical support strut is going to be your A-pillar, then the next
8 one's going to be your B-pillar, and then depending -- depending on who you
9 talk to, you might consider this to be, this third one on the right to be the
10 C-pillar and then depending on what kind of structural material are there, they
11 might -- might consider that the D -- the D-pillar or you might just lump it all
12 together and make it all make it all C.

13 But those lettered pillars are just basically the vertical support struts
14 that hold up the roof of the car.

15 Q Great. So that -- that lift card from the B-pillar from the 1990
16 Cadillac, you were able to identify that to the right palm of Richard
17 McCampbell?

18 A That's correct.

19 Q And Q5, which was a lift card from the exterior rear passenger
20 window of the 1990 Cadillac, there was a suitable print but you were unable to
21 link it up to anybody, but you were able to exclude the people you were asked
22 to compare it to including Darion Muhammad-Coleman?

23 A Yeah, I was able to exclude four of the subjects, two of the
24 subjects I didn't have sufficient known prints to make a comparison.

25 Q So the four people were Darion Muhammad-Coleman, Dale Borero,

1 Ashland Dennis [phonetic], and Richard McCampbell?

2 A That's correct.

3 Q And to clarify, Ashland Dennis was an individual that you got
4 fingerprints from with Tahir Shahab and a Quadratullah Noori?

5 A Correct. Yes.

6 Q Okay. So then the last one would be a Q6, which is a lift card from
7 an interior front passenger window?

8 A Correct.

9 Q In which you were not able -- there were no suitable prints for
10 comparison?

11 A Correct. There was nothing on that card that I could use to make a
12 comparison.

13 Q So you were able to find fingerprints of Richard McCampbell on that
14 1990 Cadillac?

15 A Correct.

16 Q And you were able to find the fingerprint, the right thumb print of
17 Darion Muhammad-Coleman on that broken piece of car door molding?

18 A Correct.

19 MR. SCHWARTZER: No further questions.

20 THE COURT: Thank you.

21 Mr. Schwarz.

22 MR. SCHWARZ: Yes, I just have one.

23 **CROSS-EXAMINATION OF ERIC SAHOTA**

24 BY MR. SCHWARZ:

25 Q How are you, sir?

1 A I'm doing well. Thank you.

2 Q I'm going to ask you the question that we all ask you, there is no
3 way to tell when these fingerprints were left on these items, right?

4 A No. No. The only -- the only answer I can give you is that the
5 fingerprint obviously couldn't have been left before that -- that material existed.

6 Q Thank you.

7 A So --

8 Q Thank you very much.

9 THE COURT: Anything further.

10 MR. SCHWARTZER: Nothing further from the State, Your Honor.

11 THE COURT: Anything from our jurors?

12 Mr. Sahota, thank you very much for your time. I appreciate it.

13 You are excused, sir.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: State may call their next witness.

16 MR. SCHWARTZER: The State calls Detective Terri Miller.

17 THE COURT: Thank you.

18 **TERRI MILLER,**

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

20 THE CLERK: You may be seated.

21 THE WITNESS: Thank you.

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

23 THE WITNESS: Terri, T-E-R-R-I; Miller, M-I-L-L-E-R.

24 THE COURT: Mr. Schwartz.

25 MR. SCHWARTZER: Thank you, Judge.

1 **DIRECT EXAMINATION OF TERRI MILLER**

2 BY MR. SCHWARTZER:

3 Q Detective Miller, how are you employed?

4 A I am a Homicide detective for the Las Vegas Metro Police
5 Department.

6 Q How long have you been a Homicide detective?

7 A Since April of 2012, so just coming up on five years.

8 Q And how long have you been a detective with Las Vegas
9 Metropolitan Police Department?

10 A I've been a police officer in the state of Nevada for about 25 and a
11 half years. With Metro, I spent five years with Nevada Highway Patrol. I came
12 over to Metro in 1996 and I did a variety of different jobs for them. I worked
13 patrol, I did undercover operations, Robbery. And prior to coming over to
14 Homicide, I spent five years on a FBI task force with Robbery and then I got
15 accepted over at Homicide, so I've been there since then.

16 Q Okay. And we've already had a detective, Cliff Mogg testify, is he
17 someone that works on your rotation?

18 A Yes, he is on my team. There's a team of six and a sergeant.

19 Q Okay. And so we won't go into rotation or anything like that. But I
20 want to direct your attention to April 19th, 2013, were you as part of that
21 team called out to an address on Fremont Street?

22 A Yes.

23 Q And that would be at the Travelers Inn?

24 A Yes.

25 Q And that would be around 10:30, 10:00 p.m.?

1 A Approximately.

2 Q Okay. And when -- when you rode out there to you -- I assume you
3 don't just sit around the station waiting for a homicide, you're probably doing
4 whatever you do in your personal life and then you get called out, correct?

5 A Yes, that's correct.

6 Q So you get called out and you meet with a group of people there?

7 A I do. When I arrive on the scene out there, there's already marked
8 units that are already there. They're the first responders. They're out there,
9 they secure our crime scene. And the way they do that is they use, you guys
10 all have seen it, the yellow crime scene tape. The marked units block off an
11 area to protect whatever evidence that we have until plain clothes, which is us,
12 the detectives that come out there. So when I get out there we have -- there's
13 only one entrance and exit to Travelers Inn and that's off of Boulder Highway.

14 Q Let me stop you there, Detective. Showing you Exhibit 10, if that
15 helps.

16 A Okay. Yes, it does. So when I arrive here, this is the entrance, the
17 driveway to the Travelers Inn. That's the only one in and out. Right here on
18 the southwest corner is where the office is located. There is a, like, wooden
19 fencing that's right along Boulder Highway, kind of decorative-type fencing.
20 But on the backside there's a large cinderblock cement wall that's fairly high,
21 that would be the north side of the building. The east side, which is the far
22 end, that has a 15 to 20, approximately 20 foot cinderblock wall. And then on
23 the south area there is chain-link-type of fencing with the green privacy plastic
24 strips. And then on -- south of that fencing it's just an open dirt lot.

25 So Boulder Highway would be right here, where you folks see the

1 tape.

2 THE COURT: You can draw, Terri, with your finger on there.

3 THE WITNESS: Okay. This is -- this would be the entrance and this is
4 going to be Boulder Highway right on this side.

5 THE COURT: Thank you.

6 BY MR. SCHWARTZER:

7 Q Okay. And for the record you made two red lines about the middle
8 of the photograph of Exhibit 10. So if I'm looking at the building, am I looking
9 north? If I'm looking at the structure?

10 A At the structure, yes, you would be looking north.

11 Q Okay.

12 THE COURT: From this photograph?

13 MR. SCHWARTZER: From this photograph.

14 THE WITNESS: Okay. Thank you.

15 BY MR. SCHWARTZER:

16 Q So once you get there and there's already been a perimeter
17 established by patrol you said?

18 A There's actually two perimeters which is difficult to see on this. So
19 you have your initial crime scene tape that blocks anybody from going in and
20 out of the area. And then where the patrol car is parked, that is a patrol car
21 there that's up against the building, there is another set of crime scene tape, I
22 believe.

23 Q Okay.

24 A So we have an inner and outer perimeter is what we call it. And all
25 of our evidence is going to be on that inner perimeter east, looking east towards

1 the -- the red shipping container.

2 Q Okay. So once -- when you're driving over there are you in a
3 vehicle which you can hear radio traffic?

4 A Yes.

5 Q Are you hearing what's going on regarding the crime scene? While
6 you're driving to the scene, do you have --

7 A A little bit of information. Typically, and at the time there wasn't a
8 cell phone law, typically you could be on the phone, you know, getting updates.
9 We talk to each other, assignments, who's going where, who's going to take
10 care of what, depending on the information that we have. So that's really more
11 what's happening as we're driving. But, yes, I have a plain car that I drive and
12 it does have radio, lights, and siren in it.

13 Q Okay. So once you're there and you've been talking over your cell
14 phone while driving there, does someone brief you about what happened at the
15 scene -- about what they have evidence-wise? Scene-wise? The information
16 they have as of that point?

17 A Absolutely, when we -- when we arrive and that's -- there's --
18 there's four other -- there's four Homicide detectives that responded and a
19 sergeant and a lieutenant that day. So what happens is the patrol officers who
20 are initial responders, they give information and at that time it was our Violent
21 Crime Section and we are briefed by the Violent Crimes detective, which was
22 Detective Pazos.

23 So he's put together all the information from the patrol officers,
24 anybody that was in the area, so we have an idea of who we need to talk to,
25 who's present, and what -- what we have, you know, initial basis of what we

1 have.

2 Q Who's -- who takes over as lead detective in this case?

3 A I do. This is -- this is my case. I'm considered to be the case agent
4 or the lead detective on this one.

5 Q As your role as lead detective or case agent, do you then delegate
6 responsibilities to individuals on your team?

7 A Yes. At that point Detective Mogg went to U.M.C. Trauma because
8 we knew that we had -- we had been advised that our victim had been
9 transported and wasn't expected to live. And then at the scene would have
10 been myself, Detective Wilson, Detective Smith, and Detective Embrey, as well
11 as Sergeant Fabian, and Lieutenant Ray Steiber.

12 Q Now as lead detective is it important for you to get a lay of the
13 land, to walk the scene, if you will?

14 A Yes. Typically before we start doing any interviews so that we can
15 get a visual on what we've been told and see exactly what the area of the
16 crime scene looks like, as a team, we'll go in and we'll, what we call, walk the
17 scene and that's going in under the tape that's been secured and taking a look
18 at what we have, so when we conduct those interviews we kind of have an
19 idea what we're talking about or what they're talking about, so you're all on the
20 same page.

21 Q So showing you Exhibit 14, this is part of the inner perimeter, is
22 that fair to say?

23 A Yes.

24 Q Okay. Showing you Exhibit 18, again part of the inner perimeter,
25 this is even closer to that --

1 A Yes. That's the far east wall that I was talking about and part of
2 shipping container.

3 Q Okay.

4 A So you're looking at the northeast corner of that whole property
5 right here in this scene.

6 Q So when you're walking this scene what of -- what was any -- if
7 anything important when you're walking the scene that you took note of that --
8 during your investigation?

9 A Well, there was several items that -- sir, yeah, can you move that
10 down a little bit? There we go.

11 So there is several items to note. The patrol officers did a great job
12 for us because they tried to protect -- there's people that are in these two, you
13 know, in the hotel rooms, there the motel rooms. So they have someone
14 stationed posted up over there to protect it. But they also went and took cones
15 and kind of marked important areas that, you know, they wanted us to see
16 where there's potential evidence, the gun, the cart casings, any blood, any
17 items of evidence that they would -- they think initially upon their initial
18 response would be important to us. So they try to help us.

19 Q Okay. Where -- what kind -- where there any type of gun evidence
20 at the scene?

21 A Yes.

22 Q And we already heard from -- from C.S.A. Felabom, there was two
23 different kind of caliber.

24 A A 9 millimeter and a .40.

25 Q Right. Where did you find the 9 millimeter casings generally?

1 A The 9s, well, there's -- so the way I look at this is there are four
2 parking stalls on this far east end. There's three painted lines which gives you
3 four stalls. So going from the building to the south one, two, three, and four.
4 So our .40 calibers were in the stall designated number 3, 4, right -- right in
5 that area, real close together.

6 Q Okay.

7 A Right in front of the -- the red shipping container, you know, in the
8 designated stalls.

9 Q So where generally did you find the 9 millimeter casings?

10 A There's two in stall number 3.

11 Q And can you -- you can make a mark.

12 A Pardon me?

13 Q Make a mark.

14 A Okay. So you can see the parking bumpers just barely, I believe,
15 right there. So this would be 3. Okay. And then there was one somewhere in
16 here and then somewhere back in here. So there's four 9s.

17 Q Okay. So they were in that in kind of toward the north side of the
18 building except for the one it looks like by the white car?

19 A Actually, they would be -- stall 3 would be to the east end of the
20 parking lot right behind the white Ford Taurus and then one towards the north
21 side, yeah, it would be northwest of the main scene right here in this area close
22 to the building.

23 Q Okay. And then was there also casings found of a .40 caliber?

24 A Yes.

25 Q And how many casings were those?

1 A There were ten .40 calibers and they were all right here in this area
2 right here where that cone is, they were all pretty much grouped right there
3 between stalls 3 and 4.

4 Q Okay. So they were more together than the 9 millimeters?

5 A Yes. The 9s were spread out, two and then and these two other
6 areas.

7 Q Showing you 32.

8 A There you go.

9 MR. SCHWARTZER: Can you clear that screen?

10 Thank you, Your Honor.

11 BY MR. SCHWARTZER:

12 Q So showing you Exhibit 32, does this show where all the .40
13 calibers were found?

14 A Yes.

15 Q And in fact -- go ahead?

16 A So this is stall 3 right here.

17 Q Yes.

18 A That I'm calling it. And this would be 4 and these were the
19 grouping that I was talking about for the .40 calibers.

20 Q And there is a -- can you see a firearm here as well?

21 A I don't know on this picture.

22 Q Let me zoom in for you.

23 A Right here.

24 Q Okay.

25 A Yep. There is the -- that would be the -- the .40.

1 Q Let me show you real fast.

2 MR. SCHWARTZER: May I approach?

3 THE COURT: Yeah.

4 BY MR. SCHWARTZER:

5 Q It's kind of hard to see it on the screen.

6 A Sorry.

7 Q No, you're fine.

8 A Right here, from this angle, yeah.

9 Q You see it right here?

10 A In the number 3. So --

11 Q Okay. Let me put it back on.

12 A I'm sorry.

13 Q So you see it now?

14 A Yes, I do.

15 Q Showing you Exhibit 32 again, and you know what, I made that
16 hard for you. Why don't we use Exhibit 33. Okay.

17 A There it is.

18 Q Okay.

19 THE COURT: By the big cone.

20 BY MR. SCHWARTZER:

21 Q So it's the big cone?

22 A Yes.

23 Q Okay. So going back to --

24 A I should wear my glasses.

25 Q Showing you -- that's okay. Showing you Exhibit 32, so back to

1 32, it's where the big cone is?

2 A Yes.

3 Q And all the .40 caliber casings are to the right of that cone?

4 A Yes.

5 Q Okay. Right and toward the back of that Matson storage container?

6 A Yes.

7 Q And that's where they're grouped up?

8 A Yep.

9 Q Did you find .40 calibers anywhere else?

10 A Nope, only in this area.

11 Q Okay. Was there also a -- so what you have is you have one
12 firearm at the scene, some .40 caliber casings, some 9 millimeter casings, is
13 there anything else of interest that might clue you into why there was a
14 shooting?

15 A Yes, narcotics were located there against the raised curb area on
16 that east end also, like stall number 3, I believe.

17 Q Okay. Why is that important?

18 A The narcotics?

19 Q Yeah.

20 A Well, it -- it indicates to us that it was probably a drug rip or a
21 robbery.

22 MR. SCHWARZ: I'm going to object, Judge. I believe that's speculation.

23 MR. SCHWARTZER: It's for purposes of the investigation, Your Honor.

24 THE COURT: Well, I'll overrule the objection.

25 ///

1 BY MR. SCHWARTZER:

2 Q Okay. So you have the narcotics in their location, the .40 caliber
3 casings in a certain location, and the 9 millimeters in a certain location?

4 A Yes.

5 Q Okay. Is there any additional evidence from the motel itself that
6 you were able to obtain that night?

7 A Actually, they had video surveillance, cameras posted on the
8 exterior. So we were able to also view surveillance footage.

9 Q Okay. So showing you Exhibit 50 and 51, are these some of the
10 cameras that you had around this Travelers Inn?

11 A Yes.

12 Q I imagine video surveillance is something that's helpful in your
13 profession?

14 A Extremely.

15 Q Okay. Let me ask you this was there any direct -- as of April 19th
16 of 2013, did you have any witnesses that said they saw what happened during
17 the shooting?

18 A No.

19 Q Okay. So you just have a whole bunch of casings, some drugs, and
20 no one that actually saw what happened?

21 A Exactly.

22 Q And then you have this video surveillance?

23 A Yes.

24 Q So like you said, that's extremely helpful?

25 A Yes, it is.

1 Q Did you review the video surveillance that that night?

2 A Yes, we did.

3 Q And based on that did you develop at least a profile of a suspect?

4 A We did. We knew we had two suspects and we knew we had a
5 white-over-blue Cadillac, like, older model Cadillac, a big car, four-door.

6 Q Okay. And why two suspects?

7 A Well, on the video surveillance we were able to see that two
8 suspects exited the -- the car pulls into the Travelers Inn and it backs into that
9 number 1 spot that's right alongside the northeast corner, right along the
10 building. Two males exit out of the vehicle and one stands and leans against
11 the back of the car and then there's another one that ends up, we can see on
12 the video, that's having a conversation with the victim who's later identified as
13 Dale Borerero.

14 Q Okay. And then you were actually able to see the shooting on the
15 video -- and the jury's already seen the video.

16 A Okay.

17 Q So you were actually able to see the shooting --

18 A Yes.

19 Q -- on the video surveillance, correct?

20 A Yes.

21 Q And so is there a specific individual you're looking at as the shooter
22 in this case or the person who actually fired the mortal wound, if you will?

23 A Yes.

24 Q Okay.

25 A It was the black male of the two that exited the passenger side of

1 the vehicle was -- was the person that was involved in the shooting.

2 Q Okay. Now, did you have any names or -- or anything associated to
3 those two males on April 19th of 2013?

4 A No.

5 Q Did you talk to anyone related to the victim on April 19th, 2013?

6 A I did not.

7 Q Okay. Was there a room -- were you able to trace the victim,
8 Dale Borero to a room in that hotel -- or motel?

9 A I was.

10 Q Okay. And was he with an individual in that room?

11 A Yes. She had made contact with patrol officers and then eventually
12 Homicide detectives ended up interviewing her, doing a recorded interview with
13 her and we found out that she is a girlfriend of Dale Borero.

14 Q And showing you Exhibit 39, is this the individual?

15 A Yes.

16 Q And it looks like she has a consent to search card with -- with her?

17 A Yes. She signed a consent to search card after we found out that
18 she was the person who had rented the room. We obtained the records for the
19 room rental from the manager of the Travelers Inn, her name and her ID was
20 used on it and we requested to search that room that she had rented.

21 Q And she agreed to let do you that?

22 A Yes, she did.

23 Q And did you find anything in there that would help you in your
24 investigation?

25 A I don't -- no.

1 Q No?

2 A No, I don't think so.

3 Q Okay. Now, additionally to the narcotics and the firearm evidence,
4 were you also told that -- were you also informed that there was a large amount
5 of cash found on Mr. Borero?

6 A Yes. At the time when we were briefed by the Violent Crimes
7 detective, he pointed out to us that there was approximately \$3300 in U.S.
8 currency as well as two cell phones that had been on the victim. If you've seen
9 the video, you know that a couple of the officers tried to do C.P.R. and medical
10 intervention on Mr. Borero at the time. Those items were removed, they were
11 placed on a patrol car, and were there for us when we arrived and were briefed.

12 Q Okay. Additionally you said, you mentioned the blue Cadillac that
13 you see in the video and that we've all seen on the video, was there any piece
14 of evidence that was potentially left there by the vehicle that became important
15 to you?

16 A Yes. After dealing with the initial crime scene, the marked unit that
17 I showed you that was parked alongside the north, well, it would be the south
18 side of the building, they had actually driven over a piece of car molding and it
19 was kind of wooden, you know, the wood looking that you -- molding inside
20 your car interior, kind of decorative, and we located that at the scene also.

21 Q Okay. And that -- showing you Exhibit 53, is that that car molding?

22 A Yes.

23 Q Okay. So I want to fast forward, so at this point you have a video,
24 you have the physical evidence, you have no names, none of the witnesses
25 there can lead you to any names; is that fair to say?

1 A That's correct.

2 Q On April 20th of 2013, the next day, that would be a Saturday do
3 you attend the autopsy?

4 A I do. I go to autopsy.

5 Q Okay. And that was the autopsy of Dale Borero?

6 A Yes.

7 Q Okay. Additionally, do you find -- is there any information that you
8 gather or someone from your team gathers leading to any potential suspects?

9 A Well, we go back out to the scene and we do some more interviews
10 because some people had left that did not want to talk to us and while we were
11 out there we learn basically the same thing that we had -- we had seen on
12 video that there was two people who had left just prior to her shooting and so
13 we were able to get them identified and we found out that they were staying in
14 the room right next to the one that was rented by Shaquana Manor-Davies and
15 Dale Borero.

16 Q That would be will LeCory Grace and Jermaine Grace?

17 A Yes, and I believe Rachel Bishop.

18 Q Okay. Now did you -- did Detective Mogg talk to anyone at U.M.C.
19 that led to any information about Sam's Town?

20 A There was some information that came in, there were several
21 people that Detective Mogg ran into at U.M.C. Trauma, they had heard that he
22 was in critical condition, Dale Borero was in critical condition and they had
23 responded down to the hospital. So while he was there he did interviews with
24 those people who had responded and we learned that there was possibility that
25 one of the persons involved was staying at Sam's Town Hotel and Casino on

1 Boulder Highway.

2 Q Did you ever get a name associated with that individual?

3 A The female? Angelica Soto, I believe.

4 Q Or the individual that was involved in with the homicide?

5 A Yes. Dustin Bleak.

6 Q Okay. Now, at that point did you guys attempt to contact Dustin
7 Bleak at the Sam's Town -- on that April 20th, 2013, did you attempt to
8 contact Dustin Bleak at Sam's Town?

