

1 not, but if somebody does get sick overnight, and they don't  
2 reach a verdict today, we're going to call upon you; do you  
3 understand that?

4 ALTERNATE JUROR: Okay.

5 THE COURT: But I'm going to give you the admonition,  
6 you give the phone numbers, and you'll take his badge, I  
7 guess, right, or somebody -- and then go down there and sign  
8 your vouchers and the jury commissioner, and that's it, all  
9 right?

10 ALTERNATE JUROR: Somebody will show me where that  
11 is, or --

12 THE COURT: Well, where is it? The jury's in the  
13 second floor, the jury? Third floor?

14 MS. JIMENEZ: Third floor.

15 THE COURT: Well, I guess, where you were in the  
16 beginning, right?

17 ALTERNATE JUROR: Okay. I put on -- sign some  
18 paperwork?

19 THE COURT: Yeah, I think, just ask them, I'm  
20 through, could I sign some voucher for my money, or something,  
21 all right?

22 ALTERNATE JUROR: Okay.

23 THE COURT: Don't converse among yourselves, or with  
24 anyone else on any subject connected to the trial, or read,  
25 watch, or listen, to any report, or commentary on the trial,

UNCERTIFIED ROUGH DRAFT

1 and don't form or express any opinion on the trial until the  
2 close is finally submitted to you.

3 Why don't you come right here a second, and give  
4 some numbers where you could be reached.

5 All right? Thanks a lot, sir. You — maybe you got  
6 to get the badge, too. All right, thanks.

7 ALTERNATE JUROR: Thank you.

8 THE COURT: You're excused.

9 ALTERNATE JUROR: Where do I go, out here?

10 THE COURT: No, you go that way. The way you always  
11 come from.

12 ALTERNATE JUROR: Oh, okay.

13 THE COURT: Out in the hallway there, and to the  
14 third floor, all right? Thank you.

15 ALTERNATE JUROR: Thank you, sir.

16 (Alternate juror exits the courtroom.)

17 THE COURT: All right. Anything else to come before  
18 the Court before we do anything?

19 MR. THUNELL: Just one quick thing, Your Honor. At  
20 least, in cases I've had before where there's video that —  
21 when you can't use a DVD for, generally, I — I know the  
22 jury's usually like to have a laptop. I have a DA laptop. I  
23 took off my slides — my slides were on there — I think —  
24 there shouldn't be anything on there, at all — I mean, if Mr.  
25 Gill wants to take a peek, that's totally fine by me, but we

1 thought maybe we could send it back there so they could watch  
2 everything.

3 THE COURT: Oh, absolutely, if you want.

4 MR. GILL: Thank you, Pete, no, I -- that's fine.

5 THE COURT: If you want you could do that?

6 MR. GILL: Absolutely. Thank you.

7 THE COURT: Okay. I'm not going to -- I'm going to  
8 keep them, I was told I shouldn't keep them more than 4:00 or  
9 something like that because budgets and all that. So I'm  
10 going to let them deliberate, but give your numbers where you  
11 could be reached within 10 minutes or so, and if they come to  
12 a verdict before 4:00, you'll be called.

13 MR. GILL: Okay.

14 THE COURT: If not, then the clerk will call you up,  
15 and say that they -- the jurors are excused until tomorrow  
16 morning, all right?

17 MR. GILL: Okay.

18 MS. JIMENEZ: Thank you.

19 MR. THUNELL: Thanks, Your Honor.

20 (Court recessed at 2:34 p.m.)

21

22

23

24

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-oOo-

ACKNOWLEDGMENT:

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

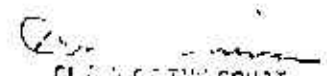
  
KIMBERLY LAWSON  
TRANSCRIBER

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

2012 APR 16 P 4:02

  
CLERK OF THE COURT

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs: )  
 )  
LAMAR ANTIWAN HARRIS, )  
 )  
Defendant. )

CASE NO. C274370  
DEPT NO. V

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR JUDGE

JURY TRIAL - DAY 4

FRIDAY, SEPTEMBER 2, 2011

APPEARANCES:

For the State: SONIA V. JIMENEZ, ESQ.  
Chief Deputy District Attorney  
PETER THUNELL, ESQ.  
Deputy District Attorney

For the Defendant: ADAM L. GILL, ESQ.

RECORDED BY RACHELLE HAMILTON, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

RECEIVED  
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CLERK OF THE COURT

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C-11-274370-1  
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1 LAS VEGAS NEVADA, FRIDAY, SEPTEMBER 2, 2011, 12:19 P.M.

2 P R O C E E D I N G S

3 (In the presence of the jury.)

4 THE MARSHAL: All rise, the jury's coming in.

5 THE COURT: All right. State versus Lamar Harris.

6 The record will reflect the presence of the defendant, his  
7 counsel, the district attorneys, all 12 members of the jury.

8 Good afternoon, ladies and gentlemen. My name is  
9 Charles Thompson. I -- Judge Bonaventure is unavailable this  
10 afternoon, and I've been asked to take any verdict in this  
11 matter and hand any -- handle any other matters that are  
12 involved in the case.

13 I'm -- like Judge Bonaventure, I'm also a Senior  
14 District Court Judge. Mr. Chadwick, the marshal tells me that  
15 you're the foreman; is that right?

