

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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APPELLANT'S APPENDIX

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Chambers v. State Case No. 73446

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1 MR. YANEZ: I will.

2 THE COURT: I'll talk to some of the other judges.
3 We talk about esoteric, hypothetical, academic issues all the
4 time. For instance, I know a lot of the judges have had the
5 issue of allowing audiovisual tapes to be presented or
6 audiovisual testimony to be presented for witnesses if there's
7 a good reason. So I think I made the right decision on that
8 one, but I know there are some splits of authority on that.
9 So I'll obviously inform myself better about the issue. See
10 if you can come up with some authority on that.

11 MR. YANEZ: I will. Thank you.

12 THE COURT: Probably a day or two to do that. So
13 can we bring the jury in then?

14 MS. THOMSON: We can. We'll need to address the
15 preliminary hearing transcript this morning, but it doesn't
16 need to be done right this second.

17 THE COURT: Okay.

18 MR. YANEZ: I haven't read -- I just got this, so
19 I'd like to read it too.

20 THE COURT: So this is our witness who is
21 unavailable and you want the preliminary hearing transcript
22 admitted then. Are you making a formal motion on that?

23 MS. THOMSON: Yes, Your Honor. We filed the motion
24 on Wednesday morning and this is the affidavit in support.

25 THE COURT: Okay. Yes, you filed it and then you

1 told me not to rule on it yet. You wanted to see if you
2 really wanted to pursue that.

3 MS. THOMSON: Well, we wanted to see if we could
4 hook her up before the decision was made.

5 THE COURT: All right. And was it today where you
6 anticipate introducing that preliminary hearing transcript?

7 MS. THOMSON: I anticipate the State will rest
8 today, either just before lunch or just after.

9 THE COURT: Sometime around lunch we can deal with
10 this issue.

11 MS. THOMSON: Yes.

12 THE COURT: Okay.

13 MR. YANEZ: And if that's the case, I think we're
14 going to have an extended lunch because my witness is not
15 coming until three.

16 MS. THOMSON: And I have a coroner who has autopsies
17 this morning. She said she should be good right around noon,
18 so my expectation is that the Court will be kind enough to
19 allow us to put on the witness when she's available, and that
20 being right around noon that we may take a little bit of a
21 late lunch.

22 THE COURT: So we might go until 12:30 or so. So
23 you're saying we'll have a break from 12:30 to three?

24 MS. THOMSON: I think we should have a break when it
25 works out. I just don't know how things are going to play out

1 this morning.

2 THE COURT: So you might rest by 12:30, as soon as
3 the coroner's done?

4 MS. THOMSON: That would be my --

5 THE COURT: Subject to the preliminary hearing
6 transcript?

7 MS. THOMSON: Yes.

8 THE COURT: Okay. Well, let's bring the jury in
9 then and let's -- we just used up a half an hour, so who
10 knows, maybe we end up going until one. I don't know. Thank
11 you for the heads up.

12 (Jury reconvened at 9:28 a.m.)

13 THE COURT: Welcome back, everybody. Hope you had a
14 good weekend. Glad you're all here safe. We've got everybody
15 here? Yep. All right. We're ready to begin or to continue
16 with the State's case in chief. We're beginning today with
17 State's witness number 14, I believe. The State may call its
18 next witness.

19 MS. THOMSON: Thank you, Your Honor. The State
20 calls Detective Raetz.

21 DEAN RAETZ, STATE'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. Will you
23 please state and spell your first and last name for the
24 record?

25 THE WITNESS: Dean, D-e-a-n, Raetz, R-a-e-t-z.

1 MS. THOMSON: May I proceed?

2 THE COURT: You may.

3 MS. THOMSON: Thank you.

4 DIRECT EXAMINATION

5 BY MS. THOMSON:

6 Q Good morning, Detective. How are you employed?

7 A I'm a detective with the Las Vegas Metropolitan
8 Police Department.

9 Q How long have you been with Metro?

10 A Twenty-five and one-half years.

11 Q Are you assigned to a specific section?

12 A Yes. I've been assigned to homicide for almost 10
13 years. The 24th it will be 10 years.

14 Q And you obviously were working homicide on July 9th
15 of 2013; is that right?

16 A Yes, I was.

17 Q On that day, did you become involved in an
18 investigation regarding a crime that had happened at 3610
19 North Las Vegas Boulevard that morning?

20 A Yes.

21 Q And sort of what was your role in that
22 investigation?

23 A When -- we work on a rotation basis. At the time
24 there were four squads in homicide, with six members one each.
25 They divide the six members into two-person teams and then we

1 work on a rotation basis. You're up until you catch a case
2 and then it goes back, goes to another squad. When they catch
3 a case, it goes to another squad, and so forth. So you're up
4 until you catch a case with your partner. On that day, my
5 partner, Matt Gillis, and I were up to catch the case and so
6 we were assigned the lead roles or the lead investigators on
7 this investigation.

8 Q When a situation like that occurs where you have
9 partners, between the two of you does one of you take sort of
10 like super lead and the other is backup lead or are you
11 equivalent throughout?

12 A We pretty much are equivalent throughout. What we
13 do is we switch off on who writes the encompassing report and
14 who puts the investigative file together. That's where we
15 switch back and forth.

16 Q Were you involved in interviews throughout that day
17 as you identified different people who potentially were
18 witnesses or had information?

19 A Yes, I was.

20 Q And was one of those interviews with a Cynthia
21 Lacey?

22 A Yes.

23 MS. THOMSON: May I approach the witness?

24 THE COURT: Yes.

25 BY MS. THOMSON:

1 Q Showing you what's been marked as State's Proposed
2 Exhibit 122, this is obviously a disc. Have you heard the
3 contents of this disc before?

4 A Yes.

5 Q And are you able -- how do you know that you have
6 heard the contents?

7 A I wrote my initials and P number, personnel number
8 on the disc.

9 Q And that was after you listened to it?

10 A Yes.

11 MS. THOMSON: Move for admission of State's Proposed
12 Exhibit 122.

13 THE COURT: It shall be admitted subject to the
14 discussion that we had outside the presence of the jury.

15 MS. THOMSON: Thank you, Your Honor.

16 BY MS. THOMSON:

17 Q Now, when you listened to this disc, is it fair to
18 say it was not the entirety of your conversation with Ms.
19 Lacey?

20 A Yes, it's been redacted.

21 Q And taken out parts that weren't relevant to the
22 investigation, parts that may just not be admissible in the
23 courtroom; is that fair?

24 A Correct.

25 MS. THOMSON: Permission to publish?

1 THE COURT: You may.

2 BY MS. THOMSON:

3 Q When you indicated that you were partnered with
4 Detective Gillis, do you travel with other detectives
5 sometimes in an investigation?

6 A Yes. The detective that does the report and puts
7 the case file together is also the detective that is primary
8 responsibility for documenting the scene with our crime scene
9 analysts. Then I am tasked with leading the other detectives
10 that are assisting us in doing -- identifying witnesses and
11 doing the interviews.

12 Q And I suppose we've referred to it, but I haven't
13 asked specifically. Did you write the overall encompassing
14 report or did Detective Gillis in this case?

15 A Detective Gillis did.

16 Q And when you did the interview with Cynthia Lacey,
17 were you alone or was there another detective with you?

18 A No, Detective McCarthy was with me.

19 Q And you were present for the entirety of the
20 interview?

21 A Yes. He started off the interview and did the main
22 part of the questioning at the beginning, and then I jumped in
23 at the end.

24 Q So you actually hear your voice on this recording?

25 A Yes.

1 Q During the main part of the initial questioning,
2 does that include sort of an introduction that includes
3 contact information, address, that kind of thing for the
4 person you're talking to?

5 A Yes, it does.

6 Q And the person you're talking to, are they present
7 for that?

8 A Yes.

9 Q And are they encouraged that if you get something
10 wrong they should say no, wait?

11 A Yes. We usually ask, at least I do, we ask if that
12 information, the information I just read into the recording is
13 correct.

14 Q And that's the same information that you have
15 previously, probably just minutes before the recording,
16 received from that person.

17 A Correct.

18 MS. THOMSON: Playing State's Exhibit --

19 THE COURT: What's the exhibit number?

20 MS. THOMSON: 122.

21 THE COURT: Thank you.

22 (State's Exhibit 122 played)

23 BY MS. THOMSON:

24 Q Before that interview started, or at least the
25 portion that we heard, did she identify what her relationship

1 was with Mr. Chambers?

2 A Yes, she did.

3 Q And how did she describe that?

4 A She characterized the relationship as fiancé, and he
5 lived there with her at that address.

6 MS. THOMSON: I'll pass the witness.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. YANEZ:

10 Q Good morning, Detective.

11 A Good morning.

12 Q I want to talk to you just about a few things that
13 we did not hear on that audio, but was in the interview. As
14 you indicated, there's other portions of the interview, right?

15 A Correct.

16 Q Cynthia Lacey told you that at that time she was a
17 methamphetamine user, right?

18 A She said she used it occasionally, yes.

19 Q And she told you she had actually been over to
20 Lisa's place, right?

21 A She said that he had driven over there to buy one
22 time a couple weeks prior and she waited in the car. She did
23 not go inside the trailer and had never seen Lisa face to
24 face. Didn't even know whether or not she was black, white,
25 Asian, or Hispanic.

1 Q And the reason he went over there was to purchase
2 drugs, right?

3 A That's what she said, yes.

4 Q And the audio we just heard, Cynthia tells you that
5 Gary Chambers had told her that morning that he had gotten
6 into some shit, right?

7 A Correct.

8 Q And that was the extent of the description of what
9 Gary had said, right?

10 A Yes. According to -- that's all he said stating
11 what had happened. He gave her other instructions on what to
12 do.

13 Q Right. But was to what went down at the trailer,
14 Gary described it as some shit, right?

15 A Yes.

16 Q He never said I just robbed someone, I just robbed
17 Lisa. He didn't say anything like that, according to Cynthia
18 Lacey.

19 A Correct.

20 Q And Cynthia also made it clear to you that she saw
21 Gary leave the house at eight a.m. on the 9th, right?

22 A Yes.

23 Q And that she did not see him with a gun at eight
24 a.m. on the 9th, correct?

25 A Correct.

1 MR. YANEZ: I have nothing further. Thank you,
2 Judge.

3 THE COURT: All right. Thank you, Mr. Yanez.
4 Anything on redirect?

5 MS. THOMSON: No, Your Honor.

6 THE COURT: All right. Anything from the jurors? I
7 don't see anything. Detective, you're excused. Thank you,
8 sir.

9 THE WITNESS: Thank you.

10 THE COURT: Have a good day. The State may call its
11 next witness.

12 MS. THOMSON: Thank you, Your Honor. The State
13 calls Detective Gillis.

14 MATTHEW GILLIS, STATE'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated. Will you
16 please state and spell your first and last name for the
17 record.

18 THE WITNESS: Matthew Gillis. M-a-t-t-h-e-w,
19 Gillis, G-i-l-l-i-s.

20 THE COURT: You may proceed.

21 MS. THOMSON: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. THOMSON:

24 Q Good morning, Detective. How are you employed?

25 A Good morning. I'm employed as a police officer with

1 the Las Vegas Metropolitan Police Department.

2 Q And for how long have you been with Metro?

3 A Seventeen years.

4 Q How long of those 17 years have you been with
5 homicide?

6 A Four.

7 Q Directing your attention back to July 9th of 2013,
8 fair to say then you were in homicide at that time?

9 A Yes, I was.

10 Q I just want to ask you sort of a little bit of a
11 background question. You initially were scheduled to come
12 testify on Friday. Is that a fair statement?

13 A That's correct.

14 Q And then Thursday night, did you receive a new case
15 that you were investigating throughout the day Friday?

16 A Yes.

17 Q And that's why you weren't able to be here.

18 A That's correct.

19 Q When homicide is called out to a scene, is it just
20 one detective or kind of how does that happen?

21 A When there's a homicide we send a team to the
22 homicide and then after being briefed, a sergeant and as many
23 detectives as they feel that they need to handle the
24 investigation, the investigation is then broken up into
25 different parts, different responsibilities.

1 Q And is there one individual sort of put in charge?

2 A Depending on the rotation, a detective is assigned
3 as the case agent for that particular homicide.

4 Q And what is the role of the case agent?

5 A A case agent's role is to -- what they do is when I
6 become a case agent I'm responsible for compiling all the
7 investigation, the investigation statements. Any information
8 that the other detectives learn, I compile it and put together
9 an office report that details the investigation, as well as
10 putting together a book, a binder of the investigation.

11 Q And is it fair to say that you were the case agent
12 in this case?

13 A That's correct.

14 Q Specifically July 9th, 2013, you were called out to
15 3610 North Las Vegas Boulevard?

16 A That's correct.

17 Q And when you arrived, were there other law
18 enforcement personnel already present?

19 A Yes.

20 Q Can you describe who, not necessarily by name, but
21 generally, who was already there?

22 A When we get called out to the investigation you
23 usually have your first responding patrol officers that
24 arrive. At that particular time we had violent crimes
25 detectives. Those are the detectives that work 24 hours a day

1 when there's a critical incident. They respond out to the
2 situation, then determining once they arrive, they gather the
3 information they need to make the determination on a follow-up
4 investigation team. In this case, it was determined that it
5 was a homicide, so those violent crimes detectives then
6 contacted the homicide section. And then, who else meets us
7 out there are the crime scene analysts.

