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INSTRUCTION NO. 22

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

INSTRUCTION NO. 23

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 24

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

INSTRUCTION NO. 25

It is the constitutional right of a Defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 26

When you retire to consider your verdict, you must select one of your members to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 27

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, experimentation at the scene, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case or anyone involved with the case on your own.

You may, of course, during deliberations, communicate with other members of the jury while you are in the jury deliberation room, after the case has been submitted to you for deliberation.

INSTRUCTION NO. 28

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

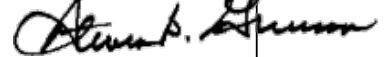
Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be read back so that the court reporter can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 29

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE



1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6
7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 CEASAR SANCHAZ VALENCIA,)

11 Defendant.)

Case No. C-16-315580-1

DEPT. XVIII

12
13 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE

14
15 FRIDAY, DECEMBER 1, 2017

16 **TRANSCRIPT OF PROCEEDINGS RE:**
17 **JURY TRIAL - PHASE I - DAY 5**

18 **APPEARANCES:**

19 For the Plaintiff:

20 MICHAEL DICKERSON, ESQ.
(Deputy District Attorney)
21 CHAD N. LEXIS, ESQ.
(Deputy District Attorney)

22 For the Defendant:

23 GREGORY E. COYER, ESQ.
ALEXIS ANNE PLUNKETT, ESQ.

24 RECORDED BY: ROBIN PAGE, COURT RECORDER
25

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WITNESSES

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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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No exhibits offered.

1 **LAS VEGAS, NEVADA, FRIDAY, DECEMBER 1ST, 2017**

2 [Proceedings commenced at 10:04 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Please be seated. This is the continuation of
6 the trial in Case No. C-16-315580, *State of Nevada vs. Ceasar Sanchaz*
7 *Valencia*. Let the record reflect the presence of counsel for the State,
8 counsel for the defense, and Mr. Valencia.

9 Are the parties ready to proceed this morning?

10 MR. DICKERSON: We are, Your Honor, on behalf of the
11 State.

12 MR. COYER: Yes, Your Honor.

13 THE COURT: I'm going to bring the jury in at this time.

14 [Jury reconvened at 10:05 a.m.]

15 THE COURT: Is the State ready to proceed?

16 MR. DICKERSON: Yes, Your Honor. We would begin back
17 up with the defense cross-examination of witness Keith Bryant.

18 **KEITH BRYANT**

19 [having been recalled as a witness and previously sworn, testified as
20 follows:]

21 THE COURT: Sir, I remind you that you're still under oath.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you. Have a seat.

24 You may proceed.

25 MR. COYER: May we proceed? Thank you, Judge.

1 Appreciate it.

2 **CROSS-EXAMINATION (CONT.)**

3 BY MR. COYER:

4 Q Morning, Detective Bryant.

5 A Good morning.

6 Q If you will recall, we had started the cross-examination
7 process yesterday evening before we adjourned at about 5:00
8 yesterday, right?

9 A About 3:30.

10 Q Three -- oh, you're right. That was early -- early day
11 yesterday --

12 A Yes.

13 Q -- 3:30. And as the judge -- or the clerk instructed, you're still
14 under oath; you understand that, right?

15 A Yes, I do.

16 Q Did you discuss your testimony with anybody from 3:30
17 yesterday until this morning?

18 A No.

19 Q Okay. So just to kind of recap briefly, yesterday we were
20 talking a little bit about the -- the CAD, the paper log that shows the
21 times and the entries that come out over the radio, right?

22 A Correct.

23 Q And we had established that you were assigned at
24 approximately 9:12 p.m., right?

25 A Correct.

1 Q Okay. And that you had arrived at 625 North 10th at
2 around 9:47 p.m., right?

3 A Correct.

4 Q And you pretty quickly, almost immediately, requested ID, or
5 what we call the CSA, crime scene analyst, correct?

6 A Correct.

7 Q And that person was Crime Scene Analyst, or CSA, Olivia
8 Klosterman, right?

9 A Correct.

10 Q Okay. And we established that she arrived, excuse me, at
11 approximately 10:55 p.m.?

12 A Correct.

13 Q And that was at 625 North 10th Street where she arrived?

14 A Correct.

15 Q Okay. Officer Jacobitz left that scene at
16 approximately 11:10 p.m. to transport prisoners to City Jail, right?

17 A Correct.

18 Q So there's about 15 minutes there where presumably
19 Ms. Klosterman would have had opportunity to discuss the incident with
20 Officer Jacobitz, correct?

21 A That's correct.

22 Q Okay. And you talked about the walkthrough that the three of
23 you did together?

24 A Correct.

25 Q Okay. At some point later that evening, did you leave the

1 scene and go back to the Downtown Area Command?

2 A I did.

3 Q Do you recall when that was?

4 A With the CAD, but it was probably after 11:30.

5 Q Okay. Does 11:34 sound right?

6 A That sounds about right, yeah.

7 Q That's good -- that was a good estimate. Now, during that

8 time when you were not at the scene, were you being made aware of

9 what was happening at the scene?

10 A No. Because my recollection, everything was pretty much

11 wrapped up at that point.

12 Q Okay. So I want -- I want to go back and sort of clarify the

13 timeline. Okay?

14 A Okay.

15 Q Because you had given some testimony on direct examination

16 about some surveillance being conducted on the residence at 625

17 North 10th Street, correct?

18 A Correct.

19 Q Okay. So my question to you is, I know you didn't personally

20 stay in visual contact with that residence, because you went back to -- to

21 DTAC, but was the residence under surveillance continually from the

22 time of the late evening of May 19th till the early morning hours of

23 May 21st when we talked about that Mustang, that black Mustang,

24 appearing at the residence?

25 A Once we cleared from the -- the residence on the 19th, as far

1 as my recollection, there was no other kind of surveillance done on the
2 residence until we set it back up again later that night.

3 Q Later which night?

4 A On the 20th.

5 Q Okay. So because we're talking about the late night hours of
6 May 19th?

7 A Correct.

8 Q At some point, officers go back to 620 -- the -- the residence
9 area of 625 North 10th Street on the 20th, the following day?

10 A Correct.

11 Q What time of day was that surveillance set up?

12 A That would have been later that night, around 11:18, I believe,
13 is when we set up the initial event.

14 Q So --

15 A 11:12.

16 Q Excuse me, I just didn't -- I didn't want to speak over you.

17 A Yeah. So I think like 11:12 I think is what the CAD had, or
18 something like that.

19 Q So approximately, give or take, about 24 hours, almost a full
20 day after you left the -- the scene?

21 A Correct.

22 Q Okay. Are you aware of whether or not any K-9 officers had
23 ever come to the scene on May 19th in the late hours when you were
24 actually there?

25 A The original event when the initial foot pursuit ensued, a K-9

1 was requested and responded out there for part of the perimeter on the
2 initial set up of the perimeter, yes.

3 Q Okay. So that wasn't something that you specifically
4 requested?

5 A No, sir.

6 Q Okay. Were you made aware of whether or not the K-9 officer
7 or officers did a -- a walk around with the dogs at the residence of 625
8 North 10th?

9 A I know they walked around the -- the perimeter aspect of it
10 on 10th and also the alleyway where the subject was last seen hopping
11 over the wall heading west through the alleyway, which is normal
12 practice. We basically go back and have the last officer who saw the
13 subject running, we'll have K-9 start at that location and kind of do a
14 walkthrough in the general area to see if the dog can pick up a scent.

15 Q Dog's got to pick up the scent, right?

16 A Correct.

17 Q And then hopefully, in a perfect world, the dog can pick up the
18 scent later in another location?

19 A Correct.

20 Q Thus giving officers a lead on where to search?

21 A Correct.

22 Q Okay. In this incident, were you ever made aware that a dog
23 had given any indication, or an alert as they call it, at the residence
24 of 625 North 10th Street?

25 A No. That night, no, there was no pick up of any scent of

1 anything.

2 Q Okay. What about the following night?

3 A We did not have K-9 with us the -- the next night during
4 surveillance.

5 Q Okay. So the surveillance that's set up about 24 hours later,
6 this is when you described it as being, like, up on the balcony of the
7 house across the way, right?

8 A Correct.

9 Q And you guys had a good line of sight down into the backyard
10 of 625 North 10th Street, right?

11 A Correct.

12 Q Okay. Mr. Valencia is arrested on the actual date of May 21st,
13 right?

14 A Correct.

15 Q But it's, like, the early morning hours, like 2:00, 3:00 a.m.?

16 A It was, like, 2:52.

17 Q Okay. So from the -- the initial assault on Officer Jacobitz is
18 about, what, 7:45 p.m.?

19 A Correct.

20 Q Till Mr. Valencia's arrest, we're talking about, like, 30 hours,
21 give or take?

22 A Roughly, yes.

23 Q Okay. So I want to talk to you now about the surveillance of
24 that black Mustang we talked about. Were you part of the surveillance
25 team that was up on that balcony looking down into the backyard of the

1 residence at 625?

2 A Yes, I was. Myself and my sergeant.

3 Q Okay. Did you see a black Mustang arrive at that residence or
4 was it always there from the time you started surveilling?

5 A It was not there when we started it. We were advised by the
6 units that were on the other side of the surveillance on -- on 10th Street
7 that the Mustang had arrived.

8 Q So you're looking at the back of the residence?

9 A Correct.

10 Q Another officer tells you that a Mustang has just arrived at the
11 front of the residence?

12 A Correct.

13 Q You can't see the front -- the front of the residence where
14 you're at?

15 A Correct.

16 Q Okay. So you don't see who gets into that Mustang, correct?

17 A Correct.

18 Q You only see people leave the area where you understand to
19 be Mr. Valencia's dwelling?

20 A That's correct.

21 Q Okay. And that's a male and a female?

22 A Correct.

23 Q Okay. Does anybody ever see male and a female get into the
24 Mustang?

25 A It was updated they saw subjects getting in the vehicle,

1 correct.

2 Q Now, by the time Mr. Valencia is arrested, there's not a male
3 and a female in the -- in the Mustang, right?

4 A Correct.

5 Q Two males, right?

6 A That's correct.

7 Q No female, right?

8 A Correct.

9 Q Okay. So between the time when the Mustang leaves the
10 residence and when it's ultimately pulled over in that area we discussed,
11 surveillance is lost on the Mustang?

12 A For a very short period of time, yes.

13 Q About how long?

14 A I'd say a matter of seconds.

15 Q Okay. And when I say lost, I mean, nobody involved in the
16 surveillance operation is able to see the Mustang at some point?

17 A Correct.

18 Q Okay. And then sometime later, you said a few seconds I
19 guess, the vehicle is relocated, right?

20 A Correct.

21 Q But now it's unoccupied?

22 A That's correct.

23 Q Okay. And that's over in that area closer to where the arrest
24 occurred, right?

25 A Correct.

1 Q Okay. You were the lead detective on this?

2 A I was.

3 Q I say incident; it's really kind of two incidents, right? There's
4 the assault incident and then there's the arrest incident, right?

5 A Yeah. Usually when you have a case like that, it kind of
6 carries over. It all becomes kind of wrapped up into one case.

7 Q But as far as the totality of all that, you're eventually assigned
8 as the lead detective?

9 A That's correct.

10 Q Okay. And so you would have drafted a -- some kind of
11 report, like an declaration or an arrest report?

12 A Correct. Actually both.

13 Q Okay. Now, you didn't personally the witness assault, right?

14 A No, I did not.

15 Q You weren't even there, right?

16 A Correct.

17 Q Okay. So any information you would have put in your report
18 would have come from, presumably, either Officers Jacobitz or Houston,
19 correct?

20 A That's correct.

21 Q Okay. Because they were the only ones on the scene when
22 the original gun-pulling incident happened, right?

23 A Correct.

24 Q Okay. And in your report, you reiterated the description of that
25 suspect as it was called out contemporaneously in realtime when it

1 actually happened, right?

2 A Correct.

3 Q And that description that you put in your report was Hispanic
4 male adult?

5 A Correct.

6 Q Dark hat?

7 A Correct.

8 Q Red striped shirt?

9 A Correct.

10 Q Dark pants?

11 A Yes.

12 Q Approximately 5'7"?

13 A Correct.

14 Q Approximately 160 pounds?

15 A Correct.

16 Q Okay. That's exactly what you put in your report?

17 A Correct.

18 Q You would have also incorporated into your report some of the
19 data that Ms. Klosterman would have put together through her
20 photographs and measurements and things, correct?

21 A That's correct.

22 Q Okay. And the distance from the suspect with the gun and
23 Officer Jacobitz ended up being about 64 feet; do you recall that?

24 A That sounds about right.

25 Q Okay. And does that sound about right based on your

1 personal visualization of the actual scene after the fact?

2 A Yes.

3 Q Okay. You also put in your report that the subject that was

4 witnessed leaving, what was believed to be Ceasar's residence, was

5 bald; do you recall that?

6 A Correct.

7 Q And fit the description of our target subject, Valencia, right?

8 A Correct.

9 Q Okay. Now, the description that went out was never that this

10 person was bald, correct?

11 A He had a hat on.

12 Q Right?

13 A Right.

14 Q So you wouldn't even be able to tell if somebody was bald or

15 not if they had a hat on presumably, right?

16 A Yes, correct.

17 Q Okay. And certainly if this person was bald and Officer

18 Jacobitz had witnessed that, that's something you would have expected

19 him to convey or at least tell you after the fact so that you could put it in

20 your report, right?

21 A Correct.

22 Q Hair style, that's the kind of detail you want in a description of

23 a suspect, right?

24 A Of course, yes.

25 Q So by the time that the -- what we're referring to as the

1 take-down operation, the arrest of Mr. Valencia, pictures had been
2 circulated at this point, right?

3 A Correct.

4 Q Everybody involved knows what Ceasar Valencia looks like
5 now, right?

6 A Correct.

7 Q Right. And turns out, Ceasar Valencia has a shaved head or
8 is bald, right?

9 A Correct.

10 Q Okay. And there's another reference in your report to
11 someone seeing the passenger of the black Mustang, right?

12 A Correct.

13 Q And again, the reference is, oh, that person is bald, he fits the
14 description of our target, correct?

15 A Correct.

16 Q Okay. And the target is Ceasar Valencia, right?

17 A Correct.

18 Q But bald doesn't necessarily fit the description of an HMA with
19 dark hat, does it?

20 A He's wearing a hat. So, yeah, no.

21 Q Okay.

22 MR. COYER: May I have the court's indulgence to acquire
23 some exhibits?

24 THE COURT: Yes.

25 BY MR. COYER:

1 Q I'm going to show you what's been pre-admitted as State's 15.
2 Zoom out so we can actually see the whole thing, if that's all right. Can
3 you see that, sir?

4 A Yes, I can.

5 Q Okay. Got it all on your screen there?

6 A Yes, I do.

7 Q Okay. You recall seeing this photograph from yesterday,
8 right?

9 A Correct.

10 Q Okay. This depicts sort of the opening of the area that is the
11 walkway on the south side of 610 North 10th Street, correct?

12 A Correct.

13 Q Okay. And, obviously, the gate is pushed half closed in this
14 picture. But my question to you is, this area right here in front of this
15 gate, in front of these steps, is the area where you believed Officer
16 Jacobitz to be standing when he saw a firearm, correct?

17 A Correct.

18 Q Okay. And would you agree that from this point, there is both
19 a little pony wall right here beside the stairs?

20 A Correct.

21 Q And there's the backside of what appears to be a structure
22 right here, correct?

23 A Correct.

24 Q So reasonable to infer that Officer Jacobitz could have, if he
25 needed to, have taken cover in either one of these positions, correct?

1 MR. DICKERSON: Speculation, Your Honor.
2 THE COURT: Restate the question, counsel.
3 BY MR. COYER:
4 Q So it's reasonable to infer, based on where Officer Jacobitz
5 was in this picture, that he could have taken cover behind either of these
6 two locations if he needed to, correct?
7 MR. DICKERSON: Speculation, Your Honor.
8 THE COURT: Did you finish your question, counsel?
9 MR. COYER: I did.
10 THE COURT: I'll sustain the objection.
11 MR. COYER: Okay.
12 BY MR. COYER:
13 Q During the approximately 30 hours or so --
14 THE COURT: I apologize, counsel. Approach.
15 [Bench conference transcribed as follows:]
16 THE COURT: I just want to verify something. Have we
17 allowed this witness to give lay opinion testimony or either -- or to give
18 opinion regarding either as a lay witness or an expert witness
19 previously?
20 MR. COYER: Not as --
21 MR. DICKERSON: Not as an expert.
22 THE COURT: Okay.
23 MR. LEXIS: Plus, he's not even giving a lay opinion. He's just
24 trying to [indiscernible] of what somebody else --
25 THE COURT: Would have been an opinion based on his

1 many years as a police officer if -- but he hasn't been qualified as an
2 expert, therefore --

3 MR. DICKERSON: Correct.

4 THE COURT: -- I'm going to sustain the objection.

5 MR. DICKERSON: Sure.

6 MR. COYER: I'll move on.

7 THE COURT: Okay.

8 MR. DICKERSON: Thank you, Your Honor.

9 THE COURT: Thank you.

10 [End of bench conference.]

11 BY MR. COYER:

12 Q All right. Officer, you -- excuse me, Detective, you were here
13 in this area in the hours following the incident with Officer Jacobitz,
14 correct?

15 A Yes, I was.

16 Q Okay. So you actually personally laid eyes on this area,
17 correct?

18 A I did, yes.

19 Q Even though you didn't necessarily take these photographs,
20 correct?

21 A Correct.

22 Q Okay. While we can't see, obviously, what's beyond the
23 photograph here, naturally, as you recall personally seeing this area,
24 were there any obstructions between where these steps are and the
25 area behind this wall or behind this wall?

1 A No.

2 Q Okay. During the approximately 30 or so hours between the
3 time of the incident and the time the surveillance began, did you request
4 for CSA or any ID to go back to the scene and try to get additional
5 photographs at about the same time, so that we could actually see what
6 the lighting looked like, given that it was kind of a dusky kind of not quite
7 day, not quite night situation?

8 A No, I did not.

9 Q Okay. Do you think that would have useful evidence to have?

10 A Possible, but I mean, we felt like we had a good identification
11 of the subject and that was our follow-up there, just trying to locate him,
12 because of the incident itself.

13 Q Right. By then you already had a target in mind, right?

14 A We knew who it was, yes.

15 Q Okay. You've seen this photograph before, correct?

16 A Yes, I have.

17 Q Okay. And this -- is it your understanding that this is the
18 booking photograph of when Mr. Valencia was arrested on
19 May 21st, 2016?

20 A I believe so, yes.

21 Q Okay. When you saw Mr. Valencia -- well, let me ask you -- a
22 previous question. Was May 21st, the day he was arrested, the first day
23 you had seen him?

24 A Yes, it was.

25 Q Okay.

1 A In person.

2 Q Right. When you saw him, wasn't wearing a hat, right?

3 A No.

4 Q Okay. So he looked more like this, right?

5 A Correct.

6 Q Okay. Did you, at that time, have any concerns that Officer

7 Jacobitz had mistakenly identified Mr. Valencia?

8 A No.

9 Q Did you have any concerns that not only Officer Jacobitz, but

10 Officer Houston had omitted the detail that Mr. Valencia has facial hair?

11 A No.

12 Q Okay. Do you agree that a show-up is a suggestive

13 identification procedure?

14 A When you're dealing with a regular victim, but police work, we

15 don't usually do that with another officer, no.

16 Q Okay. Police officers can't make mistakes?

17 A They can.

18 Q Okay. If you had had concerns whether or not we had the

19 right suspect, would you have done additional follow-up investigation?

20 A Yes, I would have.

21 Q And what would that have consisted of?

22 A Speaking with both officers again, just to reconfirm that they --

23 that they saw and believed who it was, be able to -- to identify him

24 correctly.

25 Q Maybe order some additional forensic work?

1 A Possible.

2 Q Okay. And we had talked a little bit about the black Mustang.

3 I'm going to publish what's been admitted State's 49. Does that vehicle

4 look familiar to you?

5 A Yes, it does.

6 Q And is that the black Mustang that was eventually pulled over

7 by a marked patrol unit, in which Ceasar Valencia was riding as a

8 passenger?

9 A Correct.

10 Q Okay. When Mr. Valencia was arrested, your report indicates

11 he was taken into custody "without incident"?

12 A Correct.

13 Q Okay. Without incident is a term of art that's commonly used

14 in arrest reports and declarations of arrest, correct?

15 A Correct.

16 Q And that term, without incident, is used to describe a

17 by-the-book, smooth arrest procedure, correct?

18 A What -- the subject didn't fight or run or anything like that, yes.

19 Q Mr. Valencia made no attempt to resist arrest?

20 A No.

21 Q Mr. Valencia made no attempt to flee?

22 A No.

23 Q No attempt to run away?

24 A No.

25 Q Mr. Valencia made no attempt to assault anyone?

1 A No.

2 Q If any of those things had happened, you would have
3 documented those in your report?

4 A Correct.

5 MR. COYER: We'll pass, Judge.

6 THE COURT: Any redirect by the State?

7 MR. DICKERSON: Yes, Your Honor. Thank you.

8 **REDIRECT EXAMINATION**

9 BY MR. DICKERSON:

10 Q Detective Bryant, you said that if you were dealing with regular
11 victims, like citizens --

12 A Correct.

13 Q -- you -- you might do a show-up?

14 A Correct.

15 Q What's the difference here?

16 A It -- an officer, we're -- we're trained a little bit more from day
17 one to be able to pick up certain descriptors, certain height, weight,
18 things like that, that maybe a normal citizen who isn't dealing with this on
19 a daily basis wouldn't even think about to -- to look at. So an officer --
20 it's kind of normal practice to sit there, and if we have a photo, and show
21 them realtime, hey, is this who you saw running? And they can identify it
22 right away. Whereas a citizen usually needs a little bit more time and a
23 little bit of understanding of what they're looking for.

24 Q Because an everyday part of your job as police officers is
25 identifying people you've never seen before?

1 A Correct.

2 Q There was some attention paid by defense counsel to the fact,
3 showing you State's Exhibit 8, Mr. Valencia was bald?

4 A Correct.

5 Q But he was wearing a hat the night of the 19th?

6 A Correct.

7 Q In your investigation, were you able to determine that he was
8 bald before setting up that surveillance operation?

9 A Yes, I was.

10 Q So that's a fact you knew beforehand?

11 A Correct.

12 Q Okay. And there was some attention paid to the -- the
13 under-beard thing that Ceasar Valencia has going on here on the 21st of
14 May 2016?

15 A Correct.

16 Q You said that during the cross-examination that it wasn't
17 concerning to you that that wasn't part of the initial pursuit description?

18 A Correct.

19 Q And why is that?

20 A Unless it's something of significant nature, I mean, unless he
21 has like something that's sticks out, like a handlebar mustache, or a --
22 really, a full-growth beard, those details, a small mustache and a little bit
23 of a goatee, is not going to be anything of significant information at -- at
24 that point in time.

25 Q You would agree with me that there's -- there's no hair on the

1 sides of his face?

2 A Correct.

3 Q And his mustache is very wispy?

4 A Correct.

5 Q But he does have some undergrowth down here?

6 A Correct.

7 Q Now, as far as your description that defense counsel touched
8 on in your report, it's the exact same description that was in the details
9 of the call?

10 A Correct.

11 Q Where did you get that description from?

12 A The -- from the calls from the officer on scene that actually
13 witnessed the subject running from -- eye -- eyewitness account of
14 what -- what he looked like and height and weight and everything.

15 Q And that was specific -- was that taken specifically from the
16 details of the call?

17 A Correct.

18 Q So the CAD that we have?

19 A Correct.

20 Q So you just looked at the CAD on your computer?

21 A Yeah. We'll do that, just to make sure we get the correct
22 information that was broadcast at the time of the incident.

23 Q Okay. And so that's what you were documenting at that time?

24 A Correct.

25 Q That evening on the 19th when you arrived on scene and you

1 spoke to Officer Jacobitz and Officer Houston, had Ceasar Valencia
2 been identified?

3 A Yes, he had.

4 Q As 100 percent being the suspect?

5 A 100 percent from Officer Jacobitz, yes.

6 Q And when he was subsequently taken into custody on
7 the 21st, was that by way of a felony stop?

8 A Yes. We call it, like, a high-profile car stop.

9 Q Is there more than one officer out there?

10 A Yeah. We usually have multiple officers out there, try to have
11 the air unit available.

12 Q This night in particular, how many officers were out there?

13 A With all of our detectives and then with the marked patrol,
14 maybe 12 to 15, if I was -- if I had to guess. There was quite a few out
15 there.

16 Q 12 or 15 officers?

17 A Correct.

18 Q Are guns out during a felony stop?

19 A Yes.

20 Q Most officers have guns out?

21 A Usually the officers that are up on the front line actually
22 making contact with the vehicles and the occupants in the vehicle, they
23 usually have their -- their guns drawn just in case, yes.

24 Q Okay. And again, the driver of this vehicle was not
25 Mr. Valencia?

1 A No, he was not.

2 Q Okay. So by the time that vehicle stopped, where were all
3 these officers?

4 A They were parked up behind the vehicle. Usually they'll have
5 some officers on to the side kind of blocking traffic so there's no citizens
6 that can be of any danger passing. Then there will be officers parked
7 behind the vehicle as well, strategically.

8 Q And the location of the stop here in the case had some
9 significance?

10 A Yes.

11 Q How so?

12 A Because it was close from the location that he just left and
13 picked him up from the air unit. So it was a very close distance from the
14 time they got in the vehicle to the time we made a stop.

15 Q In that area of Washington, is it kind of under the train tracks?

16 A Correct.

17 Q So are there routes to get away? I mean --

18 A There's -- there's multiple locations. It's almost -- the
19 intersection itself is almost like a huge intersection, almost like an X.
20 There's different avenues to -- to flee and different vehicles and citizens
21 and dangers and things like that.

22 Q But the specific area where this vehicle was stopped was
23 before Main Street?

24 A Correct.

25 Q Kind of in the -- the dip, where there's walls for the --

1 MR. COYER: Objection. Leading.

2 MR. DICKERSON: What --

3 THE COURT: Sustained.

4 BY MR. DICKERSON:

5 Q What was the area --

6 THE COURT: Restate your question.

7 BY DICKERSON:

8 Q -- where this vehicle was stopped --

9 A Yeah.

10 Q -- west --

11 A Yeah. It had the Main Street. Had the wall off Washington.

12 Had the big wall on the right-hand side.

13 Q I'm going to show you for reference State's Exhibit 13. Is this
14 the area right here that we're talking about?

15 A Correct. It's going to be up just a little bit past the -- let me get
16 by -- just up past that right there, in that location a little bit further up.

17 Q Okay. There was also previously some testimony on
18 cross-examination about the computer aided dispatch report and the
19 arrival time of the crime scene analyst?

20 A Correct.

21 Q No doubt she arrived at about 10:55 p.m.?

22 A Correct.

23 Q And the second arrival time right before her clear time --

24 A Correct.

25 Q -- approximately -- was that approximately six minutes before

1 her clear time?

2 A Correct.

3 Q Is it possible for her to complete the work that she did in six
4 minutes?

5 MR. COYER: Objection. Speculation.

6 THE COURT: Sustained.

7 BY MR. DICKERSON:

8 Q Did you see her complete the work that she did in six
9 minutes?

10 A She didn't complete in six minutes, no.

11 Q How long did you see her out there?

12 A She's out there for the full time we were, so it was about --
13 over an hour, hour and a half.

14 Q And she took the photos out there at that scene?

15 A Correct, she did.

16 Q Including what's depicted here in State's Exhibit 31, the
17 firearm?

18 A Correct.

19 Q And all the other photos of that firearm?

20 A Correct.

21 Q What's depicted here in State's Exhibit 17, the scene?

22 A Correct.

23 Q And all those exhibits of the scene?

24 A Correct.

25 Q As well as what's depicted here in State's Exhibit 45?

1 A That's a photo of Officer Jacobitz's name badge.
2 Q And all the photos of Officer Jacobitz?
3 A Correct.
4 Q That CSA took?
5 A Correct.
6 Q One piece of testimony that was touched on on
7 cross-examination was, was it possible that there was -- if there was
8 some uncertainty about Ceasar Valencia being the suspect, you might
9 conduct other forensic testing?
10 A Correct.
11 Q Is there any other forensic testing that you think would be
12 viable to conduct in this case?
13 A Not of this --
14 MR. COYER: Objection. Calls for an expert opinion.
15 THE COURT: Sustained.
16 MR. DICKERSON: I -- may I be heard, Your Honor?
17 THE COURT: Approach.
18 [Bench conference transcribed as follows:]
19 THE COURT: Speak low.
20 MR. DICKERSON: He's opened the door on this, because he
21 asked that specific question, would you conduct any other forensic
22 testing. So he's -- actually entitled to clear that up, what other forensic
23 testing would you conduct.
24 MR. COYER: The question that's been objected to is
25 regarding the viability of any forensic testing, and that's not a proper

1 opinion from this witness.