9 A No. On Saturday there was other things that were taking place. So
10 no, we did not on Saturday.

11 Q So on then go to Sunday, April 21st of 2013, did you then talk to --
12 well, did a Richard McCampbell turn himself into Clark County Detention
13 Center?

14 A Yes. Later that day we -- we are advised, we are out at Sam's
15 Town we've established a surveillance, some information had come in to us, we
16 were able to corroborate through phone numbers, through interviews with
17 certain people that we do have someone of interest, meaning Dustin Bleak at
18 Sam's Town, so we have surveillance established on a room that we have
19 identified, their room, 944.

20 Q Okay. So you have surveillance on Dustin Bleak during -- this is
21 Saturday or going on to Sunday of 2013?

22 A Yes.

23 Q April 21st?

24 A Yes, Sunday morning at 2:00 o'clock in the morning I get a phone
25 call from another detective that has information. Around 8:00 a.m. we

1 establish, start working Sam's Town, established that surveillance. Then
2 around 1:00 o'clock in the afternoon Detectives Mogg and Wilson respond to
3 Clark County Detention Center when we are advised by dispatch that there was
4 a male there who was trying to self-surrender and had information about a
5 shooting that had occurred at the Travelers Inn.

6 Q Okay. So I'm going to show you Exhibit 76, do you recognize that
7 individual?

8 A It's Mr. McCampbell.

9 Q Okay. Is that the individual that was trying to self-surrender on
10 April 21st of 2013?

11 A Yes.

12 Q Okay. And I don't want to get you, I mean, Mr. McCampbell's
13 already been on the stand and testified, so I don't want to get into his
14 statement at all.

15 A Okay.

16 Q But did he, based on the information he gave Detective Mogg and
17 Detective Wilson did another suspect name, slash, moniker emerge in your
18 investigation?

19 A Yes.

20 Q And what's that?

21 A Money.

22 Q Okay. Was Mr. McCampbell able to provide you with a true name
23 for Money at that time?

24 A No. He did not know his true name. But he did know a phone
25 number.

1 Q Okay. Now based on, well, we'll get there.

2 On April 22nd, 2013, do you have any breaks in this case?

3 A Yes.

4 Q And what's that?

5 A So on Monday, based on that surveillance that we had established
6 on the day before, our Criminal Apprehension Team makes an arrest over at the
7 Siegel Suites, like, less than two miles from the Sam's Town, where they get a
8 vehicle stop that Travis Costa was the driver, his girlfriend was the passenger,
9 and in the backseat they identify two females and Dustin Bleak.

10 Q Okay. Were those individuals -- was Dustin Bleak and Travis Costa
11 specifically detained?

12 A Yes, they were.

13 Q Was any anything interesting physical evidence-wise about the
14 vehicle?

15 A Well, the vehicle which had been reported stolen also had a, in the
16 backseat a BB gun and it was a Daisy BB gun. The interesting thing about that
17 it was tucked into, you know, where the backseat and the backrest and the
18 seat part meet, there was no magazine and we had recovered a BB gun
19 magazine and pellets at the original scene.

20 Q Okay. Did you get a chance to actually talk with Dustin Bleak and
21 Travis Costa?

22 A I did. I had both of them transferred to -- transported over to
23 headquarters where I was at and, you know, wanted to do an interview with
24 them.

25 Q Okay. I'm going to show you some pictures. Showing you

1 Exhibit 77, who is --

2 A That's Dustin Bleak.

3 Q Okay. Showing Exhibit 78, same happy individual there?

4 A Yes.

5 Q Okay. Showing you Exhibit 80.

6 A That's Travis Costa. He was the driver.

7 Q Showing you Exhibit -- and driver, are you talking about driver?

8 A Of the white vehicle.

9 Q Okay.

10 A At the time of the stop at the Siegel Suites.

11 Q On April 22nd?

12 A I'm sorry.

13 Q Of 2013?

14 A Yes.

15 Q And then Exhibit 79.

16 A Yes.

17 Q Because based on this --

18 THE COURT: Travis Costa again?

19 THE WITNESS: Yes, Travis Costa, sir.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 BY MR. SCHWARTZER:

22 Q Because based on the information that you received on April 21st,
23 did you believe you had the driver of the blue Cadillac?

24 A Yes.

25 Q And that was who?

1 A Mr. McCampbell.

2 Q Okay. So based on your interviews with Dustin Bleak and Travis
3 Costa did you receive further information about the African-American male that
4 was -- that you believe was the shooter in the video?

5 A Well, photo lineups were shown to them of who we --

6 Q I don't want you to get into the photo lineups.

7 A Okay.

8 Q But did that Money moniker re-emerge again?

9 A Yes.

10 Q Okay. And that was from Travis Costa?

11 A Yes.

12 Q Okay. Now, getting into, again, on April 22nd, 2013, were photo
13 lineups shown to Mr. McCampbell of Mr. Bleak and Mr. Costa?

14 A They were.

15 Q Okay. And specifically, we've gone through the lineups with Mr. --
16 with Mr. McCampbell and that the keys for Mr. Bleak for Mr. McCampbell -- for
17 Mr. McCampbell, but I want to ask you about this on one -- Exhibit 115?

18 MR. SCHWARTZER: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. SCHWARTZER:

21 Q 115A, which has been admitted into evidence; do you recognize the
22 individual that Mr. McCampbell picked out?

23 A Yes.

24 Q Okay. And I'm going to show that on the screen. Publishing 115A,
25 who is the person that Mr. McCampbell circled on -- on April 22nd of 2013?

1 A That's Travis Costa.

2 Q Okay. Now, did you show photo lineups or did Mr. McCampbell
3 have photo lineups shown to him of -- with black males with the moniker of
4 Money?

5 A Yes.

6 Q Were any of those photographs of black males with the moniker of
7 Money including Darion Muhammad-Coleman on April -- I should be very clear
8 about that, on April 22nd, 2013, the photo lineup shown to Mr. McCampbell
9 with black males with the moniker Money, did that include Darion
10 Muhammad-Coleman?

11 A No.

12 Q Did Mr. McCampbell pick out anyone from that lineup?

13 A No.

14 Q Okay. So he said none of those people were Money?

15 A That's correct.

16 Q Okay. At that point did you have the name Darion
17 Muhammad-Coleman?

18 A No.

19 Q Okay. And just so we're clear, you've seen Darion
20 Muhammad-Coleman before?

21 A Yes.

22 Q Okay. And we'll get there, do you see him in the courtroom today?

23 A Yes.

24 Q Can you point to him and identify a piece of his clothing?

25 A He's the gentleman in the light, I believe it's a light blue shirt with

1 the tan jacket.

2 MR. SCHWARTZER: Let the record reflect the identification of the
3 defendant, Your Honor.

4 THE COURT: The record will so reflect.

5 BY MR. SCHWARTZER:

6 Q Okay. So that's on April 22nd of 2013, so basically you have some
7 phone numbers, a phone number provided by Mr. Campbell and you have this
8 moniker Money, then did Mr. McCampbell give a general area of where he
9 knows Money hangs out at?

10 A Yes.

11 Q Okay. And where was that?

12 A Naked City which, like, behind the Stratosphere.

13 Q Okay. And at that point you didn't, on April 22nd of 2013, you
14 didn't have the name Darion Muhammad-Coleman?

15 A I did not.

16 Q Can you tell the ladies and gentlemen of the jury how you
17 developed that name?

18 A In -- we were -- Homicide works closely with the Criminal
19 Apprehension Team, which is called the CAT Team. We were able to -- they
20 knew that we were looking for a black male by the name of Money. So what
21 we do is we find a -- there's all kinds of records that we look at. In speaking
22 with Mr. McCampbell he stated that he had given Money and his girlfriend and
23 a child a ride to A and R Appliances. And he did that because they were trying
24 to sell a refrigerator and Mr. McCampbell also owned a white Ford Ranger, so
25 he took the refrigerator and them to A and R Appliances. They sell the

1 refrigerator there and there is a receipt. So when we go down and we talk to
2 the manager, Val Jensen of A and R Appliances she recalls exactly --

3 Q I don't want to get into, like, any hearsay, but does she provide you
4 with anything?

5 A Yes. She provides us with a receipt for the purchase of that
6 refrigerator that was sold.

7 Q Okay. And is there a name associated with that receipt?

8 A Yes.

9 Q Okay. And who is that?

10 A Keara Terrell.

11 Q Okay. Was there also a phone number that you were able to obtain
12 as well?

13 A Yes.

14 Q Okay. Was that from that receipt?

15 A Yes.

16 Q Okay. So based on that phone number and the name Keara Terrell
17 who you know was associated with Money, how do you then go about finding
18 out Darion Muhammad-Coleman's name?

19 A So what we do is we take that number and we run it through C --
20 Clark County Detention Center phone calls. We find that that numbers been
21 called. We pull the recording of that call and on that call is a woman who is
22 identified as an inmate at that time of Kamilah Muhammad. Kamilah
23 Muhammad on that call identifies herself as Money's momma.

24 Q Okay. And so based on that did you look into family records of Ms.
25 Muhammad?

1 A At that point we contacted family courts and we learned that
2 Kamilah Muhammad has one son and his name is Darion Muhammad-Coleman.

3 Q Based on that information did you believe that Money may be
4 Darion Muhammad-Coleman?

5 A Yes.

6 Q Based on that did you do a separate lineup with Mr. McCampbell on
7 April 25th of 2013?

8 A Yes.

9 Q And did you do, again, that six-pack photo lineup?

10 A Yes.

11 Q And in this case did you include Darion Muhammad-Coleman?

12 A Yes.

13 Q And now those photographs were they taken near that period of
14 time of April 19th, 2013?

15 A Yes.

16 Q Okay. So at that time those photo lineups would be more closely
17 associated with what Darion Muhammad-Coleman looked like as opposed to
18 today, four years later?

19 A Yes.

20 Q Okay. And was Mr. McCampbell able -- and you were there during
21 this -- this photo lineup?

22 A With Mr. McCampbell? No.

23 Q That was Detective Mogg?

24 A Yes.

25 Q Were you informed that that photo lineup was made -- identification

1 was made?

2 A Yes.

3 Q And that the identification was made to who? Who did
4 Mr. McCampbell identify as Money?

5 A Darion Muhammad-Coleman.

6 Q Later that day did you have the chance to meet with will LeCory
7 Grace?

8 A I did.

9 Q And you actually were there for that photo lineup?

10 A Yes. Detective Mogg and I both went.

11 Q Thank you, Detective.

12 And did you, again, the six-pack lineup with LeCory Grace, and
13 was -- and did you show him a six-pack lineup that included Darion
14 Muhammad-Coleman with photographs that more resembled him at that time as
15 they do now?

16 A Yes.

17 Q And was Mr. Grace able to make any types of identifications?

18 A He did.

19 Q Specifically, what did he do?

20 A He chose the photos depicted and marked as 4 and 5. He wasn't
21 quite sure which one, so he chose 4 and 5. Number 5 was Darion
22 Muhammad-Coleman is who he thought it was the same person he saw that
23 night when he came down the steps.

24 Q Okay. So he didn't make a specific finding that number 5 was
25 Money or -- or was the person who came down the stair -- sorry.

1 A Resembled.

2 Q Resembled the person that was, you know, by the car when he
3 came -- when LeCory Grace came down the stairs?

4 A Yes.

5 Q But that number 5 resembled that person?

6 A Yes.

7 Q Okay. To be fair. Now during this period of time, April 25th of
8 2013, were you providing any information to patrol in that area?

9 A So typically when we're trying to find someone, there's all different
10 avenues that we can do. One of things is on patrol briefings which allows us to
11 push information out so that obviously we can't be to every substation for
12 every briefing, every day, so what we do is we post photos, anything that we
13 need, information that we like, contact us, this is the person that's in charge of
14 this investigation, so please reach out to me if you locate this person. And
15 what I did is I put that we were looking for Darion Muhammad-Coleman, A.K.A.
16 Money, in the Naked City area.

17 Q So there were officers that were aware that you were looking for
18 this individual possibly in the Naked City area?

19 A Yes.

20 Q And on April 29th, 2013, so now we're talking about ten days after
21 the incident, correct?

22 A Yes.

23 Q And eight days after Mr. McCampbell turned himself in?

24 A Yes. He turned himself in on a Sunday and on Monday the 29th.

25 Q Okay. So on April 29th, 2013, were you then called out to a

1 apartment in Naked City?

2 A I was.

3 Q Okay. How did that come about?

4 A I received a phone call from an officer. There was two officers out
5 there actually, Officers Downie and Kibble, who stated that they he had
6 obtained, they had been waved down, they were doing some directed patrol
7 activity over there and some citizen had waved them down at the 1712
8 Fairfield, I believe, address stating that they had located an item that they
9 needed to talk to the police about.

10 Q Okay. Specifically was there any mention to you that Money might
11 have been -- this might be a place that Money might have been around?

12 A Yes. From people that were living in that area, they said that they
13 had seen a younger black male that was going in and out of a specific
14 apartment, which was number 7 over there, associated with that apartment.

15 Q Okay.

16 A Knowing that we were looking for Money and putting two and two
17 together, they contacted us and asked you us to respond out there.

18 Q Showing you Exhibit 88, this is -- I know it's dark and you can
19 barely, probably you can barely see it, but there's an address there. Does this
20 look familiar?

21 A Yes.

22 Q And this is the address you responded to on April 29th of 2013?

23 A Yes.

24 Q And that it would be 1712 Fairfield Avenue?

25 A Fairfield, yep.

1 Q And was there a specific apartment you were responding to?

2 A Seven.

3 Q Okay. Showing you 89, is this apartment number 7?

4 A Yes.

5 Q Okay. Now was the firearm actually inside the apartment when you

6 got there?

7 A No.

8 Q Okay. Showing you Exhibit 90, do you recognize that?

9 A Yes.

10 Q Okay. What's important in this photograph?

11 A This is a, like, Oster toaster oven and when they -- the owners of

12 the property had moved it out. When he picked it up, he noticed it was really

13 heavy. He had set it up there on that wall and it fell and inside of it is a gun.

14 Q Okay. Showing you Exhibit 94, do you recognize -- is this inside

15 that toaster oven?

16 A Yes. It's a brown belt. There is a black holster and inside that

17 holster is a 9 millimeter Ruger.

18 Q Did you have that holster and firearm tested for DNA?

19 A I did.

20 Q Did it come back with any results?

21 A It was inconclusive.

22 Q Okay. So it couldn't compare it to anybody?

23 A Nope.

24 Q Okay. And was the fingerprints attempted to taken off the firearm?

25 A We did.

1 Q And were they able to obtain any fingerprints off that firearm?

2 A No.

3 Q So based on the fact that this firearm is found in apartment
4 number 7, at least according to the witnesses, and that a person by the name --
5 a black male by the name of Money was found -- was seen going in and out of
6 that apartment, did you want to search that apartment?

7 A I did.

8 Q Were you able to get consent to search from an individual?

9 A Yes. While we were there a female identified as Tatiana Lee
10 showed up and stated that she had rented that apartment a couple of weeks
11 prior and she had established power being, Nevada Energy, service there and
12 she signed a consent to search and she also conducted a recorded interview
13 with us to enter is that apartment and search it.

14 Q Okay. Showing you Exhibit 87, is this the consent to search card?

15 A Yes.

16 Q Okay. Did you -- did you search the apartment?

17 A I did.

18 Q Okay. Can you -- were there any items of interest that you found in
19 that apartment?

20 A Yes. There were. She was very specific about what items were
21 hers prior to us going in. She was very, she told us exactly what was hers.
22 The rest of it she said she had no knowledge of who it belonged to. However,
23 there were several garbage bags full of clothing, papers.

24 Q What type of clothing?

25 A Male clothing. And when we started looking through there we

1 found a couple of items with the name of Darion and Kash on them.

2 Q Okay. I'm going to show you Exhibit 97. Do you recognize that?

3 A Yes. That's the composition notebook.

4 Q Anything inside that notebook of interest?

5 A Yeah. There's a letter signed with the name Darion.

6 Q Okay. Showing you --

7 A Or a note, I should said.

8 Q Showing you Exhibit 95, do you recognize this document?

9 A Yes. That's where we found the Kash and also on there right here

10 is Kamilah which is Darion's mom's name.

11 Q Okay. Showing you Exhibit --

12 THE COURT: And just to be clear, you said "that's where we found the
13 Kash," not cash money but the word Kash?

14 THE WITNESS: Yes, right here, it's a Skype name, Kash Muhammad.

15 THE COURT: Thank you.

16 BY MR. SCHWARTZER:

17 Q Okay. And Skype for the record is?

18 A It's like FaceTime. I don't use Skype, so.

19 Q Okay. Showing you Exhibit 96, you see the various documents in
20 here, but anything of interest for your investigation?

21 THE COURT: This is also within the composition notebook?

22 THE WITNESS: Inside the notebook. "Coleman" here and here.

23 BY MR. SCHWARTZER:

24 Q Is that "D. Coleman"?

25 A Yes.

1 Q Okay.

2 A Yes. Right here is D period Coleman, D period Coleman and here
3 we go again.

4 Q And then I'll pull it over. I just moved it on you. I'm sorry.

5 A Yes. Yes.

6 Q And then so there is various D. Coleman's all over this?

7 A Yes.

8 Q Okay. And then showing you Document 98, this appears to be a
9 document from U.M.C.; is that correct?

10 A Is that U.M.C. or Sunrise?

11 Q I might be wrong.

12 THE COURT: No, no, no, you're going to --

13 BY MR. SCHWARTZER:

14 Q It appears to be a medical document.

15 THE COURT: You're going to have to zoom out so that she can actually
16 see it because she can't see anything.

17 THE WITNESS: Right here is U.M.C., yeah.

18 BY MR. SCHWARTZER:

19 Q Okay.

20 A Yes. You were correct.

21 Q Great. Now, was that document found within that notebook or was
22 it found separate from the notebook?

23 A No. I think it was found separate. There was a lot of loose items
24 everywhere in the living room area, so I believe that was found separate from
25 the notebook.

1 Q And specifically there appears to be a name of the patient that was
2 treated on --

3 A Yes.

4 Q And that was --

5 A Muhammad-Coleman, Darion.

6 Q Okay.

7 A With a date of birth of 12-8 of '94.

8 Q Okay. And that's from -- for April, 2012, admission?

9 A Yes. Yes.

10 Q Okay. So you found male clothing, you found various document --
11 a composition notebook with D. Coleman all over it, and you found medical
12 documents with Darion Muhammad-Coleman's name on it?

13 A Yes.

14 Q Okay. Do you know where Ms. Muhammad, Darion's mom, was
15 living at the time?

16 A We had some information that she was staying in that area around,
17 not too far away, like, like, a block. I think it was on Chicago.

18 Q Let me ask you this, besides Ms. Lee, was there any females that
19 you talked to that came to the apartment that day?

20 A Yes. While speaking with Tatiana Lee, she says that she's been
21 locked out of that apartment for a week and a half, two weeks, that she hadn't
22 seen Money for about that time period --

23 Q Well, I don't want you -- I don't want you to get into what she said
24 or anything like that. Was there any women with her?

25 A Well, she went back to -- she was staying at an address on New

1 York and she went back and got her friend whose name was Keara Terrell.

2 Q So the same woman who was --

3 A Whose phone number --

4 Q -- on the receipt of the appliance store?

5 A Yes, that's correct.

6 Q Okay. And who also called -- who's also talking to Money's
7 momma on -- on the phone record?

8 A That's right.

9 Q So all that stuff got impounded? The documents?

10 A The items that were in number 7, yes, yes.

11 MR. SCHWARTZER: May I approach?

12 BY MR. SCHWARTZER:

13 Q Showing you State's Proposed 3.

14 A Yes.

15 Q Are those items that were impounded on that date --

16 A Yes.

17 Q -- on April 29th, 2013?

18 A Yes.

19 Q And basically the items that we were shown on -- by the
20 photographs, correct?

21 A Yep.

22 Q I'm going to have you cut this, but we won't go through it. We'll
23 let the jury do that.

24 A Okay.

25 Q Well, first off, there is an event number associated with this,

1 correct?

2 A Yes.

3 Q 130419-4147?

4 A That's correct.

5 Q And you see eight -- well, it's listed as eight documents found at
6 this location?

7 A It's item 8, there's papers and composition notebook with the
8 names D. Coleman, Darion Muhammad and M. Coleman.

9 Q Okay. And this was stuff that was impounded on 1712 Fairfield
10 Avenue, Apartment Number 7?

11 A Yes. It says the location right there with that address.

12 Q And that was during your search of the place?

13 A Yes.

14 MR. SCHWARTZER: Okay. I move for admission of Exhibit 3,
15 Your Honor.

16 MR. SCHWARZ: No objection, Judge.

17 THE COURT: All right. That will be admitted as envelope and contents.

18 MR. SCHWARTZER: Why don't we just say 3 and then contents as 3A?

19 THE COURT: No. It'll just be 3 and then envelope and contents.

20 MR. SCHWARTZER: Okay. Thank you.

21 **[STATE'S EXHIBIT 3 ADMITTED]**

22 BY MR. SCHWARTZER:

23 Q And to be clear when we go way back to April 22nd of 2013, did
24 you actually arrest Dustin Bleak for the -- for what happened in this case?