8 Q And when patrol arrives, they start to gather
9 information, violent crimes may gather information. Was there
10 a procedure then to write out sort of the important
11 information on the trunk of a car or the hood of a car?

12 A Yes. What winds up happening is one patrol officer
13 gets assigned to basically -- they're going to log down all
14 the information that's coming in from the other detectives.
15 If someone's transported to the hospital they try and get the
16 information of who's transported to the hospital, and they
17 note it down. The best thing for them to use is the trunk or
18 hood of a patrol car, nice clean, white area to write in, and
19 they start gathering that information in order to brief the
20 responding detectives.

21 Q I'm showing you what's been marked as State's
22 Exhibit 1. Is your screen on there?

23 A Yes.

24 Q Is the trunk of the vehicle in this specific case?

25 A Yes.

1 Q So you've got sort of the diagrams, some information
2 on a license plate, potential witnesses, all this kind of
3 information that you're going to need to proceed with your
4 case.

5 A That's correct.

6 Q When you arrive, obviously patrol has already been
7 there. Do you know if patrol has already been into the target
8 residence, trailer 45?

9 A Yes. What winds up happening is when a first
10 responding officer or the first two responding officers
11 arrive, in this incident it was a shooting, they don't know if
12 there are potential victims or suspects inside the residence,
13 as well as the fire department won't go into an uncleared
14 area. So the first responding officers go into a residence in
15 order to clear that residence to look for any persons that may
16 need immediate medical treatment or to ensure that there
17 wasn't someone in there with a gun, a possible suspect inside
18 the trailer.

19 Q So fair to say, fire department are not law
20 enforcement in the sense of going in and dealing if there's an
21 active criminal scene; is that correct?

22 A Correct.

23 Q So anytime ambulance personnel respond inside a
24 scene you know for sure that at least one law enforcement
25 personnel has already been --

1 A That's correct. What they do is they -- it's called
2 holding short. They actually will hold outside a perimeter
3 until the residence has been cleared in order for it to be
4 safe for the fire department to come in.

5 Q When you arrive on scene, what is sort of your
6 process once you receive the basic information from those who
7 are first responders have already talked to some of the
8 witnesses, what do you do?

9 A What winds up happening is once we are briefed from
10 the patrol officers or the detectives that are out on the
11 scene, patrol and the sergeant -- I'm sorry, the detective
12 sergeant makes the determination of the responsibilities.
13 Who's going to be responsible for the scene, which is the
14 primary detective on the case. And then they'll divvy out the
15 responsibilities. If there are interviews to be conducted,
16 they'll assign the interviews. If there's a person that's
17 transported to the hospital, another detective will be sent to
18 the hospital.

19 Q So you say you're responsible for the scene. How do
20 you go about dealing with the scene?

21 A What winds up happening in a situation like this is
22 the sergeant is responsible for the initial search warrant of
23 the scene. Once we obtain a search warrant, the detective
24 that's responsible for the scene, as well as the crime scene
25 analysts, will then go into the residence and document our

1 crime scene.

2 Q Do you do a walk-through of that residence before
3 the CSAs go in to do their documentation so you can point out
4 anything that they may not realize is important?

5 A What winds up happening is the crime scene analysts
6 actually go in first because we don't know what the scene is
7 going to be. We don't know if it's going to wind up being a
8 forensic case. So the crime scene analysts will actually go
9 in first and they'll photograph the entire scene, everything
10 in place, so we have an actual layout of it. Then detectives
11 are brought in and we work the scene together.

12 Q And as part of what the CSAs do, is it fair to say
13 that they will construct a layout so you have kind of a
14 diagram of what was inside the trailer?

15 A There will be one crime scene analyst that they are
16 assigned to diagram the scene, yes.

17 Q Showing you what's been marked as State's Exhibit 2,
18 is this an example of one of those diagrams?

19 A Yes.

20 Q And it lists out with numbers different pieces of
21 evidence that were located around the trailer?

22 A That's correct.

23 Q And then in the upper left-hand corner there's a --

24 A I can't see it. Okay.

25 Q In that key does it also include the event number?

1 A Yes, it does.

2 Q And for this event, anything associated to this
3 event would have that same event number attached to it; is
4 that accurate?

5 A That is correct.

6 Q When you were walking through the trailer, did you
7 find any firearms?

8 A No, we did not.

9 Q Did you find any like unexpelled bullets, the kinds
10 of things that would traditionally go along with the
11 possession of or presence of a firearm?

12 A When you say unexpelled, do you mean cartridges,
13 bullets that have not been fired? We did not find any, no.

14 Q Did you find any other weapons that were apparent,
15 billy clubs, knives, other than like in the kitchen?

16 A No.

17 Q When you were going through that home, would it be
18 fair to say that there was a pretty clear path of blood
19 towards the back door?

20 A Yes, that's correct.

21 Q Other than that path of blood and the pool of blood
22 by the front door, did you find any other blood around the
23 residence?

24 A Other than when the victim was transported out the
25 front door on a gurney, no.

1 Q When you were conducting your walk-through, your
2 investigation of the scene, did you find any casings from an
3 expelled projectile?

4 A We did not find any cartridge casings, no.

5 Q What, if anything, does that indicate to you?

6 A What that tells us is that more than likely it's a
7 revolver and that cartridge will remain inside the cylinder or
8 that the possible suspect is aware of what they just did and
9 they'll actually pick up their, it's called policing their
10 brass, they'll actually pick up their cartridge cases to
11 remove it from the scene.

12 Q Would you agree that it's more common that it's use
13 of a revolver than that the suspect is that on top of it?

14 MR. YANEZ: I'm going to object as to leading,
15 Judge.

16 THE COURT: That is leading, so please rephrase
17 because it suggests the answer and see if he has foundation.

18 MS. THOMSON: Sure.

19 BY MS. THOMSON:

20 Q In the four years that you have been on homicide,
21 approximately how many of the cases that you've dealt with
22 have involved shootings?

23 A How many shootings have I been on? Hundreds.

24 Q And in those investigations where you have
25 ultimately identified a perpetrator, the scenes where there

1 were no casings, can you give us a percentage of the times
2 that it was a revolver versus percentage of the times that the
3 person picked up the casings, having used a semiautomatic?

4 A Over 95 percent of the time it was involving a
5 revolver.

6 Q When you were doing your walk-through, your search
7 of that scene, did you find any indicia of drug use, any drugs
8 in the house particularly?

9 A There were -- yes.

10 Q And was that limited to the I guess living room, den
11 area or throughout the rest of the house?

12 A From my recollection the living room, dining area.

13 Q And showing you what's been marked as State's
14 Exhibit 28. The area where you found those drugs, would that
15 be encompassed on the coffee table we see here?

16 A Yes.

17 Q And a little bit closer up, Exhibit 32. Was it in
18 the ashtray?

19 A Yes.

20 Q State's Exhibit 36. Can you describe what it was in
21 this photograph that you noted and asked to be collected?

22 A It's a plastic baggie.

23 Q And is that consistent to you with illegal drugs?

24 A Correct.

25 Q And that's based upon your several years in

1 homicide, along with numerous years before that in other
2 sections?

3 A That's correct.

4 Q But there were no other drugs found within the
5 residence?

6 A Not to my recollection.

7 Q While you're on scene you indicated that it's --
8 there's a divvying of responsibilities. The individuals that
9 you put in charge of going to interview witnesses, are those
10 the same individuals in charge of contacting anyone who called
11 9-1-1, sort of following up on that?

12 A That's correct.

13 Q And in this case, did the suspect, the defendant
14 ever call 9-1-1?

15 A No.

16 Q While you were on scene, did another detective go to
17 the hospital?

18 A Yes.

19 Q And that was to speak with Lisa Papoutsis?

20 A That's correct.

21 Q And another CSA also went to the hospital, correct?

22 A That's correct.

23 Q Is there anyone -- or let me ask sort of a
24 preliminary question. In this case, would it be fair to say
25 that you had a suspect relatively quickly?

1 A Yes.

2 Q And in situations like that, and specifically in
3 this case, if you have information as to who you're looking
4 for pretty early on in a case, is there any attempt to locate
5 that individual around the scene?

6 A Yes.

7 Q And can you describe generally what is done in
8 furtherance of that?

9 A What we wind up doing is once we can make an
10 identification of someone we'll conduct records checks to find
11 out any addresses or people that are associated with them,
12 phone numbers. Anything that we can find that we can go and
13 look for that person, phones, anything.

14 Q In this case, did you have any information about
15 what vehicle may have been used?

16 A Yes. What wound up happening is one of the
17 witnesses at the scene was able to give us a plate, license
18 plate of the vehicle that they saw the suspect get into. They
19 were able to relay that information, the license plate, as
20 well as vehicle description to the first responding officers.
21 The first responding officers, what they did is a records
22 check and were able to see the vehicle had people associated
23 with that vehicle.

24 Q Because you had a license plate, were there patrol
25 or general law enforcement in the area given the task of kind

1 of looking for that vehicle or did you arrive late enough on
2 that that would have been futile at that time?

3 A What we do is once we get that information -- of
4 course, when the first patrol officers got that information
5 they may an immediate broadcast. And then what we will do is
6 make sure that that information is continually broadcast to
7 the officers that work the area, as well as the valley wide.

8 Q And you indicated that you did have a suspect pretty
9 early on. Was that based upon interviews, witnesses, people
10 in the neighborhood who may have been able to identify?

11 A That's correct.

12 Q And who was the suspect that you identified pretty
13 early on?

14 A Gary Chambers.

15 Q And is that individual present in the courtroom
16 today?

17 A Yes, he is.

18 Q Will you please point to the individual and describe
19 something they're wearing today?

20 A He's wearing a multi-colored tie and to me it looks
21 like either a blue or purple long-sleeved shirt.

22 MS. THOMSON: Let the record reflect identity of the
23 defendant.

24 THE COURT: It does.

25 MS. THOMSON: Thank you, Your Honor.

1 BY MS. THOMSON:

2 Q When people in the neighborhood may or you have
3 witnesses who may be able to identify, how do you go about
4 determining whether they would be able to identify the person
5 generally?

6 A What we do is when we conduct an interview, that's
7 one of the questions that the detective will ask during the
8 interview, if they're able to identify this person. If they
9 determine that they feel they would be able to make an
10 identification, we do a photo lineup. What we do is we have a
11 detective create the photo lineup and then we have another
12 detective that's actually going to show the photo lineup. The
13 detective that created the photo lineup is not the same person
14 that administers the photo lineup. We have a detective that
15 does not know the positioning of the suspect and does not know
16 the positioning. So we call that a double blind photo lineup.
17 The person receiving it and the person administering the photo
18 lineup, neither of them know the position of the suspect.

19 Q And would you use a photo lineup in every kind of
20 relationship. Specifically, what I'm trying to ask is if you
21 knew the suspect was the brother of the person that you were
22 asking to identify, would you do a photo lineup then with that
23 person?

24 A No.

25 Q And why is that?

1 A Because they know the person. They've known that
2 person for a prolonged period of time. A photo lineup is
3 presented to someone that is not familiar or not family or
4 relative of an individual.

5 Q And I'm going to start with State's Exhibit 109.
6 Showing you this photo lineup. Was this a photo lineup
7 completed with Lisa Papoutsis?

8 A Yes, it is.

9 Q And you can tell because it's filled out; is that
10 correct?

11 A That's correct.

12 Q Now, you said that the person administering, and in
13 this case would that have been Sergeant Darr at the time?

14 A Yes.

15 Q You know what, that's -- sorry.

16 A It's also at the top.

17 Q Showing you page two of State's Exhibit 109. Is
18 this the form that that sergeant would have had to administer
19 it with the witness?

20 A That's correct.

21 Q And there's no objective information on this form
22 that indicates which of these six individuals is the person
23 that you have identified as the suspect; is that accurate?

24 A That's correct.

25 Q Okay. Now, Sergeant Darr, and I don't know if you

1 know specifically whether she did, but is it possible that she
2 would have known or any of the other detectives who
3 administered the photo lineups, that a suspect might go by the
4 name of Money?

5 MR. YANEZ: Objection, speculation, Judge. What
6 another detective would have though.

7 THE COURT: Sustained.

8 BY MS. THOMSON:

9 Q The information that a detective has going into a
10 double blind photo lineup, does it mean that that detective is
11 entirely ignorant of all of the facts of your case or may they
12 have some information but not so much that they'd know which
13 photograph to look at?

14 A They may have some information, but they have not
15 seen the photograph.

16 Q And then, showing you the third page of State's
17 Exhibit 109. This page, is that provided to the sergeant or
18 the detective who's doing the photo lineup with the witness?

19 A It's not given to them at the time, no.

20 Q Is it created at the same time as the photo lineup
21 so that you'll always have information?

22 A The record, and this is what we call the records
23 page, is created but that's why we use a separate detective
24 that creates the photo lineup. He is separate from the
25 detectives that are going to administer the photo lineup.