2 THE COURT: Okay. What I -- restate the question --

3 MR. DICKERSON: Okay.

4 THE COURT: -- restating his question, and then asking is
5 there any other forensic --

6 MR. DICKERSON: Great.

7 THE COURT: In other words, you're -- you're following up on
8 his question. You need to follow up with a question. Restate his
9 question and then what was -- what was the -- do you remember the
10 question he asked?

11 MR. DICKERSON: Yeah. I'll -- I'll restate it, Your Honor.

12 THE COURT: Okay. But don't ask about viability --

13 MR. DICKERSON: Great.

14 THE COURT: -- things like that.

15 MR. DICKERSON: Thank you, Your Honor.

16 THE COURT: Thank you.

17 [End of bench conference.]

18 BY MR. DICKERSON:

19 Q Detective Bryant, having considered that, is there any other
20 forensic testing that you would have ordered in this case?

21 A No.

22 Q And May 19th, 2016, you knew exactly who the suspect was
23 you were looking for?

24 A Correct.

25 Q Ceasar Valencia?

1 A Correct.

2 Q See that individual here in the courtroom today?

3 A I do.

4 Q Could you please point to him and identify a piece of clothing

5 he's wearing?

6 A He's over --

7 MR. COYER: Objection. Asked and answered.

8 BY MR. DICKERSON:

9 Q The defendant?

10 A Correct.

11 THE COURT: If --

12 BY MR. DICKERSON:

13 Q Thank you.

14 THE COURT: Wait a minute. Has you previously identified

15 the defendant before --

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: -- in your testimony? And you identified him as

18 Ceasar Valencia?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: I mean -- sustained.

21 BY MR. DICKERSON:

22 Q The defendant?

23 A Yes, sir.

24 Q Thank you.

25 MR. DICKERSON: State will pass the witness.

RECROSS EXAMINATION

BY MR. COYER:

Q Officer, you testified just now on redirect that police officers, unlike civilians, receive training, to use your words, to identify descriptors --

A Correct.

Q -- correct? Descriptors would include someone's race?

A Correct.

Q Perhaps their build?

A Correct.

Q In some cases, clothing?

A Correct.

Q And identifiable traits, physical traits, right?

A Correct.

Q Like tattoos --

A Yes.

Q -- right? Scars?

A Correct.

Q Facial hair --

A Correct.

Q -- right? Hair in general, right?

A Correct.

Q Okay. These are all things that officers receive training on, so that when they see these things in the field, they mention them, because they're important, right?

1 A Sometimes, yes.

2 Q They're sometimes important and sometimes not important?

3 A Sometimes they mention them, sometimes they don't.

4 Q Okay. In a situation like the one we have here, where 30 or so

5 hours has gone by between incident and arrest, clothing is not that

6 important anymore, is it?

7 A Correct.

8 Q Because clothing can be changed, right?

9 A Correct.

10 Q Okay. So in a situation like that, where clothing becomes

11 irrelevant, physical descriptors become the most important features,

12 right?

13 A Correct.

14 Q Okay. Now, I want to clarify the timeframe of

15 Ms. Klosterman's involvement, okay.

16 A Okay.

17 Q Because you said it was about an hour, hour and a half?

18 A Roughly, yes.

19 Q Okay. Would you agree that the CAD indicates she was there

20 for 47 minutes?

21 A That's close to an hour, yeah. Correct.

22 Q You say that's close to an hour?

23 A Yeah. I'd say it's close to an hour.

24 Q Okay. But it's 47 minutes, right?

25 A Okay. Yes.

1 Q Do you have any reason to disagree with that?
2 A No.
3 Q Would you defer to the CAD on that?
4 A I'm fine.
5 Q Sorry?
6 A I'm fine. CAD says it's 47 minutes, I just -- I was just
7 estimating.
8 Q Okay.
9 MR. COYER: Pass, Judge.
10 THE COURT: Mr. -- do you have any --
11 MR. DICKERSON: May I briefly, Your Honor?
12 THE COURT: Briefly.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MR. DICKERSON:

15 Q Some talk about your -- the descriptors?
16 A Yes.
17 Q You ended up actually booking Ceasar Valencia into jail on
18 the 21st; is that right?
19 A Correct.
20 Q As part of that, you have to determine a couple things,
21 identifiers about the individual?
22 A Correct.
23 Q How tall is Ceasar Valencia?
24 A 5'7".
25 Q How much does he weigh?

1 A 185, I believe.

2 Q Thank you.

3 THE COURT: Counsel, can this witness be excused?

4 MR. COYER: Yes.

5 THE COURT: The State?

6 MR. DICKERSON: Yes.

7 THE COURT: Sir, thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You are excused.

10 And before -- and I've had my bailiff watching to make sure
11 nobody wanted to ask any questions of any of the witnesses. So again,
12 I want to remind you that if there -- you do want to ask any witnesses
13 question, please write it out on a full-length piece of paper before the
14 witness is excused, make sure you provide it to my bailiff and we'll
15 review it and make a determination whether it's a question that should or
16 not be asked. Okay? Thank you.

17 State?

18 MR. DICKERSON: Can we have a brief recess, Your Honor?

19 THE COURT: How long would you like, counsel?

20 MR. DICKERSON: 5, 10 minutes.

21 THE COURT: At this time we're going to take a 10-minute
22 residence, ladies and gentlemen.

23 During this recess you're admonished not to talk or converse
24 among yourselves or with anyone else on any subject connected with
25 this trial, or read, watch, or listen to any report or commentary on the trial

1 or any person connected with this trial by any medium of information,
2 including without limitation, the social media, text, newspapers,
3 television, the Internet, and radio; do not visit the scene of any of the
4 events mentioned during the trial or undertake any investigation; do not
5 do any posting or communications on any social networking sites or do
6 any independent research, including Internet searches, or form or
7 express any opinion on any subject connected with the trial until the
8 case is finally submitted to you.

9 We'll be in recess for 10 minutes.

10 [Jury recessed at 10:45 a.m.]

11 THE COURT: Counsel?

12 MR. DICKERSON: Your Honor.

13 THE COURT: Is there anything you need to bring to my
14 attention?

15 MR. DICKERSON: Not at this moment. I just need to speak
16 with my co-counsel and we'll work it out here.

17 THE COURT: Okay. Thank you.

18 MR. DICKERSON: Thank you very much.

19 THE COURT: We'll be in recess.

20 [Court recessed at 10:45 a.m. until 10:54 a.m.]

21 [Outside the presence of the jury.]

22 THE COURT: This is continuation of the trial of *State vs.*
23 *Ceasar Valencia*.

24 State, how many more witnesses do you have?

25 MR. DICKERSON: State will rest, Your Honor.

1 THE COURT: Okay. Defense, are you planning on
2 presenting any witnesses?

3 MR. COYER: Your Honor, as of yesterday afternoon I had
4 discussed with Mr. Valencia whether he wanted to testify. If he does, he
5 would be our only witness. So I don't believe we have any, but I know
6 the court has to go through the process with Mr. Valencia --

7 THE COURT: Okay.

8 MR. COYER: -- personally.

9 THE COURT: Did you want me to admonish him -- give him
10 the admonishment now or -- and take some time to discuss it with him?
11 Or when do you want me to give Mr. Valencia the admonishment?

12 MR. COYER: It -- court's pleasure. I -- I spoke with him at
13 length yesterday. I assume his mind hasn't changed. So we can do it
14 now, and that's fine, Your Honor.

15 THE COURT: Okay. So what -- we're going to bring the jury
16 back in. The State is going to rest. And then I'm going to ask you are
17 you going to present any witnesses, and you're going to rest?
18 Depending on what -- if Mr. Valencia testifies, then that will be your only
19 witness. If not, you're going to rest; is that correct?

20 MR. COYER: That's correct. But I think -- I think the court
21 should probably admonish Mr. Valencia before bringing the jury in.

22 THE COURT: No. I'm going to admonish him now.

23 MR. COYER: Okay. Okay.

24 THE COURT: I'm trying to --

25 MR. COYER: I didn't know.

1 THE COURT: -- tell you procedure.
2 MR. COYER: Yeah.
3 THE COURT: So if you rest, if Mr. Valencia decides not to
4 testify, then I was going to excuse the jurors and we'll -- we'll go over the
5 jury instructions.
6 MR. COYER: Very good.
7 THE COURT: Okay.
8 MR. LEXIS: Just so the court's aware, we pretty much have
9 agreed on most everything. There's only going to be argument really as
10 to one jury instruction.
11 THE COURT: Okay.
12 MR. LEXIS: So we should be able to --
13 THE COURT: Well, we'll take a little bit of time and then we'll
14 put it on the record.
15 MR. LEXIS: Yes.
16 THE COURT: Okay. Thank you, counsel.
17 All right. So at this time, I'm going to bring the jury -- oh, no,
18 I'm sorry. At this time I'm going to admonish Mr. -- Mr. Valencia
19 regarding his right to testify.
20 Mr. Valencia, under the Constitution of the United States and
21 under the Constitution of the State of Nevada, you cannot be compelled
22 to testify in this case; do you understand that, sir?
23 THE DEFENDANT: Yes, sir.
24 THE COURT: You may, at your own request, give up this
25 right and take the witness stand and testify. If you do, you will be

1 subject to cross-examination by the Deputy District Attorney and
2 anything that you may say, be it on direct or cross-examination, will be
3 the subject of fair comment when the Deputy District Attorney speaks to
4 the jury in his final argument; do you understand that, sir?

5 THE DEFENDANT: I understand.

6 THE COURT: If you choose not to testify, the court will not
7 permit the Deputy District Attorney to make any comments to the jury
8 because you have not testified; do you understand that, sir?

9 THE DEFENDANT: Yes. I understand.

10 THE COURT: If you elect not to testify, the court will instruct
11 the jury, but only if your attorney specifically requests, as follows:

12 The law does not compel a defendant in a criminal case to
13 take the stand and testify, and no presumption may be raised and no
14 inference of any kind may be drawn from the failure of a defendant -- of
15 a defendant to testify.

16 Do you have any questions about these rights, sir?

17 THE DEFENDANT: No. None at all.

18 THE COURT: You're further advised that if you have a felony
19 conviction and more than 1- years has not elapsed from the date you
20 have been convicted or discharged from prison, parole, or probation,
21 whichever is later, and the defense has not sought to preclude that
22 coming before the jury, and you elect to take the stand and testify, the
23 Deputy District Attorney in the presence of the jury will be permitted to
24 ask the following questions:

25 1. Have you been convicted of a felony?

1 2. What was the felony? And
2 3. When did it happen?
3 However, no details may be gone into before -- no details may
4 be gone into; do you understand that, sir?
5 THE DEFENDANT: I understand.
6 THE COURT: Do you have any questions of the court
7 regarding anything I just -- regarding anything I have just advised you
8 of?
9 THE DEFENDANT: None.
10 THE COURT: Okay. I'm going to take a very short recess
11 that will allow you confer with your attorney. And then I'm going to come
12 back on the bench and -- but I want you to take -- I know you've already
13 talked to him previously. But now that I have admonished you, I want to
14 give you the opportunity to speak with him in private. Okay?
15 THE DEFENDANT: All right.
16 THE COURT: All right. Thank you.
17 We'll be in short recess.
18 Mr. Coyer, let me know when you want to reconvene.
19 MR. COYER: Thank you, Your Honor.
20 MS. PLUNKETT: Thank you, Judge.
21 THE COURT: Thank you.
22 [Court recessed from 10:59 a.m. until 11:02 a.m.]
23 [Outside the presence of the jury.]
24 THE COURT: Mr. Valencia, have you had sufficient time to
25 discuss with your counsel regarding the admonishment I just gave you?

1 THE DEFENDANT: Yes, sir.
2 THE COURT: And what is your decision?
3 THE DEFENDANT: Not to testify.
4 THE COURT: I'm sorry, sir, I didn't --
5 THE DEFENDANT: Not to testify.
6 THE COURT: Not to testify?
7 Do you concur, Mr. Coyer?
8 MR. COYER: I concur.
9 THE COURT: Thank you. That he had -- I mean, concur that
10 he had sufficient time to speak with you and you answered all his
11 questions?
12 MR. COYER: Yes, Your Honor.
13 THE COURT: Okay.
14 MR. COYER: And we discussed the possible jury instruction
15 that you mentioned as well, Judge.
16 THE COURT: And are you requesting that the instruction be
17 given?
18 MR. COYER: Yes, Your Honor.
19 THE COURT: Okay. Thank you.
20 Is that correct, Mr. Valencia, you're requesting that instruction
21 be given to the jury?
22 THE DEFENDANT: Yes. That's correct.
23 THE COURT: Thank you, sir.
24 What I'll do then is I'll bring the jury in, ask the State is there
25 any additional witnesses, the State will then rest. I'll ask Mr. Coyer is he

1 going to call a witness. He'll rest. Then we'll probably have them come
2 back at 1:00. Okay?

3 MR. COYER: Great.

4 THE COURT: And then we'll settle jury instructions over the
5 lunch break. Is that satisfactory to counsel?

6 MR. DICKERSON: It is, Your Honor.

7 THE COURT: Mr. Coyer?

8 MR. COYER: Yes, sir.

9 THE COURT: Thank you. Bring the jury back in, please.

10 [Jury reconvened at 11:04 a.m.]

11 THE COURT: Let the record reflect the presence of the jury.

12 Mr. Dickerson, is there any additional witnesses the State are
13 going to call?

14 MR. DICKERSON: No additional witnesses at this time, Your
15 Honor. I would just like to confirm with Your Honor and your clerk that
16 State's Exhibits 1 through 51 have been admitted, and 53 and 54 have
17 been admitted, as well as Defense Exhibit 1.

18 THE CLERK: That's correct.

19 THE COURT: Okay.

20 MR. DICKERSON: At this time, Your Honor, the State rests.

21 THE COURT: Mr. Coyer, is the defense going to call any
22 witnesses?

23 MR. COYER: Your Honor, no additional witnesses from the
24 defense. And at this time, the defense would rest as well.

25 THE COURT: Thank you, counsel.

1 Ladies and gentlemen, there's some housekeeping matters
2 that counsel and myself have to take care of. We're going to take our
3 lunch break at this time. Please return at 1:00. Yes. Wait, I have to
4 give you my admonishment.

5 During this recess, you are admonished not to talk or
6 converse among yourselves or with anyone else on any subject matter
7 connected with this trial, or read, watch, or listen to any report of or
8 commentary on the trial or any person connected with this trial by any
9 medium of information, including without limitation, the social media,
10 text, newspapers, television, the Internet, and radio; do not visit the
11 scene of any of the events mentioned during the trial or undertake any
12 investigation; do not do any posting or communications on social media
13 networking sites or do independent research, including Internet
14 searches, or form or express any opinion on any subject connected with
15 the trial until the case is finally submitted to you.

16 We'll be on our lunch recess at this time. Thank you.

17 [Jury recessed at 11:07 a.m.]

18 THE COURT: Counsel, we'll settle jury instructions in the jury
19 room, and then whatever the results are we'll on the record afterwards.

20 MR. DICKERSON: Thank you, Your Honor.

21 [Court recessed at 11:08 a.m. until 1:07 p.m.]

22 [Outside the presence of the jury.]

23 THE COURT: This is a continuation of the trial of *State of*
24 *Nevada vs. Ceasar Sanchaz Valencia*, Case No. 16 C -- I'm sorry,
25 Case No. C-16-315580. Let the record reflect counsel for the State,

1 counsel for the defense, and Mr. Valencia are present.

2 This is time set for settling of jury instructions. Are the parties
3 prepared to go forward at this time?

4 MR. LEXIS: Yes.

5 MR. COYER: Yes.

6 THE COURT: Okay. The State has submitted a proposed set
7 of jury instructions and the defense has also submitted a proposed set of
8 special instructions. It's my understanding that as to many of these
9 instructions, that they're agreed to; is that correct?

10 MR. LEXIS: Correct.

11 MR. COYER: Correct.

12 THE COURT: As to Instruction No. 1, are -- are the parties in
13 agreement that that should be given?

14 MR. LEXIS: Yes.

15 MR. COYER: Yes.

16 THE COURT: As to Instruction No. 2?

17 MR. LEXIS: Yes.

18 THE COURT: Mr. Coyer?

19 MR. COYER: Yes.

20 THE COURT: Okay. Instruction No. 3, are the parties in
21 agreement that that should be given?

22 MR. LEXIS: Yes.

23 MR. COYER: Yes.

24 THE COURT: And these are the State's proposed
25 instructions.

1 MR. LEXIS: Yes.

2 THE COURT: As to Instruction No. 4, are the parties in

3 agreement that should be given?

4 MR. LEXIS: Yes.

5 MR. COYER: Yes.

6 THE COURT: As to Instruction No. 5, are the parties --

7 MR. LEXIS: Yes.

8 THE COURT: -- in agreement that it should be given?

9 MR. LEXIS: Yes.

10 MR. COYER: Yes.

11 THE COURT: Mr. Coyer?

12 MR. COYER: Yes.

13 THE COURT: As to Instruction No. 6, are the parties in

14 agreement it should be given?

15 MR. LEXIS: Yes.

16 MR. COYER: Yes.

17 THE COURT: As to Instruction -- State's Proposed

18 Instruction No. 7, are the parties in agreement it should be given?

19 MR. LEXIS: Yes.

20 MR. COYER: Yes.

21 THE COURT: As to State's Proposed Instruction No. 8, are

22 the parties in agreement it should be given?

23 MR. LEXIS: Yes.

24 MR. COYER: Yes.

25 THE COURT: As to State's Proposed Instruction No. 9, are

1 the parties in agreement it should be given?

2 MR. LEXIS: Yes.

3 MR. COYER: Yes.

4 THE COURT: Okay. As to Instruction -- Proposed -- State's
5 Proposed Instruction No. 10, are the parties in agreement it should be
6 given?

7 MR. LEXIS: Yes.

8 THE COURT: I thought --

9 MR. COYER: Yes.

10 THE COURT: -- this one was going to modified.

11 MR. LEXIS: Not -- that's not the one that's modified.

12 THE COURT: Okay. What about -- hold on, counsel. Let me
13 just look at my notes.

14 MR. LEXIS: Oh, I apologize, Judge. I -- I was thinking about
15 the lesser included. Yes, that's the one that we're going to incorporate
16 the -- the assault definition.

17 THE COURT: Okay. And this is the one that -- Defendant's
18 proposed jury instructions is going to be modified to include a portion of
19 Defendant's Proposed Instruction No. 1; is that correct?

20 MR. COYER: Correct.

21 MR. LEXIS: And that was over the State's objection, but due
22 to -- due to we believing that does not apply to this particular statute.

23 THE COURT: Okay. But in any event, I'm going to give the --
24 a modified version of Instruction No. 10. It's my understanding that it's
25 going to read:

1 A person who knowingly intends to use physical force against
2 the person of another -- person of another --

3 After the word another, we're going to modify that sentence to
4 include:

5 Mere menace is not enough, there must be an effort to carry
6 the intention the execution.

7 And then the sentence will continue:

8 Or intentionally place another person in reasonable
9 apprehension of immediate bodily harm is guilty of assault .

10 Is that correct, counsel?

11 MR. LEXIS: That's my understanding of the court's ruling over
12 the State's objection.

13 MR. COYER: Correct.

14 THE COURT: Is that correct, Defense?

15 MR. COYER: Correct, Your Honor.

16 THE COURT: Okay. As to State's Proposed Jury
17 Instruction No. 11, are the parties in agreement it should be given?

18 MR. LEXIS: Yes.

19 MR. COYER: Yes.

20 THE COURT: And as to State's Proposed Jury
21 Instruction No. 12, are the parties in agreement it should be given?

22 MR. LEXIS: Yes.

23 MR. COYER: Yes.

24 THE COURT: State's Proposed Instruction No. 13, are the
25 parties in agreement it should be given?

1 MR. LEXIS: Yes.

2 MR. COYER: Yes.

3 THE COURT: And on State's Proposed Instruction No. 14, it's
4 my understanding that that instruction is going to be modified; is that
5 correct?

6 MR. LEXIS: Correct.

7 MR. COYER: Correct.

8 THE COURT: And the modification is that the offense of
9 traffic -- essentially, will be adding that the offense of trafficking in a
10 controlled substance is a lesser offense --

11 MR. LEXIS: Yes.

12 THE COURT: -- of possession -- I'm sorry.

13 MR. LEXIS: I believe the wording that we were going to use
14 was possession of controlled substance is a lesser-included offense of
15 trafficking.

16 THE COURT: That's correct, counsel. And with that
17 modification, the parties are in agreement that State's Proposed
18 Instruction No. 11 should be given?

19 MR. LEXIS: Yes.

20 THE COURT: Okay.

21 MR. COYER: We're talking about 14, but yes.

22 THE COURT: Did I say 12? I apologize. It's State Proposed
23 Instruction No. 14 with that modification should be given?

24 MR. LEXIS: Yes.

25 MR. COYER: Yes.

1 THE COURT: Thank you. State's Proposed
2 Instruction No. 15, this is the one that I believe we were going to take
3 out -- hold on.

4 MR. LEXIS: I believe that fourth paragraph was going to be
5 taken out.

6 THE COURT: That's my understanding, the paragraph that
7 begins with the word knowingly.

8 MR. LEXIS: That's correct.

9 THE COURT: And it's covered by another instruction; is that
10 correct?

11 MR. LEXIS: Correct.

12 MR. COYER: Correct.

13 THE COURT: Okay. So with that modification, that the
14 paragraph beginning with the words, knowingly imports a knowledge,
15 that paragraph will be deleted. Is there any -- do the parties agree with
16 that modification, State's Proposed Instruction No. 15 should be given?

17 MR. LEXIS: Yes.

18 MR. COYER: Yes.

19 THE COURT: Instruction -- State's Proposed
20 Instruction No. 16, the parties in agreement it should be given?

21 MR. LEXIS: Yes.

22 MR. COYER: Yes.

23 THE COURT: And then on State's Proposed
24 Instruction No. 17, it's my understanding that the State is withdrawing
25 that instruction?

1 MR. LEXIS: Yes.

2 THE COURT: And then on State's Proposed

3 Instruction No. 18, are the parties in agreement it should be given? And

4 this is State's Proposed Instruction No. 18.

5 MR. LEXIS: Yes.

6 MR. COYER: Yes.

7 THE COURT: Thank you, counsel. And then are the parties

8 in agreement that State's Instruction No. 19 should be given?

9 MR. LEXIS: Yes.

10 MR. COYER: Yes.

11 THE COURT: Thank you. And on State's Instruction No. 20,

12 are the parties in agreement that that instruction should be given?

13 MR. LEXIS: Yes, Your Honor. And it looks like

14 Instructions 21 through -- all right. Never mind, my mistake. Keep

15 going, Judge. Sorry.

16 MR. COYER: We'll get through it.

17 THE COURT: So as to Proposed Jury Instructions 21

18 through 23, are the parties in agreement that those should be given?

19 MR. LEXIS: Yes.

20 MR. COYER: Yes.

21 THE COURT: Okay. As to Jury Instruction No. 24, are the

22 parties in agreement that instruction should be given?

23 MR. COYER: Yes, Judge. And for the record, this is the

24 instruction we requested about the defendant not being required to

25 testify.

1 THE COURT: Correct.

2 MR. COYER: Yes.

3 MR. LEXIS: Yes.

4 THE COURT: And so the defense is specifically requesting
5 that we -- that that instruction be given, correct?

6 MR. COYER: Correct.

7 THE COURT: Okay. And is it -- is the State's Proposed
8 Instruction No. 25, are they requesting that be withdrawn?

9 MR. LEXIS: Yes.

10 THE COURT: That will be withdrawn and not given.

11 And then as to State's Proposed Instructions 26 through 29,
12 are the parties in agreement that those instructions should be given?

13 MR. COYER: Yes.

14 MR. LEXIS: Yes.

15 THE COURT: Okay. And then as to the defendant's
16 proposed jury instructions, I have numbered them. So the first one is
17 Defendant's Proposed Instruction No. 1. Counsel, do you have those in
18 front of you?

19 MR. COYER: I don't, but I know what it is. It's the Wilkerson
20 instruction.

21 THE COURT: Okay.

22 To constitute the crime of assault, mere menace is not
23 enough, there must be an effort to carry the intention to execution.

24 We have included mere menace is not enough. There must
25 be an effort to carry the intention to execution as part of the instruction

1 regarding the definition of assault.

2 MR. COYER: Correct.

3 THE COURT: Okay. So because of it's covered by other
4 instructions, I'm not going to give Defendant's Proposed
5 Instruction No. 1, as it's already covered by another instruction.

6 MR. COYER: Agreed.

7 THE COURT: And then as to Defendant's Proposed
8 Instruction No. 2, this is one that states:

9 If you find the State has failed to prove beyond a reasonable
10 doubt any one element of a charged offense, you must find
11 Defendant not guilty of that offense.

12 What's the defense position on giving that instruction?

13 MR. COYER: I believe Your Honor had decided to
14 incorporate that language into the reasonable doubt instruction.

15 THE COURT: Well, I believe the State opposed that and I
16 was going to give it as separate instruction --

17 MR. LEXIS: Correct.

18 MR. DICKERSON: Oh.

19 THE COURT: -- following the reasonable doubt instruction.
20 So I will give that and it will follow -- it'll be the next instruction after the
21 reasonable doubt instruction.

22 And then as to the Defense Proposed Jury Instruction No. 3:

23 An act is not a crime if the act was committed through
24 misfortune or by accident, when it appears that there was no evil
25 design, intention, or culpable negligence.

1 What's the defense position on that instruction?

2 MR. COYER: I stand by it. I thought it was going to be given

3 by the court.

4 THE COURT: State?

5 MR. LEXIS: It was duplicative of a version that we already

6 had in there.

7 THE COURT: And I was -- and I am going to give that

8 instruction. And I was going to give it after Jury Instruction No. 20 that

9 deals with intent. Okay. All right.

10 As to Defendant's Proposed Jury Instruction No. 4, it's my

11 understanding that you're withdrawing that instruction, counsel?

12 MR. COYER: Correct.

13 THE COURT: Okay. That instruction will not be given and is

14 withdrawn.

15 And as to Defense Proposed Jury Instruction No. 5?

16 MR. COYER: That language was incorporated into a -- sort of

17 an omnibus lesser-included instruction.

18 THE COURT: Okay. And so you're satisfied by the

19 modification of the lesser included; are you withdrawing this instruction?

20 MR. COYER: Yes, Your Honor.

21 THE COURT: Okay. Okay. This instruction will not be given.

22 And then as to the Defense Proposed Jury Instruction No. 6?

23 MR. COYER: Same -- same issue. It's a lesser included.

24 THE COURT: Right. So are you withdrawing Defense

25 Proposed Instruction No. 6?

1 MR. COYER: Yes.

2 THE COURT: Then it will not be given.

3 What I'll do, counsel, is I'm going to attach as a court exhibit

4 the -- Mr. Coyer.

5 MR. COYER: Judge, I just wanted to verify one thing real

6 quick --

7 THE COURT: Okay.

8 MR. COYER: -- so that we can finalize the --

9 MR. LEXIS: Because we sent Mr. Dickerson up to do a right

10 to testify instruction. I'm believing it's not in here, but I believe it actually

11 is in here --

12 MR. COYER: There was a 20 -- Number 24.

13 MR. LEXIS: Number 24.

14 THE COURT: I thought it was in here too.

15 MR. LEXIS: It's in No. 24. I was -- we were just verifying that.

16 THE COURT: Okay. In any event, what I was advising

17 counsel is I was going to attach as a court exhibit your proposed -- the

18 defense and the State's proposed jury instructions with citations. I -- I

19 wasn't going to -- I wasn't going to attach the ones without the citation.

20 Is that agreeable to the parties?

21 MR. LEXIS: Sounds good.

22 MR. COYER: Yes.

23 THE COURT: Okay. All right. So we'll be in a short recess.

24 When the modifications have been made, provide them to defense

25 counsel. If the parties are in agreement, that will be the jury instructions

1 I will give to the -- to the jury. And then it's my understanding that we're
2 going to bring the jury in. The State is going to rest. The defense is
3 going to rest. I then am going to give the jury instructions and we'll do
4 closing arguments; is that correct?