16 JURY FOREMAN: That's correct, Your Honor.

17 THE COURT: All right. Ha -- has the jury reached a  
18 verdict?

19 JURY FOREMAN: We have.

20 THE COURT: If you'd hand the verdict form to the  
21 bailiff, please. They call them marshals now, don't they?

22 THE MARSHAL: Yes, sir.

23 THE COURT: All right. The clerk will read the  
24 verdict out loud, and -- and inquire of the jury if that is  
25 their verdict.

1 THE CLERK: District Court, Clark County, Nevada, the  
2 State of Nevada versus Lamar Antwan Harris, Case No. C274370.

3 Verdict: We, the jury in the above entitled case,  
4 find defendant Lamar Antwan Harris as follows:

5 Count 2, Battery with use of a -- I'm sorry, Guilty  
6 of battery with use of a deadly weapon resulting in  
7 substantial bodily harm.

8 Dated on September 2, 2011, by Foreman Scott  
9 Chadwick.

10 THE COURT: All right. Apparently, Count 1, was not  
11 to be ruled on by the jurors, is that --

12 MS. JIMENEZ: No, Judge, that's -- the verdict is  
13 correct as it's -- as it's been read. They had the option of  
14 choosing -- Count 1 and Count 2 were as one count. They could  
15 either choose the attempt murder with use, or the battery with  
16 use with substantial.

17 THE COURT: Okay. So they --

18 MS. JIMENEZ: That's how we had approved it.

19 THE COURT: Apparently there was another verdict form  
20 for Count 1?

21 MS. JIMENEZ: No. This is the correct verdict form.

22 THE COURT: So this is the correct verdict form?

23 MS. JIMENEZ: Yes, because the batter with use --

24 THE COURT: All right.

25 MS. JIMENEZ: -- with deadly -- with substantial is a

1 lesser included --  
2 THE COURT: It's --  
3 MS. JIMENEZ: -- of the attempt murder with use, this  
4 was a --  
5 THE COURT: It's clear that they have selected  
6 battery with use of a deadly weapon resulting in substantial  
7 bodily harm.  
8 MS. JIMENEZ: Correct. They were instructed --  
9 THE COURT: Right.  
10 MS. JIMENEZ: -- as appropriate --  
11 THE COURT: Do --  
12 MS. JIMENEZ: -- for that verdict form.  
13 THE COURT: -- do any of the -- do either of the  
14 parties desire that the jury be polled?  
15 MR. GILL: Yes, Your Honor.  
16 THE COURT: All right. Ladies and gentlemen, as  
17 you'll recall from Judge Bonaventure's instructions, you were  
18 told that in order for you to return a verdict, the verdict  
19 must be unanimous. The clerk is now going to inquire of each  
20 of you in turn, if that is your verdict.  
21 THE CLERK: Marianne O'Brien, is this your verdict,  
22 as read?  
23 JUROR NO. 1: Yes.  
24 THE CLERK: Benjamin Ortiz, is this your verdict, as  
25 read?

UNCERTIFIED ROUGH DRAFT

1 JUROR NO. 2: Yes.  
2 THE COURT: Michael Butremovic, is this your verdict,  
3 as read?  
4 JUROR NO. 3: Yes.  
5 THE CLERK: Melissa Guan, is this your verdict, as  
6 read?  
7 JUROR NO. 4: Yes.  
8 THE CLERK: Jerry Kang, is this your verdict, as  
9 read?  
10 JUROR NO. 5: Yes.  
11 THE CLERK: Ann Hanson, is this your verdict, as  
12 read?  
13 JUROR NO. 6: Yes.  
14 THE CLERK: Mary Arena, is this your verdict, as  
15 read?  
16 JUROR NO. 7: Yes.  
17 THE CLERK: Ryan Dudinski, is this your verdict, as  
18 read?  
19 JUROR NO. 8: Yes.  
20 THE CLERK: Knick Onkaspol, is this your verdict, as  
21 read?  
22 JUROR NO. 9: Yes.  
23 THE CLERK: Scott Chadwick, is this your verdict, as  
24 read?  
25 JUROR NO. 10: Yes.

UNCERTIFIED ROUGH DRAFT

1 THE CLERK: Clint Small, is this your verdict, as  
2 read?

3 JUROR NO. 11: Yes.

4 THE CLERK: And, Linda Bitters, is this your verdict,  
5 as read?

6 JUROR NO. 12: Yes.

7 THE COURT: All right. The clerk will now enter the  
8 verdict in the minutes of the court.

9 Ladies and gentlemen, on behalf of Judge  
10 Bonaventure, staff, counsel, and everybody involved in the  
11 case, I want to thank you very much for being here this week.  
12 I understand the case took about four days to try.

13 You know, this jury system we have wouldn't work, if  
14 it wasn't for good citizens like you willing to give up their  
15 time, and their business, and their other obligations and come  
16 here and decide these cases. So on behalf of Judge  
17 Bonaventure, I want to thank you very much for your service.

18 You are excused and discharged as jurors. You are  
19 also released from Judge Bonaventure's od -- admonition not to  
20 talk about the case. Now, you can talk about it with others,  
21 if you want to. Sometimes the lawyers like to talk to the  
22 jurors and see how they did. They learn from talking to  
23 jurors, and you're free to discuss it with them, if you want  
24 to. You don't have to, if you don't want to.