1 Q And the -- you indicated that in the double blind
2 you'll put the photograph in a different location for each
3 photo lineup; is that correct?

4 A Yes.

5 Q And why is that?

6 A That way you're not keeping the suspect in the same
7 position on every photo lineup. We separate our people out,
8 but you can never rule out the possibility that someone might
9 talk. So each time we move the positioning.

10 Q So that when the first person does their photo
11 lineup they can't say hey, it's number six?

12 A Correct.

13 Q You indicated that you received potential addresses,
14 that you had a license plate. Were you also able to identify
15 a potential phone number for your suspect?

16 A That's correct.

17 Q And when you do that, do you then seek help on
18 occasion from the FBI for real time location of that phone?

19 A That's correct.

20 Q And what is the document called that kind of takes
21 that path?

22 A We use a pen register.

23 Q When you get the records or the FBI gets the
24 records, do they ultimately provide those to you?

25 A Yes.

1 Q And in those records, will it give an indication of
2 a tower that the phone is using at a time?

3 A That's correct.

4 Q That tower, you have an address for it and it tells
5 you just that the phone may be in that area; is that accurate?

6 A Correct.

7 Q It doesn't tell you specifically hey, take four
8 steps to the left and two forward?

9 A No. It's telling me the tower location and then
10 what side of the tower that particular phone is pinging off
11 of.

12 MS. THOMSON: And I move for admission at this
13 point, Judge, of State's Exhibit 114.

14 MR. YANEZ: Submitted, Judge.

15 THE COURT: Thank you very much. I didn't think
16 you'd have an objection. It's admitted.

17 (State's Exhibit 114 admitted.)

18 MS. THOMSON: Thank you, Your Honor.

19 BY MS. THOMSON:

20 Q We'll come back to those in a little bit. But you
21 received that information from the FBI. Did that ultimately
22 lead another detective to locate the defendant's phone?

23 A Yes.

24 Q And was that Detective Merrick?

25 A Yes, it was.

1 Q The phone records that you received, do they provide
2 you anymore information in terms of investigative leads than
3 just where that phone, the area it may be in?

4 A Yes. They provide us the information on the phone
5 number that is calling or receiving calls, as well as
6 timestamps of date and time that those calls are either coming
7 in, going out, or don't connect.

8 Q So if there's a number that's called a whole bunch
9 from your target phone number, is that someone that you might
10 look into as a friend or relative and possibly someone who'd
11 either help you find your suspect or have information?

12 A Correct.

13 Q On July 9th of 2013, were you able to identify
14 whether the defendant had an appointment at 2:00 that day?

15 A Yes.

16 Q And did you have the hope that you would be able to
17 locate and arrest him at that appointment at 2:00 that day?

18 A Correct.

19 Q And were you successful at locating and arresting
20 him at 2:00 that day?

21 A No.

22 Q Pursuant to your investigation, would it be fair to
23 say that you requested and received search warrants for
24 several different locations?

25 A Yes.

1 Q And the first of those, 2229 Carroll Street, did you
2 seek a warrant for that?

3 A Sergeant Darr authored the warrant for that
4 location, yes.

5 Q And was the warrant granted?

6 A Yes.

7 Q And that goes through a court, they make the
8 determination whether or not you're allowed to go in. Is that
9 a fair statement?

10 A That's correct.

11 Q Do you recall approximately what time that warrant
12 was served?

13 A I would have to refer to my notes. I believe it was
14 around 4:30 is when we located the vehicle, located that
15 address. We had to coordinate with SWAT and then the search
16 warrant was served.

17 Q When you located the vehicle, was that vehicle with
18 that address?

19 A Yes.

20 Q And you said that that was approximately 4:30, based
21 upon your recollection; is that correct?

22 A Correct.

23 Q When the vehicle was located, what if anything was
24 done with that vehicle?

25 A That vehicle was processed. I believe it was towed

1 to the crime lab and processed.

2 MS. THOMSON: May I approach the witness?

3 THE COURT: Yes.

4 BY MS. THOMSON:

5 Q I'm going to show you what's been marked as State's
6 Proposed Exhibits 87 through 90 and 115. Showing you each of
7 these photographs, let me know if any of them you do not
8 recognize from that day at that address.

9 A I recognize them.

10 Q And are they all accurate depictions of how things
11 appeared on that day at that address?

12 A Correct.

13 MS. THOMSON: Move for admission of State's Proposed
14 Exhibits 87 through 90 and 115.

15 THE COURT: Counsel?

16 MR. YANEZ: I just want to confirm that this witness
17 was in fact there when the warrant was executed.

18 THE WITNESS: Yes, I was.

19 MR. YANEZ: I'll submit it, Judge.

20 THE COURT: All right. 87 through 90 and 115 are
21 admitted.

22 (State's Exhibit 87 through 90 and 115 admitted.)

23 MS. THOMSON: Thank you, Your Honor. Court's
24 indulgence.

25 BY MS. THOMSON:

1 Q Showing you what's been marked as State's Exhibit
2 87. Is that the outside of the address?

3 A That's correct.

4 Q And when you served the warrant it was on a specific
5 apartment not, just the entire building.

6 A That's correct.

7 Q Did you have information as to who lived at that
8 address?

9 A We were given the girlfriend of Cynthia Lacey.

10 Q And showing you State's Exhibit 88. Did you locate
11 this item within the address?

12 A That's correct.

13 Q And then in addition to this, did you also find
14 identifying information, ID cards, things like that for Mr.
15 Chambers?

16 A Yes.

17 Q Showing you State's Exhibit 89. Is that the same
18 vehicle that was impounded?

19 A That's correct.

20 Q And 90, a little bit different angle, but same
21 vehicle?

22 A Correct.

23 Q Showing you what's been marked as State's Exhibit
24 115. During the service of the search warrant, did you locate
25 that item on a wall within the residence?

1 A Yes.

2 Q And what was the significance of that poster to you?

3 A The moniker of Money.

4 Q And moniker is just another word for nickname?

5 A Correct.

6 Q Did it also reflect the relationship between the
7 individual in the photographs and Money?

8 A Yes.

9 Q After the warrant was served at 2229 Carroll Street,
10 did you also serve another warrant at 1984 Dwarf Star?

11 A Correct.

12 Q And when that warrant was served, were you also
13 present for that?

14 A Yes.

15 Q That warrant, when you served it, was that with CSA
16 Grammas?

17 A Yes.

18 Q And the same process was followed where you'll both
19 go in and identify -- she may identify things herself, but you
20 may point out things?

21 A Correct.

22 Q When you were preparing to see and search the
23 warrant at 1984 Dwarf Star, were you watching the address?

24 A Yes. We had a team that was doing surveillance. We
25 had received information from Cynthia Lacey on the location of

1 where she had dropped off Erika Chambers, the daughter, and
2 she directed us to that location. We had a surveillance team
3 that was sitting on that vehicle when they observed a person
4 that they believed to be Gary Chambers exit that location.

5 Q And we're talking about Dwarf Star?

6 A Yes.

7 Q So the reason you end up at Dwarf Star was having
8 received information from Ms. Lacey.

9 A Correct.

10 Q Shortly after or during the time a warrant is being
11 served on Dwarf Star, is the defendant taken into custody?

12 A Yes.

13 Q And when he's taken into custody, is he still with
14 his daughter?

15 A Yes.

16 Q And was that actually at the Dwarf Star address or
17 was it out?

18 A It was Owens and Lamb in the parking lot of a Jack
19 in the Box.

20 Q The decision to arrest the defendant, is that a
21 decision you make or is that a decision that someone else
22 makes?

23 A What we wind up doing is once we gather our
24 information we'll come together as a team and the information
25 is passed from the detectives that do the interviews, the

1 photo lineups, the detective that goes to the hospital,
2 interviews the surviving victim, the detective that worked
3 with the FBI, the information they received from the vehicle.
4 And then it is -- all the information is put together, along
5 with the supervisor, and then we evaluate all of the evidence
6 that we receive from the interviews, the photo lineups, the
7 information that we received from the surviving victim, and
8 the vehicle, locating the vehicle that wound up matching the
9 same information we had from the scene, as well as the phone
10 information. All that comes into play in the determination to
11 make an arrest.

12 Q When you made the determination to arrest the
13 defendant, you said there's a whole lot of factors. Is there
14 any particular witness that controlled that determination?

15 A No.

16 Q So absent any of the particular witnesses that
17 certain -- any single one of them, not a whole chunk of them,
18 but any single one of them, would you still have made the same
19 decision?

20 A Yes.

21 Q After October -- I'm sorry -- July 9th, 2013 at
22 approximately 10:30 at night, did you have any other further
23 investigation follow up in this case?

24 A Other than when we started getting records back,
25 forensics back, all the examination records and reports.

1 Q Did you go to an autopsy on July 10th, 2013?

2 A Correct. The following day after the initial
3 investigation at the scene and the follow up, we'll have
4 autopsy the following day.

5 Q And do you attend that alone or are there other law
6 enforcement individuals as well?

7 A We always try and send two detectives.

8 Q And that's absent some calamity that happens, you
9 will be there?

10 A Correct.

11 Q When you went to the autopsy on July 10th, 2013, do
12 you recall who the coroner was?

13 A I would have to -- can I refresh my recollection
14 from the reports?

15 Q Yes.

16 MS. THOMSON: May I approach?

17 THE COURT: Yes.

18 BY MS. THOMSON:

19 Q In your experience as a homicide detective, when an
20 autopsy is completed, does the coroner prepare a report?

21 A Yes.

22 Q And would the report reflect who the coroner was?

23 A Yes. The medical examiner, medical examination
24 report.

25 Q Looking at this, does that refresh your recollection

1 as to who the medical examiner was?

2 A Yes.

3 Q And who was it?

4 A Dr. Telgenhoff.

5 Q And do you know whether or not Dr. Telgenhoff is
6 still employed with the Clark County Coroner's Office?

7 A I don't know.

8 Q When you attended the autopsy, are you present for
9 all of the steps of the autopsy?

10 A We're there from when they break the seal on the
11 bag, the processing, and then we are in the operating theatre
12 with the doctor as they are doing their autopsy and collecting
13 evidence.

14 Q And as the autopsy was being completed on Gary Bly,
15 did you observe any injuries to his person?

16 A Yes.

17 Q And can you describe generally what injuries you
18 observed?

19 A In layman's terms, the injuries I observed was a
20 gunshot wound to the top of the head, I believe just left of
21 center, and a corresponding gunshot wound to the right back.
22 There was also stippling across the face and forehead. And
23 then there was some minor injuries to the hands.

24 Q Would you describe the most severe of his injuries
25 being that gunshot wound to the head?

1 A The devastating wound was to the head, yes.

2 Q In addition to the autopsy, you described documents
3 requesting follow up on forensics, do you also have all of the
4 audio interviews transcribed?

5 A Yes. The detective that does the interview, they
6 are recorded. That recording is then also placed on a CD to
7 be preserve it in the binder that we talked about. And then,
8 the recording is sent to transcription to have a written
9 record completed.

10 Q So fair to say that that pow wow or the gathering
11 that you described, sort of sharing of information, the only
12 information you receive is the information that the detectives
13 who do the interviews convey to you because you don't have the
14 audio or the transcript at that point.

15 A That's correct.

16 Q And so, sometimes has it been your experience that
17 there may be a small detail in an interview that is not
18 conveyed to you but turns out to be a very big detail later?

19 A Correct. It could be hours of interview and the
20 detective consolidates it down to the relevant information
21 into a summary for us.

22 Q So, for example, in an interview someone says they
23 were wearing red shoes and later on you find out that the fact
24 they were in red shoes is a make or break on the case.

25 A No.

1 Q No?

2 A It's not going to make or break a case, no.

3 Q Okay. Can it be an important detail?

4 A Yes, it could be an important detail.

5 Q You indicated that you requested forensics. Can you
6 kind of give us a list of what you requested?

7 A What we do is any evidence that we receive from the
8 scene, and in this situation we had the bullet projectile that
9 was recovered. We'll send that to the lab to have them make a
10 determination, if they can make a determination, of a caliber
11 and make or model of a firearm. And any evidence that we
12 collected we'll meet up, we'll try to meet up with the crime
13 scene analysts to find out what's going to be relevant. We're
14 limited to what we can submit for processing, but we'll make a
15 -- try to make a determination on what the most relevant
16 information or items that we need to have tested to the lab.

17 Q And you indicated you'll submit a projectile. Did
18 you receive any useful information back after that projectile
19 was submitted?

20 A No.

21 Q The -- in this case were you able to locate the
22 firearm associated to the shooting?

23 A No.

24 Q Was there an attempt to do so?

25 A Yes.

1 Q Pursuant to those search warrants?

2 A Yes.

3 Q And then, was there also searching done near that
4 Jack in the Box?

5 A Yes. We used helicopters, canine, officers on foot
6 walking the path from where he was located to the location of
7 where he left, as well as the search warrants.

8 Q And I said that we would go back a little bit. If
9 we can hook the computer up to the screen, please. I'm going
10 to show you what's been marked as Exhibit 114. Up on the
11 screen, are these the records you received for the target
12 phone number of the defendant?