5 MR. COYER: Both parties have already rested, but
6 everything else --

7 THE COURT: I'm sorry. Did they?

8 MR. COYER: Everything else is correct.

9 THE COURT: I apologize.

10 MR. COYER: That's all right.

11 THE COURT: All right. So all we have to do, once the jury
12 instructions are finalized is, I will read the instructions to the jury and
13 then we'll do closing arguments, correct?

14 MR. COYER: Very good.

15 MR. LEXIS: Correct.

16 THE COURT: Thank you.

17 [Court recessed at 1:22 p.m. until 1:26 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: Again, this is continuation of *State vs. Valencia*.
20 Let the record reflect that counsel for the State, counsel for the defense,
21 and Mr. Valencia are present.

22 I just wanted to go over a few housekeeping matters with
23 counsel.

24 First, I want to verify, State, is there any additional proposed
25 jury instructions at this time.

1 MR. LEXIS: No, Your Honor.

2 THE COURT: Defense is there any additional proposed jury
3 instructions at this time?

4 MR. COYER: No.

5 THE COURT: And then the other housekeeping matter is I
6 want to verify with counsel that we weren't going to send the evidence
7 envelopes back to the jury, because of the issue that came out earlier in
8 the trial. And that I was just going to send pictures of the gun back and
9 advise them if they want to actually look at the gun itself, that my
10 marshal would bring it back and they could inspect it. Is that correct,
11 counsel?

12 MR. LEXIS: The State stipulated to that at the request of the
13 defense and the court.

14 THE COURT: Okay. And is that correct, counsel?

15 MR. COYER: That's all -- all fine, yes.

16 THE COURT: Okay.

17 MR. LEXIS: And just so you know too, Judge, the -- even
18 though the whole thing was admitted, the bag containing the drugs,
19 there was also a bag of -- I believe the ODBs are in there as well. They
20 don't need that. So, I mean, if you just want to send back the baggies
21 with the drugs, that's all the State really is --

22 THE COURT: Is that agreeable to the defense?

23 MR. COYER: To remove the ODB sheets? Yes.

24 THE COURT: Okay.

25 MR. COYER: Yes.

1 THE COURT: Mr. Clerk, you heard the -- what we're going to
2 do? Okay. Thank you.

3 MR. LEXIS: Just the three baggies of drugs.

4 THE CLERK: Just the three baggies.

5 THE COURT: All right. Well, I just -- we'll wait until we have
6 the -- we'll be in a short recess. Once we have the finalized jury
7 instructions, if counsel can review them and if they are what we -- what
8 we -- were agreed upon, then -- do we have them? All right. I'm going
9 to be in short recess.

10 [Court recessed at 1:29 p.m. until 1:45 p.m.]

11 [Outside the presence of the jury.]

12 THE COURT: This is the continuation of the trial in *State vs.*
13 *Valencia*, Case No. C-16-315580.

14 Have the parties had an opportunity to review the proposed
15 jury instructions?

16 MR. DICKERSON: We have, Your Honor.

17 MR. COYER: Yes.

18 THE COURT: Is -- I did notice one thing. I think I misspoke at
19 the -- when we were settling instructions. On Jury Instruction No. 11, I
20 thought I said when -- that we were going to add the phrase, mere
21 menace is not enough. There must be an effort to carry the intention
22 into execution, I put it in the first sentence. Apparently, it's in the -- it's
23 been added to the third -- on line 6 and 7. And it reads:

24 To constitute an unlawful -- an unlawful attempt to use
25 physical force against a person of another, mere menace -- mere

1 menace is not enough. There must be an effort to carry the intention
2 into execution.

3 Is that agreeable to the parties where it's in the instruction,
4 counsel?

5 MR. DICKERSON: That's -- yes. State --

6 MR. COYER: It's agreeable to the defense.

7 THE COURT: I'm sorry, counsel?

8 MR. COYER: It's agreeable to the defense.

9 THE COURT: What about to the State?

10 MR. DICKERSON: Yes.

11 THE COURT: Okay. So the parties have a copy of the
12 instructions?

13 MR. COYER: Yes.

14 THE COURT: Thank you.

15 So Instruction No. 1 begins: It is now my duty to judge or
16 instruct you.

17 Instruction No. 2 will be -- begins with: If in these instructions
18 any rule, direction, or idea.

19 Instruction No. 3: An information is but a formal method.

20 Instruction No. 4 begins: To constitute the crime charged.

21 Instruction No. 5 begins: The State has -- the State -- the
22 defendant is presumed innocent.

23 Instruction No. 6 begins: If you find that the State has failed to
24 prove.

25 Instruction No. 7 begins: You are here to determine the guilt

1 or innocence of the defendant.

2 Instruction No. 8 begins: The evidence which you are to
3 consider in this case.

4 Instruction No. 9 begins: The credibility or believability of a
5 witness.

6 Instruction No. 10 begins with: A witness who has special
7 knowledge, skill, and experience.

8 Instruction No. 11 begins with: A person who unlawfully
9 attempts to use physical force.

10 Instruction No. 12 begins: As used in the instructions, a
11 deadly weapon means.

12 Instruction No. 13 in -- begins with: In order to use a deadly
13 weapon.

14 Instruction No. 14 begins: The State is not required to have
15 recovered the deadly weapon.

16 Instruction No. 15 begins with: When it is impossible to
17 commit a particular crime.

18 Instruction No. 16 begins with: Any person who knowingly or
19 intentionally.

20 Instruction No. 17 begins with: A person who knowingly,
21 intentionally possesses a controlled substance.

22 Instruction No. 18, in order -- begins with: In order to prove
23 the commission of trafficking in controlled substance.

24 Instruction No. 19 begins with: A person is a person -- repeat.
25 A person is in possession of an article or object.

1 Instruction No. 16 -- shucks. I apologize, counsel.
2 Instruction No. 20 begins with the phrase: The intent of a
3 person or the knowledge that a person.
4 Instruction No. 21 begins with: An act is not a crime.
5 Instruction No. 22 begins with the phrase: The flight of a
6 person with -- after the commission of a crime.
7 Instruction No. 23 begins with: Although you are to consider
8 only the evidence.
9 Instruction No. 24 begins with: In your deliberation you may
10 not discuss.
11 Instruction No. 25 begins with the phrase: It is the
12 Constitutional right -- Constitutional right of a defendant.
13 Instruction No. 26 begins with: When you retire to consider
14 your verdict.
15 Instruction No. 27: During the course of this trial.
16 Instruction 28 begins with: If during your deliberation you
17 should desire.
18 Instruction No. 29 begins with the phrase: Now you will listen
19 to the arguments of counsel.
20 And the verdict form is attached to -- to the back. And it's my
21 understanding that there's no objection to the verdict form from defense;
22 is that correct?
23 MR. COYER: Correct.
24 THE COURT: As to the State, no objection?
25 MR. DICKERSON: No objection, Your Honor.

1 THE COURT: All right. So that will be the jury instructions.
2 So -- and also my -- my bailiff -- my marshal has advised me that
3 counsel has agreed as to the actual drugs themselves, we will only send
4 those back if they're requested by the jury also --

5 MR. LEXIS: Correct.

6 THE COURT: -- as the same as with the gun -- with the
7 weapon; is that correct, counsel?

8 MR. LEXIS: Yes, Your Honor.

9 MR. COYER: Correct.

10 THE COURT: Okay. Are we ready to bring --

11 MR. DICKERSON: And you're just going to advise the jury of
12 that, Your Honor, orally?

13 THE COURT: At the end, yeah.

14 MR. DICKERSON: Okay.

15 THE COURT: If I don't, kind of --

16 MR. DICKERSON: Yeah. I'll let you --

17 THE COURT: -- let me know.

18 MR. DICKERSON: Yeah. Definitely.

19 THE COURT: And it's also, Mr. Dickerson, it was also my
20 understanding we weren't going to send the evidence bags back also?

21 MR. DICKERSON: We would request those don't --

22 THE COURT: Yeah.

23 MR. DICKERSON: -- be sent back.

24 THE COURT: And that -- and that was my understanding
25 also.

1 MR. DICKERSON: And if they request those bags, if you
2 could just contact counsel, as, like, a jury question, and we could talk
3 about it at that time?

4 THE COURT: Yeah. I --

5 MR. COYER: That's agreeable.

6 THE COURT: -- agree. All right. So I'm going to bring the
7 jury in. I'm going to read them the instructions. And then we're going to
8 do closing arguments, correct?

9 MR. DICKERSON: Yes, Your Honor.

10 MR. COYER: Correct.

11 THE COURT: All right. Thank you, counsel.

12 [Jury reconvened at 1:53 p.m.]

13 THE COURT: Ladies and gentlemen, thank you for your
14 patience in this matter. The State and defense have rested and -- and I
15 am about to instruct you upon the laws that applies in this case. I would
16 like to instruct you orally without reading to you. However, these
17 instructions are of such importance, it is necessary for me to read to you
18 these carefully prepared written instructions.

19 The instructions are long and some are quite complicated. If
20 they not -- are not especially clear when I read them to you, please keep
21 in mind that when you go back to the jury room, you'll be able to take
22 these -- you will be able to take these carefully prepared written
23 instructions with you so you can read them and consider them carefully.

24 [Jury instructions read.]

25 THE COURT: Counsel are you prepared to -- for closing

1 arguments?

2 MR. LEXIS: Can you switch us over, Judge?

3 MR. DICKERSON: We are, Your Honor. We would just
4 request the -- to have the monitor up.

5 Thank you very much, ma'am.

6 MR. LEXIS: Folks, what's the state of mind of a man who's
7 willing to flee from the police on a moped with two patrol officers after
8 him in a marked patrol unit in uniform? Or better yet, take off on foot?
9 Or turn around with a gun in his hand and point at an officer placing that
10 officer in danger, him in danger, and everyone else around in a
11 residential area? Or better yet, someone with three of the most potent
12 narcotics on the street when he's eventually caught? That's the type of
13 man you're dealing with, a man who has zero regard for this community
14 or for the safety of others.

15 Folks, you have a jury instruction, and this is straight from the
16 jury instructions that says use your common sense. This case was over
17 two days ago. Although you are to consider only the evidence in this
18 case in reaching a verdict, you must bring to the consideration of that --
19 of the evidence your everyday common sense and judgment as
20 reasonable men and women. What's that telling you? Follow the law
21 and use your common sense.

22 You also have a jury instruction that the judge mentioned, and
23 one of the only ones that he mentioned prior to this trial starting and at
24 the end. And it's regarding direct and circumstantial evidence.

25 At the beginning of this case I told you, and the law allows, if

1 we just had one witness and that witness has a host of baggage, gang
2 member, drug addict, you name it, and that person takes the stand, if
3 you judge their credibility to be credible and believe them beyond a
4 reasonable doubt, the State's entitled to a guilty verdict.

5 In addition, sometimes we're left with just circumstantial
6 evidence, which we'll talk about in a second. Let's say somebody
7 breaks in somebody's home. They hear somebody. They call the cops.
8 And a -- some witness sees that somebody -- running down the street.
9 The only description they could give is a white male wearing all black.
10 The cops show up, comb the neighborhood, and eventually see
11 somebody hiding in the corner.

12 Sure enough, this person is wearing all black, a white male.
13 They go back to the scene and they see that a window is broken and
14 there's -- the spigot's busted and water spewing out of it. Must have
15 tried to jump up on the spigot in order to get into the house. And this
16 suspect that they caught also, you know, has some shreds of glass on
17 him. And lo and behold, their right leg is soaked.

18 That's all we have. No viable prints left behind. No viable
19 DNA left behind. They bring it back to the person and the person can't
20 make a positive identification, other than he was weighing black clothes
21 and white male.

22 Do we have those cases? Absolutely. Do we prosecute those
23 cases? Absolutely. Are we entitled to a guilty verdict if you find beyond
24 a reasonable doubt that the defendant committed that crime?
25 Absolutely.

1 Now, on the far other side of the spectrum, you have cases
2 like this where you have both direct and circumstantial evidence, where
3 your witnesses are cops. Folks, your instructions states there are two
4 types of evidence, direct and circumstantial evidence. The law makes
5 no distinction between the weight to be given to either direct or
6 circumstantial evidence. Therefore, all of the evidence in the case,
7 including circumstantial evidence should be considered by you in
8 arriving at your verdict.

9 What is that telling you? You don't look at each event in
10 isolation. You don't look at each particular statement by every particular
11 witness on this stand in isolation. Or each event, the one on the 19th
12 and the one on the 21st, in isolation. No. The law instructs you to use
13 everything combined to come to your conclusions on each and every
14 charge.

15 What's the direct evidence in this case? Well, you have
16 Officer Jacobitz telling you 100 percent that's the man. That's the man.
17 Also, giving you a detailed account with his demonstration right here on
18 how that man pulled that gun, brought it out, pointed it at him, and then it
19 flew out of his hand when he hit the pole. That is direct evidence.

20 You have any other direct evidence to support his account?
21 Yeah. Officer Houston also tells you 100 percent that's the man. Does
22 he support Jacobitz's account? Absolutely. When they stop, he says
23 Jacobitz runs after him. Houston gets out of the car, has to run around.
24 As he's going around the car, he hears Jacobitz yell, Gun. He has an
25 obstructed view of the defendant so he can't see the defendant at that

1 point in time, but he sees Jacobitz has now stopped. Runs over.
2 Jacobitz is now with the gun as he continues to proceed. Keep in mind
3 too he was also there the 21st when he told you, again, that man 100
4 percent was the man both on the 21st and on the 19th.

5 Any other direct evidence? Yeah. There's a firearm. You
6 think we're not going to proceed on this case if there wasn't a firearm?
7 No. And there's a jury instruction on that too. We don't need to recover
8 the firearm. It's common sense tells you why. Crooks take off with the
9 firearm. However, there was a firearm in further support of Jacobitz's
10 accounts of the events.

11 Is there other direct evidence? Obviously, on the 21st,
12 multiple officers observed the takedown of the defendant where those
13 drugs were right in his pocket, that large amount of cash right in his
14 pocket.

15 Again, the law makes no distinction between the weight to be
16 given to either direct or circumstantial evidence. The State can convict
17 somebody 100 percent on direct evidence or 100 percent on
18 circumstantial evidence.

19 What circumstantial evidence do you have in this case? What
20 a coincidence, the location of the incident compared to where he lives,
21 right next to him. What a coincidence, that's exactly where he fled.
22 What a coincidence -- and we'll talk more about this later -- he's caught
23 on the 21st with three of the most potent street drugs there are.

24 And the fact that he ran from the police. You actually have a
25 separate jury instruction on this, which tells you the flight of a person

1 immediately after the commission of a crime or after he's accused of a
2 crime is not sufficient in itself to establish his guilt, but is a fact which, if
3 proved, may be considered by you in light of all the other proof, facts in
4 deciding the question of his guilt or innocence. Essentially, more
5 circumstantial evidence against this man.

6 When you combine the two, folks, when you combine the two,
7 there is a mountain of evidence against this man where he is boxed into
8 a corner where there's no way out, period. So what does the defense
9 do? There is no surprise what happened, no surprise whatever.

10 When you're dealing with amount -- this amount of evidence,
11 this is what goes on. Blame the cops. Blame other people. Blame
12 everybody other than the defendant. Really? Well, why take out the
13 gun in the first place? We know for a fact the man's gun is laying on the
14 ground. Why take it out in the first place? What's your common sense
15 tell you about that?

16 Think he just run away from the cop and oh, he's -- he's just
17 going to stop, pull his gun out and hand it to him? No. He already fled
18 on his moped. Now, he's fleeing from them on foot. That's further
19 circumstantial evidence of this man pulling his gun out and pointing it at
20 that cop.

21 Motive, drugs, firearm. Further circumstantial evidence.
22 Further circumstantial evidence. You have a jury instruction and this is
23 it, verbatim. You're not mind readers, folks. We're not tasking you to be
24 mind readers. Motive is not an element of the crime charged and the
25 State is not required to prove motive. We don't need to prove motive on

1 the part of the defendant in order to convict. However, you may
2 consider the evidence of motive or lack of motive as circumstance in this
3 case, more circumstantial evidence.

4 And ask yourself, this man who's caught two days later on
5 the 21st, a man you know, number one, carries a firearm, and number
6 two, carries with him large amounts of cash along with heroin, meth, and
7 cocaine. The police department doesn't take that lightly and neither
8 does the District Attorney's office. There is no surprise to nobody that
9 this man is running from the cops. No surprise. And willing to do an
10 extreme measure, as pulling a firearm, putting everyone in danger
11 including himself, the officer, and the public.

12 Monday night quarterback. What do I mean by that? You
13 know what I mean by that, folks. It's easy the next day to say, you know
14 what, they shouldn't have -- on that fourth down they should have
15 punted it, they shouldn't have went for it. On the eighth inning when
16 they pulled out the pitcher, ah, dumb move the next day. He should
17 have just kept with it. That's easy.

18 When you're in the heart of the moment, it's a totally different
19 ball game. And you don't get anymore of the heart of the moment. Your
20 common sense tells you what's going on here. This officer is going after
21 a suspect in a neighborhood where he was at, and then in an alley
22 having a firearm pulled on him, and had to react. So what -- what do we
23 do, right? What do we do? Attack the police, right?

24 First, we're going to go and Metro in general. First, the
25 forensic evidence, right? Well, as those people came up here and told

1 you, it's no surprise to them. Sometimes they do get hits, sometimes
2 they don't get hits, whether it's a viable print or viable DNA. Right?

3 Do you have other direct evidence in this case? Absolutely.
4 We just went over it. So when that doesn't work, what do you do? You
5 keep doing it, right? What's next?

6 They stated -- the cops stated that he dropped the gun, crime
7 is drop the gun, right? Folks, you heard the significance of that. You
8 heard these officers tell you the primary purpose of CAD is to give
9 location -- their location and a description of the suspect. You have the
10 CAD. Listen to me, this is not a full account of every detail that
11 happened now. It's no police report. It's no submission to the District
12 Attorney's office.

13 What was the significance of that, of he dropped the gun?
14 Because he stayed still. That's what his updated location was, as his
15 partner continued to flee after the man. Not to mention the fact, folks,
16 this -- the CAD started at 1946. When things finally calmed down a little
17 bit, at 2002, he actually makes a statement then. That's when he gives
18 a more detailed report that the man pointed a gun at me.

19 Oh, God forbid this man in this type of situation waits until he's
20 dealing with one crime, then sees two other people commit another
21 crime and has to take care of that situation and then gives the -- another
22 description over the CAD about what particularly happened.

23 When that doesn't work, what's next? They attack the
24 description, right? Again, God forbid this man who has just experienced
25 a situation where he almost had to be involved in an officer-involved

1 shooting, right, he just had a gun pointed at him, he gives a description
2 of the suspect. What's your common sense tells you that officers are
3 going to give a description of? Their general clothing, what they're
4 wearing, whether they're black, Hispanic, white, Asian, exactly what he
5 did.

6 What does the defense want to harp on? Oh, well, he didn't
7 mention the facial hair at the bottom. Folks, you'll have the CAD. Again,
8 it started at 1946. At 1958, less than 20 minutes later, they know
9 Ceasar Valencia's name. They know who they're looking for, that man
10 right there. Again, when that's doesn't work -- what -- what do we
11 continue to do?

12 The cones. Attack the cones all you want. We spent probably
13 an hour combined on cones. Jacobitz told you, I'm not positive who I
14 particularly was with, who I told exactly where to place those cones, but
15 yeah, those look like a true representations of where it occurred, where I
16 first saw that man and where he was placed. Initially testimony, he's
17 about 20 feet away. And at the time of the actual encounter, the -- the
18 measurement was about 60 feet.

19 Attack these people all you want that are in the heart of the
20 moment, all you want. It doesn't change the fact that that man pointed a
21 firearm at that officer. And there we go, right, it's more and more and
22 more.

23 You going to attack him. The defense wants you to believe,
24 well, Officer Jacobitz, you should have kept running after the suspect.
25 You were willing to go to the -- the moped, but you should have kept

1 running. First of all, what does that have to do with anyone -- anything?

2 Folks, you know what, in hindsight, who knows, right? Officer
3 Jacobitz had no idea there was going to be two more bozos trying to
4 steal the evidence that he was also trying to secure, the moped, along
5 with the gun. Who knows? Monday night quarterbacking. Maybe he
6 would have done something different and picked -- if he knew he was
7 going to have to pick up the gun, maybe he would have picked up the
8 gun and ran after him. Doesn't change the fact that that man pointed a
9 firearm at Jacobitz.

10 And then another good one that we spent time on with both
11 the detective and Jacobitz, okay, this -- this man has a full uniform on
12 and you saw a picture of him in full gear. And they're telling you that
13 he's in a full sprint after this man. The only reason he didn't shoot him,
14 states he's wobbly. He's not stable. Why? Because you see the cone
15 where he tells you he was standing where he first saw him. And then
16 he's proceeding to run up these stairs after him.

17 Defense counsel, well, you should have jumped out of the
18 way. Even if he should have jumped out of the way, it doesn't matter.
19 He -- that doesn't change the fact that that man pointed a firearm at him.
20 And that's not what they're trained to do. Ridiculous.

21 Fabricate. Folks, ask yourself when you're judging the
22 credibility, what motivation does this man have to come in here and
23 fabricate what he's telling you? This is not a situation in a trial where it's
24 a business contract gone bad, domestic disturbance gone bad where
25 you have child custody issues at play and maybe somebody is

1 overexaggerating something else. No.

2 You have officers trying to do their job and apprehend a
3 suspect. This case is not about who did it or whether or not he pointed a
4 firearm at that man. It's not. It's about what crimes did that man commit.

5 Assault. What is assault? A person who unlawfully attempts
6 to use physical force against the person of another, or intentionally
7 places another person in reasonable apprehension of immediate bodily
8 harm is guilty of assault. Folks, pay attention to the or language. Okay.

9 Let me first focus on the top part. A person who unlawfully
10 attempts to use physical force against the person of another. If I get
11 mad at Mike right now and Mike starts walking out that door, and I take
12 this clicker and I chuck it at him, I try to hit him, and I miss, the first part
13 applies. I unlawfully attempted to use physical force against him. Now,
14 if I hit him that would be a battery, totally separate thing. But as assault,
15 I intentionally try to use physical force against him.

16 Also, for the first point to apply, this applies, to constitute an
17 unlawful attempt, and it only applies to the first part, to use physical force
18 against another person, mere menace is not enough. There must be an
19 effort to carry out the intention into execution. Okay.

20 Are we trying to tell you that this man shot at Officer Jacobitz
21 and missed? No. No. What applies, folks, is the second part:
22 Intentionally place another person in reasonable apprehension of
23 immediate bodily harm is guilty of an assault. I just bolded it here. It's
24 the same definition, intentionally placing another person in reasonable
25 apprehension of immediate bodily harm.

1 Go up to Mike, I'm mad at him. And I act like I'm going to hit
2 him, placing him in reasonable apprehension of bodily harm. Guilty of
3 assault. If I actually hit him, it's a battery. That's the difference.

4 When a weapon is involved, go up to some old lady at a
5 mailbox and pull out a knife, and go ahead and give me your mail,
6 ma'am, placing her in fear of bodily harm. It's assault with a deadly
7 weapon. There is no better example of an assault with a deadly weapon
8 than what you just heard on the stand. A firearm is the ultimate.

9 Officer Jacobitz told you how he felt. He thought his life was
10 in danger. He thought he was going to have to shoot this man. He
11 described it as divine intervention.

12 In addition, to constitute an assault, it is not necessary that
13 any actual injury been inflicted. We'll not see that again when we talk
14 about deadly weapon. If he would have shot and hit that man, Jacobitz,
15 we'd be dealing with a whole host of other charges. All we're dealing
16 with is an assault with a deadly weapon, him pulling out that gun, placing
17 Jacobitz in reasonable apprehension of immediate bodily harm. That is
18 an understatement. He placed that man in extreme apprehension of
19 immediate bodily harm. He told you his finger was on the trigger.

20 A person who commits an assault upon a police officer during
21 the performance of his duties as a police officer is guilty of assault on a
22 protected person, period. You know that these men were acting as
23 police officers, hence the charge.

24 The person who commits an assault upon a police officer by
25 or through the use of a deadly weapon is guilty of assault upon a

1 protected person with use of a deadly weapon. Now, the common
2 sense tells you a firearm is a deadly weapon, but let's go look at the
3 statutes, just to show you how broad it is.

4 As used in these instructions, a deadly weapon means any
5 instrument which, if used in the ordinary manner contemplated by its
6 design or construction, will or is likely to cause substantial bodily harm or
7 death. A hammer, a rock, a gun, a knife, a crowbar, and we can go on
8 and on and on. Just to show you how broad this statute is, it has an or.
9 Any weapon, device, instrument, material or substance, which under the
10 circumstances of which it's used, attempted to be used, or threatened to
11 be used is capable of causing substantial bodily harm or death. I grab
12 this pen and I go up to Mike and, Give me your stuff or I'm going to stab
13 you in the neck. Assault with a deadly weapon. A pen can be a deadly
14 weapon. A string can be a deadly weapon. We can go on and on.

15 You are instructed, flat out in this case, that a firearm is a
16 deadly weapon, period. Firearm is a deadly weapon whether loaded or
17 unloaded, operable or inoperable. In order to use a deadly weapon,
18 there may not be conduct which actually produces harm, but only
19 conduct which produces a fear of harm or force by means of display of
20 the deadly weapon in aiding the commission of the crime. Again, just to
21 show you how broad this statute is, you do not need to use the weapon.
22 Simply conduct which produces a fear of harm.

23 The State is not required to have recovered the deadly
24 weapon used in the alleged crime, or to produce the deadly weapon in
25 court to establish that the deadly weapon was used in the commission of

1 the crime. You have the luxury of having it in this case. There are a lot
2 of cases where the State does not have it. And your common sense
3 tells you why.

4 Possession. Folks, it's obvious. There's no better example of
5 possession than when stuff is in somebody's pocket, period. Just to
6 show you how broad possession is though, I want to go over the law
7 with you. Obviously, we're talking about the trafficking charge and the
8 possession of a controlled substance.

9 The law recognizes two types of possession. Actual
10 possession and constructive possession. You don't need both. You can
11 only need one. A person who has -- knowingly has direct physical
12 control over a thing at any given time is in actual possession of it. Again,
13 no better example than when you're carrying around a bag, a suitcase, a
14 backpack, drugs in your pocket.

15 A person who, although not in actual possession, not only has
16 both the power and the intention in any given time to exercise dominion
17 and control over a thing either directly or through another person is in
18 constructive possession. That just goes to show you how broad this
19 statute is. A cop pulls you over and you don't have any drugs on you but
20 they're in your glove compartment, they're in your middle console,
21 they're in your trunk. So defense come in here and say, hey, ain't on
22 me, you can't convict me. No.

23 Constructive possession. It can go even broader than that.
24 We got a line of cocaine on your kitchen table at home and you're at
25 work. The cops execute a search warrant on the house, constructive

1 possession.

2 A law -- the law recognizes also that possession maybe sole
3 or joint. If one person alone has actual or constructive possession of a
4 thing, possession is sole, two or more persons show actual or
5 constructive possession of a thing, possession is joint. Again, just to
6 show you how broad it is.

7 Two people have a -- share an apartment. They're
8 roommates. And again, line of cocaine on the kitchen sink. Cops come
9 in. They're not home. People can't come in here and say, hey, not, on
10 me, I'm not even -- I'm not even in the state. No. Constructive
11 possession. Again, there's no better example of possession in this case,
12 when pulled straight from the man's pocket.

13 Trafficking. A -- any person who knowingly or intentionally is
14 in actual or constructive possession of a scheduled or controlled
15 substance or any mixture of -- any mixture which contains a scheduled
16 or controlled substance, the quantity of which weighs or is represented
17 by that person to weigh four or more grams is guilty of trafficking a
18 controlled substance.

19 You heard from the expert. You actually have her sheet telling
20 you that these substances were positive for cocaine, meth, and heroin.
21 Officer Vallad actually told you that that -- in his years and years on the
22 street, that's the most he's even seen from a suspect. You're flat out
23 instructed that heroin is a Schedule 1 controlled substance. And again,
24 it was over 11 grams, almost three times that amount. All that -- all
25 that's needed is four.