25 If somebody wants to talk to you about the case, and

UNCERTIFIED ROUGH DRAFT

1 you tell them you don't want to, that's it. You don't have to  
2 talk to them anymore. You do have to go back to the jury  
3 commissioner's office, and get -- are they -- have -- are they  
4 going to get vouchers?

5 THE MARSHAL: Judge, they've already been informed as  
6 to what --

7 THE COURT: They've already been told?

8 THE MARSHAL: -- they need to do. Yes, sir.

9 THE COURT: They know how to do that. They --  
10 they're very efficient here. You've got to go back to the  
11 jury commissioner's office, and -- and get your vouchers  
12 and -- and so that you get paid.

13 Thank you very much, again, for being a -- a juror  
14 in this district. You're excused and discharged, and you can  
15 take them out, at this time. You can leave.

16 (Jury discharged at 12:25 p.m.)

17 THE COURT: The record will reflect that the jury has  
18 exited. The matters are referred to the department of parole  
19 and probation for a presentence investigation and report, set  
20 over for evidentiary judgment, and a position of sentence.

21 THE CLERK: November 7, at 9 a.m.

22 MS. JIMENEZ: And, Judge, I would just request a  
23 couple things. First of all, that the defendant be remanded  
24 without bail. He does have two --

25 THE COURT: He's not in custody?

UNCERTIFIED ROUGH DRAFT

1 MS. JIMENEZ: He is in custody, but he -- I believe  
2 he has bail on this case. I'm asking to remand him without  
3 bail. He is also in custody on thr -- two or -- he has three  
4 other cases pending. I think he's in custody on two of them,  
5 at --

6 THE COURT: Is that right?

7 MS. JIMENEZ: -- least.

8 MR. GILL: Well, Judge, I'd like to limit whatever  
9 the State requests to this case alone.

10 MS. JIMENEZ: That's all I'm asking --

11 THE COURT: I wouldn't remand him on any other case,  
12 but I will remand him on this case without bail.

13 MS. JIMENEZ: And -- thank you, Judge. And then  
14 also, I do have, just for the record, I have some court  
15 exhibits to mark from the trial, just to make a record of  
16 those. I believe, the defense already marked a copy of their  
17 PowerPoint as a court exhibit. I also have a copy of the  
18 State's -- I'm sorry, the defense opening PowerPoint.

19 THE COURT: Yes.

20 MS. JIMENEZ: I have a copy of the State's opening  
21 statement PowerPoint, the State's summation PowerPoint, as  
22 well as a copy of the redacted transcript of Michael Thomas,  
23 which was played before the jury, a copy of the redacted  
24 transcript of Tamara Kasper that was played before the jury,  
25 transcript of some impeachment audio clips of Darnella Lay,

1 that was played before the jury. I also have the copies of  
2 the original transcript of Darnella Lay, also Tammy Kr --  
3 Kasper, and also, Michael Thomas.

4 I know the Supreme Court has asked that we make  
5 transcripts part of the court record because the audios aren't  
6 usually transcribed in the transcript. So I'd just ask to  
7 approach the clerk and have those marked and --

8 THE COURT: Any objection?

9 MR. GILL: No, Your Honor.

10 THE COURT: They'll be received. They'll be marked  
11 and received.

12 MS. JIMENEZ: And if -- maybe at -- at sentencing, if  
13 the defense will bring a copy of their closing PowerPoint to  
14 mark, so we have all the PowerPoints, for the record.

15 MR. GILL: I'm sorry?

16 MS. JIMENEZ: Can you bring a copy of your closing  
17 PowerPoint to mark --

18 MR. GILL: Of course.

19 MS. JIMENEZ: -- as a court exhibit, too, at some  
20 point?

21 MR. GILL: Of course.

22 MS. JIMENEZ: Thank you.

23 THE COURT: Anything further on the record?

24 MS. JIMENEZ: No, Judge.

25 MR. GILL: No, Your Honor, thank you.

UNCERTIFIED ROUGH DRAFT

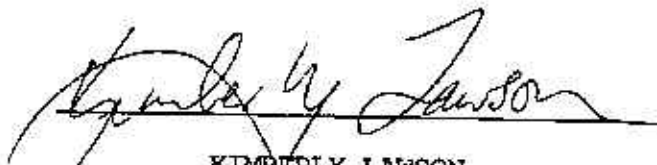
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THE COURT: We'll be in recess.  
(Court adjourned at 12:27 p.m.)

-oOo-

ACKNOWLEDGMENT:

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

  
KIMBERLY LAWSON  
TRANSCRIBER

1 COSCC

4  
FILED

JUL 05 2012

*John L. Smith*  
CLERK OF COURT

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 \*\*\*\*\*

8 STATE OF NEVADA

CASE NO.: C-11-274370-1

9 VS

DEPARTMENT 5

10 LAMAR HARRIS

11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
14 statistically close this case for the following reason:

15 DISPOSITIONS:

- 16 ☐ Nolle Prosequi (before trial)  
17 ☐ Dismissed (after diversion)  
18 ☐ Dismissed (before trial)  
19 ☐ Guilty Plea with Sentence (before trial)  
20 ☐ Transferred (before/during trial)  
21 ☐ Bench (Non-Jury) Trial  
22 ☐ Dismissed (during trial)  
23 ☐ Acquittal  
24 ☐ Guilty Plea with Sentence (during trial)  
25 ☐ Conviction  
26 ☐ Jury Trial  
27 ☐ Dismissed (during trial)  
28 ☐ Acquittal  
29 ☐ Guilty Plea with Sentence (during trial)  
30 ☒ Conviction  
31 ☐ Other Manner of Disposition

C-11-274370-1  
COSCC  
Criminal Order to Statistically Close Case  
1804308



DATED this 3rd day of July, 2012.