13 A Yes.

14 Q And they go back to I believe July 7th; is that
15 accurate?

16 A Yes.

17 Q And that's so that you have that information we
18 talked about with any frequently contacted phone numbers,
19 things like that?

20 A Correct.

21 Q And when we go over to columns G and H, those
22 numbers, do they reflect specific towers?

23 A Yes.

24 Q And you have information from the phone company as
25 to the exact location of those towers.

1 A They give us the -- that information and then it's
2 placed into a program that gives us the locations of it.

3 Q And typically those are longitude and latitude?

4 A Yes.

5 MS. THOMSON: Court's indulgence. May I approach
6 briefly?

7 BY MS. THOMSON:

8 Q You indicated that you attended the autopsy on July
9 10th, correct?

10 A Yes.

11 Q So you observed everything that the medical examiner
12 observed.

13 A Yes.

14 Q Showing you what's been marked as State's Proposed
15 Exhibits 86 through 75. If you'll look through each of these
16 individually and let me know if there are any from those that
17 you do not recognize as having come from the autopsy of Gary
18 Bly.

19 A I recognize all of them.

20 Q And do they all accurately reflect things you
21 observed during that autopsy?

22 A Yes.

23 MS. THOMSON: I'll pass the witness.

24 THE COURT: All right. Any cross?

25 MR. YANEZ: Court's indulgence. I just need to grab

1 a picture.

2 CROSS-EXAMINATION

3 BY MR. YANEZ:

4 Q Good morning, Detective.

5 A Good morning.

6 Q One of the warrants that was executed was the search
7 of an apartment at -- on a street called Dwarf Star, correct?

8 A That's correct.

9 Q Gary Chambers didn't live at Dwarf Star, right?

10 A No.

11 Q One of the things that you found, I'm going to show
12 you a picture of it, it's State's Exhibit 102. This is a
13 picture of what appears to be a black gun holster. Is that
14 fair to say?

15 A Yes.

16 Q You never requested that this holster be sent for
17 DNA testing, correct?

18 A No.

19 Q You never requested that this holster be sent for
20 possible fingerprint testing.

21 A No.

22 Q As far as you know, as the case agent, correct,
23 that's your --

24 A Correct.

25 Q As case agent, no other detective or police officer

1 requested that this gun case -- holster, I'm sorry, be sent
2 for DNA or fingerprint testing, correct?

3 A That's correct.

4 Q Now, you actually went to the scene at the trailer
5 park where the shooting occurred, right?

6 A Yes.

7 Q And that's trailer number 45?

8 A Yes.

9 Q And I'm assuming as the case agent or lead
10 detective, co-lead detective, you inspected the property?

11 A I went through the apartment, yes.

12 Q I guess inspecting may not be a good word. You took
13 a look around to see what maybe pieces of evidence or things
14 that might interest you in your investigation. Is that fair
15 to say?

16 A That's correct.

17 Q You're not the only one who does that, there's other
18 police officers who do that, right?

19 A There were other officers present, as was the crime
20 scene analyst, yes.

21 Q But you're one of the persons at least who took a
22 look around to see perhaps what could be important evidence
23 wise to your investigation.

24 A Correct.

25 Q And I'm assuming that the search or review that you

1 do is detailed. You're not just doing a quick look around and
2 then you're out of there. You're looking at different pieces
3 of the trailer, seeing what might interest you evidence wise.
4 Is that fair to say?

5 A Yes.

6 Q And at least from what you saw during that morning
7 on July 9th, you never found or saw a wallet belonging to Gary
8 Chambers, correct?

9 A I did not.

10 Q You never found an ID belonging to Gary Chambers; is
11 that correct?

12 A That's correct.

13 Q Now, the prosecutor showed you a picture of a baggie
14 that was found in an ashtray there inside the trailer. Do you
15 remember that?

16 A That's correct.

17 Q I'm going to show you, it's Defense Exhibit B. Is
18 that baggie a more in-depth closeup of the baggie that you
19 found in the ashtray?

20 A Yes.

21 Q And there was some residue inside of that baggie,
22 correct?

23 A Correct.

24 Q Did you have the residue tested?

25 A No.

1 Q Based on your training and experience, was that
2 residue consistent with methamphetamine?

3 A All I can say is it was a white substance. I can't
4 tell you if it was methamphetamine or not.

5 Q Methamphetamines is a white substance, correct?

6 A Correct.

7 Q Based on your training and experience, because it
8 was a white substance, it wasn't marijuana residue in there,
9 correct?

10 A Right.

11 Q Because marijuana residue is green. Fair to say?

12 A That's correct.

13 MR. YANEZ: Nothing further, Judge.

14 THE COURT: Do we have any redirect?

15 MS. THOMSON: No, Your Honor.

16 THE COURT: All right. Anything from the jurors?

17 All right. We have a question from the jurors, Marshal. You
18 guys can approach.

19 (Bench conference transcribed as follows)

20 THE COURT: I can't read that. Why don't you guys
21 take a look. I'm having a little bit of trouble reading it.

22 MS. THOMSON: [inaudible]

23 THE COURT: That's someone? Okay.

24 MR. YANEZ: [inaudible]

25 THE COURT: That seems like a fair question. I'll

1 let you follow up.

2 MR. YANEZ: [inaudible]

3 THE COURT: All right. I'll give it.

4 (End of bench conference)

5 THE COURT: All right. So here's the question. How
6 do you know you have the right person when you arrest someone
7 like three men with same name? If you understand the question
8 you can answer it to the jury.

9 THE WITNESS: What we wind up doing is, along with
10 having a name, we also have the photograph. When a person is
11 taken to the detention facility, they're also -- we have a
12 program called -- it's called PID, and that program, as soon
13 as they put their fingers on it, it comes up with a
14 photograph. So we can match the photograph to the records of
15 the prints to make sure that that is the correct person that
16 we are arresting, make sure that that identification has been
17 positively identified that that is that person. If that is
18 the way I understand your question.

19 THE COURT: All right. Do you guys want to follow
20 up with that?

21 MS. THOMSON: Yes, Your Honor.

22 BY MS. THOMSON:

23 Q In a case like this where you've already done a
24 photo lineup, you already have a really good idea what this
25 individual looks like; is that correct?

1 A That's correct.

2 Q And when you talk about that PID, the fingerprints
3 get in there from like work cards, right?

4 A Yes.

5 Q Thank you.

6 THE COURT: All right. Anything from the defense?

7 MR. YANEZ: No, Judge.

8 THE COURT: All right. Thank you, jurors. Anything
9 else? I don't see anything else. All right. Thank you very
10 much for your time, Detective. Appreciate it.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Have a good day and watch your step.

13 THE WITNESS: Thank you.

14 MS. THOMSON: And, Your Honor, I've been in contact
15 with the coroner -- I'm sorry, the medical examiner who's been
16 doing autopsies this morning. She will be here at 11. I
17 think we have --

18 THE COURT: So we'll take a half hour break?

19 MS. THOMSON: Perfect.

20 THE COURT: All right. Ladies and gentlemen, we're
21 going to be in recess, extended recess for half an hour
22 waiting for the medical examiner. Please leave your notes.
23 Please mind the admonition I gave you before. Don't do any
24 research. Don't form any opinions. Don't talk to anybody
25 about the case. Avoid any contact with the attorneys,

1 witnesses, and the parties. I'll see you back here at 11, be
2 ready to go. Thank you very much.

3 (Off-record colloquy)

4 THE COURT: So you submitted your affidavit in
5 support of your motion to admit preliminary hearing
6 transcript. The attorneys can do either affidavit or
7 declaration. If you do an affidavit, don't you technically
8 have to be sworn, I think?

9 MS. THOMSON: Okay.

10 THE COURT: So you called yours an affidavit, so why
11 don't you just raise your right hand, so I'll swear you in.

12 (Court swears in Ms. Thompson for affidavit)

13 THE COURT: Thank you. Madam Clerk, could you
14 please just write at the bottom of that affidavit subscribed
15 and sworn or sworn by District Court Judge and the date. All
16 right. And then, I'll sign that. Thank you.

17 MS. THOMSON: Thank you, Your Honor.

18 THE COURT: Just wanted to make sure we're following
19 formalities. All right.

20 (Court recessed at 10:35 a.m. until 2:25 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: State versus Chambers, C292987. This is
23 the time set for settling jury instructions. I'd like to
24 check with defense counsel first. We had discussed before the
25 break not needing the defendant until about 2:50. Are you

1 okay with us discussing some of the jury instruction issues
2 outside of his presence?

3 MR. YANEZ: I am, Judge. I can -- obviously, I'm
4 going to discuss the canvass you're going to do of him and I
5 can discuss the jury instructions, which I've already done
6 with him. So I don't think there's too much he can add here.
7 So I'm fine with going forward.

8 THE COURT: Very good. So what I want to do is
9 first go through the State's proposed and see as to those to
10 which instructions defense counsel might have or defendant
11 might have objections to.

12 Mr. Yanez, do you have the State's proposed set?

13 MR. YANEZ: I do, Judge.

14 THE COURT: All right. Let's go through those and
15 tell me if you have any objections.

16 MR. YANEZ: Okay. Did you want me to go -- I tagged
17 a few of them. I didn't know if you were going to go
18 individually.

19 THE COURT: I'm just waiting for you to identify the
20 first one in order that you'd object to. Identify it by
21 reading like the first three or four words.

22 MR. YANEZ: I'm on the fence on this one, but I'm
23 just going to go ahead and object to it. It says although
24 your verdict must be unanimous as to the charge, you don't
25 have to agree on the theory of liability. That one.

1 THE COURT: Okay. Give me a chance to find it.

2 MS. THOMSON: Is it after the murder?

3 MR. YANEZ: Yes, after murder.

4 THE COURT: Begins although.

5 MR. YANEZ: Yes. Although your verdict must be
6 unanimous.

7 THE COURT: All right. I'm there. So let me hear
8 the basis of your objection.

9 MR. YANEZ: I think it's just confusing. My
10 understanding of it is a correct statement of law. I
11 understand that they don't have to agree as to the same theory
12 of liability. But I don't know if a jury's going to
13 understand the difference between the theory of liability and
14 the charge itself. What I would ask the Court to do is not
15 give this instruction. But if there is perhaps a jury
16 question while they're deliberating as to this potential
17 issue, we could always give them this instruction at that
18 time.

19 THE COURT: Ms. Thomson.

20 MS. THOMSON: Well, I'd object to that. First of
21 all, because the Court's not at liberty to supplement the
22 instructions once they've been given to them.

23 MR. YANEZ: That's not true, but go ahead. You can
24 supplement the instructions.

25 THE COURT: I can't do anything without conferring

1 with the parties and getting consent. I've had dozens, dozens
2 of jury instructions during deliberations or jury questions
3 during deliberations.

4 MS. THOMSON: And it's the State's position -- I
5 mean, it's a correct statement of the law to leave them being
6 told you must all agree beyond a reasonable doubt without this
7 caveat that they don't all have to agree to the same thing,
8 just the same result.

9 THE COURT: And are there different theories in the
10 information here?

11 MS. THOMSON: There are, Your Honor. We have felony
12 murder and --

13 THE COURT: I have researched this before. I've had
14 two other murder cases since I've been on the bench and I've
15 used this before. We've argued it. It is a correct statement
16 of the law. I think it's written so that a lay person could
17 understand it, so I'm going to go ahead and give it over the
18 objection.

19 MR. YANEZ: Okay. There is a voluntary manslaughter
20 instruction. The only thing I would request is that the one
21 that I propose be used. I think it's just slightly different.

22 THE COURT: Can you identify it, please?

23 MR. YANEZ: Yes. It begins it is a killing upon a
24 sudden quarrel or heat of passion. It's maybe five
25 instructions further on down from the one we were just looking

1 at.

2 THE COURT: Okay. It begins -- yes, I see it here.

3 MR. YANEZ: I'm trying to get to the one that I
4 proposed. The one that I proposed is page eight of my packet.
5 It's fairly similar, it just adds a little more in the
6 introduction, I think.

7 MS. THOMSON: I think we think that it's probably
8 the same except that yours makes sense. I left out a word.

9 MR. YANEZ: Yes, it is.

10 MS. THOMSON: So I'm fine with doing yours.

11 THE COURT: Okay. So based on stipulation of the
12 parties, the Court is not giving the State's proposed. I'm
13 writing not giving and my initials and give that to the court
14 clerk to mark. But we will give the defense proposed that
15 begins manslaughter is the unlawful killing of a human being.
16 Okay.

17 MR. YANEZ: The next one is more towards the end. I
18 don't think these are numbered. If not I'm missing --

19 MS. THOMSON: They're not.

20 MR. YANEZ: The one that says the fact that a
21 witness had been convicted of a felony, if such be a fact may
22 be considered. I don't think --

23 MS. THOMSON: We didn't have that. I put it in when
24 I was doing them initially.

25 THE COURT: Let me find it. The fact that. Let's

1 see. Yes. We'll have the State's proposed instruction that
2 begins the fact that a witness had been convicted of a felony.
3 All right. Do you object to that?