1 Again, you have that. That was the -- not only the testimony
2 from the experts, you have the sheet telling you how many grams it was.
3 In addition, the phrase four grams or more refers to the aggregate
4 weight of the entire mixture, rather than the weight of the controlled
5 substance that is contained in the mixture. It is not necessary for the
6 State to prove that the defendant was aware of the amount of the
7 controlled substance he possessed.

8 What's that tell you? Obviously, he can't get caught and say,
9 oh man, I -- I only thought I had just a possession of controlled
10 substance amount, less than four. No. It's the actual weight you have
11 on you.

12 Possession of controlled substance. Any person who
13 knowingly or intentionally possesses a controlled substance unless the
14 substance was obtained directly from or pursuant -- through some legal
15 means. Yeah, no. Folks, what other two controlled substances did this
16 man have on him? And you're flat out instructed, and your common
17 sense tells you, cocaine and methamphetamine are controlled
18 substances.

19 The amount of evidence in this case, folks, is overwhelming.
20 Blame the cops all you want. The evidence came from right here. It's
21 no question. That's your man. And the facts demonstrate, he pointed a
22 firearm at that man, causing him a reasonable apprehension of bodily
23 harm, extreme apprehension of bodily harm. And then was caught two
24 days later with three types of controlled substances on his person.

25 With that, the State asks you find the defendant guilty of

1 assault on a protected person with use of a deadly weapon, trafficking a
2 controlled substance, and two counts of possession of a controlled
3 substance. Thank you.

4 THE COURT: Defense?

5 MR. COYER: Your Honor, I don't recall exactly how long
6 we've been going, but I wasn't sure if the court wanted to take a break?
7 I'm happy to go either way.

8 THE COURT: Counsel approach.

9 [Bench conference transcribed as follows:]

10 MR. COYER: I know you told them every 90 minutes, but I'm
11 not sure if we've been going --

12 THE COURT: Yeah. I think --

13 MR. LEXIS: They want us to keep going.

14 THE COURT: Let me ask counsel.

15 How long do you think it's going to be?

16 MR. COYER: Probably 15 minutes.

17 THE COURT: All right.

18 MR. COYER: It's pretty short.

19 THE COURT: We'll probably do your closing and then we'll
20 take a break. Do Mr. -- I assume you're doing rebuttal? Unless you
21 think it's going -- we -- we came back on the bench about a quarter
22 till 2:00, if I recall. Closer --

23 MR. DICKERSON: Yeah, if they --

24 THE COURT: Between quarter till 2:00.

25 MR. DICKERSON: Yeah.

1 MR. COYER: Yeah.

2 MR. DICKERSON: I think we can keep going --

3 THE COURT: So I was -- huh?

4 MR. DICKERSON: I think we can keep going, unless

5 anyone's asking for a break.

6 THE COURT: You want to go straight through?

7 MR. LEXIS: Yes. I want -- let's keep going.

8 THE COURT: All right.

9 MR. COYER: Do you want to --

10 THE MARSHAL: The jury would like to go.

11 MR. COYER: Okay. Perfect.

12 MS. PLUNKETT: Well, that answers that.

13 MR. COYER: That settles it.

14 [End of bench conference.]

15 THE COURT: Mr. Coyer?

16 MR. COYER: Thank you, Judge. May I approach the clerk to

17 gather some exhibits?

18 THE COURT: Yes.

19 MR. COYER: Can everybody hear me okay? Ladies and

20 gentlemen, thank you for your patience in this matter. We do appreciate

21 your time and your service.

22 The representative from the State just came out here and

23 made his first argument to the jury here about their case. I tried to count

24 the number of times that he described his case as circumstantial, but I

25 lost count after about five or six.

1 The State accused us, the defense, of doing one of these, and
2 then proceeded to spend 15 minutes explaining to you what possession
3 means. And he spent about 30 seconds talking about the forensic
4 evidence in this case, which exonerates our client.

5 State likes to argue that they have to prove two things in a
6 criminal case. That, one, that a crime was committed, and two, that the
7 defendant committed the crime. For some of you, you may not even
8 have to look passed the first part. Some of you may be more of the
9 cynical type, like my esteemed colleague who said that we were
10 suggesting that things were fabricated.

11 Some of you may think that I'm going to come out here and
12 say that Officer Jacobitz planted that gun, because he's the only one
13 whose fingerprint's on it. I'm not going to do that. I'm not going to attack
14 the police.

15 Officer Jacobitz admitted that he doesn't remember all the
16 details from that evening. It's not an attack to point out the truth. Officer
17 Jacobitz admitted that he didn't provide any details about seeing facial
18 hair. It's not attacking the police to point out the truth. Officer Jacobitz
19 admitted that he doesn't remember even meeting with the CSA,
20 Ms. Klosterman, the crime scene analyst. We know he did. She took
21 pictures of him. It's not attacking the police to point out a fact.

22 Officer Jacobitz testified to what each and every one of you
23 heard in the audio, which is that the first thing he sent out to his fellow
24 officers was, "Be advised the crime is he dropped a firearm." Not he
25 assaulted me, not he tried to shoot me. He dropped a firearm. Is it

1 possible that from 64 feet away maybe he didn't see what he later
2 thought he saw? That's for you to answer.

3 There's about 100 pictures up there and they all look like this,
4 dark sky. They're not very useful. Nobody went back and took a picture
5 of what the scene should have looked like in the right light.

6 I'll tell you what, I will assume half of the State's case for you.
7 I will assume that Officer Jacobitz was assaulted on May 19th, 2016. I
8 am willing to do that. I am willing to assume that a gun was pulled out
9 from a fleeing perpetrator and pointed at Officer Jacobitz.

10 So let's simplify this. I will concede all of that, because I'm not
11 here to defend whoever committed that crime on May 19th, 2016. I'm
12 not here to defend the Hispanic male adult that was driving the moped.
13 I'm not here to defend the man who ran from the police. And I'm sure as
14 hell not here to defend the man who pulled a gun on Officer Jacobitz.

15 I'm here to defend Ceasar Valencia. Ceasar Valencia is the
16 guy who just happens to live about two houses down from where this
17 occurred. This case is not about whether Officer Jacobitz was assaulted
18 or not. This case is about whether or not the State has proved beyond a
19 reasonable doubt that Ceasar Valencia assaulted Officer Jacobitz. This
20 case is about what happens when a rush to judgment takes the place of
21 a neutral careful investigation.

22 Let's talk about the evidence. You heard the judge instruct
23 you already that the things that I say, the things that Mr. Lexis says,
24 things that Mr. Dickerson says, things that Ms. Plunkett says, these
25 things are not evidence. This is argument. I'm arguing. Evidence

1 comes from up here. Okay? The witness stand.

2 So let's talk about the evidence. Again, tons of photographs.
3 Tell me how useful most of them are. Does looking down this alley tell
4 you that Officer Jacobitz was assaulted or not? No. We're -- we're not
5 even sure if the CSA put the cones in the right place because she only
6 spent 15 minutes with Officer Jacobitz. Who cares about the cones?
7 The point is, the State put in dozens and dozens of these photographs
8 and they're useless. But we're accused of doing this.

9 By the time these photos were taken, every single officer on
10 that scene knew who their suspect was. Every single officer was
11 convinced, Ceasar Valencia. Ceasar Valencia is the guy. These photos
12 don't show Ceasar Valencia is the guy. These are just photographs.
13 You've got in -- in the evidence for you what we keep calling the CAD,
14 okay, computer aided dispatch, the printout of the things that get
15 inputted into the computer system, and you've even got the audio.
16 You've got the audio of what the officers said back and forth to one
17 another while this event was unfolding.

18 These pieces of evidence, ladies and gentlemen, are like a
19 crystal ball. You can look back and see exactly what happened. Don't
20 take my word for it. Look at the evidence. Because you'll hear it in the
21 audio, and you'll see it in the CAD. At 7:47 p.m. the description goes
22 out, right? HMA, Hispanic male adult, 5'7", 160 pounds, dark hat,
23 red-striped shirt. That's it. HMA, 5'7", 160, dark shirt -- dark hat, excuse
24 me, red-striped shirt. That's it.

25 One minute later, at 7:48, one minute, Officer Jacobitz is

1 distracted by these two clowns trying to steal this moped from a crime
2 scene. You know how that works in your own life experiences. You're
3 focused on something, you're trying to remember something, and then
4 you're distracted and it's out of your mind. Everybody's been there.

5 Does that make Officer Jacobitz a bad guy? Does that make
6 him a liar? No. Makes him human. You got to see Officer Jacobitz as a
7 human being before you see him as a police officer. That's why we
8 spent so much time in jury selection asking about those questions, over
9 and over, about whether you might have an implicit bias toward a law
10 enforcement officer. Because Officer Jacobitz is a human being before
11 he is a law enforcement officer.

12 At 7:51 p.m. -- don't take my word for it, look at the CAD, listen
13 to the audio -- at 7:51 p.m., four minutes after the description has gone
14 out, Officer Perez, who Officer Jacobitz identified his call sign as 3DP41,
15 you'll see it in the CAD, he says over the radio, there's an HMA matching
16 that description that has a residence in that area on 10th Street. Right
17 then and there, at that moment, the investigation shifted from neutral
18 toward Ceasar Valencia.

19 At 7:58 p.m., 11 minutes after the description first went out,
20 HMA, 5'7", 160 pounds, 11 minutes later we hear the name Ceasar
21 Valencia come across the radio. And from that moment on, there are no
22 other suspects to this crime. There are no other leads. There is nothing
23 else that anybody is interested in doing, except getting Ceasar
24 Valencia. 11 minutes it took.

25 By 8:02 p.m., 15 minutes after the description went out, Officer

1 Jacobitz comes over the radio. He's now using the name Ceasar
2 Valencia to describe the crime that had occurred. When Ceasar pulled a
3 gun on me. Now the victim has become convinced that the suspect is
4 Ceasar Valencia.

5 At 8:04 p.m., two minutes later, Officer Jacobitz gets texted a
6 picture of Ceasar Valencia. Jacobitz is already using Ceasar Valencia's
7 name to describe the crime.

8 And try to imagine what the scene looks like at this point, 15
9 minutes in. Okay? We've got a perimeter set up. Suspect has got
10 away, right? There's a perimeter. There's countless officers involved.
11 There's an air unit. There's dogs coming in. This is a big scene.
12 Officers are being pulled away from the barbecue. They're being pulled
13 away from the memorial. This is a big deal happening down in the
14 DTAC right now. Okay. Because Officer Jacobitz has been assaulted.

15 And his fellow officers say, hey, Ceasar Valencia lives in that
16 area. He's an HMA. He's about 5'7". He's about 160. Must be Ceasar
17 Valencia. Then Officer Jacobitz gets a picture, hey, Officer, here's
18 Ceasar Valencia. What's Jacobitz going to say at that point? Honestly,
19 what's he going to say? Is he going to say no, no guys, no, call it off,
20 call off the perimeter, no, go back to what you were doing. That's --
21 that's not him, that's not our guy. Does anybody really think that's going
22 to happen at that point?

23 He's using Ceasar Valencia's name before he ever even sees
24 a picture of him, ladies and gentlemen. One picture. One. Okay. This
25 is what we call a positive feedback loop. Hey, the suspect is Ceasar

1 Valencia. Ceasar Valencia is an HMA. Here's a picture of Ceasar
2 Valencia. Is that the suspect? Yeah. The suspect is Ceasar Valencia.
3 Okay. That's what's happening here.

4 By 8:08 p.m., these officers are so focused on Ceasar
5 Valencia that an individual is spotted in the area walking down the street
6 wearing a red-striped shirt and a dark hat, but it's a BMA, so that can't
7 be the guy. Can't be the guy. It can't be the guy because the guy is
8 Ceasar Valencia. It always has been. It has been from the first time
9 they heard that name. They all became convinced that that was the guy.
10 Can't be the BMA that meets the clothing description, nope. Got to be
11 Ceasar Valencia.

12 Look at the CAD. You know who says the BMA is not your
13 guy? It's Officer Perez, the one who suggested that maybe Ceasar
14 Valencia was a suspect in the first place. This rush to judgment leads to
15 the police ruling out someone who is wearing the same clothes as the
16 suspect within 21 minutes. 21 minutes. That's how fast the
17 investigation focused on Ceasar Valencia.

18 Is that reasonable doubt? You better believe it. Is tunnel
19 vision reasonable doubt? Is a poor investigation reasonable doubt?
20 You better believe it. That doesn't mean that we're attacking the police.
21 That means we're doing our job as citizens, as jurors, and we're holding
22 the State to their burden to make sure that they prove a case against
23 someone beyond a reasonable doubt.

24 Let's talk about the forensics. Fingerprints, we heard about
25 fingerprints. They get about 14 percent hit rate on fingerprints. That's

1 not really very useful, is it? You know, but Jacobitz's fingerprint was on
2 that gun. That's a little bit of a head scratcher, right? We know he
3 picked it up. Right? We know he put it in his pants and eventually
4 secured it. His fingerprint's still on the gun. And they know their target
5 is Ceasar Valencia, but they don't bother to test any of the cartridges.
6 And you'll remember there were five. You'll remember the fingerprint
7 guy said smooth, metal surfaces are generally the best for finding
8 fingerprints. And there you have five smooth, metal surfaces that
9 weren't tested. That is five reasonable doubts, ladies and gentlemen,
10 right there.

11 Let's talk about the DNA. This gun that's located at the scene,
12 it goes on a little bit of a wild ride that night, right? It's in the suspect's
13 hand, eventually goes flying out of the suspect's hand, lands in the dirt.
14 Lays in the dirt for a little bit. Eventually gets picked up by Officer
15 Jacobitz, goes in Officer Jacobitz's waistband is what he said. From
16 there, Officer Jacobitz goes and arrests two idiots stealing a moped from
17 a crime scene, and then eventually the firearm goes into Jacobitz's
18 vehicle, somewhere in the vehicle, and is eventually secured and
19 impounded.

20 And after going through all of that, a forensic scientist is still
21 able to pull at least four individuals' DNA off that gun. A mixture profile
22 is what they call that. And there's a major profile and there's a minor
23 profile. And the major profile -- the major profile DNA is a female. And
24 Ceasar Valencia is excluded -- excluded -- as a contributor to the major
25 profile. Ladies and gentlemen, this is not evidence that can be ignored.

1 That DNA evidence is way more than reasonable doubt.

2 Let's talk about the burden of proof a little bit. Because we
3 asked a lot about that during jury selection. And I wondered in jury
4 selection, was there anybody here who thought Cesar was guilty the
5 moment we heard -- they heard the charges read? What about now?
6 Now that you've heard the evidence, do you feel more convinced that
7 he's guilty? Do you feel less convinced? Because we were supposed to
8 start from zero, remember?

9 Refer to the reasonable doubt jury instruction. It's No. 5. If
10 there's questions in your mind, if you have unanswered questions, okay,
11 whether or not those are reasonable doubt questions, you look at that
12 jury instruction. It will guide you. Okay.

13 Does anyone here still think Ceasar has to prove his
14 innocence now that you've heard the evidence? We know he doesn't.
15 We know the State carries the burden of proof. State said it countless
16 times in jury selection and opening statements. What would he do on
17 these facts? What do you think he would do to prove his innocence?
18 Take the stand? What's he going to -- what's he going to say? I wasn't
19 there. I was somewhere else.

20 MR. DICKERSON: Objection, Your Honor.

21 THE COURT: Counsel approach.

22 [Bench conference transcribed as follows:]

23 THE COURT: What's the basis of your objection?

24 MR. DICKERSON: Basis of the objection is that he's telling
25 them what his client would say if he testified. He can't do that.

1 THE COURT: Okay.

2 MR. LEXIS: Absolutely. He absolutely can't do it --

3 THE COURT: I heard -- okay.

4 Mr. Coyer, what is your response to the objection?

5 MR. COYER: That I'm demonstrating to them the impossibility

6 of proving a negative, which is part of the burden of proof.

7 THE COURT: But you're saying what he would have said if

8 he had testified.

9 MR. COYER: Well --

10 THE COURT: So I'm going to sustain the objection, ask the

11 jury to disregard your last comment.

12 MR. COYER: Okay.

13 THE COURT: Thank you.

14 MR. DICKERSON: Thank you, Your Honor.

15 [End of bench conference.]

16 THE COURT: The objection is sustained. The last comment

17 by counsel is to be disregarded by the jury.

18 MR. COYER: How does Ceasar Valencia prove his

19 innocence? He lives two houses away from where this happened. Of

20 course he's an HMA in the area with a residence. He lives right up the

21 street. How would he possibly prove his innocence? That is why the

22 State carries the burden of proof, ladies and gentlemen. That is why, in

23 our system, we require the State to prove their case beyond a

24 reasonable doubt. This case is a great example of why that's so

25 important, because you cannot prove a negative, no matter what you do

1 or don't do. You cannot prove that you weren't somewhere. It can't be
2 done.

3 You know, you heard some questions from the State directed
4 at the forensic experts, right? Like, is it possible that you maybe don't
5 get some DNA off of a firearm? Or is it possible that you don't get some
6 fingerprints off of it? Sure. It's -- all that stuff is possible. Right? Is it
7 possible that Ceasar Valencia is the guy? Sure. I'll concede that. But
8 that's not the question. Okay. That's not the question.

9 But if you're going to ask those questions, you need to direct
10 yourself to the reasonable doubt jury instruction. Okay. Because
11 speculation, fanciful things, okay, those are not proper areas of inquiry
12 for reasonable doubt.

13 Is it probable that this face is not the face that Officer Jacobitz
14 saw on May 19th, 2016? You better believe it. Because Officer
15 Jacobitz, just like Officer Houston, has training. He has experience.
16 He's been through the police academy. And on that evening, he was
17 very clear. Both officers could not have been clearer in their testimony,
18 that they were alert, they were attentive, they were paying attention to
19 details.

20 And you look at this face and you're not even going to mention
21 that he's got that patch of hair under his chin? Are you kidding me? The
22 State can stand up here and say that that's ridiculous all day. You guys
23 get to decide what matters in this case.

24 Has the State proved beyond a reasonable doubt that that
25 face is the face that was seen by Officers Jacobitz and Houston on

1 May 19th, 2016? No way. They saw the suspect's face at a different
2 location, followed him, then they got split up. Okay. Remember? Split
3 up. They're in different areas, so they didn't have time to, like, you
4 know, pow-wow with each other. And not one of them, neither one of
5 those officers says, oh, by the way, guy's got a big, huge goatee under
6 his skin. Not one of them at any point ever says that. That is significant.

7 They specifically testified that they're trained to recognize
8 characteristics, physical traits, clothing, height, weight, all those things.
9 But what gets pointed out? HMA, 5'7", 160 pounds.

10 What about the drugs? Ceasar had drugs in his pocket. On
11 May 21st, Ceasar had drugs in his pocket. But did the State prove to
12 you beyond a reasonable doubt that he had drugs in his pocket on
13 May 19th? Not even close. Look at Jury Instruction No. 3. The charge
14 is for May 19th.

15 I'm not going to tell you how to fill out a verdict form. I know
16 you guys can figure that out on your own. I'm going to ask you for a
17 favor though. Because the State carries that burden of proof, they get to
18 come back up here and argue some more. And I would just like you to
19 ask yourselves, whatever argument you're about to hear, is he talking
20 about argument or is he talking about evidence? Did I hear that
21 evidence come from this chair? And I ask you to keep that in mind now,
22 and when you're deliberating. Thank you, ladies and gentlemen.

23 THE COURT: Mr. Dickerson, are you ready to go forward?

24 MR. DICKERSON: Yes, Your Honor.

25 Bottom line, ladies and gentlemen, when we talk about

1 Instruction No. 3 and the drugs, obviously, they're conceding the drugs,
2 that yeah, he had drugs on him, heroin, cocaine, meth, those are all his.
3 Instruction No. 3 in that argument is not proper. What -- what we have
4 here, Instruction No. 3, is the information. And here in the State of
5 Nevada, it's notice pleading. So notice pleading is on or about
6 May 19th, 2016, he had drugs on him. On or about May 19th, 2016, the
7 defendant had drugs on him. He's guilty of that, no doubt about it.
8 May 21st, 2016. This event started on May 19th, 2016. Here we are.

9 May 19th, 2016, do we need cartridges to tell us who pointed
10 the gun? Do we need the gun itself to tell us who pointed the gun? No
11 way. Ladies and gentlemen, we have two officers up here, Officer
12 Houston and Officer Jacobitz. They both told you, yeah, that guy who I
13 saw running from us there at 11th and Wilson, that was the defendant.
14 Ceasar Valencia, yeah, that's his face. I know that face.

15 Well, then the guy gets off the moped running. Who's that
16 guy? That's Ceasar Valencia. That's him. I know that face. They
17 confirm it that night, less than half an hour into this perimeter being set
18 up in an area of downtown being cordoned off. 100 percent confirmed
19 looking at a photo, that's the guy that just ran from us. When it's
20 freshest in their mind right there on scene, right after this guy runs from
21 them, yeah, that's the guy who run -- who just ran from us.

22 Think about their motive, here and then. Who wants to catch
23 the right guy more than the guy who was just victimized by Ceasar
24 Valencia? Officer Jacobitz and Officer Houston. Do you think that they
25 want to look at a picture of a guy that's not him and say, yeah, that's him,

1 knowing that the guy who just pointed the gun at him got away? Come
2 on, these guys are police officers. Their job is law enforcement. They
3 knew what they saw.

4 Bottom line, ladies and gentlemen, is if you believe the
5 witnesses, you find the defendant guilty. You need nothing else. Do we
6 have it? Yeah. We know there is a gun out there. That's circumstantial
7 evidence that corroborates everything they're saying. The gun was on
8 the ground. We have the gun.

9 In addition, we have the forensic testing that was completed
10 showing the thoroughness of the investigation. That's why you guys
11 heard about it, to hear that, hey, the buck doesn't just stop, right? It
12 doesn't just stop with breakdown the perimeter, go find the guy. We
13 present that to you so you see the full scope of everything. We have
14 nothing to hide. Nothing. Because it's clear, 100 percent, Ceasar
15 Valencia is the person who pointed a gun at Officer Jacobitz in that back
16 alley of 610 North 10th Street.

17 What you see from the DNA evidence is pretty interesting
18 information, actually. I think that most people don't realize the scope
19 and breadth of what we get from DNA evidence and how it can be
20 applied. But you heard from Crystal May that that evidence can only go
21 so far. And what we have is a solid identification to a female. We don't
22 know who the female is, so we can't say which female it is. We know it's
23 not her, because she tested that. But we could only tell who that female
24 was if we compared it to anybody else.

25 The other folks on there, males, at least three of them. She

1 told you she can't do more than three, right? Three is the maximum that
2 their standards will let them -- or I'm sorry, four is the maximum that
3 their -- their standards at the lab will allow them to do. After -- could
4 it be 40? Could be. All she can do is four.

5 Why is that? She told you that too. Guns are notoriously bad
6 for that reason for DNA analysis, because, obviously, as we've seen with
7 this gun and the amount of DNA on it, they pass through multiple hands.

8 The fingerprints, exactly what we'd expect to find, without a
9 doubt. Exactly what you'd expect to find on that gun is after that
10 small .38 revolver, the only metal part is shoved into the waistband of
11 Officer Jacobitz's fairly tight duty belt, we would have damage to the
12 prints on there. And so that's ultimately pulled out of his pants with
13 gloves -- or without gloves and secured in his car before it's impounded
14 into that bag and kept just like that. The last person that touched it was
15 Officer Jacobitz. And the fact that we got a fingerprint off of it is
16 surprising in the first place, but of course it's his.

17 None of that says that Ceasar Valencia didn't have that gun.
18 None of that evidence says that. And you're instructed here -- I really
19 want you to look at this. The reasonable doubt instruction that says,
20 specifically, reason --

21 MR. COYER: Objection. I'm objecting to presenting
22 highlighted portions of the jury instructions to the jury.

23 MR. DICKERSON: That's not an objection, Your Honor.

24 THE COURT: Okay. Wait, counsel. Approach.

25 [Bench conference transcribed as follows:]

1 THE COURT: Okay. What's your objection, counsel?
2 MR. COYER: It's improper argument to -- to present
3 highlighted --
4 THE COURT: And why is it --
5 MR. COYER: -- portions of the jury instructions --
6 THE COURT: -- improper argument?
7 MR. COYER: Because the jury has already been instructed to
8 review them as a whole and not draw --
9 THE COURT: Okay.
10 MR. COYER: -- any special inferences from one particular --
11 THE COURT: Stop.
12 MR. COYER: -- instruction or another.
13 THE COURT: Okay. What's your response, counsel?
14 MR. DICKERSON: It's argument, Your Honor. And I can
15 point to any areas of the jury instructions I want to.
16 THE COURT: Okay. All right.
17 MR. LEXIS: That's why I just did it --
18 THE COURT: All right. Just stop.
19 All right, counsel. He's reviewing the jury instructions with the
20 jury. The jury instructions have been read. He's allowed to make
21 argument based on the jury instructions. Your objection is overruled.
22 MR. DICKERSON: Thank you, Your Honor.
23 [End of bench conference.]
24 MR. DICKERSON: Thank you.
25 So the part is specifically here. Doubt to the reasonable must

1 be actual, not mere possibility or speculation. Possibility or speculation.
2 That's all defense counsel's argument leaves us with. Is it possible that
3 it's not him? No. We know it's him. And whatever they're asking you to
4 consider, whatever questions they're asking you to answer in your mind,
5 what do those questions call for? Speculation, possibility, things that
6 you can't consider when considering reasonable doubt.

7 It's, frankly, without a doubt that Ceasar Valencia is guilty of
8 the crime of assault with a deadly weapon on a protected person. The
9 only thing that they're arguing is not that Officer Jacobitz didn't get a gun
10 pointed at him, not that Officer Jacobitz isn't a police officer. They're
11 saying just wasn't Ceasar Valencia. Well, of course it was Ceasar
12 Valencia.

13 Regardless of everything we've talked about, about him 100
14 percent being ID'd by both police officers, experienced police officers at
15 that, the night of, what other facts do we know? Well, we know Ceasar
16 Valencia is a neighbor to Downtown Area Command. He may live closer
17 than almost anybody. And when these officers are coming out of their
18 home command post, a place where they spend a lot of time, and that
19 day just finishing up eating, where do they see the moped first? The
20 alley right behind Ceasar Valencia's house. Is that a coincidence? No.
21 No doubt, that's not a coincidence.

22 Where is it coming from? Well, it's coming from that alleyway
23 right behind his house. As that moped takes off going to opposite
24 direction away from the house and officers finally get behind it, pulls into
25 that area at 11th and Wilson. There, they try to conduct the traffic stop.

1 He looks back at them. They absolutely see it's him, for the first time
2 seeing the face and being able to recognize it. But that's not what I'm
3 talking about right now.

4 What I'm talking about is where does he go? He doesn't try to
5 go back down away, the same direction that he was originally heading.
6 Where do people go when they're scared? They go to a place that they
7 know, a place of safety. And where does Ceasar Valencia go? He goes
8 back towards his house, right? Right away. He turns up Wilson. He
9 comes down that alley. He lives in the neighborhood. Reasonable
10 inference, he knows that area. And where does he go? Right into the
11 back alley of 610 North 10th Street, an area that just so conveniently has
12 open access right to 10th Street. Who knows that area? Ceasar
13 Valencia knows that area.

14 And where does he go? He goes through that alley after
15 pointing the -- pointing the gun at Officer Jacobitz, continues. At that
16 time end of that alley, does he go left away from 625 North 10th Street,
17 his home? No. He goes right towards it, right towards his area of
18 safety, his home because that's where people flee when they're scared
19 and they want to get away.

20 Judging by Ceasar Valencia's actions that night, that's exactly
21 what he wanted to do. He did not want those officers to stop him and he
22 was willing to stop at nothing. Where does he end up? Right there, right
23 at his house. It's right where officers lose track of him, surprising
24 enough.

25 Once again, ladies and gentlemen, who knows that area?

1 Ceasar Valencia. In a neighborhood that you're familiar with, that a
2 person is familiar with, who knows it better than that person themselves.
3 And that's circumstantial evidence to support and corroborate the
4 overwhelming direct evidence that establishes that Ceasar Valencia is
5 the person that committed assault with a deadly weapon upon a
6 protected person, that being Officer Jacobitz.

7 But ladies and gentlemen, we don't have to stop there. We
8 don't have to stop there, because, I think very important to
9 understanding what we have in front of us is we have a clear opportunity
10 for Ceasar Valencia to get away; and he does. And when do we see
11 him reemerge?