*Carolyn Ellsworth*  
CAROLYN ELLSWORTH  
DISTRICT COURT JUDGE

RECEIVED

JUL -5 2012

CLERK OF THE COURT

000715

C-11-274370-1

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAR ANTWAN HARRIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 59817  
District Court Case No. C274370

FILED

JAN 15 2013

*Tracie Lindeman*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 13th day of December, 2012.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 09, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll  
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAR ANTWAN HARRIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59817

**FILED**

DEC 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge. Appellant Lamar Antwan Harris raises two issues on appeal.

First, Harris contends that insufficient evidence was adduced to support the jury's verdict. Specifically, Harris cites to Heglemeier v. State, 111 Nev. 1244, 903 P.2d 799 (1995), and Austin v. State, 87 Nev. 578, 491 P.2d 724 (1971), for his claim that his conviction should be reversed because "there is no corroboration between the evidence of stab wounds on [the victim's] face and chest and use of a deadly weapon" by Harris. But Harris has misinterpreted Heglemeier and Austin because those cases require corroboration only for cases involving accomplice testimony. The State presented no accomplice testimony. Instead, the State presented several witnesses who saw Harris stab the victim. It is for the jury to determine the weight and credibility to give testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20

(1981). Therefore, we conclude that, when viewed in the light most favorable to the State, the evidence is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008); see also NRS 200.481(1)(a), (2)(e) (defining the elements and penalties for battery with a deadly weapon).

Second, Harris contends that his defense counsel was ineffective for failing to challenge a veniremember for cause or use a peremptory challenge to excuse him. This court has repeatedly stated that, generally, claims of ineffective assistance of counsel will not be considered on direct appeal. See Johnson v State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001). Harris has failed to provide this court with any reason to depart from this policy in his case. See id.; see also Archanian v. State, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). Thus, we decline to address this claim.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Saitta, J.  
Saitta

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Carolyn Ellsworth, District Judge  
Leslie A. Park  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



000718

**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: 4-20-2013

Supreme Court Clerk State of Nevada

By: [Signature] Deputy



000719

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LAMAR ANTWAN HARRIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 59817**  
District Court Case No. C274370

**REMITTITUR**

TO: Steven Grierson, District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order,  
Receipt for Remittitur.

DATE: January 09, 2013

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll  
Deputy Clerk

cc (without enclosures):

Hon. Carolyn Ellsworth, District Judge  
Leslie A. Park  
Clark County District Attorney  
Attorney General/Carson City

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JAN 15 2013

HEATHER UNGERMANN

Deputy District Court Clerk

Original

Electronically Filed  
01/30/2015 11:22:49 AM

*Allen L. Johnson*

CLERK OF THE COURT

Lamar Harris #71088

Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

IN THE Eighth JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

State of Nevada

Plaintiff,

vs.

Lamar Harris

Defendant,

Case No. C274370

Dept. No. 5

Docket

**MOTION TO WITHDRAW COUNSEL**

Date of Hearing: 2/23/15

Time of Hearing: 9:00am

"ORAL ARGUMENT REQUESTED, Yes      No XX"

COMES NOW, Defendant, Lamar Harris, proceeding in proper

person, moves this Honorable Court for an ORDER Granting him permission to withdraw his  
present counsel of record in the proceeding action, namely,

Heslie A. Park

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
Affidavit of Defendant.

DATED: this 20<sup>th</sup> day of Jan, 2015.

BY: *[Signature]*  
Lamar Harris #71088  
Defendant/In Propria Personam

000721

MC  
DA  
PP  
AOR: - Leslie A. Park  
Eg

CLERK OF THE COURT

JAN 28 2015

RECEIVED  
28

## POINTS AND AUTHORITIES

The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

"An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property which belong to or were prepared for that client."

As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s) of record, were appointed by the Court to represent the defendant, who was an indigent, in Case

Number 1274370, in Department No. 5.

N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and deliver to the defendant in his/her possession, which states:

"A client who, after demand therefore and payment of the fee due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers, Documents, pleadings and other property."

In numerous cases throughout this great land, the courts have held attorneys to a high degree of professional responsibility and integrity. This carried from the time of hiring to and through the attorney's termination of employment.

Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a prompt accounting of all his client's property in his possession." This is echoed in Canon 2 of the Code of Professional Responsibility of the American Bar Association, which states in pertinent part EC 2-32: "A lawyer should protect the welfare of his client by . . . delivering to the client all papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with applicable laws on the subject.

In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460, 24 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and  
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him  
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The  
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

10  
11 DATED: this 20<sup>th</sup> day of Jan, 2015.