25 A I did.

1 Q Dustin Bleak's, as we've seen, is not an African-American male,
2 correct?

3 A No. He's a white male.

4 Q So he was arrested but he wasn't what you believed to be the
5 shooter in this case?

6 A That's correct.

7 Q Okay. Now, so after April 29th, 2013, you find these items at the
8 Fairfield address, when you go to this address are there -- I know you're not in
9 a black-and-white, but are there black-and-whites there with you? Officers in
10 uniform that -- you have to answer, I'm sorry.

11 A Yes, there were. Uh-huh.

12 Q Officers in uniform there?

13 A Yes.

14 Q You weren't hiding the fact you were trying to find Money?

15 A Oh, no. No. We had been in the area several times. The word was
16 out that we were, between uniform officers and with Homicide going over,
17 looking for him, as well as the CAT team, the Criminal Apprehension Team,
18 word was out that we were looking for Money.

19 Q And were you able to locate him on April 29th, 2013?

20 A No, I wasn't.

21 Q By May 3rd, 2013, were you able to locate Darion
22 Muhammad-Coleman?

23 A No.

24 Q Based on the fact that you haven't been able to find him and now
25 we're talking almost two weeks after, if not more, after the incident, do you

1 then do something?

2 A Yes.

3 Q And what's that?

4 A I obtained a warrant for his arrest.

5 Q Okay. After you have the arrest warrant is then there's -- is that
6 something that you're actively searching to arrest this individual?

7 A Yes.

8 Q Okay. Were you able to arrest him in May?

9 A No.

10 Q Were you able to arrest him in June?

11 A No.

12 Q Were you able to arrest him in July?

13 A Yes, July 3rd.

14 Q So on July 3rd, 2013, you're finally able to arrest Darion
15 Muhammad-Coleman?

16 A Yes.

17 Q The defendant?

18 A Yes. The CAT team located him.

19 Q Okay. He -- he didn't -- fair to say the defendant didn't turn himself
20 in to you?

21 A No, he did not.

22 Q Okay. After that arrest on July 3rd of 2013, is there additional
23 forensic evidence that you then receive as the lead agent, as the case agent?

24 A Yes.

25 Q And what does that entail?

1 A On April 16th, I believe, 2014, the forensic lab is able to, for all the
2 forensic testing that I had requested previously on items that had been
3 recovered evidence, we found out that we had a match on bullets recovered
4 from the original scene with the handgun recovered in the 1712 Fairfield,
5 Number 7 residence.

6 Q Okay.

7 A We also found out that we had fingerprints on the car molding that
8 came back, latent prints.

9 Q And just to go back to that apartment on April 29th, 2013, the --
10 what we just showed you that U.M.C. admission document that had the date of
11 birth, was that date of birth the date of birth of this defendant?

12 A Yes.

13 Q Okay. So based on all the information you gathered through your
14 investigation then did you decide to arrest Darion Muhammad-Coleman for
15 murder?

16 A Yes.

17 Q Thank you, Detective.

18 MR. SCHWARTZER: Court's indulgence.

19 I'll pass the witness.

20 THE COURT: I'm assuming you've got a little bit, Mike?

21 MR. SCHWARZ: Yes, Judge, and I'm not going to --

22 THE COURT: Okay. We'll go ahead and take our lunch recess at this
23 time. During the recess ladies and gentlemen, you are admonished not to talk
24 or converse among yourselves or with anyone else on any subject connected
25 with the trial or read, watch, or listen to any report of or commentary on the

1 trial by any medium of information including, without limitation, to newspapers,
2 television, the Internet, and radio or form or express any opinion on any subject
3 connected with the case 'til it's finally submitted to you, no research,
4 investigation, or re-creations during our break. We will see you back in an hour.
5 Okay? Thank you.

6 [Outside the presence of the jury panel]

7 THE COURT: Okay. You guys can be seated.

8 Or, Terri, you can take off obviously.

9 THE WITNESS: Okay. Thank you, Your Honor.

10 THE COURT: This is the State's last witness, correct?

11 MR. SCHWARTZER: Correct.

12 THE COURT: All right. So I anticipate when we get back from lunch we
13 will roll right into the defense case, Mr. Schwarz. So let me -- let me go over --

14 Mr. Muhammad-Coleman, there's a couple things I need to go over
15 with you before we move to the defense case about testifying, okay, and you
16 can sit down, you're okay. Under the Constitution of the United States and
17 under the Constitution of the State of Nevada, nobody can compel you to be a
18 witness you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That mean nobody can make you testify. That's a decision
21 that you get to reach solely by yourself based on your advice and counsel of
22 your attorney, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you decide you want to testify and you get up on the
25 stand and testify, you're subjected not only to questions by your attorney, but

1 questions by the prosecutors as well; you understand that?

2 THE DEFENDANT: Yes sir.

3 THE COURT: And anything that you say when testifying, whether it's
4 from questions by your attorney or questions by the State's attorney, any of
5 that is subjected to comments by the attorneys when they make their closing
6 arguments; you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. If you choose not to testify, we give a jury
9 instruction, if you and your attorneys want me to, that tells the jury that it is a
10 constitutional right of a defendant in a criminal case that he cannot be
11 compelled to testify and the jury can make no inference from that and cannot
12 consider it in any way when they have their deliberations. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So that would be a written instruction that they get if
15 you-all want me to give them that. Okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Finally, you need to understand that if you decide you do
18 want to testify, if you have a felony conviction or convictions and more than
19 ten years has not elapsed from the date you were convicted or discharged from
20 prison, parole, or probation then the attorneys would be able to ask you in front
21 of the jury have you before convicted of a felony or felonies, what the felony or
22 felonies, and when did the convictions occur. They cannot go into the
23 circumstances of any prior felony convictions unless that gets opened up in
24 some other fashion. Okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that as well?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right do you have any questions about any of
4 those -- those issues? No?

5 THE DEFENDANT: I'm ready.

6 THE COURT: Okay. All right. We will be in recess, guys. I will see you
7 back after lunch.

8 MR. SCHWARTZER: Thank you, Your Honor.

9 THE COURT: At 2:00 o'clock.

10 MR. SCHWARZ: All right. Thank you, Judge.

11 THE COURT: Thank you, guys.

12 [Recess at 12:58 p.m.; proceedings resumed at 2:06 p.m.]

13 [In the presence of the jury panel]

14 THE COURT: All right. We're going to be back on the record.

15 Mr. Muhammad-Coleman's present with his attorney. State's attorneys are
16 present. We're going to continue on with the testimony of Detective Miller.

17 I will remind you, Detective, that you're still under oath, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. Thank you.

20 All right, Mr. Schwarz.

21 MR. SCHWARZ: Thank you.

22 **CROSS-EXAMINATION OF TERRI MILLER**

23 BY MR. SCHWARZ:

24 Q Hi, Detective. How you doing?

25 A Good. Thank you, sir.

1 Q So let me ask you this, was Richard McCampbell, the guy who
2 drove the car, the only one that turned himself in?

3 A That self-surrendered, yes.

4 Q Okay. Did you ever interview Mr. McCampbell?

5 A I personally did not.

6 Q Okay. Did you -- were you ever aware that Mr. Campbell attempted
7 to turn himself earlier than -- in earlier than the date he actually surrendered at
8 the Clark County Detention Center?

9 A No, I was not aware of that.

10 Q And if -- and if you need to refer to a report, that's fine. So
11 Dustin Bleak and Travis Costa were arrested together?

12 A Yes.

13 Q And they're brothers, right?

14 A They are.

15 Q And this has been admitted as State's Exhibit 80. Now that's
16 Travis Costa. Yes?

17 A Yes.

18 Q Do you know how old Travis Costa was at the time he was
19 arrested?

20 A I would have to look.

21 Q You can. But does 33 sound about right?

22 A Approximately.

23 Q Okay all right. And then this is his brother, Dustin Bleak, right?

24 A Yes. That's Dustin.

25 Q And do you know how old he was, approximately, when he got

1 arrested?

2 A Again, I would have to look.

3 Q Would 26 sound about right?

4 A Yes.

5 Q Okay. And then this is the lineup you showed Mr. McCampbell, and
6 I think I'll just put it this way, and that's a picture of my client, correct?

7 A Yes.

8 Q And you testified that that photograph was a recent photograph in
9 the sense that it looked like my client as he looked on April 19th of 2013?

10 A Approximately.

11 Q Okay.

12 A Can I clarify?

13 Q Of course.

14 A That was from his most recent arrest from the Clark County
15 Juvenile, so whatever that date was.

16 Q I think I'm going to have to ask you to stop there and perhaps move
17 to strike.

18 THE COURT: Okay. I will grant that. I'll strike that.

19 BY MR. SCHWARZ:

20 Q Okay. So -- so essentially around the same time?

21 A Approximately, yeah.

22 Q Okay. All right. Thank you. Do you know how old my client was
23 on April 19th, 2013?

24 A I know he was born in '94 so that would have made him 15 or 16.

25 Q Okay. All right. And possibly a little older. If he was born in '94

1 he -- and his birthday hasn't come up yet, he's 18?

2 A December 8th, correct?

3 Q December 8th, '94?

4 A Yes.

5 Q This happened April 19th, 2013, he would, in my estimation he
6 would turn 19 on the following December, he would be 18 at the time of the
7 crime, yep?

8 A In '13?

9 Q Yes.

10 A December 13th. Okay.

11 Q Okay. So he's 18, Bleak's 26, Costa's 33, Darion's 18. Now you
12 indicated that when the officers arrived on the scene and you did go to the
13 scene, right?

14 A Yes, I was at the scene.

15 Q That the responding officers had already taken money out of
16 Mr. Barrio's pocket?

17 A Borero's pocket.

18 Q Borero's pocket.

19 A Yes, and two cell phones.

20 Q And two cell phones and some other personal items?

21 A I don't recall other items.

22 Q Cigarette, lighter, that kind of stuff.

23 A Okay.

24 Q And all of that was waiting for you when you got there?

25 A Yes.

1 Q Now, did you not go to the hospital?

2 A Detective Mogg did.

3 Q Right. But did you become aware, did you ever know or learn or
4 see that Mr. Borero had his jewelry on?

5 A Yes. Because it was -- it went to the coroner's office with the
6 coroner investigator and I was at autopsy the next day.

7 Q Okay. And the bag of methamphetamine that was located at the
8 scene, that was laying on the ground?

9 A Yes.

10 Q So obviously it was still there?

11 A Yes.

12 Q I know that that's a stupid question, but, you know, you've got to
13 ask it. I had to smile at myself.

14 Now, Travis Costa was not arrested or charged for this?

15 A Technically, he was arrested because he was taken into custody in
16 a stolen vehicle, but he was released.

17 Q So more appropriately, he was not charged in connection with the
18 shooting of Mr. Borero?

19 A That is correct.

20 Q And Richard McCampbell was not, well, he turned himself in, I
21 don't know if he was technically in custody, but he was not charged in the
22 shooting of Mr. Borero?

23 A No, wasn't.

24 Q Okay. And you -- you testified that to the best of your knowledge
25 after conducting this exhaustive investigation, there were no eye witnesses to

1 the actual shooting?

2 A No.

3 Q Nobody saw that happen?

4 A Nope, just the video.

5 Q Just the video. McCampbell didn't see it?

6 A No.

7 Q And neither did Costa?

8 A They denied it.

9 Q And they -- fair enough.

10 A Uh-huh.

11 Q And they -- they -- nobody admitted they saw it?

12 A Exactly.

13 Q Now, and you can correct me if I'm wrong, because you know it's a
14 long day and so forth, did you say that you spent a couple of weeks looking for
15 Darion before you got a warrant?

16 A We got the warrant on May 2nd and I believe he was identified,
17 positively identified on the 24th. So depending, a week and a half, two weeks,
18 approximately.

19 Q Okay. And why would you wait so long to get the warrant?

20 A Well, I was trying to find him to get his side of the story.

21 Q You would have preferred to arrest him without a warrant?

22 A I would prefer to talk to him before I decide if I'm going to arrest
23 him or not.

24 Q Okay. I see. So, you know, he's -- he's sort of a suspect, you can
25 sort of bring him in?

1 A No, he was a suspect.

2 Q Right.

3 A After he was identified.

4 Q He's a suspect, you can bring him, and you can sort of, you know,
5 tell him he's not under arrest?

6 A Uh-huh.

7 Q And --

8 A Give him the opportunity.

9 Q -- you just want to chat and that kind of stuff, but once you get a
10 warrant for his arrest then obviously that's out the window, right?

11 A That's correct.

12 Q Now you've got to read him his *Miranda* warnings and so forth?

13 A Yes.

14 Q And he's got to waive them before he'll talk to you?

15 A That is true.

16 Q And ultimately that is what happened, right?

17 A Yes.

18 Q Okay. So you held out on the warrant for?

19 THE COURT: Well, just could be clear, ultimately what is what
20 happened? What do you mean?

21 MR. SCHWARZ: Ultimately --

22 THE COURT: He was arrested.

23 BY MR. SCHWARZ:

24 Q Ultimately, you did get a arrest warrant?

25 A I did on May 2nd signed by the Honorable Judge Tao.

1 Q It's amazing you remember that.

2 And then ultimately he was arrested on it?

3 A Yes, on July 3rd.

4 Q Okay. And then --

5 A He was arrested on that warrant.

6 Q But not by you?

7 A The CAT team took him into custody.

8 Q And then notified you?

9 A Yes.

10 Q And then you and your partner went and interviewed him?

11 A He was brought to us.

12 Q Okay. All right.

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

14 THE COURT: Thank you. Can you guys approach the bench.

15 [Bench conference -- not transcribed]

16 MR. SCHWARZ: Thank you, Your Honor, I have nothing further.

17 THE COURT: Thank you.

18 Mr. Scwhartzner.

19 MR. SCHWARTZER: Sure.

20 **REDIRECT EXAMINATION OF TERRI MILLER**

21 BY MR. SCHWARTZER:

22 Q Detective Miller, you were asked a line of questions about why you
23 didn't arrest Travis Costa -- if I arrested Travis Costa and Richard McCampbell
24 in this case, correct?

25 A Yes.

1 Q Do you remember that line of questioning?

2 A Yes.

3 Q Okay. Why did you decide to arrest Darion Muhammad-Coleman,
4 the defendant, as opposed to Travis Costa and Richard McCampbell?

5 A It was clear to us by the video that Travis Costa nor Richard
6 McCampbell ever got out of the vehicle. The primary aggressors on this were
7 the two that got out of the car that were going to commit this act. And when
8 we talked to both Mr. McCampbell and Mr. Costa, we made it quite clear that
9 this was an ongoing investigation because we didn't have everyone in custody
10 at that point to get everyone's story and that through the investigation,
11 depending on what happened at the outcome and our review with the D.A.'s
12 office, whether there would be charges is forthcoming.

13 Q Okay. So you charged Mr. Bleak and Mr. Muhammad-Coleman
14 based on your view of the video with them being the aggressors?

15 A That's true.

16 Q And you didn't Mr. Costa nor Mr. McCampbell involved in the
17 incident?

18 A Neither of them got out of that car.

19 MR. SCHWARTZER: Thank you. No further questions.

20 MR. SCHWARZ: I have nothing further, Your Honor.

21 THE COURT: Anything from our jurors?

22 Detective Miller, thank you very much for your time. I appreciate it.
23 You are excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right. State going to have any further witnesses?

1 MR. SCHWARTZER: We're not, Your Honor. There is a couple things we
2 need to do before we rest though.

3 THE COURT: Okay. In terms of just making sure all the evidence is
4 admitted?

5 MR. SCHWARTZER: Well, first off, the State and the defense have come
6 to an agreement regarding Exhibit 123 which is a sequential video of the actual
7 surveillance, it's Exhibit 123, we would ask for that admission.

8 MR. SCHWARZ: No objection, Your Honor.

9 THE COURT: All right. That will be admitted.

10 **[STATE'S EXHIBIT 123 ADMITTED]**

11 MR. SCHWARTZER: Additionally, the State and the defense, as opposed
12 to having a family member on the stand, have agreed to stipulate to the identity
13 of the individual who is the victim of the homicide as --

14 THE COURT: Okay.

15 MR. SCHWARTZER: -- Dale Borero.

16 MR. SCHWARZ: That's correct, Judge. No objection.

17 THE COURT: All right. So we will note that for the record as well.
18 Folks, and when the attorneys enter into stipulations, you accept that as facts
19 as if they were proven by testimony.

20 MR. SCHWARTZER: And, Your Honor, if I could just have a quick second
21 to look over the exhibit list, I think --

22 THE COURT: You may.

23 MR. SCHWARTZER: -- we will rest.

24 We're going to withdraw Exhibit 121.

25 THE COURT: Okay.

1 MR. SCHWARTZER: And with that the State will rest.

2 THE COURT: Very good. All right. Mr. Schwarz, we'll move over to the
3 defense case, you had deferred making an opening statement, do you wish to
4 make one at this point?

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

6 THE COURT: Okay.

7 MR. SCHWARZ: Good afternoon, ladies and gentlemen. In case you
8 forgot, my name is Mike Schwarz. I'm representing Darion Coleman. And this
9 is our opportunity to present some evidence to explain our position in this case,
10 what we commonly call the theory of our defense.

11 So on April 19th, 2013, my client, Darion Muhammad-Coleman,
12 was an 18-year-old kid. He lived in the area of Naked City behind the
13 Stratosphere, and on that particular night he ran into a couple of people, one he
14 knew a little bit and one he didn't know very well at all. And that's Travis
15 Costa and his brother, Dustin Bleak. Now they had a little bit of a conversation
16 and Travis Costa asked Darion if he had a car, they needed a ride, they needed
17 to go meet a guy by the name of Dale Borero. They needed to meet him
18 because they had arranged a transaction and they needed to get to Boulder
19 Highway.

20 Darion did not have a vehicle but he did have a friend, a guy by the
21 name of Richard McCampbell also known as The Mechanic. Darion and Travis
22 and Dustin Bleak approached Richard McCampbell who was sitting in his
23 vehicle, as he often did, over on Philadelphia Street. He hung out there quite a
24 bit. Darion will tell you that Mr. McCampbell was drinking, was in fact heavily
25 intoxicated, and Darion will also tell that you he observed Mr. McCampbell

1 smoking crack cocaine.

2 Now you may say to yourself, well, who would ride with such a
3 person? Well, certainly not people who are going to commit a robbery, but
4 people who are desperate to buy narcotics will certainly take that chance and
5 they did. They asked him for a ride, he agreed to give them a ride, he was paid
6 \$10.00 for the ride and off they went.

7 Now, there was a phone call between Dustin Bleak and someone.
8 My client cannot tell you who that person was. But the result of that phone
9 call was they had a little time, it wasn't urgent as it had been. And so Travis
10 Costa decided to stop at the 7-Eleven that's on the way. Now, I don't know if
11 you're familiar with this part of town, but there is a Lowe's over there on
12 Charleston and Fremont, Boulder area where it all kind of connects. And then
13 there's a Chase Bank. And then there's a 7-Eleven and a little strip mall and
14 then there's a Dotty's next to it. It's on the way. So Travis Costa said, hey,
15 we got a little time, let's go get some beer.

16 My client will testify there was no drama about where to park the
17 car, why to park the car, why they were stopping, nothing. Now when
18 Mr. Costa went in to get the beer, Dustin Bleak tapped my client on the
19 shoulder, wanted to have a word with him. Richard McCampbell testified that
20 it looked like they were having just a general old conversation. They were
21 discussing something, but they were certainly not planning a robbery and they
22 sat outside of the car, stood outside of the car until Mr. Costa got the beer, and
23 then off they went over to the Travelers Inn.

24 My client will testify that did he not, nor did anybody, tell
25 Mr. McCampbell to do that three-point turn. And I want you to watch that turn

1 on the video, Mr. McCampbell did that. They wanted him to park towards the
2 end, they pointed out the spot, and Mr. McCampbell did the three-point turn
3 and didn't execute it very well, as an aside. While they were sitting there, in
4 spot number 1, as it's been designated, my client began to notice some things.
5 Now, first and foremost, the only guy he knows in the car really well is
6 Mr. McCampbell and he doesn't know him all that well. He gives him rides
7 every now and again. He doesn't know Travis Costa but for, you know, a
8 couple of times he's met him. He doesn't know Dustin Bleak hardly at all.

9 Bleak's on the phone. He's looking up, he's seeing these people on
10 the balcony. He's seeing Dale Borero on the balcony. And by the way, my
11 client's heard of Dale Borero. Dale Borero has a reputation in the community.
12 Dale Borero has a reputation as being a drug dealer. He has a reputation in the
13 community of being a violent person. And he has a reputation in the
14 community of carrying a gun. And so my client is getting a little bit nervous,
15 Darion is. He's asking himself what have I gotten myself into.

16 Now, he doesn't know that the Grace brothers don't know Dale
17 Borero. All he knows is they're up on the balcony. That's all he knows. He
18 don't know that Ms. Bishop isn't involved in any of this, he just knows she's up
19 there too and so is Dale Borero on the phone, Dustin Bleak on the phone. All
20 these people up on the balcony, and I don't know what's going on is what's my
21 client's thinking.