4 MR. YANEZ: I think the State agrees that we're
5 going to pull that one out. I think the State put it there in
6 an abundance of caution in case one of these felonies came
7 out, but nothing came out during testimony.

8 MS. THOMSON: That's correct.

9 THE COURT: All right. So that will not be given.
10 I'm writing not given by stipulation. We're still on the
11 State's, we're talking about the State's proposed. Do you
12 have objections to any more State proposed instructions?

13 MR. YANEZ: No, but I think there's a duplicate. I
14 think there's two, the right of the defendant not to be
15 compelled to testify. I think I saw two in the State's. It's
16 the exact same one that I proposed, so I have no opposition to
17 it, but I think there's just two of them.

18 MS. THOMSON: I put it in because I didn't think it
19 was in there, but then it was. So the first one is right
20 after you have received into evidence audio or part of an
21 interview given by Cynthia Lacey. And the second one is right
22 after the fact that the witness has been convicted of a
23 felony. So it's right next to that. We should take those
24 both out. It's right before the expert.

25 THE COURT: All right. So I don't need to mark

1 anything for the clerk, you just have the same instruction in
2 there twice. You'll clean it up for the final set.

3 MS. THOMSON: Yes, Your Honor.

4 THE COURT: All right. Anything else in terms of
5 the State's proposed set of instructions?

6 MR. YANEZ: I did bring to the State's attention, I
7 think they're already aware of it, there was a typo on the
8 verdict form for Count Four. Both options are with use of a
9 deadly weapon.

10 THE COURT: I see that. The verdict form, Count
11 Four, you have a duplicate reference.

12 MR. YANEZ: It might make their case easier if it
13 went that way.

14 THE COURT: So you'll correct that verdict form?

15 MS. THOMSON: Yes.

16 THE COURT: All right. So is there anything more
17 that you'd like to put on the record, Mr. Yanez, regarding the
18 State's proposed set?

19 MR. YANEZ: No. And I don't know if the Court wants
20 to address it now. The order that these are going to go in, I
21 like the presumption of innocence, he starts out presumed
22 innocent, I always like that towards the front since that's
23 kind of our starting point. And then, I have my proposed ones
24 I'm sure we'll get to.

25 THE COURT: Make a request to move that one further

1 one to the front?

2 MR. YANEZ: Correct.

3 THE COURT: All right. Does the State have any
4 objection?

5 MS. THOMSON: No.

6 THE COURT: All right. So, please go ahead and do
7 that.

8 MS. THOMSON: Where do you want it exactly?

9 MR. YANEZ: After kind of the -- let me see.

10 THE COURT: It should come after the information.

11 MR. YANEZ: Yes, that would be my request.

12 THE COURT: Right after the information should be --

13 MS. THOMSON: Do you know where the instruction is?

14 MR. YANEZ: I think you buried it in the back
15 somewhere.

16 MS. THOMSON: I found it. I also, I had highlighted
17 so they kind of look a little bit different, but what would be
18 defense instructions. I don't know that we ended up having
19 any evidence of voluntary intoxication on the part of the
20 defendant, so I don't know that it's applicable and should be
21 given. I just put it in there in an abundance of caution when
22 I was doing these last weekend.

23 THE COURT: We should probably take that one out,
24 right?

25 MS. THOMSON: Yes.

1 THE COURT: Okay. Good. So any other objections to
2 the State's proposed instructions?

3 MR. YANEZ: No, Judge.

4 THE COURT: So let me ask the State. Do you have
5 any additional instructions that you wanted to proffer?

6 MS. THOMSON: No, Your Honor.

7 THE COURT: Great. So now, let's talk about the
8 defense proposed. Let's go to the first defense proposed. It
9 is where a person without voluntarily seeking. Let me ask the
10 State now: Do you have any objections to the defense proposed
11 and if so, let's go through them.

12 MS. THOMSON: Yes, Your Honor, we do.

13 THE COURT: All right. Let me hear your first
14 objection. First identify which instruction you're
15 contesting.

16 MS. THOMSON: The first instruction we're contesting
17 is his page eight, because he was nice enough to number them
18 for us. Page two, I'm sorry. It says page two.

19 THE COURT: So page two?

20 MS. THOMSON: Yeah.

21 THE COURT: All right. Let me hear your objection.

22 MS. THOMSON: Your Honor, at this point that seems
23 to be duplicative. We have the instructions out of Runyon
24 specifically that address the self-defense, it covers each of
25 the elements. It seems to me that this does basically repeat

1 what's already in there and therefore, is unnecessary.

2 MR. YANEZ: Can the State tell me which one of
3 theirs they think is covered and I'll take a look at it?

4 MR. SCHWARTZ: It starts with the right of
5 self-defense is not available. It should be in that section
6 with the other highlighted ones.

7 THE COURT: All right. I found the State's proposed
8 instruction which is the language out of Runyon. And it
9 appears to me the language that is being used by the defense,
10 I think that's older language. Give me a second here. You
11 cited Grimmett and Culverson. Let me see. Yeah, the language
12 that Mr. Yanez uses that begins where a person without
13 voluntarily seeking, the Culverson case says we believe that a
14 simpler rule will lead to more just verdicts. And then, they
15 go on to have just the last paragraph of the defense proposed
16 instruction.

17 So Culverson adopts the language that says basically
18 if one is a reasonable person believes that one is about to be
19 killed or seriously injured by an assailant, one does not have
20 a duty to retreat unless one is the original aggressor. So I
21 guess if the defendant is still going to insist on the first
22 paragraph of defense proposed on page two, I'm going to reject
23 that first paragraph. And then the question is as to the
24 second paragraph, does that add anything new or different to
25 the Runyon proposed that's in the State's set?

1 MS. THOMSON: Your Honor, it's the State's position
2 that particularly if we take into account the fact that Runyon
3 came out in 2000, that this is not actually an accurate
4 statement of law, that there's no duty to retreat unless
5 because the requirements for self-defense are you can use that
6 force if it's absolutely necessary. So to look at those two
7 ideas together, they can't coexist is the State's position.

8 MR. YANEZ: I think it's a correct statement of the
9 law. I think it's worded differently, but very similar to the
10 State's instruction, that you don't have a duty to retreat
11 when faced with a threat of deadly force.

12 THE COURT: This just talks about whether you have
13 to retreat, not what force you could use in response to the
14 threat.

15 MS. THOMSON: I suppose maybe I'm crossing those.

16 THE COURT: I think it's a correct statement of law.
17 I don't think it's actually covered by Runyon. Maybe we can
18 combine it to the Runyon instruction that you have already.

19 MR. YANEZ: And you're talking about the second
20 paragraph, right, Judge?

21 THE COURT: Yes. It's a little bit duplicative.

22 MR. SCHWARTZ: Your Honor, it seems --

23 THE COURT: Your instruction, the State's
24 instruction says you don't have to retreat when faced with the
25 threat of deadly force. And the defense proposed says the

1 same thing, but adds unless you're the original aggressor.

2 MS. THOMSON: We can add unless you're the original
3 aggressor to our instruction and that probably makes it work.

4 THE COURT: Let me read yours again. The prefatory
5 language to your second paragraph kind of includes that
6 already, though. Where a person without voluntarily seeking,
7 provoking, inviting, or willingly engaging in a difficulty of
8 his own free will. That's, to me, the definition of not being
9 the original aggressor.

10 MS. THOMSON: That is.

11 THE COURT: So your instruction basically says if
12 you're not the original aggressor you have the right to stand
13 your ground and you need not retreat, which says the same
14 thing in slightly different language that was used by Runyon
15 one year after the Culverson case. I think we got it covered,
16 Mr. Yanez. I think it's pretty well covered already. So I'm
17 going to deny your proposed instruction on page two. Since I
18 have mine all marked up, if you have a page you could write
19 rejected and I'll initial it and you can give it to the Court
20 if you want to make a record of that.

21 MR. YANEZ: I just wrote denied on it. Is that
22 fine?

23 THE COURT: That's fine.

24 MR. YANEZ: Okay.

25 THE COURT: If you could give that to the court

1 clerk and she can make it part of the record. Thank you, sir.

2 So, does the State have other objections?

3 MS. THOMSON: The next one, page three, we don't
4 object to, but we need to take out the ones from ours.

5 THE COURT: So page three of defendant's set shall
6 be given in lieu of the State's proposed. The State will take
7 out its corresponding instruction. All right?

8 MS. THOMSON: Yes, Your Honor.

9 MR. YANEZ: My three, was that one that yours was
10 broken into like two or three different pages?

11 MS. THOMSON: Yeah.

12 MR. YANEZ: Okay. So we're just going to put it in
13 one?

14 MS. THOMSON: Yeah.

15 MR. YANEZ: Okay.

16 THE COURT: All right. Mr. Schwartz, are you
17 getting all this?

18 MR. SCHWARTZ: Yes.

19 THE COURT: Because I'm going to ask the State to
20 put together the final set.

21 MS. THOMSON: He's the support staff, he's got this
22 all under control.

23 THE COURT: All right. Any other objections?

24 MS. THOMSON: Yes, Your Honor. So page four is
25 another one where it was combined. We need to take out ours.

1 THE COURT: So actual danger is not necessary to
2 justify. That instruction from the defense set shall be given
3 in lieu of the State's proposed.

4 MS. THOMSON: Thank you.

5 THE COURT: Very good. So the next one, defense
6 page five, if evidence of self-defense is present.

7 MS. THOMSON: That one is exactly the same as ours.

8 THE COURT: Correct statement of the law that shall
9 be given. It's already in the State's set. All right. The
10 next one, page six. Self-defense is justified when the
11 defendant uses reasonable force.

12 MS. THOMSON: Judge, my problem with this is that
13 it's citing to a civil case which cites to a civil case, as I
14 understand it. The standard doesn't appear to be the same. I
15 mean, we look at civil cases and we talk about like
16 contributory negligence and all that kind of stuff. What we
17 say as a reasonable person, which necessarily is an element at
18 least of like what 20/20 hindsight is. Someone knowing the
19 situation as a juror, looking at them saying a reasonable
20 person, would they react that way. I don't know that citing
21 to a civil case is an accurate citation for self-defense in
22 the criminal context.

23 THE COURT: So, do we have an instruction that tells
24 the jury when self-defense is permissible? Do you have one in
25 your set already?

1 MS. THOMSON: Yes.

2 THE COURT: I know we have a couple that discuss
3 when self-defense is not permissible. What do you have?

4 MS. THOMSON: What we have that we haven't put
5 together --

6 THE COURT: Oh, here it is. The one that begins the
7 killing or attempted killing of another person in self-defense
8 is justified when one and two. You have that one already.

9 MS. THOMSON: Yes.

10 THE COURT: Mr. Yanez, I'm not inclined to give this
11 because it's based upon two civil cases, so I don't know that
12 it applies here.

13 MR. YANEZ: Well, no, the Ninth Circuit is not a
14 civil case.

15 THE COURT: I was looking at the Nevada case. So it
16 relies on -- give me a second.

17 MR. YANEZ: And it's been awhile since I looked it
18 up, but I'm pretty sure the United States versus Saenz is a
19 criminal case.

20 MS. THOMSON: I was talking about the civil case
21 cites [indiscernible] cases, sorry.

22 THE COURT: So where's the language in the Ninth
23 Circuit? I have it here and I was looking over the lunch
24 hour. I didn't see where you're getting that. I have the
25 case if you want to --

1 MR. YANEZ: Yeah. Let me -- some of these
2 instructions from my days as a public defender.

3 THE COURT: No problem.

4 MR. YANEZ: I might have to double check someone
5 else's work.

6 THE COURT: I might have just missed it. I didn't
7 see any reference to that 20/20 hindsight language.

8 MR. YANEZ: It doesn't say exactly the words 20/20
9 hindsight, but I think it does talk about the defendant being
10 able to show a state of mind at the time of attack and not
11 necessarily from a 20/20 hindsight perspective. And it also
12 talks about the use of force, defendant's reasonable belief
13 that his use of force was necessary. So I agree, I don't see
14 the exact language, 20/20 hindsight, but I think that can be
15 inferred from the language that a defendant has the right to
16 show his reasonable state of mind at the time of the incident
17 and not at a later date.

18 MS. THOMSON: Your Honor, I think that that's an
19 inaccurate application. The defendant's right to express his
20 impression at the time would go to the honest and reasonable
21 belief, not the reasonable person standard. So to say that
22 because he tells the jury this was what I felt at the time,
23 that somehow that makes it so they can't apply a reasonable
24 person standard. I don't think that that's --

25 THE COURT: I think -- I've got a little bit of a

1 problem with this one, Mr. Yanez, because I think it does -- I
2 think it does add too much of a subjective element to the test
3 where the test is supposed to be a reasonable man standard,
4 which is objective. I think Runyon is a more accurate, more
5 complete statement of the law and more recent. So I'm going
6 to stick with the Runyon and deny this one over your
7 objection. I'll go ahead and put this in order.