12 Well, we have the surveillance operation started. It's several
13 hours in until we see him in the late evening hours, or the -- I guess the
14 early morning of Saturday, a time when, hopefully, no one is around.
15 What does that vehicle do as it's driving down the street? You heard
16 that it tail checked. We know that -- that Ceasar Valencia wasn't driving.
17 But it tail checked the surveillance team. Consider it. It's evidence for
18 you to consider.

19 Where does it go? They lose it for a brief second. They pick it
20 up unoccupied. Ultimately, later on, or an hour later, they get Ceasar
21 Valencia. This time he's not driving. He's not operating the vehicle so
22 he can't run. There's a whole slew of police officers, approximately 15 or
23 so, with guns in an area that's enclosed on Washington and Main Street.
24 There's nowhere to go.

25 He was caught, at least right then. And that's why he tells

1 you, well, the -- yeah, drugs were in my pocket. Right? That's why the
2 defense tells you that. But he's good for that. He's guilty of all of it.

3 Ladies and gentlemen, when you go back to that jury
4 deliberation room, just consider the first thing I said here, that if you
5 believe the witnesses, that's it. Ceasar Valencia is guilty. And what do
6 we have here, divine intervention.

7 MR. COYER: Objection, Your Honor. Prejudicial argument.

8 THE COURT: Counsel approach.

9 [Bench conference transcribed as follows:]

10 THE COURT: Speak low. What's the base --

11 MR. COYER: Judge --

12 THE COURT: What's your objection, counsel?

13 MR. COYER: This a reference to religion. It's completely
14 improper. It's inflammatory. It's totally improper argument to mention
15 divine intervention, and I objected when that testimony came in as well
16 from Officer Jacobitz.

17 THE COURT: Counsel?

18 MR. DICKERSON: It's proper comment on the testimony of
19 the officer.

20 THE COURT: Okay. His objection is sustained. I'm going to
21 have the jury disregard your last comment.

22 MR. DICKERSON: Okay.

23 [End of bench conference.]

24 THE COURT: The objection is sustained. I instruct the jurors
25 to disregard counsel's last comment.

1 MR. DICKERSON: Ladies and gentlemen, I don't have to tell
2 you anything. I don't have to tell you what it was, how scary that
3 situation was for Officer Jacobitz. He stood here and he told you. And
4 just the idea of an old fence post being the thing that stopped him from
5 getting shot, and God forbid, having to shoot somebody else that night,
6 that's what stopped this. That's what gets us here today, an assault with
7 a deadly weapon on a protected person, not something much worse.

8 Officer Houston and Officer Jacobitz, they more than anybody
9 else want to catch the right man. We're not here on a misidentification.
10 We're here on a 100 percent positive identification of both officers. They
11 know what they saw. There's no doubt about it.

12 When you consider the fact that these officers aren't telling us
13 a line of baloney to try bolster each other's stories up. If that was the
14 case, Officer Houston would have been telling us a story about how he
15 saw. He was -- he was standing right next to Officer Jacobitz when this
16 happened. No. They're just telling you what they saw. That's it.

17 Take it all into consideration, ladies and gentlemen. I submit
18 to you, if you believe the witnesses, that's all you need. Ceasar
19 Valencia is guilty. Please find him guilty of all counts. Thank you.

20 THE COURT: Counsel approach, please.

21 [Bench conference transcribed as follows:]

22 THE COURT: Okay. At this point, I'm going to have the
23 officers sworn in. I'm just going to have the marshal take the jurors back
24 to the deliberation room, advise them that they're going to get the
25 exhibits, the jury instructions, save and except the weapon, the

1 ammunition, and the -- the drugs. And if they want to inspect it, request
2 the marshal to bring it back.

3 I was going to have my JEA, Ms. Fagin, take the alternates to
4 my chambers. I'm not going to let them leave the building in light of --

5 MR. COYER: Because they have a --

6 THE COURT: -- the bifurcation issue.

7 MR. COYER: Yes.

8 THE COURT: So I'm not going to let them just -- I don't want
9 to take the chance that -- so I'm just going to have Ms. Fagin keep them
10 either in a separate isolated area. And then, you know, we'll be in
11 recess.

12 MR. DICKERSON: Okay.

13 MS. PLUNKETT: Okay.

14 MR. COYER: Thank you.

15 THE COURT: Thank you, counsel.

16 [End of bench conference.]

17 THE COURT: The clerk will now swear in the officers to take
18 charge of the jurors and the alternates -- alternate jurors. There's two of
19 them.

20 [Officers sworn.]

21 THE COURT: At this time, ladies and gentlemen, the -- the
22 jurors -- and the jurors are the first 12 seats in the jury box, the marshal
23 is going to take you to -- don't leave yet. The marshal is going to take
24 you to the jury room for deliberation. You also will be brought the
25 exhibits, which have been introduced into evidence, and the jury

1 instructions.

2 By agreement of the parties, we're not going to send back the
3 weapon, the ammunition, or the drugs. However, if you want to inspect
4 the weapon, the ammunition, or drugs, please inform the marshal and he
5 will bring them to you so you could inspect them.

6 At this time, the marshal is going to take the jurors to the jury
7 room for deliberation.

8 THE COURT: If the alternate jurors would just remain seated
9 for one second.

10 [Jury recessed for deliberation at 3:38 p.m.]

11 THE COURT: While the jury is deliberation, my judicial
12 executive assistant, Ms. Fagin, is going to take you to my chambers and
13 you're going to remain at my chambers while the jury deliberates. Once
14 the jury returns with a verdict, then you'll be brought back to the
15 courtroom. All right. Thank you.

16 Ms. Fagin? Ms. Fagin.

17 THE JEA: Yes.

18 THE COURT: Please?

19 THE JEA: Sure.

20 THE COURT: Where do you want to put them? I mean --

21 THE JEA: I was going to put them in the room.

22 THE COURT: But you have to stay there with them.

23 THE JEA: Yeah.

24 THE COURT: Okay. So right now let's just put them in the
25 courtroom, we'll make -- we'll put up a spot in chambers. All right. So

1 stay --

2 THE JEA: Do they need a break?

3 THE COURT: They can go to the bathroom. And I mean, you
4 just got to make sure nobody talks to them. Okay. Thank you. Thank
5 you.

6 THE JEA: You're welcome.

7 THE COURT: All right. All right. Before counsel leave the
8 courtroom, please provide my clerk with a telephone number where you
9 can be reached once the jury returns a verdict. Please do not -- please
10 be within 30 minutes of the courthouse.

11 MR. DICKERSON: Thank you, Your Honor.

12 MS. PLUNKETT: Thank you, Judge.

13 THE COURT: Court is in recess.

14 [Court recessed at 3:40 p.m. until 4:26 p.m.]

15 [Outside the presence of the jury.]

16 THE COURT: Please be seated. This is continuation of the
17 trial of *State of Nevada vs. Ceasar Sanchaz Valencia*, Case No.
18 C-16-315580.

19 Counsel, I've been advised that the jury has reached a verdict.
20 They're bringing the jury in with the alternates. And then what I'm going
21 to do is excuse them for today, advise them that this was a bifurcated
22 trial, there's an additional charge that needs to be tried.

23 MR. DICKERSON: I think it will probably take about 15
24 minutes, Your Honor, if we could just try to get it in.

25 THE COURT: Well, you told me I read to read the preliminary

1 instructions, correct?

2 MR. LEXIS: That's correct.

3 THE COURT: Have the parties agreed on the jury instruction?

4 MR. DICKERSON: Yes.

5 MR. LEXIS: Yes.

6 THE COURT: Is that correct, counsel?

7 MR. COYER: Yes.

8 THE COURT: All right. Where are they? Where are the
9 preliminary -- so as to the jury -- Proposed Jury Instruction No. 2,
10 regarding the -- have you filed an amended --

11 MR. DICKERSON: We have it prepared, Your Honor. It's up
12 there with your clerk.

13 THE COURT: Do you have it, Clerk? Because you're going
14 to have to read it.

15 THE CLERK: Yes.

16 THE COURT: So hopefully my glasses were not going to fog
17 up.

18 MR. DICKERSON: Thank you.

19 THE COURT: I'm making no promises though.

20 MR. DICKERSON: Okay. We'll try.

21 THE COURT: And so I'm going to read them the preliminary
22 instructions, correct? It's the same ones we had before; is that correct?

23 MR. DICKERSON: Yes, Your Honor.

24 THE COURT: And then you're going to present whatever
25 evidence you're going to present, whatever cross, this and that. And

1 you're going to do -- then I'm going to read the jury instructions to them?

2 MR. DICKERSON: Yes, Your Honor.

3 THE COURT: And then you're going to do closing arguments
4 again?

5 MR. DICKERSON: Yes, Your Honor. It should be very quick.

6 THE COURT: Okay.

7 MR. DICKERSON: I'm -- I'll tell you what we're going to do is
8 we're going to just admit the certified judgments of conviction as
9 evidence of his prior felonies. And then we'll have the opportunity for
10 closing arguments where I'll probably just say hey, here's the certified
11 judgments --

12 THE COURT: All right. Well, here's --

13 MR. DICKERSON: -- of convictions.

14 THE COURT: -- the deal, it's 4:30. I'm not going to keep
15 them -- keep them much past 5:00.

16 MR. DICKERSON: Okay.

17 THE COURT: I'm going to let you know that right now.

18 MR. LEXIS: I -- I --

19 MR. DICKERSON: Yeah.

20 MR. LEXIS: It's obvious the court's call, but I -- I have a
21 feeling if you poll them, they're going to want to get this over with,
22 especially if they know that they're not going to have to come back, but
23 court's --

24 THE COURT: Do you want me --

25 MR. LEXIS: -- whatever court's --

1 THE COURT: -- to do that, poll them, see if they want to stay?
2 And why don't I do that. If they want -- or do they want to come back
3 Monday. I'll tell them it's been advised it's -- the presentation is going to
4 take approximately an hour.

5 MR. DICKERSON: Presentation should take approximately --

6 THE COURT: All right. Well, let's get a --

7 MR. DICKERSON: -- 15 to 30 minutes, at most.

8 THE COURT: All right. If they want to stay, I'll stay, but I'm
9 going to keep them much past 5:00. I'm going to --

10 MR. LEXIS: Thank you.

11 MR. DICKERSON: Thank you, Your Honor.

12 THE COURT: Is that agreeable to the -- let's go through the
13 jury instructions. All right. As to Proposed Jury Instruction No. 1, do the
14 parties agree it can be given?

15 MR. COYER: Yes.

16 THE COURT: State?

17 MR. DICKERSON: State submits on all of them.

18 THE COURT: Okay. So let's do this then.

19 MR. COYER: Defense will submit on all as well.

20 THE COURT: Okay. As to Proposed Jury -- as to the State's
21 Proposed Jury Instructions 1 through 17, do the parties agree that
22 State's Proposed Jury Instructions 1 through 17 can be given?

23 MR. DICKERSON: State agrees, Your Honor.

24 MR. COYER: Agreed.

25 THE COURT: And as to the verdict form that's attached to the

1 back, this is -- parties agree that that verdict form can be used by the
2 jurors?

3 MR. LEXIS: Yes, Your Honor.

4 MR. COYER: Agreed.

5 THE COURT: Okay. All right. Why don't you bring the jurors
6 in.

7 [Jury reconvened at 4:31 p.m.]

8 THE COURT: Let the record reflect counsel for the State,
9 counsel for the defense, Mr. Valencia, and the jury is present. I've been
10 advised that the jury has returned a verdict; is that correct?

11 Who is your foreperson?

12 Could you please stand?

13 Is that correct, sir?

14 JUROR NO. 5: Yes, sir.

15 THE COURT: And what is your name?

16 JUROR NO. 5: My name is Xavier Antheaume.

17 THE COURT: Okay. And you've been selected as the
18 foreperson?

19 JUROR NO. 5: Yes, sir.

20 THE COURT: And can you hand the verdict form to my -- to
21 my marshal, please?

22 If the clerk could read the verdict, please.

23 THE CLERK: District Court, Clark County, Nevada, Case No.
24 C-16-315580-1, State of Nevada, Plaintiff, Ceasar Sanchaz Valencia,
25 Defendant. Verdict:

1 We, the jury, in the above-entitled case find the defendant as
2 follows:

3 Count 1, assault on a protected person with use of a deadly
4 weapon: Guilty of assault on a protected person with use of a deadly
5 weapon.

6 Count 2, trafficking in controlled substance, heroin: Guilty of
7 trafficking in controlled substance.

8 Count 3, possession of controlled substance, cocaine: Guilty
9 of possession of controlled substance.

10 Count 4, possession of controlled substance: Guilty of
11 possession of controlled substance.

12 Dated this 1st day of December, 2017, Xavier Antheaume,
13 Foreperson.

14 Ladies and gentlemen of the jury, are these your verdicts as
15 read, so say you one, so say you all?

16 COLLECTIVE JURY: Yes.

17 THE COURT: Does either counsel want the jury polled?

18 MR. DICKERSON: State does not wish to.

19 MR. COYER: Defense would ask that they be polled.

20 THE COURT: Mr. Clerk, please poll the jurors.

21 THE CLERK: Juror No. 1, is this your verdict as read?

22 JUROR NO. 1: Yes.

23 THE CLERK: Juror No. 2, is this your verdict as read?

24 JUROR NO. 2: Yes.

25 THE CLERK: Juror No. 3, is this your verdict as read?

1 JUROR NO. 3: Yes.
2 THE CLERK: Juror No. 4, is this your verdict as read?
3 JUROR NO. 4: Yes.
4 THE CLERK: Juror No. 5, is this your verdict as read?
5 JUROR NO. 5: Yes.
6 THE CLERK: Juror No. 6, is this your verdict as read?
7 JUROR NO. 6: Yes.
8 THE CLERK: Juror No. 7, is this your verdict as read?
9 JUROR NO. 7: Yes.
10 THE CLERK: Juror No. 8, is this your verdict as read?
11 JUROR NO. 8: Yes.
12 THE CLERK: Juror No. 9, is this your verdict as read?
13 JUROR NO. 9: Yes.
14 THE CLERK: Juror No. 10, is this your verdict as read?
15 JUROR NO. 10: Yes.
16 THE CLERK: Juror No. 11, is this your verdict as read?
17 JUROR NO. 11: Yes.
18 THE CLERK: Juror No. 12, is this your verdict as read?
19 JUROR NO. 12: Yes.
20 THE COURT: Thank you.
21 Ladies and gentlemen of the jury, this was a bifurcated trial.
22 There's an additional charge that needs to be tried. I've been informed
23 by counsel that the actual presentation of evidence probably will take
24 less than a half hour. However, it is the -- the same as the trial that we
25 just completed. I have to do the preliminary instructions, there is a

1 presentation of evidence, I have to read you the jury instructions, and
2 then you would have to deliberate. The parties have left it up to you
3 whether you want to start it today or come back on Monday at 10:00 to
4 hear the testimony on the additional charge. It's late in the afternoon, so
5 I will go for a while.

6 So if you could advise -- Mr. Foreperson, if you could discuss
7 with your jurors if they want to continue or come back on -- on Monday?

8 Oh, counsel?

9 MR. DICKERSON: Just -- and just for the record, Your Honor,
10 we don't expect any additional testimony, just two pieces of evidence to
11 be admitted.

12 THE COURT: Okay. But we still -- is that correct, counsel?
13 We still have to do the preliminary instructions --

14 MR. DICKERSON: Yes.

15 THE COURT: -- presentation of evidence, instruct the jury on
16 the law, and then closing arguments?

17 MR. DICKERSON: Yes. And I believe, it -- the State's side
18 will be very brief.

19 THE COURT: So we can come -- yes, sir?

20 JUROR NO. 5: Like to know the approximate time this will
21 take so that we can all come up with a quality decision for you for this
22 evening.

23 THE COURT: Okay. Well, I would suspect it's going to take,
24 to do everything, at least -- based on the representation of counsel, at
25 least 45 minutes to an hour.

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[Pause in proceedings.]

JUROR NO. 5: Sir, we will stay.

THE COURT: Okay. The problem -- I will advise you, I have
a court staff and I need to --

Can we go past 5:00? How much past?

[Phase I proceedings concluded at 4:36 p.m.]

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.



Shawna Ortega, CET*562

1 VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

DEC - 1 2017

4:35 p.m.

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -VS-

8 CEASAR SANCHAZ VALENCIA

9 Defendant.

BY, Alan Paul Castle, Sr.
ALAN PAUL CASTLE, SR, DEPUTY

CASE NO: C-16-315580-1

DEPT NO: XVIII

C-16-315580-1

VER
Verdict
4701940



11 VERDICT

12 We, the jury in the above entitled case, find the Defendant as follows:

13 **COUNT 1** – ASSAULT ON A PROTECTED PERSON WITH USE OF A DEADLY
14 WEAPON

15 *(Please check the appropriate box, select only one)*

- 16
- 17 ☐ Not Guilty
- 18 ☐ Guilty of Assault on a Protected Person
- 19 ☐ Guilty of Assault with a Deadly Weapon
- 20 ☒ Guilty of Assault on a Protected Person with use of a Deadly Weapon

21 **COUNT 2** – TRAFFICKING IN CONTROLLED SUBSTANCE (HERION)

22 *(Please check the appropriate box, select only one)*

- 23 ☐ Not Guilty
- 24 ☐ Guilty of Possession of Controlled Substance
- 25 ☒ Guilty of Trafficking in Controlled Substance

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COUNT 3 – POSSESSION OF CONTROLLED SUBSTANCE (COCAINE)

(Please check the appropriate box, select only one)

- ☐ Not Guilty
☒ Guilty of Possession of Controlled Substance

COUNT 4 – POSSESSION OF CONTROLLED SUBSTANCE

(METHAMPHETAMINE)

(Please check the appropriate box, select only one)

- ☐ Not Guilty
☒ Guilty of Possession of Controlled Substance

DATED this 1 day of December, 2017



FOREPERSON

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC - 1 2017
5:28 PM

DISTRICT COURT
CLARK COUNTY, NEVADA BY Alan Paul Castle, Sr.
ALAN PAUL CASTLE, SR, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-VS-

CEASAR SANCHAZ VALENCIA

Defendant.

CASE NO: C-16-315580-1

DEPT NO: XVIII

VERDICT

We, the jury in the above entitled case, find the Defendant as follows:

COUNT 1 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED
PERSON

(Please check the appropriate box, select only one)

☐ Not Guilty

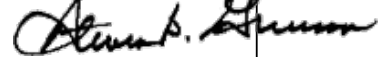
☒ Guilty of Ownership or Possession of Firearm by Prohibited Person

DATED this 1 day of December, 2017

[Signature]
FOREPERSON

C-16-315580-1
VER
Verdict
4701843





1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 CEASAR SANCHAZ VALENCIA,

11 Defendant.

)
)
) Case No. C-16-315580-1

)
) DEPT. XVIII
)
)

12
13 BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE

14
15 THURSDAY, JANUARY 25, 2018

16
17 **TRANSCRIPT OF PROCEEDINGS RE:**
18 **JURY TRIAL - SENTENCING**

19 **APPEARANCES:**

20 For the Plaintiff:

MICHAEL DICKERSON, ESQ.
(Deputy District Attorney)

21
22 For the Defendant:

GREGORY E. COYER, ESQ.
ALEXIS ANNE PLUNKETT, ESQ.

23
24 RECORDED BY: ROBIN PAGE, COURT RECORDER

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INDEX

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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State's Exhibit Nos. 1 through 4	7
----------------------------------	---

1 **LAS VEGAS, NEVADA, THURSDAY, JANUARY 25, 2018**

2 [Proceedings commenced at 9:58 a.m.]

3
4 THE COURT: First, is everybody ready, Mr. Coyer?

5 MR. COYER: Yes, Your Honor.

6 MR. DICKERSON: Yes.

7 THE COURT: On page 7, Case No. C-315580, *State vs.*
8 *Valencia.*

9 Counsel, state your appearances, please.

10 MR. DICKERSON: Michael Dickerson on behalf of the State.

11 MR. COYER: Gregory Coyer on behalf of Mr. Valencia, with
12 my co-counsel.

13 MS. PLUNKETT: Alexis Plunkett for Mr. Valencia.

14 THE COURT: This time set for entry of judgment and
15 imposition of sentence. Is there any legal cause or reason why
16 judgment should not be pronounced at this time?

17 MR. COYER: No.

18 MR. DICKERSON: Nothing from the State, Your Honor.

19 THE COURT: By verdict -- by verdict of the jury, I hereby
20 judge the defendant guilty of the offense of the -- the offenses of:

21 Count 1, assault on a protected person with use of a deadly
22 weapon;

23 Count 2, trafficking in controlled substance;

24 Counts 3 and 4, possession of a controlled substance.

25 MR. DICKERSON: And Count --

1 THE COURT: State, what's your position on sentencing?

2 MR. DICKERSON: And Count 5, Your Honor, possession of

3 firearm by a prohibited person.

4 THE COURT: I apologize. You're correct.

5 And Count 5, ownership or possession of firearm by a

6 prohibited person.

7 State, what's your position on sentencing?

8 MR. DICKERSON: Your Honor, in this case, the State is

9 seeking habitual treatment. We filed a habitual notice specifically on

10 February 3rd, 2017, listing nine different felony convictions. Here today I

11 have in my possession four judgments of conviction, detailing the

12 felonies on the State's Notice of Habitual, Nos. 4 through 9.

13 THE COURT: Have those been admitted in court and they're

14 certified copies?

15 MR. DICKERSON: They are certified copies. If I may

16 approach your clerk to have them marked?

17 THE COURT: Yes.

18 MR. DICKERSON: You sat through the trial in this case, Your

19 Honor, you heard the evidence. And based on the defendant's actions

20 and his criminal history is really why we're asking for habitual treatment

21 in this particular case.

22 What we have is an individual who has had a career of crime,

23 no doubt about it. Nine different felonies, one gross misdemeanor

24 conviction, 15 misdemeanors, 6 prison sentences, and 16 jail terms,

25 Your Honor.

1 He started back in, as an adult, in 1998 with a possession of
2 controlled substance conviction out of Bakersfield, California. In 1999,
3 carrying concealed weapon out of Visalia, California. Then '99 as well,
4 same time, different case, possession of controlled substance, Visalia,
5 California.

6 2001, he makes his way to Las Vegas, picks up a trafficking
7 controlled substance case, which is ultimately pled out to possession of
8 controlled substance with intent to sell. He receives probation, is
9 revoked, goes to prison there. Continues on into 2002, picking up
10 additional charges and being convicted in 2003 here in Las Vegas of
11 conspiracy to commit possession of a controlled substance, a felony
12 offense, sentenced to prison there.

13 He continues with drug offenses throughout the next several
14 years and onto 2006. He's also picked up and arrested and convicted of
15 possession of a stolen vehicle. Again, sent to prison. And as well as
16 another possession of stolen vehicle and possession of a stun device
17 case that he picked up in 2006 and is sent to prison on.

18 As -- again, Your Honor, you see his criminal activity
19 continuing, auto burglaries, possession of controlled substance,
20 domestic battery. One thing that stays constant is that he seems to
21 always be in possession of a controlled substance, as he was here.
22 And, ultimately, you heard that the day of the initial incident, when he ran
23 from police officers and pointed a firearm at Officer Jacobitz as he was
24 running from him, that was an incident where I think it would be
25 reasonable to say, why would he be running?

1 Well, we take a look at his history. We take a look at the fact
2 that he had a gun on him, that we know he's a felon, he's committing
3 that crime. And the fact that the next day, he gets arrested with
4 trafficking levels of multiple controlled substances. We see that there's
5 no doubt that he has been living a life of crime. And part of that includes
6 dealing drugs, based on the amount of controlled substances that he
7 has, and the way that he's carrying them. In fact that he's carrying that
8 weapon, as well, Your Honor, and he's willing to use that weapon.

9 The facts of this case show that he not only pulled the firearm
10 on Officer Jacobitz, but it is really something of a miracle that he wasn't
11 able to shoot Officer Jacobitz. Because what was formerly a fence that
12 was in the alleyway where he was running had been torn down, and
13 they'd left up that single fence post where he hit his arm. That fence
14 post was what saved Officer Jacobitz's life that day. It's because when
15 the defendant turned around to point his gun and fire at Officer Jacobitz,
16 his elbow just happened to hit that fence post that had been left over
17 from that old fence and he dropped the gun. That's why we're not here
18 on a much more serious crime or even much more tragic circumstances.

19 And then, ultimately, Your Honor, he's convicted of the drugs
20 and firearm as well.

21 So today, what I have is the judgments of conviction. Have
22 you been provided those, Your Honor?

23 THE COURT: I have and I reviewed them.

24 MR. DICKERSON: Okay. And do you accept those as
25 certified judgments of conviction of the defendant?

1 THE COURT: I do. I -- let me -- State -- shucks.
2 Defense, any objection to the admission of the certified copies
3 of the judgment and conviction State's Exhibits 1, 2, 3, and 4?
4 MR. COYER: No, Your Honor. We were previously provided
5 those.
6 THE COURT: They'll be admitted.
7 [State's Exhibit Nos. 1 through 4 admitted.]
8 MR. DICKERSON: So the defendant's now 38 years old. He
9 committed his first adult felony when he was 19. He's -- hasn't stopped
10 since. And he's escalated his behavior into trying to conceal it and
11 taking violent means towards police officers to do that.
12 For that reason, on Count 1, the assault with deadly weapon
13 on a protected person, we are asking for large habitual sentence of 10 to
14 life.
15 On Counts 2, 3, and 4, we are asking those to run consecutive
16 to Count 1. And these would be the various terms:
17 On Count 2 with the trafficking controlled substance, I would
18 ask for 24- to 72-month sentence;
19 On the Count 3, possession of controlled substance, I would
20 ask for 19- to 48-month sentence;
21 And on Count 4, possession of controlled substance, I would
22 ask for the same 19- to 48-month sentence.
23 Those three drug convictions we would ask to run concurrent
24 to one another, consecutive to Count 1.
25 As to Count 5, prohibited person in possession of a firearm, I

1 would ask for a 28- to 72-month sentence to run consecutive to Counts 1
2 through 4.

3 This is not the defendant's first firearm offense, as you can
4 see from his history. And this time he's actually taken steps to use the
5 firearm. For that reason, he should be punished to the maximum under
6 that.

7 But the one that I am seeking a habitual sentence on and
8 a 10-to-life sentence on is the assault with deadly weapon on a
9 protected person. And that's because the circumstances that we're
10 looking at here could have been much worse and it shows his intent to
11 use violence on our law enforcement officers, which cannot be stood for.

12 I'm showing that he has 615 days credit for time severed, Your
13 Honor. I would ask that you impose the sentence.

14 THE COURT: All right. So let me make sure I understand
15 your argument, counsel. On Count 1, you're asking the large habitual
16 criminal --

17 MR. DICKERSON: That's correct, Your Honor.

18 THE COURT: -- treatment? And then on Counts 2, 3, 4,
19 and 5, you're not asking any habitual treatment, you're asking me to
20 impose the statutory range of sentences; is that correct?

21 MR. DICKERSON: Correct, Your Honor.

22 THE COURT: Thank you, counsel.

23 Mr. Valencia, before your attorney speaks, is there anything
24 you'd like to tell the court on your own behalf before I pronounce
25 sentence?

1 THE DEFENDANT: Well, Your Honor, how can I deny that I
2 have been -- that I have a substance abuse problem. And that's -- that's
3 been my problem throughout the years. I've maintained relatively stable
4 employment. I don't deal drugs. I just use them. And I know that's
5 not -- no excuse, Your Honor. Nothing I can say. I mean, of course, to
6 say, it's -- yeah, it's an excuse. So that's all I would like to say. And I
7 know the court is going to be deciding a fair sentence for me today.

8 THE COURT: Defense, any argument in mitigation?

9 MR. COYER: Yes, Your Honor. Thank you.

10 My -- my goal today here, Your Honor, is to -- is to ask this
11 court to be reasonable, to issue a sentence that is reasonable and
12 appropriate given the verdict of the jury.

13 You've heard the State's argument, and they, by my
14 calculation, are asking this court to give Mr. Valencia almost 15 years to
15 life. In my practice, I routinely see murderers and rapists get less time
16 than that, Your Honor. And it's always been a mystery to me and a
17 curiosity as to which defendants get singled out for the habitual criminal
18 treatment.

19 Even -- even years ago when the State -- when the DA's office
20 had a repeat offender team, I was never able to discern or ever had
21 anybody articulate to me what exactly what -- what is the criteria? Why
22 does -- you know, why does this guy get singled out for habitual and the
23 next guy doesn't?