22 Now at some point, the Gracie bother -- or Dale comes down the
23 stairs. You see what he's wearing. He's wearing a white tank top. He's
24 carrying a gun. My client sees the gun. He's carrying it on his right hip. It's a
25 big gun. It's not the Dirty Harry gun, it's not that big. But it's eight inches.

1 It's not the type of gun that you can fit in your pocket, it's a big gun and it's
2 visible under his tank top and my client sees it.

3 So now he's got a bunch of strangers milling around upstairs on the
4 balcony looking down at him and Dale Borero with a handgun right here. Now,
5 my client may be out of the vehicle at this time and saying, you know, I don't
6 remember the video frame for frame, but he is leaning against the car. He's not
7 involved in the conversation, he's there to secure an introduction to Mr. Borero
8 from whom he hopes in the future to someday buy methamphetamine to sell
9 himself. But he's not selling that night, he arranged a ride, he's looking to
10 secure an introduction, and then all of this is going on and then the next thing
11 you know, there's an argument.

12 Now, I don't know, ladies and gentlemen, I've seen a lot of
13 arguments some of them involve waving your hands, some of them do, but all
14 of them don't. Some of the worst once I've seen don't. And a lot of them
15 involve people who are standing there just like this.

16 MR. SCHWARTZER: Objection. Argumentative, Your Honor.

17 THE COURT: Well, I'll sustain the objection.

18 MR. SCHWARZ: My point is, the testimony will show that these two
19 were engaging in a heated discussion over money, over money owed to
20 Dale Borero by Dustin Bleak. And then a threat was made by Dale Borero and
21 that is when my client responded to the threat, that is when he walked over to
22 Mr. Borero and produced the handgun, does not shoot him. You can watch the
23 tape. Mr. Borero reaches up, tries to slap the gun away, my client puts the gun
24 in his face again. Mr. Borero's reaching for the gun, my client pulls it away,
25 puts it away again. And then my client decides, based on the available

1 evidence, that he needs to put this guy on the ground. Not that he needs to
2 shoot him, he needs to put him on the ground. He needs neutralize his threat,
3 and so he hits him. And after that Mr. Borero pulls his gun and then it's a
4 shoot-out.

5 Now, that's what happened. It's up to you good citizens, 12 -- 12
6 citizens, good and true, to listen to the testimony and make up your own mind.
7 That's what my clients going to tell you, that's what his testimony will be. And
8 if you believe him, you'll have no choice but to find him not guilty. Thank you.

9 THE COURT: Thank you. Defense may call their first witness.

10 MR. SCHWARZ: Judge, I'll call my client, Darion Muhammad-Coleman.

11 THE COURT: All right. Mr. Muhammad-Coleman, if you'll come on up to
12 the witness stand please, sir. Just remain standing and raise your right hand.

13 **DARION MUHAMMAD-COLEMAN,**

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

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

17 THE WITNESS: Darion Muhammad-Coleman, D-A-R-I-O-- D-A-R-I-O-N;
18 Muhammad, M-U-H-A-M-M-A-D, hyphen Coleman, C-O-L-E-M-A-N.

19 THE COURT: All right. Thank you.

20 Mr. Schwarz.

21 MR. SCHWARZ: Thank you, Your Honor.

22 **DIRECT EXAMINATION OF DARION MUHAMMAD-COLEMAN**

23 BY MR. SCHWARZ:

24 Q Darion, as you sit here today you've been convicted of four
25 felonies; is that correct?

1 A Yes, sir.

2 Q Do you know what the four felonies are?

3 A I can't recall.

4 Q One is conspiracy to commit robbery, one is burglary while in the
5 possession of a firearm, one is robbery with the use of deadly weapon, and one
6 is coercion with use of a deadly weapon; is that correct?

7 A Yes, sir.

8 Q When were -- when were you convicted of those?

9 A 2015.

10 Q And that was pursuant to a guilty plea?

11 A Yes, sir.

12 Q All right. Now, on the -- on April 19th, 2013, prior to meeting up
13 with Dustin Bleak and Travis Costa what were you doing?

14 A I was at my mom house.

15 Q And when you say your mom's house, where was that?

16 A That was on Chicago. I don't remember the exact address. It's
17 between Chicago and Fairfield.

18 Q All right. Can you speak up a little bit?

19 A It's between Chicago and Fairfield. I can't remember the exact
20 address.

21 Q And that would be the Naked City area?

22 A Yes, sir.

23 Q All right. And did you come in contact with anybody that we've
24 been talking about in the context of this trial?

25 A Yes, sir. I came in contact with Travis Costa and Dustin Bleak. I

1 was coming outside my mom house and I was on the phone with my little
2 sister. I seen Travis Costa and Dustin Bleak. I never met Dustin Bleak before,
3 but I met Travis Costa a couple times because he was friends with my
4 neighbor.

5 Q Okay. Now, when you met them, did you have a conversation?

6 A This time right here?

7 Q Yes.

8 A The previous times or this time?

9 Q Oh, this time.

10 A Yes, sir. So --

11 Q And what was that conversation about?

12 A So I was on the phone with my sister and Travis Costa got my
13 attention let me know that he would like to speak with me. So when I got off
14 the phone with my sister, I went to speak to Travis Costa. It was pretty much
15 small talk, you know, how you doing, where you been, stuff like that. Then he
16 asked me did I have a -- did I have a car because he needed a ride. I told him
17 no, but when I was on the phone with my sister I had seen Richard McCampbell
18 sitting across the street because in our apartment complex we're in the middle,
19 so to your left is Chicago, to the right is Philadelphia. So Richard McCampbell
20 was sitting in his car on Philadelphia, so I thought to myself I'm pretty sure I
21 know someone who can give us a ride -- who can give a ride.

22 Q Okay. And how did you know Mr. McCampbell?

23 A Oh, he gave me a couple rides, usually see him on the street
24 drinking, smoking.

25 Q Okay. And was it communicated to you why they needed the ride?

1 A Well, at first I asked them what did they need a ride for and where
2 was they going and he told me he was going to Boulder Highway, that he
3 wanted to buy some methamphetamines from a guy named Dale. So I had
4 heard of Dale name before.

5 Q Okay. Stop. Did they say Dale or Dale Borero?

6 A They said Dale. I don't know -- I didn't his last name.

7 Q Did you know who they meant?

8 A Well, I knew -- yes, I knew a Dale, yes.

9 Q Okay. And how did you know of Dale?

10 A Well, I heard about him, well, he's a big drug dealer on the east
11 Las Vegas -- east side of -- east Las Vegas. And, you know, I pretty much
12 heard he sells drugs, he's has a lot of women, he's violent, he carries a gun.
13 That's pretty much what I heard about him.

14 Q Was that his reputation in the community?

15 A Yes, sir. Yes, sir.

16 Q Okay. And so did you approach Mr. McCampbell's vehicle?

17 A Well, first, when I asked Travis Costa where was he going and --
18 and he told me he was going to meet Dale Borero, I asked him, I said -- when I
19 told him that I knew him, I said, well, if you going to meet him, I would like to
20 meet him because I want to be able -- you can introduce me and connect me
21 with him because I was planning on selling drugs and just trying to get some
22 extra money. So at that point then we went across the street to Philadelphia to
23 talk to Richard McCampbell.

24 Q All right. Now, right at the time were you selling drugs?

25 A No, I wasn't.

1 Q Had you sold drugs in the past?

2 A Yeah, I have before. Marijuana.

3 Q What type -- I'm sorry?

4 A Weed, marijuana.

5 Q Okay. And at that point you were not?

6 A No. No.

7 Q But you were looking for an opportunity to step up?

8 A Yes, sir.

9 Q Okay. Was there anything about the fact that these two were older
10 than you that --

11 A Yeah, well --

12 Q -- made you interested?

13 A Yeah, I wanted to have, well, yeah, Dale, yeah, because I knew he
14 was older, he was having money. Pretty much he had things that I wanted at
15 that time at 18 and pretty much naive way of thinking and, yeah.

16 Q And so you go to Richard McCampbell?

17 A Yes, sir. We went across the street. And I tapped on his window
18 because I'm the one who knew him. And when I tapped on the window, when
19 he rolled the window down, I seen he was drunk. He had a bottle in his lap and
20 he said, you know, what's up Money, you know, I went by Money. He said,
21 What's up, Money.

22 Q Okay. All right. Let me stop you right there.

23 A Okay.

24 Q How do you know he was drunk? Have you ever seen anybody
25 under the influence of alcohol?

1 A Yeah. Growing up my granddad drunk -- drank alcohol, so I seen
2 him drunk before, so I knew he was drunk.

3 Q Did you live with your granddad?

4 A Yeah, he raised me.

5 Q How many times would you say you'd seen him under the
6 influence?

7 A Fifty times.

8 Q And when you saw Mr. McCampbell you could tell he was drunk?

9 A Yes, sir. He was slurring of his words, you know, slouched over,
10 eyes red, also -- you want me to you -- also he had a crack pipe in his hand. I
11 knew he smoked crack.

12 MR. SCHWARTZER: Objection. Nonresponsive to the question.

13 MR. SCHWARZ: All right. That's fine.

14 THE COURT: I would sustain the objection. But you can ask the
15 follow-up question.

16 MR. SCHWARZ: All right.

17 BY MR. SCHWARZ:

18 Q Was he doing anything other than drinking?

19 A Yes, he was smoking crack cocaine.

20 Q Did he do that often?

21 MR. SCHWARTZER: Objection. Relevance.

22 THE COURT: Well, I'll overrule -- or excuse me, I'll sustain that objection.

23 MR. SCHWARZ: Okay.

24 BY MR. SCHWARZ:

25 Q And so why would you get in a car with this guy?

1 A Well, previous times when he was high --

2 MR. SCHWARTZER: Objection, Your Honor.

3 THE WITNESS: -- off crack cocaine.

4 THE COURT: I'll sustain the objection and strike that.

5 BY MR. SCHWARZ:

6 Q Okay. So why would you get in a car with the guy? Were there
7 other times that you -- that he had -- all right.

8 A I have rolled with him intoxicated off of alcohol before. He had
9 droven me. And we got to A and B destination safely, so I figured why not do
10 it again, it worked the first time, you know. And, you know, so I didn't feel,
11 I've done it before, so I guess because I was comfortable with it.

12 Q All right. Did he agree?

13 A For a ride?

14 Q Yes.

15 A Yes, sir. He just said he's needed \$10.00 and we can leave right
16 now.

17 Q And did you pay him?

18 A Well, Travis paid him. Travis and Dustin paid him because they --
19 they wanted the ride.

20 Q Okay. And what happened next?

21 A So he got out of the car and he put his bottle in the trunk. He had
22 two bottles. And he put one in the drunk. I don't know what he did with the
23 other bottle. He probably put it in the trunk as well. We got in the car. We
24 proceeded -- we was leaving Naked City, we was leaving Philadelphia and we
25 get to Philadelphia, you get to Fairfield and he made a left on Fairfield. And it

1 comes down to St. Louis, he made a right on St. Louis, now we on Las Vegas
2 Boulevard. He made a left on Las Vegas Boulevard and we came to Charleston.
3 So we made a right on Charleston. We was coming down Charleston, and by
4 this time Charleston take you all the way down to Fremont to Boulder.

5 Q All right. Let me stop you for a minute. Was anybody in the car
6 take talking about anything?

7 A No.

8 Q Was anybody in the car discussing a robbery?

9 A No, sir.

10 Q Was it your understanding you were going there to commit a
11 robbery?

12 A No, sir.

13 Q You had a pistol with you?

14 A Yes, sir.

15 Q Why did you have a gun with?

16 A Well, when I was 16 I used to box for Richard Steele, and when I
17 was leaving Richard Steele's gym when I was 16, it was about 8:00 o'clock at
18 night, I was on my way to the bus stop -- the bus stop on Cheyenne and Martin
19 Luther King, it's a bad neighborhood right there.

20 MR. SCHWARTZER: Judge, I'm going to object and actually ask to
21 approach at this point.

22 THE COURT: Okay.

23 [Bench conference -- not transcribed]

24 THE COURT: All right. You can continue.

25 ///

1 BY MR. SCHWARZ:

2 Q So what happened?

3 A So I was walking to the bus stop through a bad neighborhood and a
4 car pulled up on me and just -- they just dropped the window and they started
5 shooting at me and I was shot twice.

6 Q Where were you shot?

7 A In my foreman and my bicep.

8 Q Were you cooperative with the police with respect to that shooting?

9 A Yes, sir.

10 Q Oh, yeah? You answered all their questions and so forth?

11 A Yes, sir.

12 Q And you were carrying a gun why on April 19th, 2013?

13 A After that -- after the point I got shot, you know, I was -- they said I
14 was suffering from P.T.S.D. and --

15 Q Who said that?

16 A A doctor, I seen a doctor.

17 Q When you were treated for the gunshots?

18 A Yes, sir. And I used to be paranoid a lot. So I had bought a gun. I
19 was carrying it because at the time I was 18, but we -- we -- at 18 you can
20 have a shotgun, but you can't have a handgun 'til you're 21.

21 Q Okay. And that's why you were carrying a gun?

22 A I carried it for protection.

23 Q All right. Now, back to the car. Nobody's saying anything? Does
24 anything happen while you're in the vehicle?

25 A No, sir. Everyone was pretty quiet.

1 Q What happens next?

2 A So, as I was saying, we was coming down Charleston and we
3 arrived to Fremont in the intersection, the cross-over is Boulder Highway, but
4 Travis Costa, he's in the backseat to the left behind the driver, Richard
5 McCampbell, he asked to stop at the 7-Eleven because he wanted to buy a
6 beer. So as we were pulling into the 7-Eleven there's, like my attorney said,
7 there's a 7-Eleven, a Dotty's, and a Lowe's but the 7-Eleven and the Dotty's
8 are right next to each other, how they are now. So all the parking spaces are
9 full, I don't know if they all in the Dotty's or the 7-Eleven because I didn't go in.

10 So on the side of the building, you know, in the front is parking
11 spots, but right on the side of the building there's more parking spaces. Richard
12 McCampbell, he pulls in the -- in the parking space on the side of the building.

13 Q Was there any drama about parking the car?

14 A No. No, sir.

15 Q Did Travis Costa tell him, You park there?

16 A No, sir.

17 Q Did McCampbell have to move the car to park somewhere else?

18 A No, sir.

19 Q All right. Did anybody get out of the car?

20 A Yes, sir. Travis Costa got out of the car to go purchase a beer.

21 Q Okay. What about you?

22 A I stayed, I was -- no, I stayed in the car in the passenger seat. I
23 stayed in the car.

24 Q Dustin Bleak didn't get out of the car?

25 A No. He was behind me. No.

1 Q Okay. Did he come back with the beer?

2 A Well, before he came, yeah, he came back with the beer, yes.

3 Before he came back with the beer Dustin Bleak was in the rear of
4 me and he tapped me on my shoulder asking could he speak with me. And
5 when we got outside of the car he told me, he's like, Listen, man, me and Dale
6 was in prison together, let me do all the talking, then I introduce you-all because
7 he be trippin' sometimes, especially with people he doesn't know.

8 So this is my first time meeting him, this is my first time even trying
9 to be met to a person who sells methamphetamine, so I don't know what type
10 of person he is, so I just took his word for it. I said, okay. And then we got
11 back in the car. Then Travis Costa was coming back out of the store, I want to
12 say a minute later, a minute or so later.

13 Q Okay. What is -- what does it mean when Dustin Bleak tells you
14 sometimes Dale's trippin', what does that mean?

15 A I took it as --

16 MR. SCHWARTZER: Objection. Speculation, Your Honor.

17 BY MR. SCHWARZ:

18 Q Let me ask you this, Darion, does the word "trippin'" have a
19 common meaning where you come from?

20 A Yes, sir. It means you can be violent, hostile, pretty much violent
21 and hostile. It just means that you're -- you can become erratic.

22 Q Okay. All right. And is that what you understood it to mean?

23 A Yes, sir.

24 Q All right. And so basically Dale told you let him do all the talking?

25 A No, Dustin.

1 Q Or Dustin said let him do all the talking?

2 A Yeah, then he introduce me to him.

3 Q And then lay back?

4 A Yes, sir.

5 Q Okay. So after the beer episode -- oh, by the way, during that
6 conversation did you discuss robbing Dale Borero?

7 A No, sir.

8 Q After the beer episode what happened?

9 A So when we get back in the car, now from here I don't know where
10 we're going, so on the side of the Lowe's there is a light. Now, you can go
11 through the light and you can make a left on Boulder Highway, you can make a
12 right and you will be back on Fremont. So Dustin tell Richard McCampbell, The
13 Mechanic, to go through the light and make a left and we'll be back on Boulder
14 Highway. So he goes through the light, we make a left. And also Dustin
15 directs him to the -- because it's the Lowe's and right behind the Lowe's was
16 the Travelers Inn, it was the motel.

17 But when you get to the light, it's a light -- there's Travelers Inn,
18 there's a light, but there's no way to just turn in. You gotta to go to the light
19 and make a u-turn. So we go to the light and make the u-turn and now we're
20 coming to the motel.

21 Q All right. Now, you heard Mr. McCampbell testify that you're the
22 one that was telling him to go everywhere.

23 A How can I -- I didn't know where -- I didn't even know the guy. I
24 didn't know where we were going.

25 Q Did you give him any driving directions?

1 A No, sir.

2 Q Did you tell -- all right. So you're pulling into Travelers Inn, what
3 happens?

4 A So when we pull into the Travelers Inn, Richard McCampbell says
5 so where do I go, where do I park. And I'm not sure if it was Dustin Bleak or
6 Travis Costa, he just said go all the way to the end. That's where we're going,
7 we're going all the way to the end because there's a dead-end. You gotta go
8 all the way to the end.

9 So as we're going to the end, there's a parking spot over to your
10 left. Richard McCampbell pulls -- and -- when we get to the end, he pulls in a
11 parking spot to the right and then he just throws his car into reverse and then
12 backs in. As he's backing in, I realize how drunk he was, he hit the wall and he
13 wasn't too happy about himself hitting the wall. He straightened the car up and
14 he parks.

15 Q Did you tell him to do that?

16 A No, sir.

17 Q Did you tell him to back into the spot?

18 A No, sir. I didn't have a reason to.

19 Q All right. So once you got there --

20 A Uh-huh.

21 Q -- what did you notice? What did you see?

22 A Well, at first I didn't notice anything because we were inside the
23 car. Dustin gets a phone call and then he opens the car -- he's behind me, so
24 he got out of the car and said come on, so I got out of car. And I go to lean on
25 the trunk. And I don't know who's he talking to, well, I'm assuming it was

1 Dale because we going to meet -- we going to meet him.

2 So as I'm leaning on the car, he's talking, he walked off a little bit,
3 so he's out of earshot, so I couldn't hear him. But it feels like, you know how
4 if, like, someone was looking at me, like, you know how you can tell when
5 someone looking at you, you turn around and look at them, so when I looked
6 upstairs I seen Dale, I didn't know who it was then, I just heard, I didn't know
7 who it was. But I seen Dale and I seen two black dudes and I seen a lady
8 standing on the stairs just staring at me.

9 Q All right. You talking about the balcony?

10 A Yes. The second -- the second floor of the balcony.

11 Q The second floor?

12 A Yes.

13 Q Not the stairs, right?

14 A No, no, no.

15 Q Why did that concern you, if it did?

16 A Well, the part that concern -- it didn't concern me until when I
17 looked up there, they just kept staring at me and this went on for two minutes
18 at least. They just staring at me for no reason. So now I'm kind of, you know,
19 I'm uncomfortable because I don't know what's going on. I just went to a
20 situation where the guy who I'm outside the car with, I don't really know and
21 it's -- it's three people, four people but the lady, I think she went back in the
22 apartment, it's three people now, three guys, two black guys and a Hispanic
23 man just standing there, they're just staring at us. So in my mind I'm thinking
24 what's going on. So I just I said probably nothing, so as they're --

25 Q Did -- did you stay by the car?

1 A Yes, sir. I stayed on the car.

2 Q You stayed where you were told to stay?

3 A Yeah, he just told me --

4 Q To wait for your introduction?

5 A -- to wait for the introduction, yeah.

6 Q Were you -- were you staying by the car to wait for somebody to
7 come down to rob 'em?

8 A No, sir. No. No, sir.

9 Q So what happened next?

10 A So Dale starts coming towards the stairs, you know, we're by the
11 stairs, we're parked by the stairs. So he come -- he started coming by the
12 stairs, I'm still looking up there and as he's walking he has a tank top on, blue
13 jeans and white shoes, and the tank top is thin so I can see the butt of the gun
14 hanging outside his pants.

15 Q What color is the gun?

16 A He had the shirt over the gun. You could just see the butt, the
17 outlining of the gun when he's walking it's moving. So when he come down
18 the stairs, I'm looking at him and he had, like, a, like, a angry scowl on his
19 face, you could tell he was angry about something. Then two black dudes,
20 when they come down stairs they're still staring at me. They haven't broke eye
21 contact with me. So Dale, he walks around the car and he goes around their
22 car to where Dustin is and their -- and the car I'm leaning on, their car is right in
23 front of me. So as I'm leaning on the car, it was -- it was black guy and
24 obviously it was his brother, two black guys. The one on the driver's side, he --
25 he opened the door and he hit the unlock button. But he just standing there,

1 just looking at me. He didn't open the door.