8 Anything else from -- well, the next one on page
9 seven. Does the State have an objection to that?

10 MS. THOMSON: Yes, Your Honor. This is the --

11 THE COURT: This is the --

12 MR. YANEZ: Two reasonable interpretations.

13 THE COURT: -- two reasonable interpretations. All
14 right. What's your thoughts on that?

15 MS. THOMSON: As the Court knows, the Supreme Court
16 has addressed this and found that it's not error not to give
17 it. They don't agree with the contention that the Court is
18 compelled to give the instruction.

19 THE COURT: Don't we have a lot of circumstantial
20 evidence in this case since we really don't have a -- I mean
21 we do have an eyewitness, but we also have a lot of
22 circumstantial evidence.

23 MS. THOMSON: Correct. I agree.

24 THE COURT: And there's probably different
25 inferences that could be drawn. I think we need to give some

1 instruction to the jury on circumstantial evidence. I don't
2 know that this is the right way to do it.

3 MS. THOMSON: Well they have -- I mean, we have the
4 general instructions that talk about what circumstantial
5 evidence is and they can give it the weight to which they deem
6 it appropriate.

7 THE COURT: Do you have the one from, that I used
8 before, from the Sopranovich case?

9 MS. THOMSON: Do I? Is it --

10 THE COURT: Do you have any objection to that? This
11 is the one that --

12 MR. YANEZ: Is that the one that was --

13 THE COURT: -- defense counsel refer to a lot and I
14 usually give it. This is September 24, 2015. It's where the
15 Supreme Court says if you're going to give it, give the more
16 complete version.

17 MS. THOMSON: I'm sorry. I didn't recognize the
18 name. I do have that.

19 THE COURT: That's the one -- it actually is
20 different than what defense counsel has here. It says before
21 you may rely on circumstantial evidence, et cetera, et cetera.
22 It's two paragraphs long. Mr. Yanez, do you want to look at
23 that?

24 MR. YANEZ: I have read that. When I was preparing
25 I read that one.

1 THE COURT: Are you acceptable to have this language
2 instead of your proposed seven, or do you still want me to
3 rule on seven and --

4 MR. YANEZ: I would have preferred seven, but of
5 course, if the Court's going to deny it, I would rather have
6 that than nothing.

7 THE COURT: Since we have the appellate court at
8 least saying if you're going to give something, this language
9 is acceptable. I would prefer to give what our appellate
10 court has said is acceptable. Ms. Thomson, what's your
11 thoughts? I mean, if you prefer his seven over Sopranovich,
12 we can do that.

13 MS. THOMSON: I'd rather give the Supreme Court
14 version.

15 THE COURT: All right. Do you want to take my copy
16 and make sure that you --

17 MS. THOMSON: I have a copy. Thank you. I just
18 didn't recognize the name. I'm sorry. And where do we want
19 it?

20 THE COURT: Does the State want to object to the
21 Court giving --

22 MS. THOMSON: Yes, please.

23 THE COURT: Okay. So the State is objecting to the
24 Court giving the circumstantial evidence instruction, which
25 I'm taking from Sopranovich, the Court is going to give it

1 over the State's objection. The defendant is offering their
2 proposed seven, which the Court is rejecting. The Court will
3 go ahead and write denied and mark that and have it entered
4 into the record. Okay?

5 MS. THOMSON: Where do you want it, Abel? I'd be
6 inclined to maybe put it right after the circumstantial
7 evidence instruction, you think?

8 MR. YANEZ: Yeah, that would be fine.

9 MS. THOMSON: That's at the beginning, right?

10 MR. YANEZ: Yeah. That's fine.

11 THE COURT: The record should reflect that a few
12 minutes ago the defendant was brought in. He's sitting at
13 counsel table.

14 Can we go to the next one? So page eight is given.
15 We already discussed that. Let's go to page nine. This is
16 the heat of passion instruction, which looks like it's
17 verbatim right out of Ricky v. State.

18 MR. YANEZ: I think it's the same one the State has,
19 right?

20 MS. THOMSON: I think so too.

21 THE COURT: All right. So this is given. It's
22 already a duplicate of what the State has given. Now, let's
23 go to page 10. So now we get the two Crawford instructions.
24 What's the State's position on this one?

25 MS. THOMSON: I understand the Crawford

1 instructions. With regard to number 10, I have no problem
2 with the first sentence. I think the second sentence is
3 duplicative.

4 THE COURT: It says reasonable doubt twice. So,
5 yeah. I think it is duplicative. It says really the same
6 thing. Aren't you saying the same thing twice? I think so.

7 MR. YANEZ: It's very similar, Judge? So if we want
8 to --

9 THE COURT: So I'm not going to give your proposed
10 10, but if you submit a modified version of it that has the
11 first sentence only, I will give that.

12 MR. YANEZ: Can we agree to just strike out that
13 second sentence? I'm fine with that.

14 MS. THOMSON: Yeah.

15 THE COURT: Yeah. So the parties stipulate to
16 strike out the second sentence and the Court will give the
17 first sentence as a defendant instruction. Do you guys know
18 where you want to put it?

19 MS. THOMSON: I think it should probably go after
20 the instruction that says essentially attempt murder is
21 attempting to kill somebody.

22 MR. YANEZ: Yeah, next to that. Keep it together.

23 THE COURT: All right. So nothing to mark with the
24 Court since this was agreed upon. Page 11. This is a defense
25 proposed. If you find the State has not proven -- this is

1 basically the reverse robbery instruction.

2 MR. YANEZ: Or burglary.

3 THE COURT: Or burglary. Robbery, larceny and/or --
4 yeah.

5 MR. YANEZ: The only thing that I think is missing
6 when I was looking at it today, it should be and/or a felony
7 as well.

8 MS. THOMSON: Well, I mean, realistically, I think
9 the felony is the robbery. I'm fine with it.

10 MR. YANEZ: I was trying to follow the language of
11 the information.

12 MS. THOMSON: That's fair. The only issue I have
13 with this is the same as the last one. The second sentence is
14 a duplicate of the first.

15 THE COURT: Yeah. Can you guys modify the first
16 sentence to meet defense's concerns about the word felony and
17 then take out the second sentence? This is modified by
18 stipulation and the original instruction is deemed withdrawn
19 and modified.

20 MR. YANEZ: And then, Judge -- I don't know if you
21 -- I sent this afternoon during lunch break another
22 instruction.

23 THE COURT: Can we hold on one second?

24 MR. YANEZ: Oh, sure.

25 THE COURT: You've got a page 12, which is just the

1 constitutional right instruction. That's already given in the
2 State's set.

3 MR. YANEZ: Right.

4 THE COURT: And then, you have one more proposed,
5 right?

6 MR. YANEZ: Right. But I need to modify -- the
7 State pointed something out, and I agree, because there's two
8 theories of liability here. So I'm going to propose it with a
9 slight modification whenever the Court's ready.

10 THE COURT: I've got to find it. So this is defense
11 proposed instruction that reads, if you find that the State
12 did not prove beyond a reasonable doubt that the defendant
13 premeditated and deliberated before the killing, you must find
14 him not guilty of murder in the first degree. What's your
15 proposed modification?

16 MR. YANEZ: I think we need to add or committed
17 during the perpetration or attempted perpetration of robbery
18 to reflect the second theory that the State has. So after --

19 THE COURT: Felony murder.

20 MR. YANEZ: Right. So with that modification I
21 propose that instruction as well.

22 THE COURT: So it should say if you find, et cetera,
23 et cetera, and you also find there's no felony murder, then
24 you must find him not guilty.

25 MR. YANEZ: If you find that the State did not prove

1 beyond a reasonable doubt that the defendant premeditated and
2 deliberated before the killing --

3 THE COURT: Comma, and.

4 MR. YANEZ: And/or --

5 THE COURT: No, it has to be and. It has to be --
6 both of those have to be ruled out before you find him not
7 guilty.

8 MR. YANEZ: Oh, yes. You're right. You're right.
9 Committed during the perpetration or attempted perpetration of
10 the robbery, you must find him not guilty of murder in the
11 first degree.

12 THE COURT: Mr. Schwartz, can you make that change?

13 MR. SCHWARTZ: Absolutely.

14 MS. THOMSON: Can I have a copy written up how you
15 want it?

16 MR. YANEZ: Yes. Can I give it to you before we
17 leave today?

18 MS. THOMSON: If we're reading instructions today,
19 no.

20 MR. YANEZ: I thought we were going to read
21 instructions tomorrow before closing.

22 MS. THOMSON: I thought we were going to read them
23 tonight.

24 THE COURT: If we can get them read today, I'd
25 prefer to read them today. We might have the time.

1 MR. YANEZ: Oh, okay.

2 THE COURT: State doesn't have to write it out right
3 now. Take your time. So the Court is going to give the
4 defense proposed Crawford instruction re: first-degree murder.
5 While you're working on that, I need to tell the State
6 something. Your instruction that begins when a trial witness
7 fails for whatever reason to remember.

8 MS. THOMSON: Yes.

9 THE COURT: You think there's a typo in there?
10 Looks like there's something that's missing. It says the
11 failure of recollection constitutes a denial of the prior
12 statement makes it a prior inconsistent statement. I think
13 you've got to put the word and in there.

14 MS. THOMSON: Yep.

15 THE COURT: It's probably a stock instruction you
16 used from somewhere because I had another case, we had the
17 same exact typo. Probably needs to be changed on some macro
18 somewhere.

19 MS. THOMSON: I appreciate it.

20 THE COURT: Okay. Thanks. Mr. Yanez, are there any
21 additional instructions you want to propose?

22 MR. YANEZ: No, Judge, not at this time.

23 THE COURT: All right. Anything else anybody wants
24 to put on the record regarding jury instructions?

25 MS. THOMSON: Only that if we're going to be doing

1 these today I'm going to need Mr. Schwartz to work on making
2 amendments while we're working on this next witness, which
3 means I need to run downstairs and get the digital format to
4 do that.

5 THE COURT: He needs to or you need to?

6 MS. THOMSON: Well, one of us needs to. I think
7 that --

8 THE COURT: Can he run down while we start?

9 MR. YANEZ: Do you want me to check to make sure my
10 witness is here?

11 THE COURT: Yeah. Why don't you go check and then
12 we need to canvass the defendant. Mr. Schwartz can run down
13 now or do you want to run down?

14 MS. THOMSON: I just don't know exactly where I
15 saved it.

16 THE COURT: Okay. Go ahead. You can go down.
17 We'll wait for you.

18 MS. THOMSON: I'll be back. Sorry.

19 THE COURT: Do you mind if I canvass the defendant
20 while you're gone?

21 MS. THOMSON: No.

22 MR. YANEZ: He's here.

23 THE COURT: All right. Did you have a chance to
24 talk to your client about whether he wants to testify and his
25 constitutional rights regarding that?

1 MR. YANEZ: On numerous occasions I've spoken to
2 him, Judge, yes. I did tell him that Your Honor would canvass
3 him. My understanding, at this point, he's not going to
4 testify, but obviously, you can canvass him and ask him,
5 Judge.

6 THE COURT: Perfect. I've got some basic
7 instructions I need to go over, make sure you understand what
8 you're doing.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So, Mr. Chambers, under the Constitution
11 of the United States of America, and under the Constitution of
12 the State of Nevada, you cannot be compelled or forced to
13 testify in this case. Do you understand that, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. You may, at your own
16 request, give up that right and take the witness stand and
17 testify. If you do you will be subject to cross-examination
18 by the deputy district attorneys and anything that you might
19 say, whether it be on direct or cross-examination will be the
20 subject of fair comment when the deputy district attorneys
21 speak to the jury in their final argument. They can comment
22 on what you said. Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you choose not to testify, then I
25 will not permit the deputy district attorneys to make any

1 comments to the jury about you not having testified. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And if you elect not to testify, and if
5 your attorney specifically requests, and he has so requested
6 in this case, then I'll give an instruction to the jury that
7 reads substantively as follows. "The law does not compel a
8 defendant in a criminal case to take the stand and testify.
9 And no presumption may be raised and no inference of any kind
10 may be drawn from the failure of a defendant to testify."
11 That's your right to have that instruction and I'm going to
12 give that instruction. Do you have any question about these
13 rights so far?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. You're further advised that
16 if you have a felony conviction and more than 10 years has not
17 elapsed from the date that you have been convicted or
18 discharged from prison, parole, or probation, whichever is
19 later, and the defense has not sought to preclude that from
20 coming before the jury, which they haven't done here, then if
21 you elect to take the stand and testify the deputy district
22 attorneys, in the presence of the jury, can ask the following
23 questions of you when you're on the stand. They can ask you,
24 number one, have you been convicted of a felony. And number
25 two, what was the felony. And they can ask you when did it

1 happen. All right? But they can't get into any further
2 details. So, do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. So that's what happens if
5 you take the stand.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So, knowing all that, have you had a
8 chance to talk to your counsel about whether to take the stand
9 or not?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you elect to exercise your
12 constitutional right not to testify, sir?

13 THE DEFENDANT: I don't want to testify.

14 THE COURT: All right. So that means you are
15 exercising your right not to testify. If for some reason you
16 change your mind before it's too late, let your attorney know
17 so he can speak up. Okay, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Very good.