24 I mean, we all know what the statute says, right? It's two prior
25 felonies for the small, three priors for the large. That applies to half the

1 men you see sitting in the box here every day, Judge. And so it is
2 always discretionary. And we're asking this court for a reasonable
3 sentence.

4 Mr. Valencia has and has conceded, and the State has noted,
5 that all of his crimes involved controlled substances. He has a drug
6 problem. There's no doubt about that, Your Honor. But as I said, my
7 goal here today is to be reasonable. I'm not going to come in here with
8 Mr. Valencia's record and ask you to give him probation. I'm not going
9 to do that.

10 Your Honor heard the evidence in this trial. And I'm not -- I'm
11 not going to repeat any of that or belabor it. The information in this case
12 was filed June of 2016. The Notice of Intent to seek habitual criminal
13 was filed in February of 2017. And it was filed when the negotiations
14 broke down. Okay. I'm not saying it was done as punishment or making
15 him pay a trial tax or anything like that. But this case would never have
16 gone to trial had Mr. Valencia ever had the opportunity to plead guilty to
17 something that did not involve that firearm.

18 And Your Honor heard the evidence. You can't fault
19 Mr. Valencia for going to trial on those gun charges. And I'm not asking
20 the court to ignore the jury verdict. The jury found his guilty. But I'm just
21 asking the court to consider the evidence along with the jury verdict.

22 What I'm asking this court to do -- well, and -- and let me note
23 first, the State mentioned nine felonies, but there's only four judgments
24 of convictions. And they mentioned six prison sentences. Okay. So I
25 think for us to be reasonable, I think we need to put some of that into

1 perspective. Okay.

2 At least three of those prior felonies came out of one case.
3 And so it's clear for everybody, Mr. Valencia has been to prison twice.
4 Okay. We go through his PSI, and in 2002, he was sentenced to 12
5 to 30 months concurrent with the previous case where his probation had
6 been revoked. Okay. That's prison sentence -- that's prison, you know,
7 visit, if you will, number one.

8 Mr. Valencia was -- caught two cases in 2006, went to trial on
9 one of them and got convicted of -- of three felonies. Ultimately, dealt
10 the other case and was given 12 to 48 concurrent with the 24 to 60.
11 Okay. That's prison sentence number two.

12 He has not been to prison since then. And now we are here
13 on our case. So when -- and I expect Your Honor will -- when Your
14 Honor sentences him to prison, this will be his third term of going to the
15 Nevada Department of Corrections. The number of felony convictions
16 far exceeds the reality of how many times Mr. Valencia has gone to
17 prison, been released, and re-offended.

18 So my point, of course, is, why does Mr. Valencia get the
19 habitual criminal treatment as opposed to some other defendant? I
20 would submit to the court that that's the State's burden to persuade Your
21 Honor as to why that's appropriate. And I would submit that they failed
22 to do that today.

23 The seriousness of this offense that he was convicted of is not
24 in question. The bravery of Officer Jacobitz is not in question. The risk
25 that our officers take protecting us every day is not in question. What is

1 in question is what is the appropriate sentence for Mr. Valencia given his
2 history and this case, Judge.

3 I would submit to you that there are essentially two incidents in
4 this case. There's the incident from the date where the flee -- the fleeing
5 occurred. And there was the incident from when he was arrested and he
6 had drugs in his possession.

7 I'm going to ask this court for 24 to 60 months on the assault
8 on a protected person. I'm going ask this court for 24 to 60 months
9 consecutive for the trafficking. I'm going to ask the court to run all the
10 other counts concurrently. That's four to 10 years.

11 If we look at Mr. Valencia's prison history on the two times
12 he's been to prison previously, the one thing you'll note, Your Honor, is
13 the total absence of any grants of parole. This is not a man that the
14 parole board gives love to. This is a man that's going to serve every day
15 of whatever sentence you give him.

16 So a four to 10 is probably closer to about six and a half years.
17 And I think that's pretty reasonable for the defense to come in here and
18 make that request. And I want the court to be cognizant of that fact, that
19 a life tale is totally inappropriate given everything that you've heard. I
20 think a four to 10 is very reasonable, given the history and the conduct.
21 And that would be aggregate. Obviously, I've already said two to five
22 with a consecutive two to five.

23 Judge, and that's what we're asking for today. I'll submit it.

24 THE COURT: Thank you. I -- as to Count 1, the defendant is
25 to be adjudicated under the small habitual criminal statute. In

1 accordance with the laws of the State of Nevada, this court does now
2 sentence you as to Count 1 to confinement in the Nevada Department of
3 Corrections for a maximum term of 240 months, with a minimum parole
4 eligibility of 84 months.

5 As to Count 2, you're sentenced to confinement in the Nevada
6 Department of Corrections for a maximum term of 24 months with a
7 minimum term -- I'm sorry, with a maximum term of 72 months, with a
8 minimum parole eligibility of 24 months. Count 2 is to run consecutive to
9 Count 1.

10 As to Count 3, you are sentenced to a confinement in the
11 Nevada Department of Corrections for a maximum term of 48 months
12 with minimum parole eligibility of 12 months. Count 3 will run concurrent
13 to Count 2.

14 As to Count 4, you're sentenced to Nevada Department of
15 Corrections for a maximum term of 48 months with a minimum term
16 of 12 months. Count 3 will run -- I'm sorry, Count 4 will run concurrent to
17 Count 3.

18 As to Count 5, you're sentenced to confinement to -- in the
19 Nevada Department of Corrections for a maximum term of 72 months
20 with a minimum parole eligibility of 24 months. Count 5 will run
21 concurrent to Count 4.

22 With an aggregate sentence of a maximum term of 312
23 months, with a minimum parole eligibility of 108 months.

24 There's a \$25 administrative assessment fee, \$150 for a DNA
25 analysis fee and the defendant is to submit to testing, \$3 for a DNA

1 administrative assessment fee. The court does not impose a fine, no
2 restitution owes. And the defendant will be given credit for time served
3 in the amount of 608 days.

4 UNIDENTIFIED SPEAKER: Six hundred and what, Your
5 Honor?

6 MR. DICKERSON: I think it's --

7 THE COURT: 608 days.

8 MR. DICKERSON: I believe we have 615, Your Honor.

9 MR. COYER: It is, because we continued it --

10 THE COURT: 615 days credit --

11 MR. COYER: -- for the last week.

12 THE COURT: -- 615 days credit for time served.

13 Also, counsel, I'm attaching the letters of recommendation
14 and -- and his letter that were reviewed by the court as court's exhibit to
15 this sentencing.

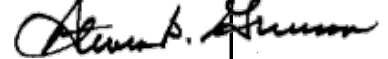
16 MR. COYER: Thank you.

17 [Phase III proceedings concluded at 10:17 a.m.]

18
19
20 ATTEST: I do hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled case to the
22 best of my ability.

23
24 

25 Shawna Ortega, CET*562



JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CEASAR SANCHAZ VALENCIA
#1588390

Defendant.

CASE NO. C-16-315580-1

DEPT. NO. XVIII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– ASSAULT ON A PROTECTED PERSON WITH USE OF A DEADLY WEAPON
(Category B Felony) in violation of NRS 200.471, COUNT 2 - TRAFFICKING IN
CONTROLLED SUBSTANCE (Category B Felony) in violation of NRS 453.3385.1,
COUNT 3 – POSSESSION OF CONTROLLED SUBSTANCE (Category E Felony) in
violation of NRS 453.336, COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE
(Category E Felony) in violation of NRS 453.336, COUNT 5 – OWNERSHIP OR
POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in
violation of NRS 202.360, and the matter having been tried before a jury and the

1 Defendant having been found guilty of the crimes of COUNT 1 – ASSAULT ON A
2 PROTECTED PERSON WITH USE OF A DEADLY WEAPON (Category B Felony) in
3 violation of NRS 200.471, COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE
4 (Category B Felony) in violation of NRS 453.3385.1, COUNT 3 – POSSESSION OF
5 CONTROLLED SUBSTANCE (Category E Felony) in violation of NRS 453.336,
6 COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE (Category E Felony) in
7 violation of NRS 453.336, COUNT 5 – OWNERSHIP OR POSSESSION OF FIREARM
8 BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360;
9 thereafter, on the 25TH day of January, 2018, the Defendant was present in court for
10 sentencing with his counsel, Gregory Coyer, Esq. and Alexis Plunkett, Esq., and good
11 cause appearing,
12
13

14 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses as set forth in
15 the Jury's verdict under the SMALL HABITUAL Criminal Statute as to COUNT 1 and, in
16 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
17 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
18 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
19
20 **COUNT 1** - a MAXIMUM of TWO HUNDRED AND FORTY (240) MONTHS with a
21 MINIMUM parole eligibility of EIGHTY-FOUR (84) MONTHS; **COUNT 2** - a MAXIMUM
22 of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR
23 (24) MONTHS, CONSECUTIVE to COUNT 1; **COUNT 3** - a MAXIMUM of FORTY-
24 EIGHT (48) MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS,
25 CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of FORTY-EIGHT (48)
26 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS, CONCURRENT
27 with COUNT 3; **COUNT 5** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
28

1 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with
2 COUNT 4; with SIX HUNDRED AND FIFTEEN (615) DAYS credit for time served. The
3 AGGREGATE TOTAL sentence is THREE HUNDRED AND TWELVE (312) MONTHS
4 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED AND EIGHT
5 (108) MONTHS.
6

7
8 DATED this 2 day of ^{FEB}~~January~~, 2018.
9

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12 _____
13 MARK B. BAILUS
14 DISTRICT COURT JUDGE
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1 **NOAS**
2 GREGORY E. COYER, ESQ.
3 Nevada Bar No. 10013
4 **COYER LAW OFFICE**
5 600 S. Tonopah Dr., Suite 220
6 Las Vegas, Nevada 89106
7 Telephone: 702.802.3088
8 Facsimile: 702.802.3157
9 E-mail: gcoyer@coyerlaw.com
10 *Attorney for Defendant*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11
12 Plaintiff,
13
14 v.
15
16 CEASAR VALENCIA,
17
18 Defendant.

Case No.: C-16-315580-1
Dept. No.: XVIII

NOTICE OF APPEAL

NOTICE OF APPEAL

17 TO: THE STATE OF NEVADA, STEVEN B. WOLFSON, DISTRICT ATTORNEY,
18 CLARK COUNTY, NEVADA AND DEPARTMENT XVIII OF THE EIGHTH
19 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR
20 THE COUNTY OF CLARK

21 NOTICE is hereby given that Defendant, CEASAR VALENCIA, presently incarcerated in
22 the High Desert State Prison, appeals to the Supreme Court of the State of Nevada from the Eighth
23 Judicial District Court Judgment of Conviction and sentence entered against said Defendant on or
24 about February 2, 2018.

24 DATED this 1st day of March, 2018.

COYER LAW OFFICE

26 By: /s/ Gregory E. Coyer
27 GREGORY E. COYER, ESQ.
28 Nevada Bar No. 10013
600 S. Tonopah Dr., Suite 220
Las Vegas, Nevada 89106

COYER LAW OFFICE
600 S. TONOPAH DR., SUITE 220
LAS VEGAS, NEVADA 89106

1 **CERTIFICATE OF MAILING**

2 The undersigned does hereby certify that on the 1st day of March, 2018, I did deposit in the
3 United States Post Office at Las Vegas, Nevada, a true copy of the above and forgoing Notice of
4 Appeal addressed to the following:

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Criminal Appeals Division
8 200 Lewis Avenue
9 Las Vegas, NV 89101

10 ADAM PAUL LAXALT
11 Nevada Attorney General
12 100 North Carson Street
13 Carson City, NV 89701

14 CEASAR SANCHEZ VALENCIA
15 ID# 94307
16 High Desert State Prison
17 P.O. Box 650
18 Indian Springs, NV 89070

19 By /s/ Gregory E. Coyer
20 An Employee of Coyer Law Office
21
22
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24
25
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27
28

#94307

Cesar Sanchez Valencia
Pobox 650
Indian Springs NV 89020

DISTRICT COURT
CLARK COUNTY NEVADA

Electronically Filed
3/2/2018 11:01 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

STATE OF NEVADA

Plaintiff

VS

Cesar Sanchez Valencia
#94307
Defendant

Case No C-16-315580-1

Dept no Dept 18

Notice of Appeal

COMES NOW THE DEFENDANT; IN PRO SE OR
BY AND THROUGH his attorney Coyer Gregory E.
and pursuant to Nevada Revised Statutes and Nevada
Rules of Appeal. Gives Notice of Appeal and would also
be requesting the court transcripts to include
but not limited to Feb 28 2017
Court hearing

Cesar Valencia
Pobox 650
Indian Springs NV 89020

RECEIVED

MAR 02 2018

CLERK OF THE COURT

Cesar Valencia #94307

Pobox 650

Indian Springs NV 89402

Please Return File Stamp copy

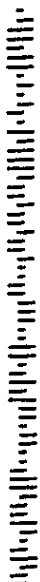
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Clerk of the Court
200 Lewis Ave 3rd Fl
Las Vegas NV 89135



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HIGH DESERT STATE PRISON
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No. 75282

Electronically Filed
Jul 20 2018 09:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

V.

Respondent.

AA0001 – AA0941

AA0717 – AA0941

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON, ESQ.

Clark County District Attorney

200 Lewis Avenue, 3rd Floor

Las Vegas, Nevada 89101

Telephone: 702.617.2700

Facsimile: 702.868.2415

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1 THE COURT: Could I see it, counsel.
2 Any objection by the defense?
3 MR. COYER: No objection, Your Honor.
4 THE COURT: This will be admitted.
5 [State's Exhibit No. 54 was admitted.]
6 MR. LEXIS: Court's indulgence.
7 Nothing further, Your Honor.
8 THE COURT: Any cross-examination by the defense?
9 MS. PLUNKETT: No, Judge.
10 THE COURT: Can this witness be excused?
11 MS. PLUNKETT: Yes, Judge.
12 THE COURT: Sir, thank you. And you are excused.
13 THE WITNESS: Thank you, Your Honor.
14 THE COURT: Is State prepared to call their next witness?
15 MR. DICKERSON: Yes, Your Honor. State's next witness is
16 Keith Bryant.
17 **KEITH BRYANT**
18 [having been called as a witness and first duly sworn, testified as
19 follows:]
20 THE CLERK: Please be seated. Will you please state and
21 spell your name for the record?
22 THE WITNESS: It's Keith Bryant, K-E-I-T-H B-R-Y-A-N-T.
23 MR. DICKERSON: May I proceed, Your Honor?
24 THE COURT: Yes, please.
25 MR. DICKERSON: Thank you.

DIRECT EXAMINATION

BY MR. DICKERSON:

Q Sir, how are you employed?

A I am a detective with the Las Vegas Metropolitan Police Department.

Q Do you have a specific assignment as a detective?

A Basically, investigate area crime from simple misdemeanors all the way up to homicide, prior to Homicide taking over.

Q Okay. And where are you working -- what unit are you working out of right now?

A I am currently assigned to the Convention Center Area Command.

Q Where is Convention Center Area Command?

A It's -- it incorporates all of the major Strip properties on the Las Vegas strip.

Q Okay. And where were you between May 19th and May 21st, 2016?

A I was actually assigned as a detective at the Downtown Area Command.

Q And what area does the Downtown Area Command cover?

A It incorporates a lot of the downtown, like Fremont Street area, the -- kind of Las Vegas Boulevard, Fremont Street.

Q And does it also have residential neighborhoods?

A A lot of residential neighborhoods, yes. It spans quite a good distance.

1 Q Quite a good distance? Do you know generally the
2 parameters of Downtown Area Command?

3 A I know, I want to say, like, the 15 is to the west. And I think it
4 goes as far as -- I want to say Eastern to the -- to the east.

5 Q Okay.

6 A I believe the north is Las Vegas Boulevard and Sahara. And
7 then the south go -- I'm sorry, I got that backwards. The south is -- is
8 Sahara. North is going to be, I want to say, past -- just say Washington.

9 Q Okay.

10 A Not 100 percent.

11 Q So pretty big area?

12 A Yes.

13 Q The area of 10th Street between Wilson and Bonanza, that's
14 just a very small area of Downtown Area Command's jurisdiction?

15 A Correct.

16 Q Okay. And so May 19th, 2016, you were working as a
17 detective?

18 A Yes, I was.

19 Q And do you respond to a call there in the area we just talked
20 about on 10th Street?

21 A I did.

22 Q What was the purpose of your responding to that call?

23 A An officer, Officer Jacobitz, had broadcast an incident where
24 they had -- him and another officer, Officer Houston, had attempted to
25 stop a subject on a moped. The subject fled. They got in a foot pursuit.

1 At some point during that time, a firearm was pointed at Officer Jacobitz.

2 Q And so what was your reason for responding to that as a
3 detective?

4 A As detectives assigned to the area command at that time,
5 we're the ones responsible for the follow-up investigation. We're going
6 to go out there, conduct our investigation, interview anybody that's a
7 witness, kind of go with the CSI, find out what evidence they have, and
8 then conduct follow-up from that point and hopefully make an arrest.

9 Q Now, am I correct in my understanding that you didn't arrive
10 on scene until about 9:47 p.m.?

11 A Correct.

12 Q And that was sometime -- approximately two hours after the
13 actual event occurred?

14 A Correct.

15 Q Is that usual? Is that normal?

16 A No. Normally we arrive pretty quick after the event is initiated.
17 But, unfortunately, that night we were involved in another -- another
18 incident going on at the police memorial. So we're -- we're on the other
19 side of town at that time, so it took us some time to get down there.

20 Q Okay. By the time you get down there, what does the scene
21 look like?

22 A It's pretty static at that time. Majority of all the officers that
23 were there that had set up perimeters and things like that had already
24 been cleared. Officer Jacobitz, Officer Houston were still there. I
25 believe their sergeant was there, and then my squad was there as well,

1 which -- my sergeant and a couple other detectives.

2 Q Okay. So no more perimeter going on?

3 A No.

4 Q No K-9 searching around?

5 A They'd all been cleared.

6 Q Okay. What do you do when you first arrive?

7 A I make contact with Officer Jacobitz, kind of get a briefing
8 about exactly what happened, as much details as I can about the
9 incident, who was involved and things of that nature.

10 Q Do you request for any sort of crime scene analysis?

11 A We eventually, because of everything that happened, we
12 ended up calling ID to come out, crime scene analysis to come out and
13 do their kind of analysis of the scene and -- and the situation.

14 Q So we heard a couple terms there, ID, crime scene analysis.
15 Explain that for us.

16 A They're the same. It's just CSI, crime scene analysis. We
17 also call them ID. They -- it's same -- it's just different ways to call the
18 same --

19 Q Okay. And what is their job?

20 A They come out and they basically look at the evidence. They
21 take photographs. They document distances, things like that. They end
22 up -- usually, if there's a weapon involved, for the most part, they'll
23 couple out and impound it. They -- any kind of -- any kind of evidence at
24 the scene that's going to be connected to the crime, they'll come out and
25 impound it and take custody of that and document it.

1 Q And that crime scene analyst that arrived that night was a
2 crime scene analyst by the name of Olivia Klosterman?

3 A Yes.

4 Q She arrived sometime just before 11:00; is that right?

5 A Correct.

6 Q And approximately 10:55 p.m.; is that right?

7 A Correct.

8 Q And she didn't leave that scene until just before
9 midnight, 11:42 p.m.?

10 A Correct.

11 Q When she arrived on scene, what, if anything, did you do?

12 A I went with her and also Officer Jacobitz so he could walk --
13 walk us through the location where the firearm was pointed at him and
14 kind of get an idea exactly where it was at and what took place.

15 Q Okay. So where do you do this walk through?

16 A It was down there at the 610 10th Street, I believe it was, if my
17 recollection is correct. It's an alleyway between a building and a wall
18 and some stairs, just to the west of that alley.

19 Q I'm going to show you here what's been admitted as State's
20 Exhibit 18; do you recognize this to be that alleyway?

21 A Correct.

22 Q And so you actually do a walkthrough with Officer Jacobitz?

23 A Correct.

24 Q And CSA Klosterman?

25 A Correct.

1 Q And what is a walkthrough? How would it work in this sort of
2 situation?

3 A Basically, you take the officer that was involved and they'll --
4 they'll kind of walk you through the whole scene, show us their location,
5 the suspect's location, any evidence, where that evidence was picked up
6 at or where the evidence was left at, anything that's going to be pertinent
7 to the investigation. We kind of do a walkthrough and basically just kind
8 of get an idea exactly what happened at the time the incident took place.

9 Q Now, didn't Officer Jacobitz have two prisoners in his custody?

10 A Yes, he did.

11 Q And so where were they at this time?

12 A They were in another patrol car up on 10th Street, I believe it
13 was.

14 Q Okay. So he has these guys in his car and -- and you're doing
15 a walkthrough with him?

16 A Correct.

17 Q Okay. And does he show you, in fact, where he was?

18 A Yes, he did.

19 Q I want to show you here State's Exhibit 23; do you recognize
20 this, sir?

21 A My screen just went out. Yes. Oh, went out again. There you
22 go.

23 Q What do you recognize this to be?

24 A This is the stairwell that if you're coming through the alley,
25 this -- if -- if you keep going up this stairwell and keep walking west, that

1 gets you back out onto 10th Street. The -- the stairwell was the area
2 that Officer Jacobitz advised he was at when the subject turned around
3 and pointed the firearm at him.

4 Q Okay. And --

5 MR. COYER: Counsel, will you identify the exhibit?

6 MR. DICKERSON: I'm sorry, yeah. Absolutely. That's State's
7 Exhibit 23. I think I did. I just --

8 BY MR. DICKERSON:

9 Q I'm going to further publish for you State's Exhibit 26; do you
10 recognize this image, sir?

11 A Correct. That's going to be if you just walked up those steps
12 we just looked at, that's going to be up in the alleyway continuing to
13 head back west towards 10th Street.

14 Q So this would have been right at the top of the steps,
15 basically?

16 A Correct.

17 Q And I want to -- here in the center of the photo, do you see a --
18 an orange cone over there?

19 A I do.

20 Q Was this part of your walkthrough?

21 A Correct.

22 Q And what was that?

23 A That was to document the actual metal pole where the subject
24 had turned around and hit his elbow before the gun was discharged from
25 his -- or dislodged from his arm.

1 Q Okay. And so in your capacity, you're -- you're working as the
2 investigator, officer Jacobitz is a witness?

3 A Correct.

4 Q A victim?

5 A Correct.

6 Q And the crime scene analyst, Olivia Klosterman, is kind of
7 assisting you with your investigation?

8 A Yeah. She's there to document the location so that she can
9 put it into her report.

10 Q Okay. And is this what you remember being documented at
11 that time?

12 A Correct.

13 Q Did you have then the opportunity to go back to that point --
14 showing you here State's Exhibit 20 -- and look back at the area where
15 Officer Jacobitz was standing --

16 A Yes.

17 Q -- when this gun was pointed at him?

18 A Yes, I did.

19 Q And you also had the opportunity to stand where Officer
20 Jacobitz was standing?

21 A Yes, I did.

22 Q What was your assessment of the size of this area?

23 A It was very close, very easily -- if a firearm would have been
24 discharged, very easily would have struck Officer Jacobitz.

25 MR. COYER: Objection. Speculation. Foundation.

1 THE COURT: Sustained.

2 BY MR. DICKERSON:

3 Q You have --

4 THE COURT: Disregard that last answer -- shucks.

5 BY MR. DICKERSON:

6 Q Do you have --

7 THE COURT: Disregard that last answer by the witness.

8 BY MR. DICKERSON:

9 Q Do you have training in firearms?

10 A Yes, I do.

11 Q And do you have training in dangerous situations as a police

12 officer?

13 A Yes, I do.

14 Q And when you see this situation right here, specifically what

15 we're looking at in State's Exhibit 20, what do you see?

16 A What I have here is what we call a fatal funnel. Basically, the

17 best way to describe that --

18 MR. COYER: Object to the relevance of this testimony,

19 Judge.

20 MR. DICKERSON: It's absolutely relevant, Your Honor.

21 THE COURT: Wait, counsel. Approach.

22 [Bench conference transcribed as follows:]

23 THE COURT: Okay. What is your objection, relevancy?

24 MR. COYER: Relevance.

25 THE COURT: Why isn't it relevant?

1 MR. COYER: Because it has no purpose other than to
2 attempt to increase the danger level that is portrayed in this incident.
3 This officer was not a part of the incident. And so if there is any
4 relevance whatsoever, the unfair prejudice would outweigh any potential
5 relevance, Judge. So my objection is twofold.

6 THE COURT: Okay. Counsel, why -- why is it relevant?

7 MR. DICKERSON: It's -- it's relevant to the fact of the entire
8 incident. This is the lead investigator. It's giving his personal
9 assessment of what he saw at the crime scene from the ground level.
10 The assessment of the crime scene is 100 percent relevant to how this
11 act occurred, where the parties were standing, what he sees at that
12 area. He is there and able to get first-hand knowledge, outside of what
13 the witness testified to, of what this area looks like, which is incredibly
14 relevant.

15 THE COURT: Okay. He's not offering lay opinion testimony.
16 So the only way it could come in is expert opinion. So at this time, I'm
17 going to sustain the objection.

18 MR. DICKERSON: But that wasn't the objection.

19 MR. COYER: Thank you, Judge.

20 THE COURT: Well, that's my ruling.

21 MR. DICKERSON: Well, I don't -- I think it is lay opinion
22 testimony, given the fact that this area -- his -- his observation, what he
23 sees the area is just a lay opinion. I mean, he's just --

24 THE COURT: Okay. But you're --

25 MR. DICKERSON: -- telling us --

1 THE COURT: -- asking him to -- given the -- I mean, he can
2 describe the area. And what is the opinion you want to elicit from this
3 witness?

4 MR. DICKERSON: And he did describe the area --

5 THE COURT: Okay.

6 MR. DICKERSON: -- but then --

7 THE COURT: What is the opinion that -- the lay opinion that
8 you want to elicit from this witness?

9 MR. DICKERSON: What he observed from the area when he
10 saw it.

11 THE COURT: But that's not what you're asking him. He --
12 you're asking for an opinion. What's the actual opinion that you're
13 asking him to give?

14 MR. DICKERSON: What -- I -- what he -- I'm not asking an
15 opinion. I'm asking what he saw of this area, what was his assessment.

16 THE COURT: Okay. I thought I heard him say something
17 like -- something funnel, he views it --

18 MS. PLUNKETT: Fatal funnel.

19 THE COURT: What was it?

20 MS. PLUNKETT: Fatal funnel. Which is a --

21 THE COURT: Huh?

22 MS. PLUNKETT: A fatal funnel, which is --

23 THE COURT: Okay.

24 MS. PLUNKETT: -- highly prejudicial.

25 MR. COYER: Right. It's an improper characterization.

1 THE COURT: All right. I'm not going to let him say fatal
2 funnel.
3 MR. DICKERSON: So we can agree it's relevant?
4 THE COURT: All right. I'm not going to let him give an
5 opinion --
6 MR. DICKERSON: Okay.
7 THE COURT: -- that this is a fatal funnel.
8 MR. DICKERSON: Okay.
9 THE COURT: You can -- this goes to the issue of Count 1
10 Assault with -- upon a police -- peace officer with a deadly weapon,
11 correct? And you want him -- the relevancy is that you want to give his
12 assessment of the alleyway. Okay. I'll let him give his assessment of
13 the alleyway.
14 What I'm having problems with -- this is an assault. He's using
15 the term fatal funnel. Okay. If this was a different charge, I might have
16 let it in. But that's the -- I apologize, counsel. I know it better as
17 Rule 403. I think it's 48.035 or 48.045 in State court. But that's the
18 prejudicial effect that outweighs -- let's see, the prejudicial effect
19 outweighs its --
20 MR. DICKERSON: Probative value.
21 THE COURT: -- probative value. Okay. So that's the
22 concern I have with the phrase fatal funnel. So let him give testimony.
23 You're right. He did not object --
24 MR. DICKERSON: Okay.
25 THE COURT: -- as far as opinions. So I'm --

1 MR. DICKERSON: Yeah.

2 THE COURT: -- not going to consider that. I just consider the
3 relevancy. And so if he can do it without that type of terminology, I'll let it
4 in.