2 Q All right. All right. Did you have any concerns about that?

3 A Yeah. The part where I had the concern is when he opened the
4 door and started getting in the car he just stood there staring at me. So I'm
5 thinking to myself, you know, I'm just sitting here minding my own business
6 and they're looking at me, like, you know, I did something to 'em or something.
7 So they get in the car --

8 Q Did you do anything about that? Did you say anything to 'em?

9 A No. I just, no. I just sat there. So they close the doors and they're
10 still sitting in the car staring at me. So I'm more focused on what's going on
11 right here. I'm trying to figure out what's going on. This probably went on for
12 about a minute, 50 seconds to a minute. They pull out, now, I'm so focused on
13 why these two people were staring at me that I just realized that Dale and
14 Dustin are having an argument. So when I realized what was going on I heard
15 Dale say, so you came again without my --

16 Can I curse?

17 He says, So you came again without my fucking money.

18 Q Now, stop. When Dale says that who does he say it to?

19 A He said it to Dustin.

20 Q Were they the only two talking at that point?

21 A Yes, sir. Yes, sir.

22 Q What was Dustin doing when he said that?

23 A When he said that, well, that's when I looked, he, like, took his hat
24 off and put it back on and, like, rubbed his head and was, like, I'm sorry, man, I
25 just ain't got it right now. So as soon as he said that, that's when Dale -- Dale

1 crossed his arms and then he looked at me and then he looked back at Dustin.
2 He says, Somebody don't come up with my fucking money I shoot both of you
3 all. So when he said this, I don't what's going on now. This -- I didn't even
4 know that Dustin had owed Dale money. So my first thought was, man, you
5 should just go get back in this car.

6 Q Why didn't you do that?

7 A Because then my thought was, well, he just said he'd shoot both of
8 us if somebody don't come up with up with some money, so I'm thinking, well,
9 if I try to go get in this car, he might shoot me in my back or something. I
10 don't know -- I don't know, you know, I don't know what to do right now. I
11 don't know what's going on, so.

12 Q Did you have any concern about the Grace brothers?

13 A Well, I just seen them pulling off. I don't know -- my focus on Dale
14 now he just said he shoot me and this -- and Dustin over something, I don't
15 even know what their dispute is about. So I'm more focused on how am I
16 going to make sure my life isn't in danger, how am I going to get out of this
17 situation. And this -- this all happened pretty fast.

18 So I got off the car because I knew he just said somebody going to
19 give me some fucking money, I'll shoot both you-all, so my gun was on my
20 right side in a holster. So as I'm walking it's like I'm reaching in my pocket for
21 some money and I pull my gun. And I told him I don't know what's going on, I
22 don't want any problems, this don't have nothing to do with me.

23 Q All right. Let me stop you right there.

24 A Okay.

25 Q So you're reaching for your gun, you're pretending to be going into

1 your pocket.

2 A Yes, sir.

3 Q Why were you pretending to be going into your pocket?

4 A Because the whole point he was angry was over some money.

5 When he looked at us, when he looked at me then he looked at Dustin, he said

6 if somebody don't come up with my money I shoot both you-all. So he just

7 involved me in a situation I didn't know about. So I can't just -- if I just -- he

8 has a gun, I seen the gun. So if I just try and reach for my gun, he will pull his

9 gun and shoot. I didn't pull my gun to shoot him. I pulled my gun so we could

10 figure this out because I'm just -- I just want to get out of this situation now.

11 So instead of just pulling my gun out, provoking him to pull his gun out, and it

12 turned to a shoot-out, that's not what I wanted. So I had to act like I was

13 going to reach for some money so I could be able to pull my gun out.

14 Q Was he -- to the best of your knowledge were you looking at Dale

15 when this was going on?

16 A At what part?

17 Q While you were reaching in your pocket.

18 A No. I was looking down, like, you know when you reach in your

19 pocket, you know.

20 Q Okay. Do you know if he could see you? If you don't that's fine.

21 A I was walking -- I don't know. I was just walking, like, towards

22 him.

23 Q Okay. And does there a come a point when you pull your gun out?

24 A Yes, sir.

25 Q And when you pulled your gun out was it your intent to rob

1 Dale Borero?

2 A No, sir.

3 Q Was it your intent to shoot Dale Borero?

4 A No, sir.

5 Q Was it your intent to harm him in any way?

6 A No, sir.

7 Q What was your intent in pulling your gun out?

8 A Pretty much when he threatened to shoot me and Dustin, if
9 someone doesn't come up with his money I guess you -- to intimidate him just
10 so he know that I have a gun too and that we can just figure this out because
11 my first words were, I don't know what's going on, this don't have nothing to
12 do with me, I don't want no problem with you.

13 But what I was trying to say was, as soon as I said that, I see his
14 hand because I'm looking at him, so I see his hand come across like come
15 towards me. So I just smack his hand, I'm, like, stop, man, what you doing
16 and his hand come again and I smack it away.

17 Q Well, you were here when Detective Mogg testified and he said it
18 looked to him like he was trying to hand you a bag of methamphetamine?

19 A Yes, sir. I recall him saying that.

20 Q Was that what was happening?

21 A I didn't see what was in his hand, all I see, I just pulled my gun on
22 him.

23 Q Did you make any demands on him?

24 A No, sir. No, sir.

25 Q Did you ask him for money?

1 A No, sir.

2 Q Did you ask him for dope?

3 A No, sir.

4 Q What happened next?

5 A So after I smacked his hand away the second time, I seen him
6 before it happened because when I smacked his hand away, he looked -- he
7 looked at his gun and when he looked at his gun, I seen his right hand go like
8 this, so my first thought was if I hit him with the gun I could knock him to the
9 ground, so if I knock him to the ground, I could just run and get in the car. He
10 probably would shoot at the car, but I don't want to have to shoot this gun. I
11 do not want to have to shoot this gun.

12 But when I went to hit him with the gun, I'm not sure if I missed or
13 I grazed, like, I barely hit him. Because after I swung it, I seen this gun come
14 up. So when this gun came up, I turned my left -- because, you know, his gun
15 is on his right side and that's where my left shoulder is, so I had turned my left
16 shoulder and he fired. As he -- when he fired, I guess when I turned my left
17 shoulder, my momentum, it started backing me up and there was a parking
18 block right there. And as I'm tripping over the parking block, I fire the gun and
19 when I fired the gun, it seemed like we both fell at the same time.

20 So when we fell, I got up, and I ran to get in the car and then that's
21 when I heard the gunshots as I'm running to get in the car, I heard him
22 shooting, still shooting.

23 Q Do you know how many times you fired your gun?

24 A It felt like I only shot probably once or twice.

25 Q You know they found four shell casings?

1 A Yeah, I remember they told me. But when the situation like that,
2 you know, I -- I don't know how I didn't get shot and, you know, it just
3 happened so fast, you know, there is really no thinking in that situation
4 because, you know.

5 Q All right, Darion, let me ask you this, if this is just a tragic accident
6 like you claim --

7 A Yes, sir.

8 Q -- or just you trying to defend yourself after being threatened, why
9 didn't you turn yourself in?

10 A Well, for one, I wanted to get an attorney before I turned myself in
11 and we're not rich and I know that, you know, if I turn myself in at that point in
12 time with no attorney, I probably get a public defender or something, they
13 won't believe me. So I wanted to make sure that I was able to turn myself in
14 with a attorney and handle the situation accordingly.

15 Q Were you ever aware that a warrant was issued for your arrest?

16 A No. No, sir. I didn't know.

17 Q Were you ever aware that anybody -- that the police were looking
18 for you?

19 A No, sir.

20 Q Did you ever talk to anybody in the Naked City area that had been
21 advised that the police were looking for you?

22 A No, sir. I didn't -- no, I didn't know many people, no.

23 Q Did you want to -- did -- well, let me ask you this, okay, so now
24 you're in the car, right?

25 A Uh-huh.

1 Q Speeding away from the scene.

2 A Uh-huh.

3 Q Did you threaten Mr. McCampbell with the gun?

4 A No, sir. When I got back in the car we're still being shot at, so
5 McCampbell was driving pretty fast and he go through the light, we make a
6 left, we're on Boulder Highway. At this point when I fell I scraped my shoulder,
7 so my shoulder was burning. So when we got in the car first thing I did was to
8 check and see if I was shot or something because it was burning. When I made
9 sure that I was okay, when I looked up we were coming up on Oakey, we
10 coming up on Oakey, and I told McCampbell to make a right because I know
11 Oakey go all the way back up to the Stratosphere. And I when I told him to
12 make a right, go all the way up to the Stratosphere, after that everyone in the
13 car was quiet. I think everyone was pretty -- pretty shocked and they didn't --
14 no one knew really what just happened, so to answer your answer, no, I never,
15 I never threatened him.

16 Q Did you direct Mr. McCampbell to go to a dead-end street?

17 A No, sir. We just turned on Oakey and we went all the way up
18 Oakey. I don't know Oakey have a dead-end street.

19 Q When you went to the Travelers Inn was it your intention to buy
20 narcotics?

21 A When I went to the Travelers Inn?

22 Q Yes.

23 A No, sir. I just wanted to meet Dale, be introduced to him,
24 connected with him so I could purchase drugs later on in the future.

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

1 THE COURT: Thank you.

2 Yeah, Mr. Schwartz.

3 **CROSS-EXAMINATION OF DARION MUHAMMAD-COLEMAN**

4 BY MR. SCHWARTZER:

5 Q Mr. Coleman, you didn't tell the detectives any of this, did you?

6 A No, sir.

7 Q You had the opportunity to but you decided not to, right?

8 A Yes, sir.

9 Q You talked to them July 3rd, 2013?

10 A Yes, sir.

11 Q Right?

12 A Yes, sir.

13 Q And you did not talk to them -- and you didn't say any of this?

14 A No, sir.

15 Q And do you remember Mr. Schwarz telling Mr. McCampbell, You
16 had two days to come up with your story, right?

17 A Yes, sir.

18 Q Do you remember that?

19 A Yes, sir.

20 Q You've had -- well, you were arrested on July 3rd, 2013, correct?

21 A Yes, sir.

22 Q This happened on April 19th, 2013.

23 A Yes, sir.

24 Q And here with are on January 9th, 2017.

25 A Yes, sir.

1 Q So how much time have you had to think about this?

2 A With this --

3 Q Almost four years, right?

4 A That's -- three and a half years, yes, sir.

5 Q Okay. So you've had a while?

6 A Yes, sir.

7 Q And you've seen this video?

8 A Yes, sir.

9 Q You've seen all these people walk into this courtroom and testify

10 before you got on here and testified, correct?

11 A Yes, sir.

12 Q Okay. I want to talk about some things that we can agree upon.

13 A Okay.

14 Q We can agree upon you approached Mr. McCampbell about a right,

15 correct?

16 A Yes, sir.

17 Q That you were in the passenger door side of Mr. McCampbell's

18 vehicle during this incident, correct?

19 A Yes, sir.

20 Q That Mr. McCampbell drove you to the 7-Eleven, correct?

21 A That he drove us, yes, sir.

22 Q That Mr. McCampbell drove you to the Travelers Inn?

23 A Yes, sir.

24 Q That Mr. McCampbell didn't know the other two people there in the

25 car with you?

1 A No, sir.

2 Q Mr. McCampbell didn't know Travis Costa and he didn't know
3 Dustin Bleak, correct?

4 A No, sir.

5 Q You say you didn't know Dustin Bleak until this -- this day?

6 A Yes, sir.

7 Q You knew Travis Costa but only in passing?

8 A Yes, sir.

9 Q But you decided to go to this drug exchange despite the fact you
10 don't know those two individuals that, well, you don't know and one you don't
11 know that well?

12 A Yes, sir.

13 Q And you've said you've heard of Dale, he's a guy who's violent
14 with guns, correct?

15 A Yes, sir.

16 Q But you decide, despite the fact you don't know any of these
17 people, Dustin, Travis, you were going to go with them anyway to this
18 Travelers Inn?

19 A Yes, sir.

20 Q Okay. That you deny that you told McCampbell where to park? He
21 just made that up on his own.

22 A Yes, sir.

23 Q Okay. That you got out of the Cadillac?

24 A Yes, sir.

25 Q That was you sitting on that backseat of that vehicle, correct?

1 A Yes, sir.

2 Q That was you on your phone every once in a while looking up at a
3 phone while you were sitting there leaning there, correct?

4 A I looked once, yes, sir.

5 Q Okay. So you were so concerned about, you know, the Grace
6 brothers and Dale and what's going on that you were able to look at your
7 phone?

8 A When we first got out the car is when I looked at the phone.

9 Q Okay. I see.

10 A I didn't look at the phone -- when I looked at the -- if you look at the
11 video, which you could play, when I got out of the car, I looked at the phone
12 then I looked up is when I seen them. I told you that I felt someone looking at
13 me.

14 Q All right. So you felt so at ease you were looking at your phone?

15 A Yes, sir.

16 Q Okay. That's fair to say. That Dustin Bleak and the victim was
17 having a conversation away from you?

18 A Yes, sir.

19 Q That you actually said you didn't hear that conversation for the first
20 part of that conversation?

21 A No, sir.

22 Q But then suddenly you were able to hear part of that conversation,
23 right?

24 A Yes, sir.

25 Q And then you actually pulled your gun out first; is that correct?

1 A Yes, sir.

2 Q And you put the gun to Mr. Borero, Dale's, head first?

3 A Yes, sir.

4 Q You put it -- how -- you were, what, about this close to him when
5 did you that?

6 A Probably a little farther back. But yes, sir.

7 Q And so, and you had the gun extended like this?

8 A Yes, sir.

9 Q So even, like that?

10 A Yes, sir.

11 Q So you did this before he took a gun out or anything like that?

12 A Yes, sir.

13 Q All right.

14 A You forgot to say that --

15 THE COURT: For the record you-all were about three to four feet apart.

16 BY MR. SCHWARTZER:

17 Q Okay. Would you say that's an aggressive act?

18 A No, sir. Because --

19 Q You wouldn't say walking up to an individual putting a gun to their
20 head --

21 THE COURT: Mr. Schwartz, you've got to let him finish his answer.
22 Okay?

23 MR. SCHWARTZER: All right.

24 THE COURT: Finish your answer.

25 THE WITNESS: No, sir, because I didn't pull my gun 'til he said he would

1 shoot both of us.

2 BY MR. SCHWARTZER:

3 Q Okay. That didn't answer my question. When you walk up to an
4 individual and put a gun to their head within two feet, would you call that an
5 aggressive act?

6 MR. SCHWARZ: Well, I'm going to object. I think he answered the
7 question. It's asked and answered.

8 MR. SCHWARTZER: I don't think he answered.

9 THE COURT: The question isn't about the context. It's just about the act
10 itself.

11 So you can answer that question.

12 THE WITNESS: Yes, sir.

13 BY MR. SCHWARTZER:

14 Q Would you say that hitting an individual, striking an individual in the
15 head with a firearm is an aggressive act?

16 A Yes, sir.

17 Q Okay. And at -- so you had the gun to his head, Dale Borero
18 doesn't pull out his gun, correct?

19 A He went to reach for his gun. After I struck him, he was already --
20 it was all one motion. When I see him reaching for the gun, I struck him hoping
21 that he wouldn't be able to get it, but he already had it.

22 Q Okay. Let's get into this a little bit more then.

23 A All right.

24 Q You go up to him, you're two feet away from him, you have the
25 gun to his head, and you say you're not grabbing for anything?

1 A No, sir, I was smacking --

2 Q You're just striking down his hand?

3 A Yeah. Yes, sir.

4 Q You're not trying to reach out and grab something?

5 A No, swiping and grabbing's different.

6 Q Okay. So you're not reaching out and trying to grab anything?

7 A No, sir.

8 Q And just to be clear, you said earlier in your testimony that
9 Dale Borero had stuff you wanted like money?

10 A I never said that.

11 Q You didn't say that?

12 A No, sir.

13 Q Didn't you say earlier in your thing that you wanted to sell
14 methamphetamine?

15 A Oh, yes, yeah, yeah.

16 Q -- so you could have money like Dale Borero?

17 A I get -- I get your question now. Yes, I did.

18 Q Okay. So he has objects and stuff that you want like narcotics --
19 you wanted methamphetamine?

20 A I wanted to sell it, yes, sir.

21 Q You wanted money?

22 A That's what you sell -- yes, sir.

23 Q Okay. You wanted jewelry?

24 A I never said that.

25 Q You don't want jewelry?

1 A No.

2 Q So just the money and the drugs?

3 A Well, you know, sell drugs to get money, you know, you just take

4 care of yourself.

5 Q Okay.

6 A That's my whole purpose.

7 Q Okay. So Dale Borero has money and he has drugs.

8 A I know he have -- I knew that they were arranging a drug meet. I

9 don't know.

10 Q Dale Borero has money and drugs?

11 A Yes, sir.

12 Q You want money and drugs?

13 A Yes, sir.

14 Q Okay. So when you point the gun at him and you're saying you

15 don't reach out, you're just swiping.

16 A It was just swipe.

17 Q Now, before you approach him you say something to the effect that

18 Dale Borero says, I want my fucking money, correct?

19 A He said you came again without my fucking money.

20 Q Okay. Now, in order to do, I mean, I don't know how many drug

21 transactions any of us have done here, but usually if you don't have money,

22 drugs aren't produced; is that fair to say in a drug transaction?

23 A They know each other, so you know.

24 Q Okay. So Dustin Bleak come -- again, this is a person you don't

25 know?

1 A No. I know his brother.

2 Q Okay. Who's in the car by the way.

3 A Yeah.

4 Q And you're by the car when this first happens, right?

5 A I'm leaning on the car, yeah.

6 Q Okay. So you approach this guy who you think is dangerous by
7 reputation because you never met Dale before.

8 A Okay.

9 Q Who you know has a gun because you saw a bulge.

10 A Uh-huh.

11 Q For a guy that you don't know, Dustin Bleak, correct?

12 A Sure.

13 Q Okay. And as you're approaching there, Dustin -- Dale Borero has
14 drugs out, correct?

15 A I didn't see it.

16 Q You didn't see the drugs? You don't see him unwrapping the
17 drugs?

18 A No, sir. I told you I was looking --

19 Q Okay.

20 A I was looking at the --

21 Q Were drugs in his hands?

22 A -- car right in front of me. I didn't see it, sir.

23 Q Okay. Well, you saw that video, is he not unwrapping the drugs?

24 A You can't really see what's in the video.

25 Q Okay. Okay. But you would agree to me if money was a problem,

1 it's unlikely that Dale Borero would produce the drugs?

2 A Well, once again --

3 MR. SCHWARZ: I would objection this is speculation.

4 THE COURT: I'll sustain that objection.

5 BY MR. SCHWARTZER:

6 Q Okay. Okay. So you approached the victim, you pull your gun first
7 out, you aim your gun first, you swipe at him, and then you strike him, correct?
8 The victim, Dale Borero.

9 A Yes, sir, swipe his hand away.

10 Q And then after you strike him you actually go and try and grab some
11 something from him again, right?

12 A No, sir. After I struck him the second time when he --

13 Q What do you mean the second time? You struck him a first time?

14 A Yes, sir. When he reached his hand out, I swiped his hand away.

15 Q Okay.

16 A He reached his hand out again, I swiped his hand away. When he
17 went to reach for his gun is when I hit him with the gun is when he pulled his
18 gun and fired.

19 Q Okay. So after you strike him with the gun, which again, you
20 would say is an aggressive act, correct?

21 A Yes, sir.

22 Q Okay. You're saying nothing happened in between you striking him
23 with a gun and Dale Borero taking out his gun and firing?

24 A No, sir. Well --

25 Q You didn't try to grab anything after you struck him with the gun?

1 A No, sir.

2 Q Okay. And then you were saying he pulls out his gun, he starts
3 firing, you start firing?

4 A Yes, sir.

5 Q Who fires first?

6 A Dale Borero.

7 Q Okay. You think he fired first?

8 A I know he fired first because that's why I turned out the way of and
9 I end up falling trying to get out the way of the gunshots.

10 Q Well, you remember a lot of things but you don't remember firing
11 four times, right?

12 A Well, no, I told you it was -- listen --

13 Q I don't -- you don't remember firing four times, correct?

14 A I don't remember. No. No, sir.

15 Q You have a great attorney, he will ask you redirect questions.

16 A No, sir.

17 Q You don't to argue with me.

18 So they are aspects you don't remember?

19 A That's the only part I don't remember. I don't remember firing four
20 times.

21 Q Okay. So on that video, how many times does Dale shoot, well,
22 no, in your memory how many times does Dale shoot you before you start
23 shooting?

24 A I know for sure he shot once but as soon as he shot, I'm trying to
25 back out the way and I fell and I fired, so for sure once.