20 MR. YANEZ: Judge, one other kind of somewhat
21 related matter that I did bring to the State's attention, I
22 brought to Ms. Thomson's attention. I've spoken to Gary about
23 his right, statutory right to have -- if there is a
24 first-degree conviction, to have the jury determine the
25 sentence.

1 THE COURT: Yes, sir.

2 MR. YANEZ: He's in agreement to waive that and have
3 Your Honor sentence him if there is a conviction as to
4 first-degree murder. I don't think the State was inclined to
5 do that, but I'm putting it out there. I don't know how much
6 of a difference it would make in this case, but timewise if it
7 could save time. So I was just bringing that to the Court's
8 attention. I spoke to Mr. Chambers about it. He's fine with
9 it.

10 THE COURT: Does the State -- I think the State has
11 the right -- let's wait for -- we were just talking about you.
12 So the defense counsel is willing to stipulate to waive the
13 right to have the jury determine sentence. I think under the
14 law the State has the right to allow the issue to go to the
15 jury.

16 MS. THOMSON: That is correct.

17 THE COURT: So it's up to you at this point. Are
18 you comfortable with it going to the jury?

19 MS. THOMSON: We would like it to go to the jury.

20 THE COURT: Okay. So I appreciate the request, and
21 it would save time. But it looks like we need to let it go to
22 the jury. I don't have the discretion to take it out of the
23 jury's hands. But thank you.

24 Defendant has been canvassed. Defendant has
25 exercised his right not to testify. Are we ready to proceed?

1 MS. THOMSON: Yes.

2 MR. YANEZ: Yes, Judge.

3 THE COURT: Okay. Let's go ahead and bring the jury
4 in.

5 (Jury reconvened at 3:07 p.m.)

6 THE COURT: Welcome back. Please be seated. Mr.
7 Yanez, the defense may call its first witness.

8 MR. YANEZ: Thank you. The defense calls Dr.
9 Michael Levy.

10 MICHAEL LEVY, DEFENDANT'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated. Please
12 state your first and last name for the record.

13 THE WITNESS: Michael, M-i-c-h-a-e-l, Levy, L-e-v-y.

14 THE COURT: You may proceed, Mr. Yanez.

15 MR. YANEZ: Thank you.

16 DIRECT EXAMINATION

17 BY MR. YANEZ:

18 Q Good afternoon, Doctor Levy.

19 A Good afternoon.

20 Q Sir, how are you employed?

21 A I'm self-employed as a physician.

22 Q And what's the name of your business or your medical
23 practice?

24 A The name of my practice is the Center for Addiction
25 Medicine.

1 Q Can you tell the ladies and gentlemen of the jury a
2 little bit about your education and training?

3 A I was educated at the West Virginia University where
4 I have a degree in biology. I interned in Phoenix at Phoenix
5 General Hospital. I am Board-certified in family medicine and
6 Board-certified in addiction medicine.

7 Q Briefly, licensure, certifications, if you could let
8 the jury know about that.

9 A As again, I am certified and licensed as a physician
10 in the State of Nevada, but my practice is exclusive for
11 addiction medicine. And I am a fellow in addiction medicine
12 from the American Society of Addiction Medicine. There are
13 approximately, a little more than 300 physicians since the
14 inception of the program in 1996.

15 Q With your employment, in your self-employment, can
16 you let the jury know what do you do? What kind of patients
17 do you treat? What kind of work do you do?

18 A I evaluate and treat addictive disease. I have my
19 own treatment program, which is an outpatient treatment
20 program. I do a lot of work for the family courts and
21 occasionally testify in the district courts. I sit on the
22 Moral Character and Fitness Committee for the State Bar for
23 the past 22 years.

24 Q In either your current job or your prior experience,
25 does it entail or did it entail looking at either blood test

1 results or urine test results?

2 A Yes, it does.

3 Q Can you guesstimate how many of those, whether it's
4 blood test results or urine test results that you have looked
5 at or analyzed over the years?

6 A Oh, my. Tens of thousands.

7 Q You mentioned testifying. Besides your
8 self-employment you sometimes work as an expert on cases?

9 A Correct.

10 Q Are you retained by the court sometimes?

11 A I am retained by the courts, particularly in the
12 case of the family courts. The judge mandates an evaluation
13 and I report directly to the court, although the individual
14 who's evaluated has to pay for it.

15 Q In criminal cases like this, are you sometimes
16 retained in those type of cases as well?

17 A I have been, yes.

18 Q Is it for one side or for the other, for the
19 prosecution or for the defense, or a little bit of both?

20 A I have worked for the prosecution, although much
21 more for the defense. And I also testify and work in civil
22 cases.

23 Q Testimony wise or consulting on these cases, how
24 many years have you been doing that for?

25 A Over 20.

1 Q And when you're retained on these cases, whether
2 it's for the prosecution or whether it's for the defense,
3 you're compensated for your time?

4 A Correct.

5 Q How does that work? How do you get compensated?

6 A Well, in the case of -- if I am retained for a case,
7 I generally ask for a retainer up front for which I charge a
8 specific hourly fee against.

9 Q And is that, so the ladies and gentlemen of the jury
10 are clear, is that based on the opinion you're going to give
11 or is that based on the time that you're putting into the
12 case?

13 A I have never, ever charged for an opinion, nor would
14 I. It's always on the basis of time.

15 Q Is part of the field that you're in, is that
16 considered toxicology?

17 A Toxicology is a part of it, but certainly not the
18 primary part.

19 Q Is looking at blood test results, urine test
20 results, looking at what substances are or aren't in those
21 results, is that part of the field of toxicology?

22 A It can be. I do urine drug testing in my office,
23 screening tests. I used 12-panel urine drug screens in my
24 office on a regular basis.

25 MR. YANEZ: At this point, Judge, I'd ask that Dr.

1 Levy be allowed to testify in the field of toxicology.

2 THE COURT: Any objection?

3 MS. THOMSON: No, Your Honor.

4 THE COURT: All right. You may proceed and treat
5 this witness as an expert in the field of toxicology.

6 MR. YANEZ: Thank you.

7 BY MR. YANEZ:

8 Q Doctor Levy, you were retained by my office to
9 review some records in this case.

10 A Correct.

11 Q Was one of the documents that you reviewed a
12 toxicology printout or result of blood work done on a Gary
13 Bly?

14 A Yes.

15 Q Was one of the other documents that you reviewed a
16 UMC urine test for a Lisa Papoutsis?

17 A Yes.

18 Q Let's talk about the blood test, the results from
19 Gary Bly. The test, that's just a simple blood draw that they
20 take. How does that work? What kind of drugs in general are
21 screened, do you know?

22 A They can be specifically requested or they can do a
23 panel that basically covers a variety of different substances.

24 Q Is the panel generally done in most blood draw
25 analysis or tests?

1 A Yes.

2 Q So with a general panel, what type of drugs can that
3 detect or look at?

4 A It can be very nonspecific in terms of classes of
5 drugs, such as barbiturates, amphetamines, benzodiazepines,
6 opiates, that sort of general panel. Or it can be very
7 specific in terms of looking for specific types of drugs, like
8 Xanax or Alprazolam or methamphetamine or amphetamine.
9 Depends on, again, what you're looking for. But it can be
10 requested or it can be just an overall general panel.

11 Q Specifically as to the toxicology report for Gary
12 Bly that you looked at, do you remember what exact substances
13 were found in his system?

14 A Methamphetamine, amphetamine, and ephedrine.

15 Q And can you let the jury know what type of drug
16 methamphetamine is? What exactly is that?

17 A Methamphetamine is a stimulant drug. It comes in
18 essentially two forms. The, what are called isomers, D-isomer
19 or L-isomer, but it also comes and is available as a
20 prescription drug, which is a Schedule II controlled substance
21 used for weight loss, narcolepsy, things like that.

22 Q Is methamphetamine also called speed?

23 A Yes, it is.

24 Q The methamphetamine that was found here, are you
25 able to give an opinion as to when usage was compared to the

1 time of the draw, of the analysis of the blood?

2 A Well, if you could help me with that because I did
3 not find a specific time of the draw on there. Maybe I missed
4 it, but I didn't find that time as to when the blood was
5 actually drawn.

6 Q How about if we just do a hypothetical.

7 A Okay.

8 Q Assume that the blood draw was at noon. Based on
9 the amount that was found, can you give an opinion as to when
10 you believe usage was?

11 A Yes. And again, in a hypothetical situation.
12 Methamphetamine breaks down to amphetamine. In other words,
13 it's metabolized. And amphetamine is part of the breakdown
14 product. And then, amphetamine breaks down into ephedrine or
15 norephedrine, as the case may be. If I remember correctly,
16 the number for methamphetamine was 6,300 nanograms or
17 milliliter. A nanogram is a billionth of a gram. So 6,300
18 may sound like a significant number, but when you look at it
19 in terms of billionths of gram, it may or may not be that
20 significant.

21 As I discussed with you in terms of previous
22 discussion about this, in my opinion the number that's
23 assigned to the methamphetamine again, and the number that's
24 assigned to the amphetamine, to me represented recent usage.
25 Basically, for the methamphetamine to break down, to start to

1 break down at the very least, it generally is around two to
2 four hours. Methamphetamine is a relatively long-acting drug.
3 So there was a very -- the ratio of amphetamine to
4 methamphetamine in that specific blood draw, to me represented
5 recent usage.

6 Q And are you able to tell the jury hours wise what
7 exactly recent usage is, an approximation, or is that too
8 difficult?

9 A Well, again, it is an approximation. I would say it
10 would be sometime in the past six hours, six to eight hours.

11 Q Now, in your training and experience and in your
12 career as a doctor, are you familiar with some of the
13 behaviors that people can exhibit when they methamphetamines
14 in their system?

15 A Yes.

16 Q Can you tell the jury what some of those behaviors
17 or symptoms can be?

18 A Well, it's a very reinforcing drug in the sense that
19 the initial usage of the drug causes a release of dopamine,
20 which is the feel good neurotransmitter in the brain. And it
21 also releases serotonin, which is used for -- which we
22 attribute to mood, depression, in particular. And most of the
23 medications that are prescribed right now are selective
24 serotonin reuptake inhibitor. So therefore, we want to keep
25 serotonin in the system longer. So these drugs block the

1 reuptake of serotonin in the brain. So serotonin mood,
2 dopamine feel good.

3 So when an individual initially uses
4 methamphetamine, they feel good. They may talk and be very
5 social. They may exhibit rapid movements of their
6 extremities. If you look at their eyes the pupils in the eyes
7 are very dilated. But if you look closely you will see them
8 moving very rapidly. That's called nystagmus. So again,
9 initial states, depending on how much the individual uses, and
10 also, whether or not the individual has a tolerance to the
11 drug. In other words, if they're an experienced user, they
12 know what to look for, so they look for that effect primarily.

13 The problem with methamphetamine is it's also
14 addictive. And therefore, addiction represents continued use
15 of the drug despite the knowledge of adverse consequences as
16 its most primary hallmark. So again, depending on where you
17 are in the stage of use represents the behavior that's
18 associated with it.

19 Q And behavior wise, some of those behaviors can
20 include being aggressive or violent. Is that a possible
21 characteristic of methamphetamine use?

22 A Well, it's interesting because the studies support
23 that you may see aggressive behavior, you may see violent
24 behavior. But the studies are also unclear as to whether or
25 not methamphetamine was the causative ingredient in that

1 aggression or behavior or was it more used as a way -- does
2 methamphetamine support aggression and violence in someone who
3 may be predisposed to aggression and violence. So this is not
4 exactly, you know, where we're having a great deal of studies
5 that are based on human trials. Most of the reports are
6 somewhat anecdotal and there has not been a great deal of
7 human study, if you will, over the years.

8 Actually, the first papers in regard to
9 methamphetamine violent behavior came out of Japan in the
10 early 1950s because in Japan during World War II the Japanese
11 soldiers were given methamphetamine to increase their energy,
12 their fighting spirit. The appetite is significantly
13 decreased. So they wanted soldiers that were on the
14 battlefield to be -- to have a great deal of energy.

15 Q Are you familiar with the term tweaking?

16 A I am.

17 Q Okay. Can you explain to the jury what exactly that
18 is?

19 A It's used commonly, a tweaker is generally applied
20 to someone who uses methamphetamine. That's not -- that may
21 be a street term more than a scientific term, for sure. But
22 tweaking is, at least my understanding, is someone who has
23 been up for a significant amount of time. And in these cases,
24 an individual may be up for days or weeks at a time without
25 sleep, and in some cases without eating. When they start to

1 come down from that prolonged impact on the body of being up
2 without sleep, they may hallucinate and they may become
3 delusional, which is a false fixed belief that's not based in
4 fact. But everybody else around the individual knows that
5 that delusion is not based in fact except for the individual
6 themselves. So they may be delusional. They may be
7 hallucinating visually. They may hear things.

8 They may feel things, and frequently what happens is
9 a condition called formication. Formication is when the
10 individual starts to scratch his legs or his face or his
11 abdomen because they think there are bugs crawling on the
12 skin, as part of that delusion. So not unusual. But those
13 individuals, when they're in that tweaking state of mind, may
14 be dangerous.