5 MR. DICKERSON: Absolutely. Thank you, Your Honor.

6 MR. COYER: Should -- should the court instruct the witness
7 not to use that term?

8 THE COURT: That's a good point.

9 MR. DICKERSON: I'll -- I'll try to avoid that.

10 THE COURT: Huh?

11 MR. DICKERSON: I'll try to avoid that. I'll -- I'll make a
12 concerted --

13 THE COURT: Yeah. But my concern is that's how he's going
14 to term --

15 MR. DICKERSON: I'll say -- I'll -- I'll start off my question,
16 without --

17 THE COURT: Wait, wait, wait. Let me --

18 MR. DICKERSON: Without using any -- any explicit
19 terminology. That's --

20 THE COURT: I need to -- can -- see, I'm used to have a
21 sidebar, and I don't have a sidebar here.

22 MR. DICKERSON: I think I can get him through this.

23 THE COURT: Can I instruct him -- can I bring him around
24 here and instruct him --

25 MR. DICKERSON: Yeah. Sure.

1 THE COURT: Okay.
2 Sir, could you come up in the front, please.
3 THE WITNESS: Yes, sir.
4 THE COURT: I'm going to allow your testimony to question --
5 this line of questioning. But I don't -- this is an assault upon a peace
6 officer with a deadly weapon. I don't want you to use a phrase like fatal
7 funnel --
8 THE WITNESS: Okay.
9 THE COURT: -- or things of that nature. I don't want -- I know
10 that's probably the jargon that's used --
11 THE WITNESS: Right.
12 THE COURT: -- but you can -- you can answer his questions,
13 but don't use that type of language --
14 THE WITNESS: Okay.
15 THE COURT: -- if you would.
16 THE WITNESS: Okay.
17 THE COURT: Okay.
18 THE WITNESS: Yes, sir.
19 THE COURT: Thank you.
20 THE WITNESS: Yes, sir.
21 MS. PLUNKETT: Thank you, Judge.
22 MR. DICKERSON: Thank you, Your Honor.
23 THE COURT: Thank you, counsel.
24 [End of bench conference.]
25 MR. DICKERSON: May I proceed?

1 THE COURT: Yes.

2 MR. DICKERSON: Thank you very much.

3 BY MR. DICKERSON:

4 Q Detective Bryant, having stood in this alley and looking at it
5 here today, what, if anything, did you take note of as being significant to
6 your assessment of the scene?

7 A Just how close the pole where the subject was when he
8 turned around towards Officer Jacobitz, how close he was to Officer
9 Jacobitz. And then just how close everything was in -- you know, usually
10 when you have, say, like, an open field, it's going to take a little bit
11 longer to -- to pick up your -- your target. In a situation like this, it's such
12 a close -- closed environment, that it's going to be -- all he has to do is
13 basically aim -- point the gun and aim and he's going to get a good shot
14 off on the --

15 MS. PLUNKETT: Objection --

16 THE WITNESS: -- officer.

17 MR. COYER: Object --

18 MS. PLUNKETT: -- speculation.

19 MR. COYER: Relevance, and prejudicial effect.

20 THE COURT: What's your objection, counsel? Speculation?

21 MR. COYER: Speculation, relevance, and prejudice, Judge.

22 MR. DICKERSON: And this would just be a lay opinion, Your
23 Honor, that he's --

24 THE COURT: I'm going to allow it. It's overruled.

25 MR. DICKERSON: Thank you, Your Honor.

1 BY MR. DICKERSON:

2 Q So once you had the opportunity to observe this crime scene,
3 specifically this enclosed alleyway, what did you do next?

4 A Stayed with ID, let them process the scene. They did their
5 measurements and -- and documented any of their evidence that was on
6 scene. And then we basically walked back over to -- to 10th Street and
7 kind of started wrapping up the investigation.

8 Q Did Officer Jacobitz leave that scene at some point in time?

9 A Yes, he did.

10 Q And where did he go?

11 A I believe he transported the -- Gilbert and Rivera down to -- to
12 their -- I think to the City --

13 Q Is that Eric --

14 A -- City Jail.

15 Q -- Gilbert and Anibal Rivera?

16 A Yes.

17 Q The two individuals that he had in custody?

18 A Correct.

19 Q So from there, you're on scene, you've done your
20 walkthrough; what happens next in your investigation?

21 A We determine at that point there was really nothing further to
22 follow up on that night. So we returned back to our station and kind of
23 decided what kind of game plan we wanted to go forth at that point.

24 Q And, ultimately, do you proceed with your investigation the
25 next day?

1 A Yes, we did.

2 Q That was May 20th?

3 A Yes.

4 Q 2016?

5 A Yes, sir.

6 Q A Friday?

7 A Yes, sir.

8 Q Specifically that evening, did you take any investigative steps?

9 A Yes, I did. I responded to City Jail and conducted an interview

10 with Eric Gilbert.

11 Q Eric Gilbert was one of the individuals that was arrested by

12 Officer Jacobitz?

13 A Correct.

14 THE COURT: Counsel approach, please.

15 [Bench conference transcribed as follows:]

16 THE COURT: We're not going to get in here -- there's not

17 going to be any testimony about anything dealing with this person having

18 any type of criminal background or how Eric Gilbert knew him or

19 anything of that nature, correct?

20 MR. DICKERSON: No.

21 THE COURT: I mean, no insinuation of --

22 MR. DICKERSON: Just his investigative steps.

23 THE COURT: Huh?

24 MR. DICKERSON: Just his investigative steps. That's it.

25 THE COURT: Okay. But --

1 MR. DICKERSON: We're not talking about hearsay, anything
2 like that.

3 THE COURT: No, no. But what I'm saying is, first of all, I
4 don't -- where is this testimony going?

5 MR. DICKERSON: We're just talking about his investigation
6 here, Your Honor.

7 THE COURT: Okay. I understand. But where is it going?
8 Why -- why is the interview with Eric Gilbert relevant to this --

9 MR. DICKERSON: Just to show --

10 THE COURT: -- prosecution?

11 MR. DICKERSON: -- what he's done in his investigation. And
12 it's probative of the thoroughness that he's gone through and where
13 we're at now and how --

14 THE COURT: Okay. You --

15 MR. DICKERSON: -- he gets there.

16 THE COURT: -- can't just jump over up to his investigation
17 led to --

18 MR. DICKERSON: Sure.

19 THE COURT: Something like that?

20 MR. DICKERSON: Absolutely.

21 THE COURT: I mean, that would be my preference.

22 MR. DICKERSON: Okay. Absolutely, Your Honor.

23 THE COURT: I mean, you can say you investigated this,
24 there come a time -- whatever. But just jump over to where -- I assume
25 we're talking -- talk the -- how they arrested Mr. --

1 MR. DICKERSON: Absolutely.
2 THE COURT: Okay. All right. That will be my preference.
3 MR. DICKERSON: Great. Thank you, Your Honor.
4 THE COURT: Thank you.
5 [End of bench conference.]
6 BY MR. DICKERSON:
7 Q That was approximately 9:20 p.m.; is that right?
8 A Correct.
9 Q Two hours later, you decide there's another step in your
10 investigation; is that right?
11 A Correct.
12 Q What's the next step of your investigation?
13 A Well, we had the individual identified as Ceasar Valencia. So
14 we knew where his address was, 625 North 10th Street. So we decide
15 to set up a surveillance on the residence to see if we can get him either
16 coming or going.
17 Q It -- you'd actually learned that the night before?
18 A Correct.
19 Q And Officer Jacobitz confirmed it to you?
20 A Correct.
21 Q And so approximately 11:18 p.m. on May 20th, 2016, do you
22 start that surveillance?
23 A We did.
24 Q How is it that you start the surveillance?
25 A We had some other detectives at our area command had

1 helped us. And they set up perimeters around 625 North 10th Street.
2 And myself and my sergeant actually got on the balcony at 620
3 North 9th Street, which was basically just one house to the west of the
4 alley right behind 625 North 10th Street.

5 Q I'm going to show you here, just so you can show us, State's
6 Exhibit 10; do you see the address 625 North 10th Street here?

7 A I do.

8 Q If you can just -- it's right there in the middle of the screen; is
9 that fair?

10 A Correct.

11 Q So can you describe for the members of the jury how you set
12 up this surveillance operation?

13 A Myself and my sergeant, if you look just to the house that's
14 just west of that location, there -- is off a little bit, that -- where the white
15 dot is --

16 Q We've been hearing that all week.

17 A Yeah. There's a --

18 Q I'll -- I'll clear it for you.

19 A Okay. It's 620 North 9th Street. This house, there's a balcony
20 on the north side of that street that myself and my sergeant actually set
21 up on with binoculars and we actually had a good eye visual of the
22 backyard of 629 -- 625 North 10th. And then we had -- we had other
23 officers and detectives that were set up in different locations -- there was
24 one that was, I believe, at Wilson and 10th -- to keep a visual on 10th
25 Street. And then we also had some set up on Bonanza and -- and 10th,

1 just south of Bonanza. And then there were other officers actually in the
2 parking lot of Downtown Area Command as well, just kind of keep, what
3 we call, a perimeter around the area, so if he ends up getting mobile, we
4 have some way -- somebody set up at different locations to be able to
5 pick them up, so we're not trying to backtrack and locate him at that
6 point in time.

7 Q So the surveillance operation starts in the late evening hours
8 of Friday, May 20th. What do you do when you're on this surveillance
9 operation? What's your role?

10 A We basically -- what we call having the eye on the residence.
11 We -- me and my sergeant had visual of the backyard with binoculars.
12 So we're the ones that are communicating with the rest of the detectives
13 that are out on the outside of perimeter, letting them know if we have
14 any movement, anybody coming or going or anything of that nature.

15 Q And just so we're clear, you said you're on the north side.
16 North would be up towards the top of this photograph --

17 A Correct.

18 Q -- is where we're looking at?

19 A Back where the 625 is, that just -- right in that area, that little
20 gray -- my -- my finger is all messed up. Kind of that area there.

21 Q Okay. And how good was your view from there?

22 A It was perfect. We had a direct shot right into the backyard.

23 Q So how long do you wait before you see anything?

24 A I would probably say a couple hours.

25 Q Was it approximately 1:31 a.m. the next morning?

1 A The next morning, correct.

2 Q That -- what happened?

3 A As I was looking through the binoculars, I actually saw --
4 there's a shed in the backyard of 625 North 10th Street. And we had
5 some intel that that's where he was actually staying at. As I was --

6 Q He being who?

7 A Mr. Valencia.

8 Q And you indicated with the slight point just now, are you
9 identifying someone here in the courtroom today?

10 A Yes, I am.

11 Q If you could please identify that person by pointing and
12 identifying a piece of clothing that you see them wearing here?

13 A He's the gentleman sitting at the desk right there and he's got
14 a long -- long-sleeved blue shirt on.

15 MR. DICKERSON: If the record could reflect that the witness
16 has identified the defendant, Ceasar Valencia.

17 THE COURT: The record will so reflect.

18 BY MR. DICKERSON:

19 Q So, specifically, the defendant is the individual that you were
20 looking for this night?

21 A Correct.

22 Q Tell me about that, 1:31 a.m.

23 A I was looking through the binoculars. I observed a subject
24 exit -- it was actually a male and a female exit from the shed in the
25 backyard of 625 North 10th Street. Fit the same description, Hispanic

1 male, bald, around 5'6", 5'7". I broadcast -- actually, my sergeant
2 broadcast on the radio that we had movement in the backyard, kind of
3 notified the rest of the detectives in the area that, hey, we could possibly
4 have somebody leaving the house that -- that's going to match the
5 description of our subject.

6 Q Then what happens?

7 A The female and -- end up being Valencia, ends up walking
8 back towards North 10th Street through, like, a gate. And then we lost
9 visual at that time. There were other detectives that were setting up on
10 the perimeter on 10th, had visual. They actually updated that there was
11 a black Mustang that was parked in the driveway of 625 North 10th
12 Street, and that they saw the male and the female get into that vehicle.

13 Q Okay. And then what do you do?

14 A At that time, my sergeant and I had actually climbed back
15 down the roof and down the balcony and tried to make it back over to his
16 vehicle, which was parked over at Downtown Area Command, front
17 parking lot.

18 Q And that's there --

19 A That's -- yeah.

20 Q -- to the left of the screen?

21 A Yeah. It's just right in there. Yes, sir.

22 Q So what happens from this point in time after you get that
23 vehicle?

24 A We -- on radio traffic, we're getting updates that the -- the
25 vehicle is mobile. It's taken off. And it's actually leaving the 625

1 North 10th Street and heading south on 10th Street towards Bonanza.

2 Q Okay. I'm going to approach, with the court permission, and
3 show you a couple items.

4 THE COURT: You can approach.

5 BY MR. DICKERSON:

6 Q I have in my hand State's Proposed Exhibits 12, 13, and 14. I
7 just want you take a look at these three exhibits, tell me if you recognize
8 them and if they're fairly -- fair and accurate depictions of the areas that
9 you traveled that evening during your surveillance operation?

10 A Get my bearings here. That's where we ended up. That's
11 correct.

12 Q All three of these exhibits fairly and accurately depict those
13 areas?

14 A Correct.

15 MR. DICKERSON: State moves for the admission of 12
16 through 14.

17 THE COURT: Any objection from the defense?

18 MR. COYER: Not to 12 through 14, Judge.

19 THE COURT: Counsel, let me see them for just one second.

20 MR. DICKERSON: Yes, Your Honor.

21 BY MR. DICKERSON:

22 Q So where did you go --

23 THE COURT: I'm sorry, counsel. Exhibits 12, 13 and 14 are
24 admitted.

25 [State's Exhibit Nos. 12 through 14 admitted.]

1 MR. DICKERSON: Thank you.

2 THE WITNESS: We get in the -- my sergeant's vehicle and
3 we pull out onto 9th Street. We approach Bonanza and 9th Street. At
4 that moment, we got updated that the vehicle initially was going east on
5 Bonanza. So we turned left and started heading east on Bonanza.

6 MR. DICKERSON: Okay. May I publish, Your Honor?

7 THE COURT: Yes.

8 MR. DICKERSON: Thank you.

9 BY MR. DICKERSON:

10 Q I'm going to show you here State's Exhibit 12; have your
11 bearings on this one?

12 A I'd have to -- let's see it. Yes.

13 Q Okay. If you could indicate as we go through this generally
14 where we're -- where we're going, what we're looking at.

15 A Okay.

16 Q So you head east on Bonanza?

17 A Correct.

18 Q And then what happens?

19 A As soon as we started heading east, another detective gets on
20 the radio and -- and broadcasts the --

21 MR. COYER: Objection. Hearsay.

22 MR. DICKERSON: It would be a present-sense impression,
23 Your Honor.

24 THE COURT: Are you offering for the truth of the matter
25 asserted --

1 MR. DICKERSON: I --

2 THE COURT: -- or the effect on the listener?

3 MR. DICKERSON: I'm offering for the truth of the matter
4 asserted as a present-sense impression, Your Honor.

5 THE COURT: Okay. Counsel, what's your position on
6 present-sense impression?

7 MR. COYER: I think that the best evidence of that would be
8 whatever was actually broadcast or reflected in the CAD, not necessarily
9 this witness's recollection, Judge.

10 MR. DICKERSON: I'm not having him testify to what the CAD
11 says. That would be a best evidence rule objection. Here, I'm just
12 having him testify to what he heard, Your Honor, which would be a
13 statement from somebody else that was a present-sense impression of
14 what that individual was seeing at the time.

15 THE COURT: Did you -- lay the foundation.

16 MR. DICKERSON: Absolutely, Your Honor.

17 BY MR. DICKERSON:

18 Q You guys have radios?

19 A Correct.

20 Q How do those work?

21 A We have vehicle radios and pack sets that we communicate
22 back and forth with.

23 Q Who's involved in this operation that you're communicating
24 with?

25 A It was our detective section at DTAC and then we had some

1 what we call problem solving unit, detectives who are also assigned to
2 us.

3 Q How many detectives and officers in total?

4 A I'd probably say total maybe, like, eight to 10 on that --

5 Q Are you guys working off a -- a normal dispatch radio
6 channel?

7 A In the cars, some of them are -- are to the radio station -- or
8 the actual DTAC station. But we also have what we call detective
9 channels that just interact with detectives.

10 Q So --

11 A And yeah, nobody else hears that except for the -- if you're
12 actually logged into that channel.

13 Q Okay. No dispatch --

14 A No.

15 Q -- or just a couple of you guys?

16 A Yeah. It's almost like a walkie-talkie kind of situation.

17 Q And is that what you were using to communicate this night?

18 A Correct.

19 Q During this surveillance operation?

20 A Correct.

21 Q And specifically what you were just about to testify to, is that
22 how you were receiving this information?

23 A Correct.

24 Q Is this from officers who were on scene?

25 A It was detectives that were on the scene that were following

1 the vehicle. Yes, sir.

2 Q Okay. And you're -- and what was it --

3 THE COURT: Go ahead, counsel.

4 BY MR. DICKERSON:

5 Q -- that those officers told you or those detectives told you over
6 the radio as you turned east onto Bonanza?

7 A They said the Mustang had actually did a U-turn and was now
8 heading back west on Bonanza.

9 Q Okay. And do you see Bonanza here on the map that we
10 have in front of us?

11 A I do.

12 Q If you could just please indicate just a simple point of which
13 street it is.

14 A Just right --

15 Q I see.

16 A Just -- just above the arrow -- the arrow right there.

17 Q I'm going to change the color. White's a little hard. So that's
18 Bonanza that you've indicated on the map?

19 A Correct.

20 Q And what happens when you get that information that the
21 vehicle has now made a U-turn?

22 A The vehicle actually passes us. We're heading east, it's
23 heading west. It drives right past us.

24 Q What does the vehicle look like?

25 A It's a black Mustang.

1 Q And what do you do then?

2 A We immediately turn around and get right behind the vehicle.

3 Q Do you notice what kind of plates that vehicle had?

4 A It had a Florida plate.

5 MR. DICKERSON: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. DICKERSON:

8 Q I'm showing you here State's proposed 46 through 52. If you'll
9 just take a look at these photographs and tell me if you recognize them,
10 number one?

11 A Yes. This is the Mustang.

12 Q How is it that you recognize these photos?

13 A That was the vehicle we were behind.

14 Q Okay. Do these photos all -- all relate to this surveillance
15 operation that you were conducting --

16 A Correct.

17 Q -- on May 20th, 2016?

18 A Correct.

19 Q Okay. And these are all fair and accurate depictions of those
20 events as depicted that day?

21 A Yes.

22 MR. DICKERSON: State moves for the admission of State's
23 Proposed 46 through 52, Your Honor.

24 THE COURT: Counsel, let me see the exhibits, please.

25 Thank you.

1 Counsel approach.

2 [Bench conference transcribed as follows:]

3 THE COURT: It's my understanding you have no objection to
4 any of these exhibits?

5 MR. COYER: No. That's not accurate.

6 THE COURT: Okay. You do have objections?

7 MR. COYER: I do to at least one of them.

8 THE COURT: This one?

9 MR. COYER: Yes.

10 THE COURT: Okay.

11 MR. COYER: 52, I think -- I think that's 52.

12 THE COURT: I'm not -- State, what's your position on
13 Exhibit 52?

14 MR. DICKERSON: I don't know what the objection is.

15 THE COURT: What's the objection?

16 MR. COYER: The objection is -- is twofold. One is the
17 relevance of the picture, because it's just of an individual that's not
18 related to this case we're here on.

19 THE COURT: Yeah.

20 MR. COYER: And secondly, the fact that he's holding search
21 warrant paperwork --

22 THE COURT: Uh-huh.

23 MR. COYER: -- indicates, obviously, that a search warrant
24 was done. My problem with that is it's unfair to the defense because this
25 officer -- this officer did not apply for the warrant, so I can't cross this

1 officer on whether the warrant was valid. And there's some
2 misrepresentations in the warrant that I would like to point out, if we're
3 going to talk about a warrant.

4 THE COURT: Okay.

5 MR. COYER: So I don't think it's fair. It's prejudicial. Those
6 are the reasons.

7 THE COURT: Hold on a second.

8 MR. DICKERSON: Nothing -- first of all, as to the warrant,
9 nothing that we're introducing was found during the warrant search. The
10 relevance or the validity of the warrant is something that should have
11 been challenged pretrial, if that was the concern of defense counsel and
12 not here. It has nothing to do with this exhibit. This picture of this
13 individual is absolutely relevant, Your Honor, given that this was the
14 driver of the vehicle, Nicholas Harris.

15 It's relevant to show the identification by the officers of the
16 defendant as they're driving, identifying Nicholas Harris as the driver,
17 and identifying the defendant as the passenger, so as not to conflate the
18 two saying, hey, maybe it was Nicholas Harris who actually had the gun,
19 because they look alike. It's going to be absolutely probative to my
20 identification of the defendant for me to show Nicholas Harris to the jury
21 and say, yeah, you guys can see him for yourself. This is him.

22 MR. COYER: As an offer of proof, I don't intend to make that
23 argument.

24 THE COURT: I'm sorry?

25 MR. COYER: As an offer of proof, I don't intend to make that

1 argument that counsel is concerned about.

2 THE COURT: Okay.

3 MR. DICKERSON: I don't think that should --

4 THE COURT: Without further foundation, I'm not going to let
5 Exhibit 52 in. The remainder of the exhibits will be admitted.

6 MS. PLUNKETT: Thank you, Judge.

7 MR. DICKERSON: And it's because foundation?

8 THE COURT: It's because I don't also, at this point, see the
9 relevancy. This is a picture of unidentified individual holding paperwork
10 which has been represented to be a search warrant. Defense counsel
11 has argued that he is not going to make the argument that you're
12 concerned about.

13 MR. DICKERSON: But that shouldn't preclude --

14 THE COURT: I am not going to let him make that argument.
15 So --

16 MR. DICKERSON: That shouldn't preclude me from admitting
17 the matter.

18 THE COURT: I'm not letting it in, counsel.

19 MR. DICKERSON: Okay.

20 THE COURT: Thank you.

21 MR. DICKERSON: Thank you, Judge.

22 MS. PLUNKETT: Thank you.

23 THE COURT: So exhibits -- we can go back on the record.

24 [End of bench conference.]

25 THE COURT: Exhibit -- Exhibits 47 through 51 will be

1 admitted.

2 [State's Exhibit Nos. 47 through 51 admitted.]

3 MR. DICKERSON: Thank you, Your Honor.

4 BY MR. DICKERSON:

5 Q Detective Bryant, did you have the opportunity to see these
6 two individuals that were in the vehicle?

7 A I saw the front-seat passenger, yes.

8 Q Did you also see the driver?

9 A Yes.

10 Q Did these two people look anything alike?

11 A No.

12 Q No? Who was the front seat passenger?

13 A Hispanic male, shorter shaved head.

14 Q Did you later identify that individual?

15 A I did.

16 Q And who was it?

17 A Ceasar Valencia.

18 Q Who was the driver?

19 A He -- what --

20 MR. COYER: Objection. Relevance.

21 MR. DICKERSON: Same thing that we just discussed, Your
22 Honor.

23 THE COURT: He can identify -- overruled. He can identify
24 the driver.

25 THE WITNESS: I didn't make any contact with him, so I -- I

1 honestly can't remember, without looking at my record -- report, his
2 name.

3 BY MR. DICKERSON:

4 Q What did he look like?

5 A I believe he was, like, a white male, dark hair, kind of thick
6 hair.

7 Q Nothing like Ceasar Valencia?

8 A No.

9 Q And did you prepare a report in this case?

10 A I did.

11 Q Would the report that you prepared in this case have the
12 identification and name of that driver?

13 A It would.

14 Q Would looking at that report help refresh your recollection?

15 A Yes, it would.

16 THE COURT: You may approach the witness.

17 MR. DICKERSON: Thank you, Your Honor.

18 BY MR. DICKERSON:

19 Q I have in my hand a declaration of arrest

20 Event No. 1605193387; is this your report, sir?

21 A Yes, it is.

22 Q If you could please take a look at it, just see if that happens to
23 refresh your recollection.

24 THE COURT: Read it to yourself, please.

25 THE WITNESS: Yes, sir.

1 BY MR. DICKERSON:

2 Q And when you're done, just flip it over and look up at me.

3 A [Witness complies.]

4 Q Did that refresh your recollection?

5 A Yes, it did.

6 Q And were you able to identify that driver of the vehicle?

7 A Yes, I was.

8 Q Who was the driver of that vehicle?

9 A Nicholas Harris.

10 Q Okay. So as you get behind the vehicle, you see that it's a
11 black Mustang?

12 A Correct.

13 Q Florida plates?

14 A Yes.

15 Q Specifically showing you --

16 MR. DICKERSON: May I publish, Your Honor?

17 THE COURT: Yes.

18 BY MR. DICKERSON:

19 Q State's Exhibit 47; these are the plates that you see when you
20 pull up behind it?

21 A Correct.

22 Q And this was at Bonanza and Las Vegas Boulevard?

23 A Correct.

24 Q More specifically, State's Exhibit 49, is this the vehicle you
25 see?

1 A Yes, it is.

2 Q So what do you do from this point in time at Las Vegas
3 Boulevard and Bonanza?

4 A We broadcast that we had a -- a vehicle with a potential in the
5 side -- in the passenger side. We started doing what we call rolling
6 surveillance, kind of watching the vehicle, waiting to try to get a
7 black-and-white marked unit there to -- to do a car stop.

8 Q And so from -- showing you here State's Exhibit 21; still have
9 your bearings with this one?

10 A Yes, I do.

11 Q Where is it that you go from there, following this black
12 Mustang?

13 A We continue to head west on Bonanza. We pass Las Vegas
14 Boulevard and approach the -- the 215 underpass.

15 Q The 15?

16 A I'm sorry, the 15. I apologize.

17 Q And is that depicted here in this photograph?

18 A Yes, it is. Right there.

19 Q And then what happens?

20 A As we're following the vehicle, it takes a quick right-hand turn,
21 I believe it was on H Street, and started heading north. And we didn't
22 want to burn our vehicle, so we kept going west and let another vehicle
23 try to pick him up from behind us.

24 Q Okay. H Street, is that located right here on the map?

25 A Correct.

1 Q It's one of the topmost streets?

2 A Yes. It's a major thoroughfare.

3 Q At this point in time, what happens?

4 A Other units in the area that were behind us were broadcasting
5 that they had a vehicle continuing north on H. Myself, and I was with my
6 sergeant at the time, he was driving, we continued to go up another
7 street further west and try to backtrack to see if we can pick him back up
8 again.

9 Q Did you ultimately locate that vehicle?

10 A We did not, but other officers and other detectives that were
11 there located it in an alleyway by, like, H and West Monroe.

12 Q We see a marking over here, West Monroe and H, is that that
13 intersection right here?

14 A Correct.

15 Q And is that vehicle occupied when it's located up there?

16 A No, it's not.

17 Q Specifically showing you here State's Exhibit 14; does that
18 appear to be that general area?

19 A Yes, it does.

20 Q And then what happens?

21 A The detectives that saw the vehicle unoccupied sat -- this is
22 an alleyway between Monroe and Madison in this area. They kind of set
23 up on the vehicle, kept -- again, keeping an eye on the vehicle to see if it
24 got occupied. We just -- we had no idea where the occupants went to at
25 that moment.

1 Q Then it's some time, approximately an hour, before this
2 vehicle is moving again?

3 A Correct.

4 Q What happens then?

5 A We actually called air support in to help us with this. When
6 they arrived, they updated and advised us that the vehicle was now
7 occupied and was now heading back south on H Street.

8 Q And H Street, depicted here in State's Exhibit 12, as we saw
9 before?

10 A Correct.

11 Q Near the top of the screen?

12 A Correct.

13 Q That side -- at the left side of the screen. Where does the
14 vehicle go then?

15 A It goes down H Street and then makes a left-hand turn and
16 starts heading back east on Washington.

17 Q What happens from that point in time?

18 A We had already set up our black-and-white marked units in
19 the area of Washington and the 15. So when they approached that
20 area, they -- if it -- what they did is they conducted what we call a car
21 stop, and they -- they pulled the vehicle over and detained the subjects
22 inside the vehicle.

23 Q You had marked patrol units do that?

24 A Correct.

25 Q That's for a specific purpose?

1 A Yeah. Just for officer safety and so there's no confusion or
2 anything like that, so they know that it's actually the police stopping
3 them.

4 Q Okay. Showing you here State's Exhibit 13; does that appear
5 to be the intersection of Main and Washington?

6 A Correct.

7 Q And -- how -- is this the intersection where that car stop took
8 place?

9 A I want to say it was a little bit further up, possibly closer to this
10 location up here. I know there was a big wall, like a barrier wall, where
11 we stopped them.