12  
13 BY:

14 Lamar Harris #11088  
15 Defendant/In Propria Personam  
16  
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**CERTIFICATE OF SERVICE BY MAILING**

I, Lamar Harris, hereby certify, pursuant to NRCP 5(b), that on this 20<sup>th</sup>  
day of Jan, 2015, I mailed a true and correct copy of the foregoing, "

Reconsideration"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Steve Wolfson  
200 Lewis Ave  
Las Vegas, NV  
89155

CC:FILE

DATED: this 20<sup>th</sup> day of Jan, 2015.

Lamar Harris  
/s/ Lamar Harris # 71088  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

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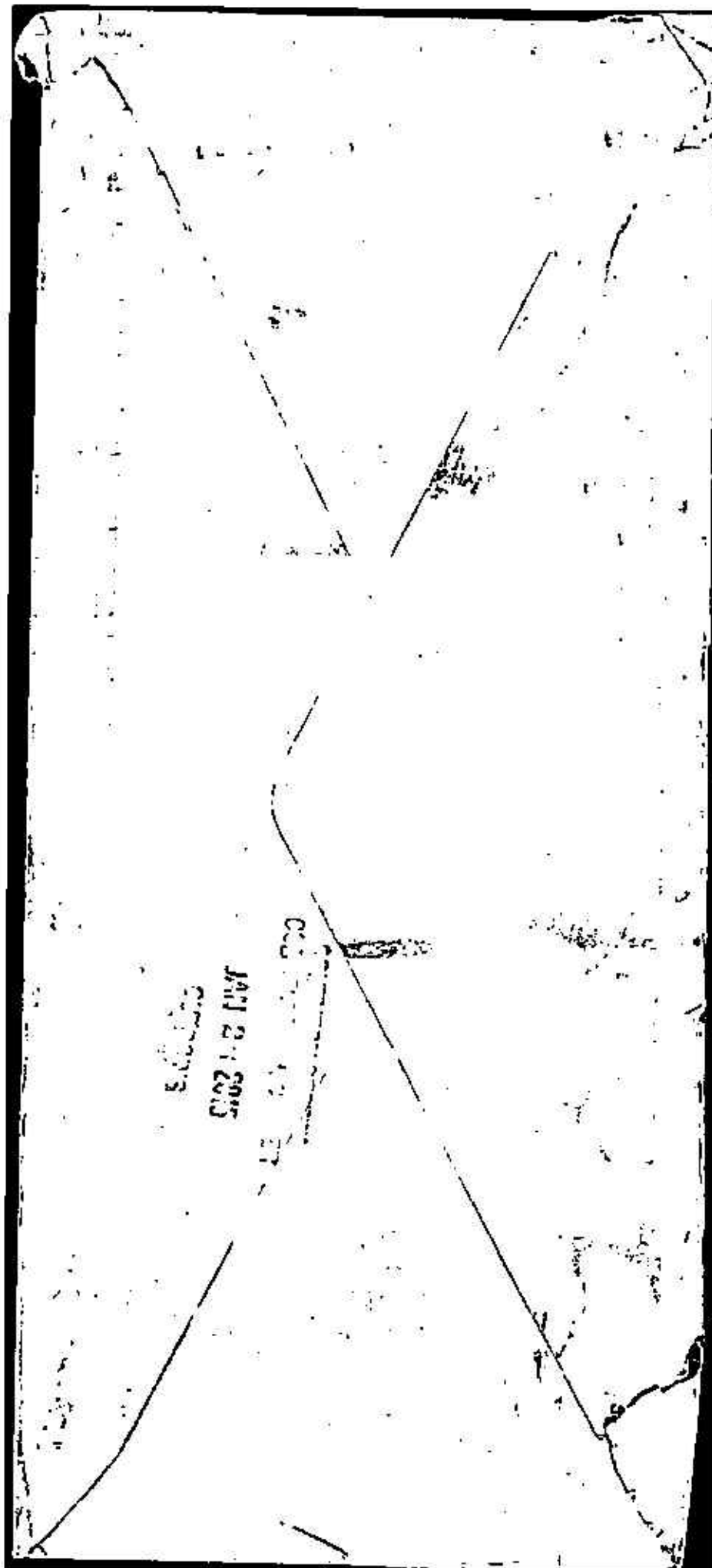
Lamar Harris #71088  
P.O. Box 208  
Indian Springs, Nv. 89070



Regional Justice Center  
Clerk of Court  
200 Lewis Avenue  
Las Vegas, Nv. 89155

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JAN 24 2015  
5:00 PM

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Lamar Harris #71088

Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

FILED

MAR 11 2015

*John J. Williams*  
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

Lamar Harris

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. C274370

Dept. No. 12

Docket \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

**INSTRUCTIONS:**

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

CLERK OF THE COURT

MAR 11 2015

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PWHC  
Petition for Writ of Habeas Corpus  
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1 Failure to raise all grounds of this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

### 15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you  
17 are presently restrained of your liberty: S.D.C.C.

18 2. Name the location of court which entered the judgment of conviction under attack: \_\_\_\_\_

19 8th Judicial Dist. Court

20 3. Date of judgment of conviction: December 2, 2011

21 4. Case number: C274370

22 5. (a) Length of sentence: 70 to 175 months

23 (b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
25 this motion:

26 Yes \_\_\_\_\_ No ☒ If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

27 7. Nature of offense involved in conviction being challenged: \_\_\_\_\_

28 Battery W/D/W Causing Substantial  
Bodily Harm

1 8. What was your plea? (Check one)

2 (a) Not guilty ☒

3 (b) Guilty \_\_\_\_\_

4 (c) Nolo contendere \_\_\_\_\_

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea  
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: \_\_\_\_\_  
7 N/A

8  
9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury ☒

11 (b) Judge without a jury \_\_\_\_\_

12 11. Did you testify at trial? Yes \_\_\_\_\_ No ☒

13 12. Did you appeal from the judgment of conviction?