15 Q If I understand you then correctly, tweaking then is
16 more coming off of the methamphetamine?

17 A Yes.

18 Q Okay. So is it fair to say that methamphetamine,
19 while it's I guess being absorbed by your body, can affect
20 your behavior just like when it's being dispelled or taken out
21 of your body through the actual process, that can also affect
22 your behavior; is that fair?

23 A Absolutely.

24 Q Now, you -- switching gears here to the urine test
25 of Lisa Papoutsis. That, of course, wasn't a blood test,

1 right?

2 A That's correct.

3 Q Okay.

4 A And it was a screening test.

5 Q Okay. Can you explain how that makes a difference
6 or how that can impact --

7 A Well, in reference to your initial questions about
8 classes of drugs. The screening test basically defines a
9 number of different classes of drugs without being very
10 specific. And that's why it's called a screening test, as
11 opposed to the blood test which is very specific in terms of
12 identification of the substance because of the intensity of
13 the test itself. In other words, the blood test went through
14 much greater testing process, much more specific testing
15 process, than the urine screen itself.

16 Q Is it fair to say then it's more difficult to draw
17 conclusions from a screening urine test than a blood screen or
18 test?

19 A That's correct.

20 Q Do you remember as to the results for Lisa
21 Papoutsis, what she was positive for?

22 A If I remember correctly, it was amphetamine,
23 opiates, and benzodiazepines.

24 Q Let's talk about those. The benzo, what exactly is
25 that? Can you tell that to the jury?

1 A Well, benzo is a classification of drugs that are
2 used more for sleep, anxiety, such as drugs like Xanax, such
3 as Valium. That class of drug.

4 Q And the -- you mentioned the amphetamine. That --
5 are you able to tell or can you give an opinion whether that
6 is a separate drug in itself that was ingested or is that the
7 breakdown of methamphetamine?

8 A I cannot tell you that.

9 Q So it could be either or?

10 A It could be. Methamphetamine could show up as
11 amphetamine or it could be the breakdown of methamphetamine
12 that would show up as amphetamine.

13 Q And the opiates, can you explain to the jury exactly
14 what opiates are and how it can affect your body?

15 A Opiates are drugs like heroin or pain pills.
16 Vicodin, Hydrocodone, Oxycodone, Percocet, things like that.

17 Q Because it was a urine screen, are you able to give
18 any opinion as to when usage was before the sample was taken?

19 A Well, it had to be recent enough so that the drugs
20 would meet the specific level to be detected. So that could
21 have been -- it could have been a week, it could have been
22 three days, it could have been longer than that, depending on
23 if somebody was, for example, using a long-acting benzo. You
24 know, a Valium is a very long-acting benzodiazepine. So it
25 could have been within a specific time frame of a week at

1 least, possibly less, but at least probably around a week.

2 Q All the opinions that you've just expressed to the
3 jury, has that all been within a reasonable degree of
4 scientific certainty or medical certainty?

5 A I would say medical probability.

6 Q Medical probability.

7 A Correct.

8 Q Thank you, Doctor.

9 MR. YANEZ: Nothing further, Judge.

10 THE COURT: Thank you, Mr. Yanez. All right.

11 Cross-examination by the State.

12 MS. THOMSON: Court's indulgence.

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MS. THOMSON:

16 Q Good afternoon, Doctor.

17 A Good afternoon.

18 Q Did you prepare a report for Mr. Yanez?

19 A I did not.

20 Q And did he specifically ask you not to or just
21 because you were talking about general things, it wasn't
22 necessary?

23 A If he had asked me to I would have, but I don't
24 believe he asked me to.

25 Q You said that there are certain effects from

1 methamphetamine, and correct me if I'm wrong. Typically,
2 shortly after usage there's sort of a positive effect. Is
3 that a fair statement?

4 A Yes.

5 Q And then, as one is coming down there's generally
6 associated negative effect.

7 A Can be.

8 Q When you say coming down, is that the moment that
9 first starts metabolizing or is that halfway through or is
10 that -- where kind of does that fall?

11 A Well, it's variable. And again, when you're using a
12 street drug you don't know how it's manufactured. You don't
13 know what the components are. You don't know, in this case,
14 has the individual been up for days at a time, perhaps weeks
15 at a time. You don't know, so I cannot give you an exact
16 answer.

17 Q When the amphetamine level is higher than the
18 methamphetamine level, does that indicate to you that they're
19 coming down or does that indicate something else, or nothing
20 at all?

21 A Well, it could be -- it depends, yes. They're
22 coming down because the metabolism has changed from the
23 methamphetamine as the primary substance to the amphetamine,
24 the breakdown product. So therefore, yeah, it's -- they're
25 certainly coming down.

1 Q You indicated I think, and correct me if I'm wrong,
2 that methamphetamine typically starts to break down at about
3 four hours. Is that an accurate statement?

4 A I'd say that's reasonable.

5 Q And I say breakdown, metabolize, kind of that same
6 thing.

7 A Correct.

8 Q What is the amount of time for the amphetamine to
9 begin to break down?

10 A It starts to break down almost immediately. So, you
11 know, you see over a period of around 12 to 15 hours, you see
12 pretty much the substance having completely broken down to a
13 its base parts, which in this case would be something -- the
14 end product is norephedrine.

15 Q With an individual who has a very high level of
16 methamphetamine in their system and a relatively low, say
17 maybe 10 percent of that high level, would you expect that
18 person to have been someone who'd been up for hours or would
19 you expect that to be someone who had just used?

20 A It could be either one; it could be either one.
21 Because what happens for the individuals who stay up for
22 periods of time, they continue to reinforce and use throughout
23 that entire time frame, until their body becomes absolutely
24 completely exhausted.

25 Q Each person who uses methamphetamine, assuming that

1 there's not an individualized kind of allergic reaction to it,
2 but as a general rule, the vast majority, are all people
3 affected the same way by the drug?

4 A No. I would say not all people, but the majority,
5 certainly.

6 Q Is it an outlier in terms of people who are not? Is
7 that a fair statement?

8 A That is correct.

9 Q And for people who use methamphetamine -- well, you
10 said you do treatment and counseling. Is that a fair
11 statement?

12 A Correct.

13 Q In your experience, those who you would consider to
14 be heavily addicted, how often a day would they be using
15 methamphetamine?

16 A Several times.

17 Q For people like that, would you anticipate finding a
18 higher level of methamphetamine in their system than say the
19 person who tried it the first time a week ago?

20 A Correct.

21 Q And does the oftenness of use change the ability for
22 the body to break it down or does the body maintain that sort
23 of rate?

24 A No, it doesn't maintain the rate because there are a
25 lot of variables that are involved. I mean, did the

1 individual eat? What is the condition of the kidneys and the
2 liver, which are the primary metabolizing organs in the body?
3 Are there other medical conditions? Were there other drugs
4 that were used in combination with the methamphetamine? So,
5 there's many variables.

6 Q How does a person eating affect the metabolism of
7 methamphetamine?

8 A Because most people don't eat on it. And depending
9 on the route of administration, for example, if the drug is
10 oral and you eat, that slows down the metabolism. As opposed
11 to if the drug is injected or smoked, there's a different rate
12 of metabolism based on the route of administration.

13 Q Would I be accurate in understanding that, for
14 example, if I eat methamphetamine and then I eat a large meal
15 that my positive effects from the methamphetamine would last
16 longer?

17 A They may last longer, but again, are you tolerant to
18 those effects? Are you an experienced user versus a
19 first-time user, for example?

20 Q Okay. You talked about different drugs as it
21 related to the urine test taken from Ms. Papoutsis. Do you
22 remember those?

23 A Yes.

24 Q You, I think, described the benzodiazepines as being
25 drugs associated with kind of putting people to sleep. Is

1 that a fair statement?

2 A Again, they're used for anxiety as well as sleep
3 medications.

4 Q Am I correct --

5 A They have a calming effect.

6 Q That was going to be the question. And then, with
7 regard to opiates, the Vicodin, Oxycodone, Percocet I think
8 that you listed, those you said are for pain management?

9 A Correct.

10 Q When those are taken for a reason not clinically
11 prescribed, recreationally, do they have the same kind of
12 effect of maybe disconnecting?

13 A They can, certainly.

14 Q And at the beginning of your testimony, correct me
15 if I'm wrong, you indicated that amphetamines can either be a
16 breakdown of methamphetamine or it could be the result of
17 having had a prescription drug that had that in it; is that
18 accurate?

19 A That's correct.

20 Q Now, methamphetamine you said tends to reduce one's
21 appetite. In your experience, people who are often users or
22 heavy users or even moderate users, would you expect to find
23 those people to be more waifish?

24 A Waifish. That's an interesting term. I would say
25 thin, thinner.

1 MS. THOMSON: Court's indulgence. I'll pass the
2 witness.

3 THE COURT: Redirect.

4 MR. YANEZ: Nothing further, Judge.

5 THE COURT: All right. Nothing further. Anything
6 from the jury? We have one. Go ahead, take your time to
7 write it out.

8 I have a quick question, Doctor. Based on your
9 experience, is there a typical dose that a regular meth user,
10 male, middle age, takes if it's say someone who's been taking
11 meth for say six months? Is there some regular dose that a
12 person takes?

13 THE WITNESS: Again, it's very hard to put a number
14 on dose because you don't know exactly what you're dealing
15 with in terms of the drug itself. Is it a strong drug or is
16 it a weak drug? You see what I mean? You don't know how the
17 drug is manufactured.

18 THE COURT: How about based on the different
19 strengths of drugs, meth drugs that you've seen in your
20 experience, what's the range of dose that a person takes to
21 experience a high without overdosing?

22 THE WITNESS: I think the average dose would be
23 around 2.5 to five milligrams of the drug.

24 THE COURT: Is that something that would be taken
25 all at once or spread out?

1 THE WITNESS: It could be taken all at once and may
2 be toxic for that particular individual. Or it may be in an
3 experienced user, someone who uses on a regular basis, it may
4 be something that's average for that person.

5 THE COURT: How would you describe the quantity of
6 say 2.5 -- you're talking about grams.

7 THE WITNESS: Milligrams.

8 THE COURT: Milligrams, 2.5 milligrams of meth, how
9 much is that? How can you describe --

10 THE WITNESS: It's hard. I really don't know the
11 answer to that. It's a weight, it's by weight. As we talked
12 about in the blood test itself, you cannot look at the number
13 of 6,300 nanograms and apply a dose to that number. It just
14 doesn't work. As opposed to something like a blood alcohol
15 level where you can -- there's been much greater testing and
16 you -- if we have a .08, for example, we know that that
17 individual meets the criteria for legal intoxication. I don't
18 think we can do that at this point in time with the science
19 that's currently available to us.

20 THE COURT: All right. Thank you. Appreciate that.

21 THE WITNESS: You're welcome.

22 THE COURT: Thank you very much, Doctor. We've got
23 a question here.

24 (Bench conference transcribed as follows)

25 MR. YANEZ: [inaudible]

1 THE COURT: See if he knows? All right. I'll give
2 it.

3 (End of bench conference)

4 THE COURT: Doctor, this is a question from the
5 jurors, so direct your response to them. Did either Gary Bly
6 or Lisa Papoutsis test positive for THC?

7 THE WITNESS: Based on my memory of the tests
8 themselves, I did not see that.

9 THE COURT: All right. Thank you. Anything else
10 from the jurors? Anything from the attorneys? Want to follow
11 up on that?

12 MS. THOMSON: Just briefly. Thank you, Your Honor.

13 THE COURT: Defense first.

14 MR. YANEZ: I have nothing further. I might have a
15 response based on this question. Go ahead.

16 BY MS. THOMSON:

17 Q Generally speaking, is it fair to say that THC stays
18 in the system for a very extended period of time?

19 A It depends on how you use it. I mean, again, if you
20 use it orally then it's metabolized much lower. But one dose
21 or one hit of a joint doesn't necessarily -- that's not going
22 to raise the THC level high enough perhaps that it will even
23 be detectable.

24 Q And just because you're saying orally, I'm hearing
25 like eating. Does that also include smoking through the

1 mouth?

2 A Yes.

3 Q Okay. Thank you.

4 MR. YANEZ: No follow up, Judge.

5 THE COURT: All right. Doctor, you're excused.

6 Thank you very much for your time. Watch your step there.

7 The defendant may call his next witness.

8 MR. YANEZ: Judge, at this time the defense rests.

9 THE COURT: All right. Very good. The defense
10 rests. Then, ladies and gentlemen of the jury, I need to ask
11 the State if they have any rebuttal witnesses?

12 MS. THOMSON: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, this matter is now submitted to you. I need to read you
15 the jury instructions. We're not going to get to closing
16 arguments because it takes quite some time to read the jury
17 instructions. It's going to take me at least 45 minutes to
18 read those things. And I think we probably need what, five or
19 six minutes to -- let's say 10 minutes to print them out.
20 Let's take 15 minutes. Let me just play it safe. Let's take
21 15 minutes. You guys can have a break. And then we're going
22 to begin with the jury instructions and then I'm going to let
23 you go home. All right? And then tomorrow we start at 1:00.
24 We're going to have closing arguments and then you'll start
25 deliberating. All right?