12 Q And that location that you indicated there on the screen, are
13 there big walls on both sides?

14 A I know there's a big wall on -- which would be the south side. I
15 know that for a fact.

16 Q Okay.

17 A That's where the vehicle was stopped.

18 Q I'm showing you here State's Exhibit 48; is that that vehicle at
19 that stop?

20 A Correct.

21 Q At that point in time, did you make contact with -- with the
22 occupants of that vehicle?

23 A Patrol had already stopped the vehicle, so by the time my
24 sergeant and I got there, they were already bringing the passenger back
25 to -- in front of the patrol vehicle.

1 Q And you've already testified as to who those individuals were?

2 A Correct.

3 Q That was Ceasar Valencia was the passenger?

4 A Correct.

5 Q Nicholas Harris is the driver?

6 A Correct.

7 Q And so at that point in time, was Mr. Valencia taken into
8 custody?

9 A He was.

10 Q Now, there was a moped involved in this case; is that right?

11 A Correct.

12 Q Did you request testing on that moped?

13 A No, I did not.

14 Q Is there any reason why you didn't request testing on at that
15 moped?

16 A One of main reasons was we had the Officer Jacobitz, who
17 actually witnessed Valencia driving the -- the moped that night and
18 actually dumping the moped before he took off on foot. And then right
19 after that, within seconds, two other individuals had already picked up
20 the moped and started pushing it away. So in my opinion, just wasn't
21 necessary to -- to go through the DNA process when we had a good
22 eyewitness being the officer who actually saw Valencia driving the
23 moped.

24 Q Are mopeds, at least then in May 2016, registered vehicles?

25 A They weren't --

1 MR. COYER: Objection. It's outside the --
2 THE WITNESS: -- required to be registered.
3 MR. COYER: -- scope of this witness's --
4 THE COURT: Sustained.
5 MR. COYER: Thank you.
6 MR. DICKERSON: I don't believe it's outside the scope, if I
7 may be heard, Your Honor. Can we have a bench conference?
8 THE COURT: Sure.
9 [Bench conference transcribed as follows:]
10 MR. DICKERSON: Not going to get into the vehicle being
11 stolen, simply to show that, hey, look at that investigative step, whether
12 he could ID the person who was driving it by it being registered to that
13 person. In fact, they weren't registered at that time. And there's no
14 mopeds registered.
15 THE COURT: Does he know -- was this moped, this
16 particular -- your question was as --
17 MR. DICKERSON: There will be.
18 THE COURT: -- to all mopeds. Does he know if this moped
19 was registered?
20 MR. DICKERSON: Yeah.
21 THE COURT: I mean, if he --
22 MR. DICKERSON: He will.
23 THE COURT: If it wasn't registered, he can testify to that,
24 whether --
25 MR. DICKERSON: Yeah.

1 THE COURT: But your question was are mopeds registered,
2 general -- generally. So you need --

3 MR. DICKERSON: As a rule.

4 THE COURT: Right. If you -- if you want to ask him, was this
5 moped registered? And he says no, and then --

6 MR. DICKERSON: Okay.

7 THE COURT: -- you can say, so wouldn't have been -- do you
8 any good type of thing.

9 MR. DICKERSON: Okay. Absolutely.

10 THE COURT: It's as to this specific moped, you can ask him.

11 MR. COYER: Judge, I hope I'm getting picked up. As -- as an
12 offer of proof, where this is headed is they're going to get into the fact
13 that the VIN is shaved off the moped and I think that's --

14 THE COURT: Huh?

15 MR. COYER: They're going to get into the fact that the VIN is
16 shaved off the moped. And I think that's irrelevant and prejudicial.

17 THE COURT: Are you going to get the fact that the VIN is
18 shaved off the moped?

19 MR. DICKERSON: Absolutely. It's absolutely relevant to the
20 identification of the driver.

21 THE COURT: Why is it relevant to the -- if it's --

22 MR. DICKERSON: Because --

23 THE COURT: Is he going to testify it was registered to
24 somebody?

25 MR. DICKERSON: No. It's --

1 THE COURT: Okay.

2 MR. DICKERSON: -- not registered to anybody.

3 THE COURT: Okay. Then why would the VIN being shaved

4 off -- because the implication is that the moped itself is stolen --

5 MR. DICKERSON: Right.

6 MS. PLUNKETT: Right.

7 THE COURT: -- because the VIN is shaved off. I am not

8 going to let you get into it that -- he's not on trial for the moped.

9 MR. DICKERSON: Right.

10 THE COURT: I don't know if --

11 MR. LEXIS: Judge, this case is all about, on the front end, it's

12 all about identification. It's going to look like he is not doing his job as

13 an -- as a detective.

14 THE COURT: No, no, no, no. That's not what we're talking

15 about.

16 MR. DICKERSON: Absolutely, Your Honor.

17 THE COURT: Okay. We're going to take a brief recess. I've

18 got to leave at 3:30. So are we going to finish this witness or not?

19 MR. DICKERSON: I'll be very brief.

20 MS. PLUNKETT: And he --

21 THE COURT: Okay.

22 MS. PLUNKETT: -- he has already stated that Officer

23 Jacobitz saw Ceasar Valencia on the moped. So I don't --

24 THE COURT: I'm sorry?

25 MS. PLUNKETT: He already stated that Officer Jacobitz saw

1 Ceasar Valencia on the moped, got a good ID.
2 THE COURT: Right.
3 MS. PLUNKETT: So I don't think we need to go into the VIN
4 being shaved off, as it's --
5 THE COURT: I am not --
6 MS. PLUNKETT: -- part of --
7 THE COURT: -- going to let you go into that the --
8 MR. DICKERSON: And it's already in evidence, by the way,
9 You Honor, in the audio that they admitted.
10 THE COURT: Okay. I'm not going to let you have him testify
11 that the VIN was shaved off the moped.
12 MR. DICKERSON: Okay. All right.
13 THE COURT: Wait, is there any other -- do you understand
14 my ruling?
15 MR. DICKERSON: I do.
16 THE COURT: You can ask this officer was this moped
17 registered? It's not registered, that whole line of questioning,
18 establishing whatever he needs to establish as far as the investigative
19 procedures. But he -- you cannot ask him and he cannot testify to that
20 the VIN was shaved off the moped or anything about the VIN.
21 MR. DICKERSON: Okay.
22 THE COURT: Okay. Thank you, counsel.
23 MR. DICKERSON: Okay. Thank you, Your Honor.
24 MR. LEXIS: Thank you.
25 [End of bench conference.]

1 BY MR. DICKERSON:

2 Q Detective Bryant, this moped was not registered; is that right?

3 A Correct.

4 Q And in 2016, there was no DMV registration for mopeds?

5 A Correct.

6 Q So there was no way for you to track the owner of this moped?

7 A Correct.

8 MR. COYER: Objection. Speculation. Foundation.

9 THE COURT: Overruled.

10 MR. DICKERSON: Thank you, Your Honor.

11 State will pass the witness.

12 THE COURT: Any cross-examination by the defense?

13 MR. COYER: Your Honor, we do have cross-examination, but
14 obviously none that can be completed in 10 minutes. Would the court
15 prefer if I start or defer till our next session?

16 THE COURT: Okay. Counsel approach, please.

17 [Bench conference transcribed as follows:]

18 THE COURT: How long -- do you -- we've got about 10
19 minutes. So you think it's going take longer than 10 minutes?

20 MR. COYER: I do.

21 THE COURT: Then you're probably going to -- I mean, he's
22 going to have to come back tomorrow. I'm not going to be able to --

23 MR. DICKERSON: We might as well start.

24 THE COURT: All right. Well, what -- what we'll do is go for 10
25 minutes.

1 MR. COYER: Okay.
2 THE COURT: Go as far as you can go. He's going to have to
3 come -- I was hoping to get him out today, but --
4 MR. COYER: Understood.
5 THE COURT: -- he took longer than anticipated. So let's go
6 for 10 minutes and then we'll start tomorrow at 10:00.
7 MR. COYER: Understood.
8 THE COURT: All right.
9 MR. DICKERSON: Thank you, Your Honor.
10 THE COURT: Thank you, counsel.
11 MR. COYER: Very good.
12 [End of bench conference.]
13 MR. COYER: May I approach the clerk to set up some --
14 THE COURT: Yes.
15 MR. COYER: -- exhibits?

16 **CROSS-EXAMINATION**

17 BY MR. COYER:
18 Q Good afternoon, Detective.
19 A Good afternoon.
20 Q I want to start here by going back to your testimony about the
21 walkthrough.
22 A Okay.
23 Q Okay. You testified that you and Officer Jacobitz and a CSA,
24 crime scene analyst, did a walkthrough of the crime scene, correct?
25 A Correct.

1 Q Your 100 percent sure it was the three of you?
2 A As far as I can recollect, yes.
3 Q Okay. And the CSA was Olivia Klosterman?
4 A I believe so, yes.
5 Q Okay. Do you -- you understand what a CAD is, right?
6 A Yes.
7 Q Okay. And you understand how to read one of those, right?
8 A Yes.
9 Q Okay. We've -- we've previously heard testimony that on the
10 evening of May 19th, 2016, that Officer Jacobitz was operating
11 as 3DP40 with an Adam, or A, designation because his partner was B; is
12 that right?
13 A Correct.
14 Q Okay. And you understand what that means, right?
15 A Correct.
16 Q What was your identifying designation, as it would -- as it
17 would appear on the CAD that evening?
18 A I was 199PD.
19 Q 199P --
20 A PD199, yes.
21 Q Sorry, 1 --
22 A It's either 199 or PD199.
23 Q Okay. I just don't want to talk over each other --
24 A Yeah.
25 Q -- so that the -- the recorder picks up everything.

1 And would somebody, like a crime scene analyst like
2 Ms. Klosterman, also have a -- an identifying, you know, call sign, for
3 lack of a better term?

4 A Correct.

5 Q What would hers be?

6 A It would start with a C.

7 Q Okay. And then beyond that, do you know how she was
8 identified on that evening?

9 A I -- I will maybe say 23.

10 Q Okay. Now, when we're looking at a CAD, okay, the printout,
11 the paperwork I'm talking about here, there are some letters that indicate
12 some information about the officer, correct?

13 A Correct.

14 Q And the letters can indicate several things, like when they're
15 en route or when they've arrived on a scene, right?

16 A Correct.

17 Q Okay. So would you agree that, theoretically, the CAD would
18 show when you arrived on the scene?

19 A Correct.

20 Q And theoretically, it should show when Ms. Klosterman or -- I
21 don't know if it's officer or Ms. Klosterman, arrived on the scene?

22 A Correct.

23 Q Okay. If I show you the CAD, would you be able to recognize
24 those designations on -- on this exhibit?

25 A I would.

1 Q Okay.

2 MR. COYER: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. COYER: Okay.

5 THE WITNESS: [Witness reads document.] Okay.

6 BY MR. COYER:

7 Q That -- that information in that CAD looks familiar to you, looks

8 like a regular CAD, right?

9 A Correct.

10 MR. DICKERSON: Okay. Can I get the ELMO? Or is it on

11 already?

12 THE CLERK: Uh-huh.

13 MR. DICKERSON: Okay.

14 BY MR. DICKERSON:

15 Q Can you see that, sir?

16 A Yes, I can.

17 Q Going to zoom in here so that the jury can see it with us. All

18 right. Now, you discussed previously that the CSA -- and again, I'm

19 sorry, is it -- should I refer to her as Ms. Klosterman or is she Officer

20 Klosterman?

21 A Ms. Klosterman is fine.

22 Q Okay. She's C -- C23, right?

23 A Correct.

24 Q Okay. And is where my pen tip is, is that the first entry of C23

25 that we see on this CAD?

1 A I believe so, yes.

2 Q The letters out here to the left say USAS, correct?

3 A Correct.

4 Q What does that mean?

5 A The AS stands for assigned.

6 Q Okay. So that doesn't mean that she's on scene, correct?

7 A Correct.

8 Q Okay. Let me move this up so it's still on the screen. Okay.

9 So this is USAS C23, correct?

10 A Correct.

11 Q And then if we go down a little further, we see C23 again,

12 correct?

13 A Correct.

14 Q Yes?

15 A Yes.

16 Q Okay. Just have to answer audibly. Okay?

17 A Yeah. I did.

18 Q And then out there to the left, we see the -- the letters USAR,

19 right?

20 A Correct.

21 Q Now, AR is shorthand for arrived?

22 A Correct.

23 Q So this would indicate that she, Ms. Klosterman, arrived at this

24 time out here, which is 2255, correct?

25 A Correct.

1 Q And that's --
2 A 10:55.
3 Q 10:25 --
4 A In the evening.
5 Q 10:25 p.m., correct?
6 A Correct.
7 Q Or 10 --
8 A 10:55.
9 Q -- 10:55, excuse me. And then we've got an address here
10 of 625 North 10th Street, correct?
11 A Correct.
12 Q Okay. Now, that is not the area where the purported assault
13 on an officer occurred, correct?
14 A Correct.
15 Q Okay. Were you present at 625 North 10th Street when
16 Ms. Klosterman arrived?
17 A Correct.
18 Q Were you -- the question is were you present?
19 A Yes, I was.
20 Q Okay. So she shows up and you met with her there at 625
21 North 10th?
22 A Correct.
23 Q Okay. Continue on down the page a little bit here and you'll
24 see where my pen tip is, okay, we're at -- what time is that?
25 A 2336.

1 Q And in regular people time?
2 A It's 11:36 p.m.
3 Q Okay. And we've got another USAR, right?
4 A Correct.
5 Q Which is arrived, and we've got C23 again, right?
6 A Correct.
7 Q Same address, 625 North 10th Street?
8 A Correct.
9 Q Can you explain those discrepancies?
10 A A lot of times with the -- the computer system we have, it's a
11 touch-based computer system. We have arrived and en route buttons
12 on our computers. And sometimes if you -- and I've done it myself
13 hundreds of times -- if you go to push one, like, to pull up -- to query
14 something, I've hit arrived, I've hit cleared before on CAD several times.
15 So it's -- it's easily a mistake that happens quite often, honestly.
16 Q So you are presuming that this entry of 2336 is perhaps a
17 mistake?
18 A Correct.
19 Q Okay. And your testimony on direct was that she, in fact,
20 arrived at 10:55, right?
21 A Correct.
22 Q On direct, okay? Not the CAD. On direct examination when
23 you said she arrived at 10:55, did you mean 625 North 10th Street
24 or 610 North 10th Street?
25 A We all arrived at 625. That's where we were holding kind of

1 our briefing at, at that location.

2 Q Okay. So just going to take you back to the CAD here and go
3 one entry down --

4 A Uh-huh.

5 Q -- to 2342. Can you see that?

6 A Yes, I can.

7 Q And we see USCL and C23, right?

8 A Correct.

9 Q What is CL?

10 A That stands for clear.

11 Q Okay. So when does an officer normally clear themselves
12 or -- or --

13 A When we're done with the scene.

14 Q Okay.

15 A When we're leaving.

16 Q So would this entry suggest that Ms. Klosterman was done
17 with her work at 2342, or left the scene, rather?

18 A I would say left the scene, yes.

19 Q Okay. That's it.

20 THE COURT: Is there anything else you're going to ask about
21 this CAD?

22 MR. COYER: Yes.

23 THE COURT: How much longer?

24 MR. COYER: Probably five minutes or so.

25 THE COURT: All right.

1 MR. COYER: Okay.

2 THE COURT: Go ahead.

3 BY MR. COYER:

4 Q I'm just going to take you back up the page. Are you following

5 my -- my pen tip?

6 A Yes.

7 Q Okay. You see this entry here, 3DP40, right?

8 A Correct.

9 Q 2310, right?

10 A Correct.

11 Q Okay. Now, the -- over here it says City Jail?

12 A Correct.

13 Q Okay. What's -- what is that? What's that going to indicate to

14 you?

15 A That he's transporting somebody to the city jail.

16 Q That this person --

17 A The TO stands for to other.

18 Q Okay. 3DP40 is -- is transporting to jail?

19 A Correct.

20 Q Now, is that going to be Officer Jacobitz or Officer Houston?

21 A They were together, so it was both of them.

22 Q They both transported the two prisoners to jail together?

23 A They're -- they should have been both in the same vehicle.

24 That's why the A and the B.

25 Q Right.

1 A They were assigned the same vehicle.

2 Q Okay. So if we assume Ms. Klosterman arrived at 625
3 North 10th at, what is that, 10:37, correct?

4 A Correct.

5 Q No, no. I'm sorry, that's assigned. We assume she arrived
6 at 10:55, correct?

7 A Correct.

8 Q And this would indicate that Officer Jacobitz left to take the
9 prisoners to the city jail at 2310, right?

10 A Correct.

11 Q Okay. So why is there no indication in this CAD of anybody
12 doing the walkthrough down at 610 North 10th, where the crime scene
13 was?

14 A We wouldn't necessarily document it on radio. It's something
15 we do on scene. We just walk down there and kind of go over what --
16 what happened.

17 Q Okay.

18 A It's nothing that really needs -- needs to be documented on
19 CAD.

20 Q Okay. Did the CSA's work with you continue after Officer
21 Jacobitz left to transport the prisoners?

22 A They were finishing up and we usually try to stay on scene
23 with them, just for safety issues.

24 Q Okay. You were not present during the alleged assault on --
25 on Officer Jacobitz, correct?

1 A No, I was not.

2 Q Okay. So any information you would have about that crime,
3 including the details of the crime scene, would have come from Officer
4 Jacobitz, correct?

5 A Correct.

6 Q Okay. All right.

7 MR. COYER: Judge, I don't have anything further on the
8 CAD, but I do have still have additional cross-examination.

9 THE COURT: No, I understand.

10 MR. COYER: Okay.

11 THE COURT: We're going to take our evening recess at this
12 time.

13 During this recess you're admonished not to talk or converse
14 among yourselves or with anyone else on any subject connected with
15 this trial or read or watch or listen to any report of or commentary on the
16 trial or any person connected with this trial by any medium of
17 information, including without limitation, the social media, text,
18 newspapers, television, the Internet, and radio; do not visit the scene of
19 any of the events mentioned during the trial or undertake any
20 investigation; do not do any posting or communications on any social
21 networking sites or do any -- do any independent research, including
22 Internet searches, or form or express any opinion on any subject
23 connected with this trial until the case is finally submitted to you.

24 At this time, the jury is excused. We will reconvene tomorrow
25 at 10:00.

1 [Jury recessed at 3:31 p.m.]
2 THE COURT: And it's my understanding the State expects to
3 rest sometime tomorrow?
4 MR. DICKERSON: We do, Your Honor.
5 THE COURT: Okay. So I --
6 MR. LEXIS: Your Honor, can we meet in your chambers
7 at 9:00 to finalize jury instructions?
8 THE COURT: Well, I don't want to finalize them yet. I want to
9 see what --
10 MR. LEXIS: There's a lot we could -- even not finalizing,
11 there's --
12 THE COURT: Okay. We're not going to do jury instructions
13 until after the defense presents their case.
14 MR. COYER: Thank you.
15 THE COURT: Because some of the instructions are theory of
16 defense instructions. So that's why I'm -- so, counsel, the defense
17 should be prepared to go forward sometime tomorrow.
18 MR. COYER: Sure. I'll prepare Mr. Valencia for the canvass
19 about whether he wants to testify as well.
20 THE COURT: Very good, counsel. So we'll be in recess until
21 tomorrow 10:00. Thank you.
22 MR. DICKERSON: Thank you very much.
23 MS. PLUNKETT: Thank you, Judge.
24 MR. COYER: Thank you, Your Honor.
25 [Proceedings concluded at 3:32 p.m. until December 1, 2017,

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at 10:00 a.m.]

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.



Shawna Ortega, CET*562

ORIGINAL

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHAD LEXIS
6 Deputy District Attorney
7 Nevada Bar #010391
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

LED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC - 1 2017
4:35 p.m.

BY, Alan Paul Castle
ALAN PAUL CASTLE, SR, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-315580-1
AINF
Amended Information
4701939



9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 CEASAR SANCHAZ VALENCIA,
13 #1588390

14 Defendant.

CASE NO: C-16-315580-1

DEPT NO: XVIII

THIRD AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That CEASAR SANCHAZ VALENCIA, the Defendant(s) above named, having
20 committed the crimes of **OWNERSHIP OR POSSESSION OF FIREARM BY**
21 **PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460)**, , on or about
22 the 19th day of May, 2016, within the County of Clark, State of Nevada, contrary to the form,
23 force and effect of statutes in such cases made and provided, and against the peace and dignity
24 of the State of Nevada, did willfully, unlawfully, and feloniously own, or have in his
25 possession and/or under his custody or control, a firearm, to-wit: a .38 caliber revolver, the
26 Defendant being a convicted felon, having in 2006, been convicted of Possession of Stolen
27 Vehicle (Felony), in Case No. C224558, and/or having in 2006, been convicted of Unlawful
28 Possession of Electronic Stun Device (Felony), Possession of Stolen Vehicle (Felony) and


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AA0776

1 Burglary(Felony), in Case No. C223991, in the Eighth Judicial District Court, Clark County,
2 felonies under the laws of the State of Nevada.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY


7 CHAD LEXIS
8 Deputy District Attorney
9 Nevada Bar #010391

10 Names of witnesses known to the District Attorney's Office at the time of filing this
11 Information are as follows:

11	<u>NAME</u>	<u>ADDRESS</u>
12	BARLOW, DAWN or designee	CCDA/INVESTIGATOR
13		200 LEWIS AVE 9TH FLR
		LV NV 89155
14	BRYANT, K.	LVMPD P#7773
15	CUSTODIAN OF RECORDS	CCDC
16	CUSTODIAN OF RECORDS	LVMPD/COMMUNICATIONS
17	CUSTODIAN OF RECORDS	LVMPD/RECORDS
18	GOODRICH, A.	LVMPD P#9198
19	HOFFMAN, J.	LVMPD P#9001
20	HOUSTON, C.	LVMPD P#13249
21	JACOBITZ, J.	LVMPD P#9383
22	KLOSTERMAN, O.	LVMPD P#1317
23	LEFEBVRE, N.	LVMPD P#8383
24	WHITMARSH, B.	LVMPD P35645

25
26
27 16F08334X/pm/L-2/ckb
28 LVMPD EV#1605193387
(TK8)

1 INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC - 1 2017
4:35 p.m.

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

BY, Alan Paul Castle, Sr.
ALAN PAUL CASTLE, SR, DEPUTY

5
6 THE STATE OF NEVADA,
7 Plaintiff,

CASE NO: C-16-315580-1

8 -vs-

DEPT NO: XVIII

9 CEASAR SANCHAZ VALENCIA

10 Defendant.
11

12 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

13 MEMBERS OF THE JURY:

14 It is now my duty as judge to instruct you in the law that applies to this case. It is your
15 duty as jurors to follow these instructions and to apply the rules of law to the facts as you find
16 them from the evidence.

17 You must not be concerned with the wisdom of any rule of law stated in these
18 instructions. Regardless of any opinion you may have as to what the law ought to be, it would
19 be a violation of your oath to base a verdict upon any other view of the law than that given in
20 the instructions of the Court.

21
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23
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25 C-16-315580-1
INST
Instructions to the Jury
4701941



INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that CEASAR SANCHAZ VALENCIA, the Defendant(s) above named, having committed the crimes of ASSAULT ON A PROTECTED PERSON WITH USE OF A DEADLY WEAPON; TRAFFICKING IN CONTROLLED SUBSTANCE and POSSESSION OF CONTROLLED SUBSTANCE, on or about the 19th day of May, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - ASSAULT ON A PROTECTED PERSON WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to-wit: J. JACOBITZ, a protected person employed as a Police Officer with Las Vegas Metropolitan Police Department, while J. JACOBITZ was performing his duties as a Police Officer with Las Vegas Metropolitan Police Department, which Defendant knew, or should have known, that J. JACOBITZ was a Police Officer with Las Vegas Metropolitan Police Department, with use of a deadly weapon, to-wit: a firearm, by pointing said firearm at the said Officer J. JACOBITZ.

COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE

did willfully, unlawfully, feloniously, and knowingly or intentionally possess, either actually or constructively, 4 grams or more, but less than 14 grams, to-wit: approximately 11.8 grams of Heroin, or any mixture of substance consisting of approximately 11.8 grams containing the controlled substance Heroin.

COUNT 3 - POSSESSION OF CONTROLLED SUBSTANCE

did willfully, unlawfully, feloniously, and knowingly or intentionally possess a controlled substance, to-wit: Cocaine.

1 COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE

2 did willfully, unlawfully, feloniously, and knowingly or intentionally possess a
3 controlled substance, to-wit: Methamphetamine.

4 It is the duty of the jury to apply the rules of law contained in these instructions to the
5 facts of the case and determine whether or not the Defendant is guilty.

INSTRUCTION NO. 4

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6

If you find that the State has failed to prove beyond a reasonable doubt any one element of a charged offense, you must find the Defendant not guilty of that offense.

1 INSTRUCTION NO. 7

2 You are here to determine the guilt or innocence of the Defendant from the evidence in
3 the case. You are not called upon to return a verdict as to the guilt or innocence of any other
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt
5 of the Defendant, you should so find, even though you may believe one or more persons are
6 also guilty.

INSTRUCTION NO. 8

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 9

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he or she testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 10

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 11

A person who unlawfully attempts to use physical force against the person of another or intentionally places another person in reasonable apprehension of immediate bodily harm is guilty of Assault.

To constitute an assault, it is not necessary that any actual injury be inflicted.

To constitute an unlawful attempt to use physical force against the person of another, mere menace is not enough; there must be an effort to carry the intention into execution.

A person who commits an assault upon a police officer during the performance of his duties as a police officer is guilty of Assault on a Protected Person.

A person commits an assault by or through the use of a deadly weapon is guilty of Assault with a Deadly Weapon.

A person who commits an assault upon a police officer by or through the use of a deadly weapon is guilty of Assault on a Protected Person with Use of a Deadly Weapon.

INSTRUCTION NO. 12

As used in these instructions, a "deadly weapon" means:

- (1) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or
- (2) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a Firearm is a deadly weapon. A firearm is a deadly weapon whether loaded or unloaded, operable or inoperable.

A "Firearm" means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

INSTRUCTION NO. 13

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

INSTRUCTION NO. 14

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. 15

When it is impossible to commit a particular crime without committing, at the same time and by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense."

If you are not satisfied beyond a reasonable doubt that the Defendant is guilty of the offense charged, you may find the Defendant guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of the lesser included offense beyond a reasonable doubt.

Assault on a Protected Person is a lesser included offense of Assault on a Protected Person with use of a Deadly Weapon.

Assault with a Deadly Weapon is a lesser included offense of Assault on a Protected Person with use of a Deadly Weapon.

Possession of Controlled Substance is a lesser included offense of Trafficking In Controlled Substance.

INSTRUCTION NO. 16

Any person who knowingly or intentionally is in actual or constructive possession of a Schedule I controlled substance, or any mixture which contains a Schedule I controlled substance, the quantity of which weighs, or is represented by that person to weigh, 4 grams or more, is guilty of Trafficking in Controlled Substance.

The phrase "4 grams or more" refers to the aggregate weight of the entire mixture rather than the weight of the controlled substance that is contained in the mixture.

It is not necessary for the State to prove that the defendant was aware of the amount of the controlled substance he possessed.

You are instructed that Heroin is a Schedule I controlled substance.

INSTRUCTION NO. 17

A person who knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, dentist, podiatric physician, optometrist, advanced practice registered nurse or veterinarian while acting in the course of his or her professional practice, is guilty of Possession of Controlled Substance.

You are instructed that Methamphetamine is a Schedule I controlled substance.

You are instructed that Cocaine is a Schedule I controlled substance.

INSTRUCTION NO. 18

In order to prove the commission of Trafficking In Controlled Substance and Possession Of Controlled Substance, the State must prove that the defendant had knowledge of the item's nature as a controlled substance.

A defendant's knowledge that the substance he possessed was a controlled substance may be shown by direct evidence or by circumstantial evidence and reasonably drawn inferences.

INSTRUCTION NO. 19

A person is in possession of an article or object if it is carried on his person or, if not carried on his person, he knows that it is present and he has custody, dominion, or control over it.

The law recognizes two kinds of possession: actual possession and constructive possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that a defendant had actual or constructive possession, either alone or jointly with others.

"Knowingly" imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person on notice. An act or a failure to act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

INSTRUCTION NO. 20

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

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INSTRUCTION NO. 21

An act is not a crime if the act was committed through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.