1 Q Okay. So you pull out a gun and put it to his head, he doesn't
2 shoot you, he doesn't try to shoot you, correct?

3 A Pulled out my gun, he went to reach for his gun.

4 Q He doesn't shoot you when you pull out your gun and put it to his
5 head; is that correct?

6 A No, sir.

7 Q Then you struck him. Now you're saying he tries to shoot you with
8 nothing in between?

9 A Yes, sir.

10 Q Okay. And to be clear, so we all know, you're the one that shot
11 and killed Dale Borero, right?

12 A Yes, sir.

13 Q Okay. And you're the one jumping into the car?

14 A Yes, sir.

15 Q And you tell McCampbell where to go?

16 A I told him to go down Oakey after we already -- yes, sir.

17 Q So you're telling McCampbell where to go?

18 A Yes, sir.

19 Q Okay. And you had the gun in your -- where do you have the gun
20 after you get in the car?

21 A I believe I put it in my pocket.

22 Q Okay. Mr. McCampbell says he's -- he's going to tell and you say
23 you're going to tell what?

24 A No, I never said that.

25 Q So he made that up too?

1 A Yes, sir.

2 Q Okay. And to be clear Mr. McCampbell knows you, right?

3 A The only one he know .

4 Q And he doesn't know Dustin Bleak or Travis Costa?

5 A No, sir.

6 Q Okay. I mean, he's helped you out before?

7 A He didn't help me out, you know, he gave me a ride. I helped him
8 out. He needed gas money. He gave me a ride.

9 Q He drove you to the appliance store?

10 A We helped each other out. We helped each other out.

11 Q Okay. Okay. So you drive to Naked City?

12 A Yes, sir.

13 Q And then you get out of the car with Dustin Bleak and
14 Travis Costa?

15 A No, I didn't get out of the car with them. They got -- Dustin and
16 Travis got out of the car, I don't where they went. I sat in the car for a couple
17 more seconds. Richard McCampbell pulled out his crack pipe. I got out of the
18 car and I headed -- started to head home. But I stopped first. I had a lady
19 friend who stayed in apartment 7 and I went there, she wasn't there but the
20 door was open. So I went inside and I put the gun in the microwave, then I
21 went out to figure out how I was going to get a lawyer and turn myself in.

22 Q Okay. So that same night is when you put the gun in Fairfield,
23 apartment number 7?

24 A Yes. As soon, like, as soon as I got out of the car before I went
25 home.

1 Q And that was in April 19th of 2013?

2 A Yes, sir.

3 Q And that's when you started thinking about trying to get an
4 attorney?

5 A Yes, sir.

6 Q And you don't call the police on April 19th?

7 A No, sir.

8 Q You don't call or talk to the police at all in April?

9 A No, sir.

10 Q Now, that lady friend of yours, her name is Tatiana Lee?

11 A Yes, sir.

12 Q So you were friends with her?

13 A Yes, sir.

14 Q She know how to get a hold of you during that period of time?

15 A Yes, sir.

16 Q Okay. She knows your mom?

17 A Yeah.

18 Q Okay. And, I mean, you were here, I mean, they found that gun in
19 that apartment on April 29th, 2013.

20 A Uh-huh.

21 Q And your testimony today is you didn't know police were looking
22 for?

23 A No, sir. No, sir.

24 Q You didn't know the police were looking for you despite the fact
25 they were looking, they were asking about a guy named Money, and you go by

1 Money, correct?

2 A Yes, sir, at that time. Yes.

3 Q Okay. And this friend of yours talks to police and knows a gun's
4 found in her apartment, but she doesn't contact you in April to say, hey, police
5 is looking for you?

6 A No, sir.

7 Q Okay. And you never ran from police?

8 A Have I ever ran from them?

9 Q You never ran from police --

10 A This right here?

11 Q -- when they tried -- when they tried to apprehend you the first
12 time?

13 A No, sir.

14 Q Okay. Now, this homicide was in the news, right, that blue
15 Cadillac?

16 A Yes, sir.

17 Q So you saw that in the news?

18 A I don't watch the news. I was 18.

19 Q Okay. So, but I'm assuming people like, you know, family members
20 and stuff watch the news, right?

21 A Yeah. But no one -- I assume. You know, I know my mom don't
22 watch the news.

23 Q So Mr. McCampbell who the next day knows all about them looking
24 for this blue Cadillac, but you have no idea they're looking for a blue Cadillac for
25 the next three months?

1 A Excuse me if I'm wrong, I believe Mr. McCampbell said his wife told
2 him that police were looking for the news.

3 Q Okay.

4 A Yeah.

5 Q That's fair. But McCampbell, then it's true that if his wife told him
6 Mr. McCampbell heard that they were looking for the blue Cadillac, correct?

7 A But that's his wife. We're two different households, sir.

8 Q Okay. But he heard that they were looking for -- in that 24-hour
9 period he knew that they were looking --

10 A His wife told him, yes. His wife told him, yes.

11 Q Okay. And the gun that you hid in the Fairfield Avenue address is
12 found and your friend doesn't tell you about it?

13 A No, she doesn't.

14 Q And Ms. Terrell, I forget her name, Keara?

15 A Yeah, Keara Terrell.

16 Q Okay. And she's friends with your mom as well, at least talks to
17 your mom, correct?

18 A Not, well, no, she was friends, she was a friend of my friend.

19 Q Okay.

20 A Yeah.

21 Q And so she doesn't -- you don't hear through her because you heard
22 she was there April 29th, 2013, that they were looking for you?

23 A No. Her friend that we knew each other by, how I knew her, he
24 had went back to California. So that's the only way, like, she wasn't a person
25 who I, you know, like, talked to on a regular basis for her to contact me or

1 nothing like that.

2 Q Okay. Okay. And then it's fair to say you never contacted police
3 'til they arrested you?

4 A I did not, sir.

5 Q Okay. You say you carry a gun -- and why did you hide the gun in
6 the toaster oven?

7 A I went and put it -- well, you know, I just went and put it in the
8 toaster oven. I know now -- I know what just happened, I know that there was
9 just a shooting. When I put the gun in the toaster oven. To be honest with
10 you, I was scared.

11 Q Okay.

12 A And, you know.

13 Q You carry a gun --

14 A I knew that --

15 Q You carry -- you carry a gun around --

16 A I always carry it.

17 Q -- because of protection, right?

18 A That's why it's in the holster.

19 Q Because you were shot when you were -- in 2012, right?

20 A Yeah, that was couple, probably, what, six, eight months before
21 this happened.

22 Q And you were saying you were cooperative with police on that?

23 A Yes, I was.

24 Q Would you be surprised that a detective wrote a report that you
25 weren't cooperative with them during that shooting?

1 A No.

2 Q That would not surprise you?

3 A Yeah, it would because I told him, I don't know who shot me and I
4 didn't see who shot me, I just know I was shot. A car pulled up and someone
5 jumped out and shot me.

6 Q Okay. Okay. So you carry this gun around for protection, but then
7 you quickly hide it in where -- that night on April 19th, 2013?

8 A Never quickly hid it. I went to the apartment, hid the gun in the
9 microwave. I had to figure out how I was going to get an attorney, then I went
10 to my mom's house. I'm respectful of my mom, not going to take this gun in
11 her house when I know what just happened until I can tell her what happened
12 and she'd -- you know, she'd hit me in my mouth and get a attorney then turn
13 myself in.

14 Q But you didn't do that by July of 2013?

15 A No, sir, I did not.

16 Q And when you -- the point of getting an attorney, which you
17 brought up, is so you could tell your side of the story, right?

18 A Well, yeah. You gotta have an attorney.

19 Q So you wanted to tell your side of the story?

20 A Yes.

21 Q So you were dying to tell someone, like the detectives, your story?

22 MR. SCHWARZ: Well, Judge, I'm going to -- I'm going to object. I think
23 we're getting close here.

24 THE WITNESS: I'll sustain the objection.

25 MR. SCHWARTZER: Okay.

1 BY MR. SCHWARTZER:

2 Q But you didn't tell the detectives this story, did you?

3 A I didn't have my attorney present.

4 Q Okay. This is the first time you've said this statement?

5 A No. My lawyer -- no. The detectives --

6 THE COURT: Hold on a second. I'm going to *sua sponte* strike that
7 question. Let's move on.

8 MR. SCHWARTZER: Okay.

9 BY MR. SCHWARTZER:

10 Q You drove to have Dale Borero's residence?

11 A Yes, we drove there.

12 Q You produced the gun first?

13 A After he threatened to shoot me. Yes.

14 Q You struck -- when he threat -- to be clear, when he threatened to
15 shoot you, you were at a car where there was a driver inside the car, correct?

16 A Sir, I'm on the outside of a car --

17 Q "Yes" or "no," again, you have Mr. Schwarz here to that will
18 redirect you.

19 A Okay.

20 Q You were sitting at the car where there was a driver inside when he
21 supposedly -- when Dale Borero supposedly said he was going to shoot you?

22 A Yes, sir.

23 Q And it was actually you wanted to go meet this individual in the
24 first place?

25 A Well, they were already going, but, yes.

1 Q Okay. But you didn't have to go with them?

2 A Yes, I wanted to meet him, yes.

3 Q Okay. And you wanted money and narcotics?

4 A Yes, sir.

5 Q And you shot and killed Dale Borerero?

6 A Yes, sir.

7 MR. SCHWARTZER: Thank you. No further questions.

8 THE COURT: Mr. Schwarz.

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

10 **REDIRECT EXAMINATION OF DARION MUHAMMAD-COLEMAN**

11 BY MR. SCHWARZ:

12 Q Listen, Darion --

13 A Yeah.

14 Q -- I mean, all things considered, if you're standing on the street and
15 two people are minding their own business and you walk up and point a gun in
16 somebody's face, that's aggressive, isn't it?

17 A Yes, it is.

18 Q Were you being aggressive when you did that to Dale Borerero?

19 A No, sir.

20 Q Can you explain to the ladies and gentlemen of the jury why?

21 A The only reason I pulled my gun because he threatened to shoot
22 both of us, I would not have pulled my gun otherwise. And if I wanted to shoot
23 him, wouldn't I just pulled my gun and shot him? I waited until I had to smack
24 his hand away twice, until he reached for his gun and fired before I fired my
25 weapon.

1 Q Now, you did say --
2 A What am I supposed to do?
3 Q You did say that Dale Borero had stuff that you wanted.
4 A Yes, I wanted, yeah.
5 Q Did you mean you wanted his exact stuff?
6 A No, I did not.
7 Q What did you mean by that?
8 A I meant that, you know, I knew he had money, he was older, he
9 was established, and that's what I wanted. I wanted money, cars, and things
10 like that, like that nature.
11 Q You mean your own money?
12 A I wanted to -- exactly, I wanted to buy the drugs so I could hustle
13 for myself, not take what's his into -- for my own benefit.
14 Q Because you're an 18-year-old knucklehead at the time?
15 A Yes, I was. Yes, I was.
16 Q Are you aware of drug dealers actually giving people drugs when
17 they don't have money?
18 A Yes, they do.
19 Q In fact, this happens all the time, isn't it?
20 A Loans, you know, credit. Yes, yes.
21 Q Now, this apartment were you put the gun in the toaster oven,
22 were you staying there sometimes?
23 A Yeah, sometimes, yes.
24 Q Okay. So it's not like you took the gun and flushed it down -- or
25 put it down the sewer, right?

1 A No, it -- it wasn't a secret hiding place, no, it wasn't.

2 Q And you didn't drive to Lake Mead and throw it in there, did you?

3 A No, I did not.

4 Q Okay. But you put it away somewhere?

5 A Yes, I did.

6 Q An apartment where you stayed sometimes in a toaster oven?

7 A Yes, sir. In the often -- in the microwave.

8 Q And then you went to your mother's house?

9 A Yes, sir.

10 Q And you didn't want to bring the gun there?

11 A No, sir.

12 Q All right. Darion, did you conspire with anyone to commit a
13 robbery?

14 A No, sir.

15 Q Did you commit a murder?

16 A No, sir.

17 THE COURT: Well, I'm going to *sua sponte* strike that question. That's a
18 jury determination.

19 MR. SCHWARZ: All right. All right. All right.

20 BY MR. SCHWARZ:

21 Q Did you conspire with anybody to commit a crime?

22 A No, sir.

23 Q Did you threaten Mr. McCampbell?

24 A No, sir.

25 Q Were you going there to buy drugs?

1 A No, sir.

2 Q Did you try and buy drugs?

3 A Did I try and buy drugs?

4 Q Yes.

5 A No, sir.

6 Q If you could possibly have avoided it -- strike that.

7 Why did you shoot Dale Borero?

8 A Man, because he reached for his -- well, you said why did I shoot
9 Mr. Borero?

10 Q Yes.

11 A Because he fired his weapon.

12 Q Prior to that --

13 A He tried to shoot me.

14 Q -- did you have any intention of shooting him?

15 A No, sir. I tried my hardest not to.

16 MR. SCHWARZ: I have nothing further.

17 MR. SCHWARTZER: Your Honor, could we approach?

18 THE COURT: Yep.

19 MR. SCHWARZ: Now what did I do?

20 [Bench conference -- not transcribed]

21 MR. SCHWARZ: I have nothing further, Judge, I think I said.

22 THE COURT: Okay. Anything further from the State?

23 **RECROSS-EXAMINATION OF DARION MUHAMMAD-COLEMAN**

24 BY MR. SCHWARTZER:

25 Q Dale Borero wasn't handing out free drugs that night, was he? He

1 wanted to be shown the money.

2 A I couldn't hear you.

3 Q Dale Borero wasn't giving out free drugs that night, was he?

4 A The drug transaction's supposed to be in between Dustin and Dale,
5 so I don't know about that part.

6 Q Well, he yells something about his money, right?

7 A He actually told Dustin, he said, You came again without my
8 fucking money.

9 Q So that indicates he wasn't just giving away free drugs that night?

10 A Yeah, I would assume so, yes.

11 MR. SCHWARTZER: Okay. I have no further questions of this witness,
12 Your Honor.

13 THE COURT: Anything further, Mr. Schwarz?

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

15 THE COURT: Anything from our jurors? Yes?

16 Joel, if you would, please.

17 [Bench conference -- not transcribed]

18 THE COURT: All right. Mr. Muhammad-Coleman, I've got a couple --
19 what's that? Hold on, guys.

20 [Bench conference -- not transcribed]

21 THE COURT: Okay. First question, Mr. Muhammad-Coleman, is were
22 you working at the time that this occurred back in April of 2013?

23 THE WITNESS: Yeah, I was still -- I was still -- I couldn't box at the time
24 because of my arm was -- I had a rod place, screw, still healing but I still
25 worked at the boxing gym teaching and stuff.

1 THE COURT: All right. And did you reload the magazine of that gun
2 when you got home that evening after this occurred?

3 THE WITNESS: No, sir. That's why I didn't understand why when
4 they --

5 THE COURT: I just need you just answer exactly what I'm asking and I'll
6 let the attorneys follow up.

7 THE WITNESS: All right.

8 THE COURT: How many people do you know that sleep overnight in the
9 Naked City? And I'm assuming by this question we're talk talking about --

10 THE WITNESS: Sleep overnight?

11 THE COURT: -- sleeping outside a residence, correct? Okay. That are
12 just kind of sleeping in the Naked City in their cars.

13 THE WITNESS: It's a pretty -- Naked City is a area where there's a lot of
14 drug addicts, so that's -- that's -- that's pretty normal.

15 THE COURT: Okay. Where did your mom live at the time in April of
16 2013?

17 THE WITNESS: She stayed in Naked City on Chicago between Chicago
18 and Philadelphia.

19 THE COURT: At the time this occurred in April of 2013, did you have a
20 concealed weapon permit?

21 THE WITNESS: No, you couldn't have a -- at that time, at 18 --

22 THE COURT: Just "yes" or "no".

23 THE WITNESS: No, you couldn't have one at 18.

24 THE COURT: Was the gun that you were speaking of that you had that
25 night, was that gun registered?

1 THE WITNESS: No. No.

2 THE COURT: Okay did the gun accidentally discharge when you tripped
3 over the parking block or did you purposefully fire the gun?

4 THE WITNESS: It was kind of, you know, a little of both, little of both.

5 THE COURT: Did you know that Dale Borero had died?

6 THE WITNESS: No, I did not. I did not.

7 THE COURT: Did you ever inquire about whether he had died?

8 THE WITNESS: No, I did not. Honestly, from the way that I shot, I didn't
9 think the bullet hit him because I was falling down when I tripped over the
10 parking spot, so I didn't think the way the angle, I didn't know -- I didn't think
11 he was shot at all.

12 THE COURT: Okay. Did you ever have any conversations with
13 Mr. McCampbell or Mr. Bleak or Mr. Costa that led you to believe they did not
14 know each other or were you just kind of assuming they didn't know each
15 other?

16 THE WITNESS: I was assuming.

17 THE COURT: Okay. Mr. Schwarz, you have any questions based upon
18 mine?

19 MR. SCHWARZ: No, Your Honor, I do not.

20 THE COURT: And, State, do you have any questions based on mine?

21 BY MR. SCHWARTZER:

22 Q Is this the only shoot-out you were involved in in 2013?

23 A Yes, sir.

24 MR. SCHWARTZER: That's the only question I have.

25 THE COURT: Anything further?

1 MR. SCHWARZ: No, Your Honor.

2 THE COURT: Okay. Mr. Muhammad-Coleman, thank you very much for
3 your time. I appreciate it. You can step down.

4 Mr. Schwarz, does the defense have any further witnesses?

5 MR. SCHWARZ: No, Your Honor. However, the State and the defense
6 have entered into a stipulation whereby the jury will be informed of three of
7 Mr. Borero's prior felony convictions.

8 THE COURT: Okay.

9 MR. SCHWARZ: I have had them marked as court exhibits. They are not
10 going back with the jury and I will just read out the charges.

11 THE COURT: Okay.

12 MR. SCHWARZ: That's my understanding. Right, Mike?

13 MR. SCHWARTZER: Yes.

14 MR. SCHWARZ: All right. So number one is from 2000 -- July 24th,
15 2001, and that is an attempt possession of firearm by prohibited person.

16 THE COURT: Okay.

17 MR. SCHWARZ: Number two is December 10th, I believe, it's 2007.
18 Correct me -- yes, 2000 well, 2007, 2008, and that is two counts; one count
19 possession of firearm by prohibited person; one count of possession of stolen
20 property that being a firearm. And then the third one is from 2009, possession
21 of stolen property that being a firearm. And, again, they're court exhibits so
22 they won't go back to the jury.

23 THE COURT: Okay. Is that correct?

24 MR. SCHWARTZER: That's correct, Your Honor.

25 THE COURT: Yes?

1 MR. SCHWARTZER: That's correct, Your Honor.

2 THE COURT: Okay. No further witnesses?

3 MR. SCHWARZ: I have no further witnesses, Your Honor, and defense
4 rests.

5 THE COURT: State, going to have any rebuttal witnesses?

6 MR. SCHWARTZER: Yes, Your Honor. State's going to call Terri Miller.

7 THE COURT: Okay.

8 Detective Miller, I'll just remind you that you're still under oath.

9 THE WITNESS: Yes, thank you.

10 THE COURT: Thank you.

11 **TERRI MILLER,**

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

14 **DIRECT EXAMINATION ON REBUTTAL OF TERRI MILLER**

15 BY MR. SCHWARTZER:

16 Q Good afternoon again, Detective.

17 A Good afternoon.

18 Q Thank you for coming back, Detective.

19 A You're welcome.

20 Q So since you've been gone we've heard that, from

21 Mr. Muhammad-Coleman that he gave a statement to police on July 3rd, 2013.

22 Were you there for that?

23 A I was.

24 Q Are those recorded audially and visually?

25 A Yes.

1 Q Was it done in this case?

2 A Yes.

3 Q Was it -- when the statement was given, was it -- where was it?

4 A At Metro headquarters.

5 Q Okay. And do you guys have a special room where you talk to
6 suspects and witnesses and what have you?

7 A Yes, we do.

8 Q At this point, Mr. Muhammad-Coleman was arrested on an arrest
9 warrant; is that correct?

10 A Yes.

11 Q And you were going to charge him with homicide?

12 A Yes.

13 Q Or murder?

14 A Yes.

15 Q And did you read Mr. Coleman his rights?

16 A I did.

17 Q How did you read him his rights?

18 A Directly from an advisement of rights card.

19 Q Okay. Did he acknowledge that he understood his rights?

20 A Verbally and he signed the card.

21 Q Okay. So the actual card you read his rights from you had him sign
22 it?

23 A I did.

24 Q And did Mr. Coleman actually decide to talk to you after being read
25 his rights?

1 A Yes, he did.

2 Q Okay. And that includes, you know, you have the right to remain
3 silent and the right to have an attorney during questioning?

4 A Yes.

5 Q Okay. And then you actually had a conversation with him about
6 April 19th, 2013?

7 A I did.

8 Q And I don't want to get into the contents of it just yet.

9 A Okay.

10 Q But before we get into it, I want to talk a little bit about what
11 happens when you go in with a suspect, someone that you suspect is involved
12 in a murder. So in your experience do you take certain -- do you do certain
13 tactical decisions?

14 A Yes.

15 Q Okay. Sometimes bad, you know, we've all heard
16 good-cop-bad-cop, that situation.

17 A Yes.

18 Q In this case did you guys do good-cop-bad-cop?

19 A I don't believe we did really.

20 Q Was it more of just like, What happened?

21 A Exactly.

22 Q Okay. Additionally, do you say some things in order to try to get
23 someone talking like maybe throw out self-defense, for example?

24 A Yes.

25 Q And you do that for the purposes to get an individual to talk about

1 an incident?