14 Yes ☒ No \_\_\_\_\_

15 13. If you did appeal, answer the following:

16 (a) Name of court: New Sup. Court

17 (b) Case number or citation: 59817

18 (c) Result: Order of Affirmance

19 (d) Date of appeal: 12/13/2012 (Remittitur issued 1-9-13)

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: N/A

22 \_\_\_\_\_

23 \_\_\_\_\_

24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously  
25 filed any petitions, applications or motions with respect to this judgment in any court, state or  
26 federal? Yes \_\_\_\_\_ No \_\_\_\_\_

27

28

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: N/A

3 (2) Nature of proceedings: \_\_\_\_\_

4 \_\_\_\_\_  
5 (3) Grounds raised: \_\_\_\_\_

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes \_\_\_\_ No \_\_\_\_

10 (5) Result: \_\_\_\_\_

11 (6) Date of result: \_\_\_\_\_

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each  
13 result: \_\_\_\_\_

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: \_\_\_\_\_

16 (2) Nature of proceeding: \_\_\_\_\_

17 (3) Grounds raised: \_\_\_\_\_

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes \_\_\_\_ No \_\_\_\_

20 (5) Result: \_\_\_\_\_

21 (6) Date of result: \_\_\_\_\_

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each  
23 result: \_\_\_\_\_

24 (c) As to any third or subsequent additional application or motions, give the same  
25 information as above, list them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes \_\_\_ No \_\_\_

5 Citation or date of decision: 2/14

6 (2) Second petition, application or motion?

7 Yes \_\_\_ No \_\_\_

8 Citation or date of decision: \_\_\_\_\_

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: \_\_\_\_\_  
19 \_\_\_\_\_

20 (b) The proceedings in which these grounds were raised: \_\_\_\_\_  
21 \_\_\_\_\_

22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

1 18. If any of the grounds listed in Nos. 13(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). N/A

7  
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length). ~~Not~~ This petition

13 is untimely. See Memorandum of Points  
14 And Authorities

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes ☐ No ☐

18 If "Yes", state what court and the case number: N/A

19  
20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Trial Bret Whipple

22 Direct Appeal - Leslie Pank

23  
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes ☐ No ☐ If "Yes", specify where and when it is to be served, if you know:

27 N/A

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: See Memorandum To  
4 Support of Writ of Habeas Corpus  
5 Post-Conviction

6  
7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):  
8  
9  
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1 WHEREFORE, Petitioner, prays that the court grant Harris  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at S.D.C.C.  
4 on the 4<sup>th</sup> day of Nov, 2015.

5  
6 [Signature]  
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208, 165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

13  
14 [Signature]  
15 Signature of Petitioner

16  
17 Pro Se  
18 Attorney for Petitioner

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
TR

CERTIFICATE OF SERVICE BY MAILING

1. Lamar Harris, hereby certify, pursuant to NRCP 5(b), that on this 4<sup>th</sup>  
day of March, 2015, I mailed a true and correct copy of the foregoing, "

Habeas Corpus

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Steve Wolfson  
200 Lewis Ave  
LV, NV. 89155

CC: FILE

DATED: this 4<sup>th</sup> day of March, 2015.

Lamar Harris  
Lamar Harris #71088  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Habeas Corpus  
(Title of Document)

filed in District Court Case number C274370

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Lamar Harris  
Signature

3-4-2015  
Date

Lamar Harris  
Print Name

Pro Se  
Title

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FILED

MAR 11 2015

Office of the  
CLERK OF COURT

Lamar Harris #71088  
P.O. Box 209  
Tardieu Springs, NV  
89470

IN THE Eighth DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Lamar Harris  
Petitioner,

CASE NUMBER: C274370

vs.  
State of Nevada  
Warden; State of Nevada,  
Respondents.

EX PARTE MOTION FOR  
APPOINTMENT OF COUNSEL AND  
REQUEST FOR EVIDENTIARY  
HEARING

COMES NOW, Harris the Petitioner, in proper person, and moves this Court  
for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This  
motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1):

A petition may allege that the petitioner is unable to pay the costs of the  
proceedings or to employ counsel. If the court is satisfied that the  
allegation of indigency is true and the petitioner is not dismissed  
summarily, the court may appoint counsel to represent the petitioner. In  
making its determination, the court may consider, among other things, the  
severity of the consequences facing the petitioner and whether:

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings, or



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Ex Parte Motion  
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MAR 11 2015

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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at S.D.C.C., is indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Dated this 4<sup>th</sup> day of March, 2015.

Sam Huns  
In Proper Person

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on 4<sup>th</sup> March, 2015, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office  
Address:

200 Lewis Ave.  
Lv. NV. 89155

Warden  
Address:

Lamar Harris  
Petitioner

Lamar Harris

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District Court  
Clark County, Nevada

FILED

MAR 11 2015

Lamar Harris,  
Petitioner,

*John L. Williams*  
CLERK OF COURT

Case No. C274370

vs.

Dept. No. 12


State Of Nevada,  
Respondent /

Memorandum Of Points And Authorities  
In Support Of  
Writ Of Habeas Corpus / Post-Conviction

Comes Now, Lamar Harris, Petitioner,  
in proper person pursuant to *Haines v.*  
*Kerner*, U.S. 92 S.Ct 594, 596 (1972),  
wherein, (Pro Se pleadings are to be held  
to a less stringent standard than plead-  
ings drafted by attorneys) and respect-  
fully submits the instant Memorandum  
of Points and Authorities to assist  
this Court in reaching a fair and  
just decision on the constitutional  
claims herein.

/////  
/////

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C-11-274370-1  
MPA  
Memorandum of Points and Authorities  
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# Points And Authorities

## Procedural History

On or about June 24, 2011, Petitioner was bound over from the Las Vegas Justice Court to the District Court on charges of: Attempt Murder with a Deadly Weapon and Battery With a Deadly Weapon Causing Substantial Bodily Harm.

A jury trial commenced August 30, 2011 and concluded September 2, 2011. On September 2, 2011, the jury returned a verdict of guilty of Battery With Use of a Deadly Weapon Causing Substantial Bodily Harm. The jury did not find that there was enough evidence to convict Petitioner of Attempt Murder with a Deadly Weapon.

Petitioner, on November 21, 2011 was sentenced to a term of 70 months to 175 months in the NDOC. The Judgment of Conviction was filed December 2, 2011. A timely Notice of Appeal was filed December 8, 2011.

On December 13, 2012, the Nevada Supreme Court issued the Order of Affirmance and on January 22, 2013, the Nevada Supreme Court issued its Remittitur.

### Statement Of Facts

The alleged victim, Michael Thomas was arrested and detained on a material witness warrant due to the fact that it was believed he was avoiding his service to testify. Mr. Thomas testified under oath that he wasn't sure if he was stabbed.

When Mr. Thomas was asked how he was injured his reply was "from my understanding, I slipped and fell on some glass. I don't know."

Mr. Thomas was asked if he knew who stabbed him, his reply was "I still don't know. It could have been anybody, because there was a large crowd of people and that he was drunk." Mr. Thomas admitted to having eighteen drinks.

There were four other eyewitnesses that testified, Jocelyn Boston, Tammy Kasper, Stacey Monroe and Darnella Lay.

The first to testify was Tammy Kasper. Her testimony was that she was inside when the fight outside occurred and that she did not see it. Ms. Kasper also stated that she was drunk that night.

The second eyewitness to testify was Darnella Lay. Darnella testified that she had an altercation with the Petitioner Harris while trying to get to her purse inside the bar and that she pushed him with her body and he pushed her back and she fell over a barstool. Darnella then testified that she swung at the Petitioner Harris and hits him in the face and was subsequently escorted out by security. Darnella states she went back inside to get her purse, a female threw a glass at her, whom she believes to be the Petitioner Harris' girlfriend.

Darnella then tells the female that threw the glass to meet her outside. Darnella states that she blacked out when the events that occurred outside started. When asked who she was fighting with, she states that she was not sure. Darnella never saw a weapon.

The next eyewitness to testify was Jocelyn Boston. Her testimony was that the Petitioner Harris looked as if he were being jumped inside the bar, and that she left and did not see anything that occurred outside the bar.

The final eyewitness was Stacey Monroe. He testified that he did not see the altercation outside the bar, but that he went out after and saw the Victim, Michael Thomas, bleeding. Mr. Monroe also upon being asked about speaking with police stated "You mean the gang unit dude." An objection was made by counsel and a bench conference followed wherein the Prosecutor stated "I told him not to mention

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it two different times, and I was just going to move on, and not bring attention to it."

The jury found Petitioner Harris guilty of Battery With Use of a Deadly Weapon Causing Substantial Bodily Harm although there was no knife recovered and there was no evidence admitted as to blood recovered from Petitioner Harris' person or clothing.

Detective Fletcher was called to the stand to testify. He was asked by the prosecution if he had investigated other crimes in that area or at the Seven Seas Bar specifically, he replied "yes". He was further asked how he would characterize cooperation with the police. Detective Fletcher stated that it was discouraged.

An objection was made by defense counsel that ~~it~~ the line of questioning was going beyond what the case is about. The prosecution responded that ~~that~~ given the way the witnesses had testified it was relevant. The objection was overruled.

///

On August 2, 2011, the jury read the verdict of Guilty on one count of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

### Legal Argument

The Instant Writ Of Habeas Corpus Should Not Be Time Barred By NRS 34.726, As Petitioner Can Demonstrate Good Cause And Prejudice To Excuse The Procedural Default

NRS 34.726(1), provides for a petition for writ of habeas corpus/post-conviction to be filed within 1 year after entry of judgment of conviction or within 1 year after the Supreme Court issues its remittitur after appeal. For this subsection, good cause for delay exists if:

(a) the delay is not the fault of the petitioner and;

(b) dismissal of the petition as untimely will unduly prejudice the petitioner.

Generally, "good cause" means a "substantial reason, one that affords a legal excuse." Colley v. State, 773 P.2d 1229 (Nev. 1989).