2 A Yes.

3 Q In your experience do people find it hard to talk about being
4 involved in a murder?

5 A Absolutely.

6 Q Okay. Did you do that in this case? Did you throw out
7 self-defense, you had to do it? That type of situation?

8 A Yes.

9 Q And were -- during that period of time, and we'll get into it with the
10 video, but did Mr. Coleman ever say that he had to do it, it was self-defense on
11 April 19th, 2013?

12 A No, he never mentioned that.

13 Q Now, I want to play this briefly so you can just lay some
14 foundation. Additionally, with these type of audio-visual things you get into a
15 lot of personal information, right?

16 A Yes, I do.

17 Q Some of those times that has to be redacted so, you know, we all
18 don't hear that redact -- that personal information?

19 A Yes, that's correct.

20 MR. SCHWARTZER: And, Your Honor, at this point I'm going to publish a
21 brief part of Exhibit 124 in order for Detective Miller to lay the foundation.

22 THE COURT: Okay.

23 MR. SCHWARTZER: Again, this has been provided in discovery.

24 THE COURT: Thank you.

25 ///

1 BY MR. SCHWARTZER:

2 Q Do you recognize -- do you recognize anyone in this photograph or
3 this video?

4 A I do. I recognize myself and Darion Muhammad-Coleman.

5 Q Is this how it looked on July 3rd, 2013?

6 A Yes.

7 Q And eventually, just to play a little bit further, another individual
8 walks in as well. I just want you to identify that person.

9 A That's Detective Sam Smith.

10 Q Okay. And is he a Homicide -- at that time was he a homicide
11 detective on your team?

12 A Yes, at that time.

13 Q Okay.

14 A Uh-huh.

15 Q Is this, again, a fair and accurate viewing of -- of that interview you
16 had with Darion Muhammad-Coleman on July 3rd, 2013?

17 A Yes.

18 MR. SCHWARTZER: I move for admission of 124.

19 THE COURT: All right. And you've had a chance to review the entirety
20 of the video, correct?

21 THE WITNESS: Yes.

22 THE COURT: That will be -- well --

23 MR. SCHWARZ: I don't have any objection.

24 THE COURT: That will be admitted.

25 **[STATE'S EXHIBIT 124 ADMITTED]**

1 BY MR. SCHWARTZER:

2 Q I'm going to play it.

3 [Video plays]

4 MR. SCHWARTZER: I'm going to try something real fast in order to get
5 us some better sound.

6 [Colloquy regarding the equipment]

7 MR. SCHWARTZER: All right, so.

8 [Video continues]

9 THE COURT: Do you have the volume on the computer up? Not just the
10 video, but the computer?

11 [Video continues]

12 THE COURT: Can you pause that, please, guys?

13 All right. We're going to take a break before we get too far into
14 this. During the recess, ladies and gentlemen, you are admonished not to talk
15 or converse among yourselves or with anyone else on any subject connected
16 with the trial or read, watch, or listen to any report of or commentary on the
17 trial by any medium of information including, without limitation, to newspapers,
18 television, the Internet, and radio or form or express any opinion on any subject
19 connected with the case 'til it's finally submitted to you.

20 We'll be in break for about ten minutes, okay.

21 [Outside the presence of the jury panel]

22 THE COURT: You can step down again. Did you guys not try and do
23 that before we came in?

24 MR. SCHWARTZER: No.

25 THE COURT: Sometimes the computers just don't get that loud. Usually

1 it plays through there, if you've got it hooked up right. But I don't know.

2 [Recess at 3:39 p.m.; proceedings resumed at 3:48 p.m.]

3 [Outside the presence of the jury panel]

4 THE COURT: All right. Mr. Schwarz?

5 We are outside the presence of the jury. Mr. Schwartzer.

6 MR. SCHWARTZER: Yes, Your Honor. I just want to get some
7 clarification of the Court, we have an officer, a detective by the name of Steven
8 Perry, who took down the report regarding the shooting that occurred in 2012
9 in which Mr. Coleman was the victim.

10 THE COURT: Okay.

11 MR. SCHWARTZER: In the report specifically says, and I'm pretty sure
12 this has all been provided in discovery as well along with all of his other F.I.
13 cards, that Mr. Coleman was non-cooperative and did not make sense regarding
14 what happened.

15 I wanted just some clarification regarding whether we can bring in
16 Officer Perry as part of our rebuttal case.

17 THE COURT: That it was he was non-cooperative and it didn't make
18 sense?

19 MR. SCHWARTZER: I can get the exact words, the report's out -- do you
20 want to hear the exact words in the report?

21 THE COURT: Okay.

22 MR. HAMNER: Your Honor, Christopher Hamner for the State. If I could
23 just kind of add to that. The defendant had gotten up gotten and stated
24 specifically to the question of when he was shot he said, yeah, I was just kind
25 of minding my own business and I was shot and he was specifically asked the

1 question, well, would it surprise you to learn that if you had not been
2 cooperative with the police. He says, yes, that would surprise me because I
3 didn't do anything, I was just kind of minding my own business. And the report
4 specifically states that Mr. Muhammad-Coleman would provide absolutely no
5 information regarding the shooting or any of those circumstances.

6 And that's clearly laid out in the report and I think it goes to his
7 credibility and it's, you know, given the fact that he was kind of offering it
8 almost as a good character or justification or a peaceful reason as to why he
9 would even need to carry protection, I think it's relevant to at least evaluate his
10 credibility as to that fact that he wasn't willing to provide any details as to why
11 he got shot when actually asked at the hospital.

12 THE COURT: Okay. Mr. Schwarz.

13 MR. SCHWARZ: Judge, the only purpose of that testimony was to show
14 that he had been the victim of a shooting before. It's got nothing to do with
15 anything else and dragging in some other case at this point is, in my opinion,
16 going to be, you know, a possible appellate issue. I mean, look, for crying out
17 loud, it's always the same, they got a loaf of bread under each arm, they want
18 another loaf. I mean, come on, how far are we going to go here?

19 The only whole purpose of the testimony was he was a gunshot
20 victim in the past, in the recent past before this incident. You know, whether
21 or not he was cooperative with the detectives has absolutely nothing to do with
22 this case.

23 MR. SCHWARTZER: I mean, it goes -- it was beyond that. I mean, even
24 before my questioning regarding would it surprise you, I mean, Mr. Coleman
25 made this story about how he was innocently walking out of a boxing gym and

1 he was just --

2 THE COURT: But how -- let's just cut to the chase, how does this get
3 around 50.085? Which is when you're asking questions about credibility you
4 don't go into specific instances of conduct through other evidence. You can
5 inquire about it.

6 MR. SCHWARTZER: Right.

7 THE COURT: But don't -- you don't prove it through trying to bring in
8 other evidence because it's because it's kind of ancillary to what the trial's
9 about.

10 MR. HAMNER: I think it's worth inquiring into, Your Honor. I mean, it --

11 THE COURT: Well, I get why it's worth it. But, quote, specific instances
12 of the conduct of a witness for the purpose of attacking or supporting credibility
13 other than conviction of a crime may not be proved by extrinsic evidence.

14 MR. HAMNER: Well, I mean, you could call that same officer and say, Do
15 you have an opinion as to his truthfulness based on your interactions with him
16 and he could say, In my opinion he's not forthcoming.

17 MR. SCHWARZ: I wouldn't want to go down that road.

18 THE COURT: That's a singular instance. So in any event, I'm going to --
19 I'm going to -- I'm going to prohibit that.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 MR. SCHWARZ: Thank you, Your Honor.

22 THE COURT: Detective Miller can stay here.

23 MR. SCHWARTZER: We're going to cut the other guy.

24 THE COURT: Yeah, yeah, yeah.

25 THE WITNESS: The other detective.

1 THE COURT: Sit down, Terri, you're not going anywhere.

2 THE WITNESS: Sorry, Your Honor.

3 THE COURT: You're all right.

4 [In the presence of the jury panel]

5 THE MARSHAL: Jury's present, Your Honor.

6 THE COURT: Thank you. You all can be seated. We're going to be back
7 on the record. Mr. Muhammad-Coleman's present with his attorney. State's
8 attorneys are present. Jurors are present.

9 We're going to continue on with the examination of Detective Miller
10 in the State's rebuttal case.

11 Detective Miller, I'll remind you again that you're still under oath.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Thank you.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 THE COURT: Mr. Schwartz.

16 BY MR. SCHWARTZER:

17 Q Detective Miller, we rewound it back to 2:01. We believe we
18 figured out a way to have more volume.

19 A Okay.

20 Q I'm going to play it and then I might pause here and there to ask
21 you some questions.

22 A Okay.

23 Q So starting Exhibit 124 at 2:01 for the record.

24 [Video plays]

25 ///

1 BY MR. SCHWARTZER:

2 Q Detective, who are you showing a photo of here; do you recall?

3 A No. I can't -- I can't tell from this direction. I'm sorry.

4 Q Okay.

5 A It's going to be one of the -- either McCampbell, Costa, or Bleak.

6 Q All right. Thank you, Detective. And that was at 6:12 into the --

7 [Video continues]

8 THE WITNESS: I can tell now. It looks like Bleak.

9 BY MR. SCHWARTZER:

10 Q I'm sorry, Detective?

11 A It looks like Bleak.

12 Q Okay.

13 [Video continues]

14 BY MR. SCHWARTZER:

15 Q Stopping at 6:42, did you see the photo you just showed the
16 defendant?

17 A It appears to be Travis Costa.

18 Q Okay. And then you're going to show him a third photo; is that
19 correct?

20 A Yes.

21 Q And who is that going to be?

22 A McCampbell, Mr. McCampbell.

23 [Video continues]

24 BY MR. SCHWARTZER:

25 Q All right, Detective, just a few more questions and then I'm done.

1 Did you release that video, well, let me ask you this. Now, I believe
2 you testified earlier that you had some type of release regarding the blue
3 Cadillac, correct?

4 A Some type of what?

5 Q Release about that blue Cadillac on that April 19th, 2013?

6 A A release?

7 Q A media release.

8 A Yes.

9 Q Did you ever release the video surveillance of the actual shooting
10 into the media?

11 A No.

12 Q Okay. So the only person who saw that video surveillance would
13 have been, at that point, would have been detectives, police personnel?

14 A That's correct.

15 Q There would have been no way for the defendant to have seen that
16 video surveillance before July 3rd, 2013?

17 A No.

18 Q Okay. So the story that the defendant gave on July 3rd, 2013, to
19 sum up is he doesn't know what you're talking about?

20 A Yes, that's correct.

21 Q Doesn't know Travis Costa?

22 A Nope.

23 Q Doesn't know Dustin Bleak?

24 A No, sir.

25 Q Never has been to a Travelers Inn or anywhere on Fremont?

1 A Nope.

2 Q And doesn't know Richard McCampbell?

3 A No.

4 Q And the whole talk about, you know, like, you tell us your side of
5 the story, you know, maybe he shot first, maybe he pulled first, is that what
6 we were talking about where you were just trying to get him to talk?

7 A Yes.

8 Q Because you saw the video?

9 A Yes.

10 Q You watched who did what?

11 A Exactly.

12 Q You knew who the aggressor was?

13 A Yes.

14 Q Okay. That was just because you knew he didn't see the video you
15 were just trying to get him to talk?

16 A Yes.

17 Q Okay. And despite telling them people talked about what happened
18 and that there was video surveillance, he still went with I don't know what
19 you're talking about?

20 A That's correct.

21 MR. SCHWARTZER: I have no further questions, Detective. Thank you.

22 THE COURT: Mr. Schwarz.

23 MR. SCHWARZ: Yes.

24 ///

25 ///

1 **CROSS-EXAMINATION ON REBUTTAL OF TERRI MILLER**

2 BY MR. SCHWARZ:

3 Q Detective --

4 A Yes.

5 Q -- let me ask you a question, why would it be in my client's best
6 interest to tell you anything about this crime?

7 MR. SCHWARTZER: Objection. Speculation and --

8 MR. SCHWARZ: It's the flip side of what he just asked, Judge.

9 THE COURT: Well, I'm going to sustain the objection.

10 BY MR. SCHWARZ:

11 Q All right. Let me ask you this, suppose that he had told you
12 everything that he just testified to and you weren't here and you knew what it
13 was, was he getting out?

14 MR. SCHWARTZER: Objection. There's no way for this witness to know
15 what was said when she was not here.

16 THE COURT: Well, overruled.

17 You can answer the question.

18 MR. SCHWARTZER: Thank you.

19 THE WITNESS: To the best of my knowledge at that point he would not
20 get out.

21 BY MR. SCHWARZ:

22 Q Of course. And so what you're trying to do at this point is extract
23 a confession from him?

24 A I'm trying to get his side of the story.

25 Q Well, assuming that his side of the story is going to be the truth,

1 that's a confession, isn't it?

2 A That's assuming.

3 Q Well, but you had already seen the videotape, you had painstakingly
4 developed my client as the person in the videotape, right?

5 A Yes.

6 Q I mean, at this point none of this is a mystery. Okay? You know
7 exactly what happened and you know exactly who was there. So how could
8 he have helped himself by telling you what happened?

9 A Depends on what he would have said.

10 Q Well, the fact of the matter is he couldn't have helped himself by
11 telling you what happened; isn't that true?

12 A No.

13 Q Now, you said, I'm going to give you the opportunity to help
14 yourself.

15 A Yes.

16 Q My question for as you is how could he have helped himself?

17 A Depending on what --

18 MR. SCHWARTZER: Objection, again. Objection. Speculation again.

19 THE COURT: Well, that's a different question. She can answer the
20 question.

21 Go ahead, Detective.

22 THE WITNESS: Depending on what he would have said. I have no idea
23 what he would have told me. I have the video of that nine minutes, I have no
24 idea what the rest of the story is.

25 ///

1 BY MR. SCHWARZ:

2 Q The warrant was already approved, right, because he was picked up
3 on it?

4 A Yes.

5 Q And then, you know, you told him, We get into a lot of stuff, goes
6 the wrong way, we do things we don't mean them to happen, right? You told
7 him sometimes we get in a hole --

8 A Yes. Yes.

9 Q And when you're telling him that, you're just trying to do what? I
10 mean, why are you telling him that? You know, sometimes things happen and
11 we don't mean it, what's your point in telling him that?

12 A Again, it's a technique that we use in interviewing people to try to
13 get them to talk.

14 Q Okay. Now, you said him -- you said to him that you had the DNA
15 out on the gun and you were sure it was going to come back to him.

16 A Yes.

17 Q Did you mean that when you said it?

18 A No.

19 Q Okay. So that was a lie?

20 A Yes.

21 Q Okay. And just so everybody is clear, the police get the lie to
22 suspects that they're interrogating?

23 MR. SCHWARTZER: Objection, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: Police do, if you want to call it lie, but so do suspects.

1 BY MR. SCHWARZ:

2 Q Right. I guess my point is if that's true then why does it make
3 Darion any more suspect if he lies to you?

4 THE COURT: Why does it make him more suspect to who?

5 MR. SCHWARZ: Well, let's put it this way, I'm --

6 THE COURT: I'm going to -- I think that's an improper question.

7 MR. SCHWARZ: That's fine. That's fine.

8 THE COURT: So I'll strike that question.

9 BY MR. SCHWARZ:

10 Q So as an investigative technique the police can lie to suspects that
11 they're asking questions to?

12 A Yes.

13 Q For example, and you didn't do it in this case, but for example you
14 could have taken a swab of him and said we found your DNA at the scene, we
15 know it was you, and that would be perfectly acceptable, yes?

16 A Yes.

17 Q Okay. Now, here's the thing that I sort of don't understand with
18 this interview. You didn't arrest him, so he was brought to you, right?

19 A Yes.

20 Q So how long had he been sitting in that position before the
21 interview started, before you turned on the video tape?

22 A I believe you see the officer bringing him in approximately 16:48
23 hours. The interview -- the tape starts as soon as he's brought in. You can see
24 the officer bringing him in and securing him. So I read him *Miranda* at 17:05.
25 So we're less than 15 minutes.

1 Q Okay. Well, I see an 18-year-old kid who's --

2 MR. SCHWARTZER: Objection. Testifying.

3 THE COURT: I'll sustain the objection. What you see is irrelevant.

4 BY MR. SCHWARZ:

5 Q There is an 18-year-old kid on the tape, correct?

6 A Yes.

7 Q He appears to be half asleep, correct?

8 A Either that or uncaring as to what's going on.

9 Q And then he becomes violently ill, correct?

10 A Yes, he did throw up.

11 Q Did you think this was an appropriate time to conduct an interview?

12 A I offered him medical attention.

13 Q And after he threw up you continued with the interview.

14 A I believe it ended shortly after that.

15 Q But it continued?

16 A Not much longer.

17 Q And that was only because he finally stopped it and asked -- and
18 invoked his right to an attorney?

19 A I don't think that's entirely true.

20 Q Okay. Why did it stop?

21 A Why did it stop?

22 Q If you recall.

23 A Because I -- well, actually I asked him if he would like to have an
24 attorney present then he can talk to me with his attorney and he said, yes,
25 that's in a nutshell, yes, that's probably a good idea.

1 Q Okay. Okay. Now we're splitting hairs.

2 A So basically I invoked for him.

3 Q You invoked for him?

4 A Yes.

5 MR. SCHWARZ: Okay. All right I don't have anything further. Thank
6 you.

7 THE COURT: Mr. Schwartz, anything?

8 **REDIRECT EXAMINATION ON REBUTTAL OF TERRI MILLER**

9 BY MR. SCHWARTZER:

10 Q Detective, in your experience in Homicide have you dealt with
11 self-defense cases before?

12 A Yes.

13 Q And dealt with suspects with self-defense -- who've presented you
14 with a self-defense argument before?

15 A Absolutely.

16 Q Do they, in your experience, do they experience the demeanor that
17 you saw in Mr. Coleman?

18 MR. SCHWARZ: Objection, Judge.

19 THE COURT: I'll sustain the objection. What anybody else does is not
20 relevant to deciding this case.

21 BY MR. SCHWARTZER:

22 Q Detective, did you -- did you have any indication that Mr. Coleman
23 was going to throw up in the beginning of that interview?

24 A That he was what?

25 Q That he was going to throw up in the beginning of that interview?

1 A No.

2 Q Did he appear to you to be sick at all during that interview before --

3 A No.

4 Q -- he told you he was going to throw up?

5 A No.

6 Q Okay. So if he was violently ill, as put by the defense counsel, in
7 the start of the interview, would you have held off until he got medical
8 treatment and then conducted the interview?

9 A Of course.

10 Q Okay. And to be clear, you read him *Miranda* rights and he decided
11 to talk with you, correct?

12 A Yes.

13 Q And he again denied everything?

14 A That's correct.

15 MR. SCHWARTZER: No further questions, Your Honor.

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

17 THE COURT: Thank you.

18 Anything from our jurors? Yeah?

19 [Bench conference -- not transcribed]

20 THE COURT: Okay. Got a couple questions for you, Detective Miller.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: First off, isn't really for you though. One of you-all as
23 jurors asked the question and the attorneys agreed that I could just tell you, the
24 question was why wasn't an attorney present from the beginning. Under the
25 law an attorney's not present unless somebody being questioned invokes the

1 right to have an attorney present meaning they asked for an attorney to be
2 present before the questioning starts.

3 Okay. But for you, are you aware, Detective Miller, at all the
4 circumstances surrounding when he was arrested by the CAT team?

5 THE WITNESS: I have an idea. Yes.

6 THE COURT: Okay. And just the very specific question is do you know
7 whether or not he had a gun when he was arrested by the CAT team?

8 THE WITNESS: I not believe he did.

9 THE COURT: Okay. Did you -- you viewed the surveillance video from
10 the Travelers, correct?

11 THE WITNESS: Yes.

12 THE COURT: And was it, when you were viewing it did you have all
13 those different camera angles? I think there were eight different camera angles
14 available.

15 THE WITNESS: Yes.

16 THE COURT: Okay. So you would have viewed the same surveillance
17 video that's been introduced into evidence, correct, that the jurors have been
18 witnessing?

19 Gentlemen, you all agree with that?

20 MR. SCHWARZ: Yes, we all agree.

21 THE COURT: Okay.

22 Were you able in any fashion to zoom in on the video you were
23 seeing to try and identify people's faces or was it just what you got from
24 Travelers is all you got?

25 THE WITNESS: That's what we got.

1 THE COURT: Okay. Obviously, a defendant is not, quote, unquote,
2 "under oath" when they're being questioned by police, that's a kind of a
3 courtroom thing, right? You don't place a witness or a defendant under oath
4 when they come into the police department for an interview?

5 THE WITNESS: No.

6 THE COURT: Okay. And from your investigation were you able to
7 determine who shot first?

8 THE WITNESS: Technically, we have a fairly good idea. I can tell you
9 from my experience and training that when -- where the cartridge cases were
10 located, the who .40 caliber that Borero had was in stall 3 and 4. The 9
11 millimeter were spread in three behind Mr. Borero's vehicle and out in the
12 middle of the parking lot. On a Ruger, typically, they eject to the right. So I
13 would expect to find the .40s, if Dale Borero fired first because he was up
14 against the wall with the shipping container behind him, it would eject to the
15 right the casings should have been up there.

16 THE COURT: Okay.

17 THE WITNESS: That's -- that's the way I look at it.

18 THE COURT: So all of which your determination of who shot first was
19 what?

20 THE WITNESS: Is that it's -- there's no way to be exactly sure, but based
21 on the physical evidence I would say that Mr. Coleman shot first.

22 THE COURT: Okay. Mr. Schwartz, any questions based upon mine?

23 MR. SCHWARTZER: Yes, just based on that.

24 BY MR. SCHWARTZER:

25 Q Not the casings but before that, the video surveillance, I think

1 what's happening is you say multiple times, I saw you with my own eyes on
2 the video surveillance, correct?

3 A Yes.

4 Q You say that during the interview?

5 A Yes.

6 Q Now you're saying that, again, knowing that Mr. Coleman hadn't
7 seen the video?

8 A Right.

9 Q So you're just getting him to, again, confirm that he was there and
10 then start talking?

11 A Yes.

12 Q Okay. So you didn't actually -- you weren't able to actually
13 physically identify Mr. Coleman based on the video alone?

14 A No. It was a black male.

15 Q Okay. You were able to identify Mr. Coleman as the shooter based
16 on the things you testified to this morning?

17 A Yes.

18 Q Okay.

19 MR. SCHWARTZER: No further questions.

20 THE COURT: Mr. Schwarz, anything?

21 MR. SCHWARZ: Yeah.

22 BY MR. SCHWARZ:

23 Q Detective Miller?

24 A Yes.

25 Q You did the declaration of warrant in this case, didn't you?

1 A Yes.

2 Q Do you recall saying in there that it appeared that Dale Borero fired
3 the first shot?

4 A No.

5 Q Can you look over on page 2, do you have a copy of it with you?
6 And I am looking at about the middle of the --

7 A You're going to have to let me get some glasses, sorry.

8 Q That's all right. I need them to see far.

9 MR. SCHWARTZER: What page, counsel?

10 MR. SCHWARZ: Two, the third paragraph about the middle.

11 BY MR. SCHWARZ:

12 Q You know, Detective, I can just give you my copy.

13 A Okay.

14 MR. SCHWARZ: If I can approach, Judge?

15 THE WITNESS: Because all I have is the actual warrant.

16 MR. SCHWARZ: No, that's fine.

17 THE COURT: You can approach.

18 BY MR. SCHWARZ:

19 Q I'm looking at --

20 A Okay.

21 Q -- like right there.

22 A May I read that?

23 Q Yeah.

24 A At that point Borero pulled a handgun from his right pocket and
25 fired at the black male suspect, Muhammad-Coleman. I don't see where it says

1 fired first.

2 Q Well, if you look at the chronology of the events, the black made
3 pulled a handgun from his right and pointed it, Borero appeared to try to push
4 the gun away, black male struck the upper left side of Borero's body with the
5 butt of the gun, at that point Borero pulled a handgun from his right pocket
6 side, and fired. Nobody else has fired at the point that you make that
7 observation?

8 A Well, I don't read it that way. And based on physical evidence of
9 where those cartridges cases are and with the fact that most semiautomatic
10 handguns, I'm no firearms expert, but most fire and eject, when they eject, they
11 eject to the right. As you can see on the video where Mr. Borero was standing
12 in which direction he was facing prior to him heading west and south to the
13 fact of where Mr. Coleman was standing and where his cartridge casings were
14 located.

15 Q Does the video show who shot first?

16 A No.

17 Q All right.

18 A And I said that clearly.

19 Q All right. Thanks.

20 THE COURT: Anything?

21 BY MR. SCHWARTZER:

22 Q Your opinion is just based on the physical evidence?

23 A Yes.

24 THE COURT: Detective Miller, thank you again for your time again.

25 THE WITNESS: Thank you, Your Honor.

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

2 State, have any further rebuttal witnesses?

3 MR. SCHWARTZER: That's it, Your Honor, thank you.

4 THE COURT: All right. And there are no surrebuttal witnesses?

5 MR. SCHWARZ: No surrebuttal, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, absent the attorneys
7 making sure they've got all their evidence introduced, which we'll discuss after
8 we recess for the day, that rests the presentation of witnesses and evidence.
9 So tomorrow we will get you instructed and closing arguments and get you to
10 your deliberations. We're going to start tomorrow at 11:00 and my plan would
11 be that we go through argument and then we'll just buy you lunch. So you can
12 start your deliberations while you have lunch.

13 The two things that are we can get up here fairly quickly are pie
14 pizza which include salad, chicken fingers, things like that from a place that's
15 pretty descent, as well as sandwiches, sometimes, from downstairs. A lot of
16 times people don't want the sandwiches because they've been having
17 sandwiches every time we take a lunch recess during trial. But just think about
18 what you want and let Joel know and we'll arrange to have that for you
19 tomorrow. Okay. And with that I will see you tomorrow, 11:00 o'clock.

20 During the recess, ladies and gentlemen, you are admonished not to
21 talk or converse among yourselves or with anyone else on any subject
22 connected with the trial or read, watch, or listen to any report of or
23 commentary on the trial by any medium of information including, without
24 limitation, to newspapers, television, the Internet, and radio and you cannot
25 form or express any opinion on any subject connected with the case 'til it's

1 finally submitted to you. And again no investigation research or any type of
2 re-creation on your own outside of your deliberations.

3 Thank you for your time today. I will see you tomorrow.

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We will be in recess. They can stay in right now,
6 Joel. We're not -- we're just having some discussion on the record about stuff.

7 THE MARSHAL: Okay.

8 THE COURT: It's okay. One thing I wanted to make a record of was
9 when, and you guys can be seated, when the question occurred and we didn't
10 do this at the last recess, but when a question occurred with Detective Miller's
11 State's case-in-chief testimony, when Mr. Schwarz asked Detective Miller to
12 clarify what she meant about the photo that we used in the defendant's
13 six-pack lineup. So after the question was asked about the photograph and the
14 similarity to how Mr. Muhammad-Coleman looked around the time that this
15 occurred in April of 2013, and she said do you want me to clarify and
16 Mr. Schwarz said, yes, will you please clarify, I kind of anticipated she was
17 going to do what she did which was say the photo's from an arrest. I think
18 what she said was, It was a photo from his most recent juvenile arrest and then
19 she started to go on a little longer and then Mr. Schwarz said, well, you know
20 what, actually I think I should object. At which point I said, I sustain the
21 objection and I'll strike that.

22 I didn't say anything further as I explained at the bench, for a
23 couple of reasons, number one, the nature of that question I thought was
24 soliciting what she was going to talk about and I thought maybe there was a
25 reason, Mr. Schwarz, you wanted to go into that. Secondly, I knew from

1 everything that Mr. Muhammad-Coleman was planning on testifying at which
2 point he was going to be questioned about four felony convictions. So when
3 we approached the bench and we were having that conversation, Mike, I did
4 offer at that time I think did you want me to do anything else, admonish the
5 jury in any other fashion and you said no, I didn't want --

6 MR. SCHWARZ: No, Judge. I -- I, you know, certainly don't want to call
7 any more attention to it.

8 THE COURT: Okay.

9 MR. SCHWARZ: I think it sort of went --

10 THE COURT: Okay. All right I just wanted to make sure that we that we
11 made a record of that.

12 In regard to jury instructions, did you guys have a chance to go
13 through each other's instructions?

14 MR. SCHWARZ: Well, actually, Judge, I only had one or two that I was
15 going to proffer and I believe that they are covered sufficiently in the State's
16 instructions.

17 THE COURT: Yeah. Look, you're entitled by law to the self-defense
18 instructions. I think the ones that you have are duplicitous of two of the ones
19 the State has.

20 MR. SCHWARZ: I'm agreeing.

21 THE COURT: Okay. And I think that there are -- there is about five or six
22 of them that are standard that I give every time we have a self-defense issue.
23 So the I think the ones that the State typed up include yours.

24 MR. SCHWARZ: Yeah. My only position is I would request a voluntary
25 manslaughter instruction.

1 THE COURT: Oh, a lesser-included for voluntary manslaughter.

2 MR. SCHWARZ: Yes.

3 THE COURT: Okay. What's the State's -- well, first off, do you have any
4 objection to any of the State's instructions?

5 MR. SCHWARZ: Yes, I have an objection to the flight instruction.

6 THE COURT: Okay. Which we don't have them numbered yet, but
7 what's the State's response on that?

8 MR. SCHWARTZER: What, to the objection?

9 THE COURT: Yeah.

10 MR. SCHWARTZER: I think this is pretty clear -- I think the evidence is
11 pretty clear of flight, Your Honor. In fact, you can see it on the video
12 surveillance, he jumped into the car and then drives away and then -- and then
13 according to his own testimony he then stashes the gun somewhere in Naked
14 City and then we don't hear from him again until the CAT team picks him up on
15 July 3rd of 2013. I think all the elements there establish flight.

16 THE COURT: Okay. I do think the -- the flight instruction is appropriate
17 based upon the facts that have been brought out in front of the jury at this
18 time. So I will give that.

19 Do you have any objection --

20 MR. SCHWARZ: Well, Judge, I understand your ruling; however, my
21 client does raise a good point and sometimes they do, the fact of the matter is
22 at that particular point he was being shot at.

23 THE COURT: Yeah. But that's -- that's argument to be made from either
24 side. The import of a jury instruction is there's some evidence that supports an
25 instruction being appropriate on a tentative law based on the facts that are

1 presented. So you're each free to argue about what flight means, whether it
2 was flight because I'm scared that guy's going to shoot me or flight because
3 I'm scared because of what I just did in shooting somebody else and knowing
4 that I committed a crime. So I will allow that.

5 Any objection any others, Mike?

6 MR. SCHWARZ: No, Your Honor.

7 THE COURT: All right. You just want to have voluntary manslaughter as
8 part of --

9 MR. SCHWARZ: I do.

10 THE COURT: -- the homicide, lesser-included. Okay. What's the State's
11 position on that?

12 MR. SCHWARTZER: I guess my argument, Your Honor, is I don't see any
13 evidence of heat of passion in this case. I mean, I understand if there's even an
14 indicia or suggestion of evidence that allows for it, but in this case I guess I
15 didn't -- I didn't hear any regarding which heat of passion element, voluntary
16 manslaughter would apply. And in fact it would just confuse the jury if they
17 just don't want to find him guilty, but want to consider -- other than perfect
18 self-defense which we know in the State of Nevada isn't allowed.

19 I mean, the voluntary manslaughter would just confuse -- without
20 having any evidence of voluntary manslaughter, I think it just confuses the jury.

21 UNIDENTIFIED AUDIENCE MEMBER: Could there be a parent objection?

22 THE MARSHAL: Ma'am, ma'am.

23 THE COURT: No, ma'am. Okay. You need to go ahead and sit down.
24 Thank you.

25 Okay. Mr. Schwarz, anything further?

1 MR. SCHWARZ: Well, Judge, I think there is evidence of heat of passion
2 and I think it came from my client when -- when he testified that Mr. Borero
3 looked at him and said I ought to shoot both of you and I think at that point,
4 yes, the heat of passion was around -- aroused and became part of the reason
5 why he was, you know, compelled to do what he did.

6 MR. HAMNER: Can I possibly respond at least briefly to that?

7 THE COURT: Sure.

8 MR. HAMNER: I don't think the testimony bears that out. The testimony
9 from the defendant with respect to that issue was when Dale Borero makes the
10 comment, according to him, that if you don't give me my money I'm going to
11 shoot both of you, his statement at that point was that not that he was
12 overcome by some sort of irresistible impulse and kind of loses his mind and
13 reacts, he actually says at that point I want to walk over and try to diffuse the
14 situation. What I decided to do was pull out a gun, shove it in his face to see if
15 that stops things. When he keeps reaching his hand out toward me at that
16 point, I then make another calculated decision of I'm going to pistol whip him
17 essentially in the face in the hopes of knocking him down to the ground so that
18 we can then leave.

19 It's only after he hits him in the face and then he claims that the
20 victim immediately reached for his gun, it's at that point he makes the decision
21 a decision of that's when I decided I wanted to shoot him. Based on his
22 testimony, if we accept it solely as true, that's not a voluntary manslaughter
23 testimony situation. He's not saying he temporarily lost his mind, he was
24 provoked and he couldn't stop himself. He actually takes a series of calculated
25 decisions and, according to him, to deescalate the situation by shoving a gun in

1 his face and pistol whipping him and then when he sees he might get shot, he
2 claims that's when I decided to shoot him.

3 So I don't think voluntary manslaughter, based on the defendant's
4 own testimony, even applies in this situation. Self-defense does but not -- not
5 voluntary manslaughter.

6 MR. SCHWARZ: Well, he also testified that he was scared at that point,
7 Judge. And that can be sufficient.

8 THE COURT: Yeah, but that's -- that's -- I mean, you can't mix voluntary
9 and self-defense and kind of create a voluntary based instruction because of a
10 self-defense argument. Self-defense is kind of a complete defense.

11 I mean, here's the way I look at it, I think that if you consider the
12 law of self-defense about who's the initial aggressor and that you can't be
13 engaged in some kind of wrongful conduct and start a provocation and then kill
14 somebody and then say, hey, self-defense, I think if you consider that, it's very
15 skinny that self-defense even applies here based on the way he testified. But I
16 think out of an abundance of caution, there is slight or marginal basis to give
17 you the self-defense instruction.

18 But I don't think there's anything that justifies a voluntary
19 manslaughter. I mean, it's -- even within the first or second degree or if he has
20 a complete self-defense argument that the jury buys, then it's an acquittal. But
21 I don't think -- even though homicide gets broken down into all those, absent
22 some evidence to support it, we don't just throw them all in there. And in this
23 case I don't really think there's any evidence to support voluntary
24 manslaughter. I mean, it's -- it's either of the degrees of murder or a complete
25 self-defense which would result in an acquittal.

1 Okay? What I will say is the information instruction needs to be
2 redone because it doesn't include the paragraph that talks about your verdict as
3 to one cannot control your verdict as to others. That gets left out a lot for
4 some reason in the macro in you-all's office. And I also would just ask that you
5 put that paragraph as well the it is the duty of the jury paragraph, both of those
6 at the end of the instruction. Okay?

7 MR. SCHWARTZER: The end of the instruction three, Your Honor, or the
8 end of the information instruction?

9 THE COURT: The information instruction, so right now the third
10 paragraph of that instruction, before you even start the charges is, It is the duty
11 of the jury to apply the rules of law, just move that to the very end of that
12 instruction.

13 MR. SCHWARTZER: Okay.

14 THE COURT: And then add that other paragraph about one verdict not
15 controlling the others.

16 MR. SCHWARTZER: Got it.

17 THE COURT: And have those at the end. And then on page 2 of that
18 instruction, you just have kind of one of the charges hanging down there by
19 itself, just move that down the next page so that it's --

20 MR. SCHWARTZER: I'm sorry, which -- was that the same --

21 THE COURT: Kind of a pet peeve type thing. The bottom of page 2 just
22 has, it's not going to be there after you remove that paragraph and place it
23 down, so it's really irrelevant I guess.

24 MR. SCHWARTZER: Okay.

25 THE COURT: Okay. And I'm going to get these in an order and I'll let

1 you know what that order is. You want to stick around for that or are you
2 worried about that?

3 MR. HAMNER: Whatever the Court's pleasure.

4 MR. SCHWARZ: No, Judge, I'm fine.

5 THE COURT: Okay. Then I'll just give them to you in the order in the
6 morning and you guys, if you're using them in PowerPoints or whatever then --
7 well, either side can stick around. I'm going to take a minute and rearrange
8 them a little bit. So if you want to know what the order's going to be, then
9 stick around. Actually stick around.

10 MR. SCHWARZ: All right. I'll stick around.

11 THE COURT: We're going to put the order and that way we can put it on
12 the record and we don't have to do it in the morning.

13 MR. SCHWARZ: All right.

14 THE COURT: So just sit tight or run and use the restroom, whatever you
15 need to do and give me five minutes and then we'll be done.

16 MR. SCHWARZ: Okey doke.

17 MR. SCHWARTZER: Thank you, Judge.

18 [Recess at had 4:44 p.m.; proceedings resumed at 4:50 p.m.]

19 [Outside the presence of the jury panel]

20 THE COURT: All right. We'll back on the record. And just so you know,
21 once it gets to the crime portion, I generally like to do them chronologically with
22 the way things are laid out in the charging documents.

23 MR. SCHWARTZER: Okay.

24 THE COURT: That's kind of why we ended up the way we're going to
25 end up here. But for the record, instructions to the jury, number 1 is going to

1 be, it is now my duty as judge; number 2, if in these instructions; number 3, an
2 amended indictment; number 4, to constitute the crime charged; number 5, the
3 defendant is presumed innocent; Number 6, you are here to determine the guilt
4 or innocence; number 7, the evidence which you are to consider; number 8, the
5 credibility or believability; number 9, a witness who has special knowledge;
6 number 10, the fact that a witness has been convicted of a felony.

7 Number 11 is going to be those certain recorded statements.
8 That's the first place we get a little out of order I think. So certain recorded
9 statements of the defendant have been admitted is number 11. And then we're
10 going to jump into the conspiracy instructions.

11 MR. SCHWARZ: All right. I'm not there yet, Judge. I'm sorry.

12 THE COURT: That's okay. Damn, must have been at the back.

13 MR. SCHWARTZER: It's after the verdict form.

14 MR. SCHWARZ: All right. I got it now.

15 THE COURT: Okay.

16 MR. SCHWARZ: And that is number what?

17 THE COURT: 12, a conspiracy is an agreement.

18 MR. SCHWARTZER: Recorded statements, number 11, if that's what
19 you're looking at.

20 MR. SCHWARZ: Okay. I just saw that one. A conspiracy is an
21 agreement is 12.

22 THE COURT: Yeah. 13, it is not necessary in proving a conspiracy.

23 MR. SCHWARZ: 13.

24 THE COURT: 14 where or more persons. And then 15 is going to be the
25 attempt, the elements of an attempt to commit a crime are; 16, robbery is the

1 unlawful taking.

2 And then we get into the murder instructions: 17, in this case the
3 defendant is accused; 18, murder is the unlawful killing; 19, malice
4 aforethought means; 20, express malice is; 21, murder of the first degree is;
5 22, willfulness is; 23, deliberation is.

6 MR. SCHWARZ: I'm sorry, Judge. Can you give me a minute?

7 THE COURT: Okay.

8 MR. SCHWARZ: Murder of the first degree is 21; willfulness is 22.

9 THE COURT: Deliberations is is 23.

10 MR. SCHWARZ: 23, okay.

11 THE COURT: 24, a deliberate determination; 25, premeditation is; 26,
12 premeditation need not be; 27, the law does not undertake; 28, the true test is;
13 29, the prosecution is not required; 30, the intention to kill; 31, there are
14 certain kinds of murder which carry with them; 32, while a guilty verdict must
15 be unanimous; 33, all murder which is not murder of the first degree; 34, if you
16 find that the State has established.

17 And then we're going to begin the self-defense instructions, so 35
18 is going to be the right of self-defense is not generally available; 36, the killing
19 of another person; 37 --

20 MR. SCHWARZ: I'm sorry.

21 THE COURT: That's okay.

22 MR. SCHWARZ: 35 is the right to self-defense?

23 THE COURT: Right. And then 36, the killing of another person.

24 MR. SCHWARZ: Okay. 36.

25 THE COURT: 37, actual danger is not; 38, if a person kills another in

1 self-defense; 39, if evidence of self-defense is present; 40, self-defense is not a
2 defense. And then we're getting into battery and assault now, so 41, battery
3 means any willful; 42, an assault with a deadly weapon is; 43, if you find the
4 defendant guilty of murder, attempt robbery, battery, or assault that's the
5 weapon instruction; 44, when two or more persons conspire, that's the first
6 controlled substance instruction; 45, except as authorized by law; 46, the flight
7 of a person; 40 -- and I think that's all the specials.

8 47, although you are to consider only the evidence; 48, in your
9 deliberation; 49, when you retire to consider your verdict; 50, if during your
10 deliberation; and 51, now you will listen to the arguments of counsel. It's going
11 to take me a while to read these tomorrow.

12 State has a copy of the 51?

13 MR. SCHWARTZER: We do, Your Honor.

14 THE COURT: And other than making the change to the information,
15 Number 3, to add that paragraph in, you have any objection to the giving of any
16 of the 51?

17 MR. SCHWARTZER: No, Your Honor.

18 THE COURT: And do you have any that you-all wish to mark as court
19 exhibits that are being proposed by the State but not given?

20 MR. SCHWARTZER: No, Your Honor.

21 THE COURT: And you're okay with the verdict form?

22 MR. SCHWARTZER: Yes, Your Honor.

23 THE COURT: Okay. Mr. Schwarz, you-all also have a copy of the 51?

24 MR. SCHWARZ: I do, Your Honor.

25 THE COURT: And that same caveat, other than getting a corrected copy

1 of the instruction, do you have any objection other than the objections raised
2 earlier to any of the 51?

3 MR. SCHWARZ: No, Your Honor.

4 THE COURT: And do you have any that you're proposing to be given that
5 the Court's not going to give that you want to have marked as court exhibits?

6 MR. SCHWARZ: No, Your Honor.

7 THE COURT: And any objection to the verdict form?

8 MR. SCHWARZ: No, Your Honor.

9 THE COURT: Okay. All right. Then we will see you all tomorrow at
10 11:00 o'clock, guys. Thank you very much.

11 MR. SCHWARZ: Thank you, Your Honor.

12 PROCEEDING CONCLUDED AT 4:58 P.M.

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON
25 Court Recorder/Transcriber