In order to show cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rule. Loveland v. Hatcher 231 F.3d 640 (9<sup>th</sup> Cir. 2000); Hathaway v. State, 71 P.3d 503 (Nev. 2003).

Cause for a procedural default is due to an "objective factor" that is "external to the petitioner and that 'cannot fairly be attributed to him.'" Coleman v. Thompson, 501 U.S. 722, 731-32 (1991). An impediment external to the defense may be demonstrated by showing "that the factual or legal basis for a claim, or that some interference by officials made compliance impracticable." Murray v. Carrier, 477 U.S. 478, 488 (1986); Pellegrini v. State, 34 P.3d 519, 537 (Nev. 2001).

The court may excuse the failure to show cause where the prejudice from failure to consider the claim

amounts to a "fundamental miscarriage of justice." Mazzari v. Warden, 921 P.2d 920, 922 (Nev. 1996).

Here, Petitioner can demonstrate good cause for the procedural default by showing: (1) That he reasonably believed his attorney had filed his petition for writ of habeas corpus / post-conviction and when he discovered no petition had been filed, he filed the instant petition within a reasonable time, and (2) Petitioner would suffer extreme prejudice and the failure to consider the claim would amount to a "fundamental miscarriage of justice." State v. Bennett, 81 P.3d 1 (Nev. 2003).

## I. Good Cause

In Hathaway v. State, 71 P.3d 503 (Nev. 2003), the court addressed good cause to excuse the delay in filing an untimely post-conviction petition because he requested of his attorney to file an appeal, he believed his

attorney had filed an appeal, and when he learned his retained attorney had not filed the petition, he filed habeas corpus/post-conviction petition within a reasonable time.

Although Hathaway was not predicated upon the filing of a post-conviction petition, the same principle theory applies.

Here, after Petitioner was convicted, he retained attorney Leslie A. Park, Esq. to represent him in the direct appeal proceedings. Upon conclusion of direct appeal, Petitioner retained Ms. Park to prepare and file his petition for writ of habeas corpus/post-conviction.

As the direct appeal was denied on December 13, 2012 and the remittitur was issued January 22, 2013, attorney Park, on June 6, 2013, submitted a Petition For Writ Of Habeas Corpus to the Nevada Supreme Court claiming ineffective assistance of counsel. (Exhibit B)

In December of 2013, Petitioner made contact with Ms. Park and advised her of the fact that the petition for

1 kind of power, and that kind of injury that could cause that.

2 MR. GILL: And, Judge, there's been no evidence  
3 presented that these wounds threatened his life. There's been  
4 no medical testimony. No evidence that he -- he could have  
5 died, as a result of these wounds.

6 MR. THUNELL: I can rephrase it, Your Honor.

7 THE COURT: Fine.

8 MR. THUNELL: That's fine.

9 Dangerous wounds. And, ladies and gentlemen,  
10 listen, you're the jury, you'll get to decide. In fact,  
11 that -- that brings us to the next part. Well, the -- we'll  
12 get to the next part in a minute.

13 Talking about the deadly weapon, the State is not  
14 required to have recovered the deadly weapon, used in an  
15 alleged crime, or produce the deadly weapon in court, at  
16 trial, to establish that the deadly weapon was used in the  
17 commission of a crime.

18 We don't have the knife here today. If we did we  
19 would have -- we would have showed it to you. So what  
20 happened to the knife?

21 (Audio played.)

22 MR. THUNELL: The defendant held onto the knife. So  
23 obviously, and as the law says, the State doesn't have to show  
24 you the knife to prove that there was a deadly weapon. We've  
25 seen the injuries. We've heard the te -- we've heard the

1 taped statements of the people from before. There was  
2 obviously, a deadly weapon, a knife, involved in this one.

3 Now, the next part is — so we talked about battery  
4 with a deadly weapon, and then, with substantial bodily harm.  
5 And substantial bodily harm, it kind of breaks down so — the  
6 piece by piece.

7 So substantial bodily harm means, bodily injury,  
8 which creates a substantial risk of death, or which causes  
9 serious permanent disfigurement, or protracted loss, or  
10 impairment of the function of any bodily member or organ, or  
11 prolonged physical pain. So that's substantial bodily harm.

12 And what do we have in this? We have a large gaping  
13 wound. We saw the -- the bloody T-shirt, the blood that he  
14 lost from there. The slash to the face, he cut him there, and  
15 you'll have these pictures, so you can look at these to judge  
16 for yourself, to look at this. Plus, we also have the  
17 statement that was written out by the defen -- by the victim  
18 here.

19 And what did he say in his statement — his written  
20 statement? He said, I received two stab wounds. One to the  
21 left side of my jaw, that cracked my jaw, and knocked out two  
22 of my teeth. The other was to the right side, right pec,  
23 upper chest area.

24 Prolonged pain. They — we even talked about — and  
25 the defense talked to him about meds that they had to give

1 him. They gave him meds for that pain. Substantial bodily  
2 harm. This is substantial, what happened to him. The  
3 injuries to the face. Two teeth got knocked out. To the  
4 chest.

5 So when you go back there — and you'll have  
6 everything, you'll also have a verdict — a verdict sheet.  
7 And you'll see that there's the two counts, count one, count  
8 two. Attempt murder with use of a deadly weapon. And count  
9 two, battery with the use of a deadly weapon, resulting in  
10 substantial bodily harm.

11 As I've kind of talked about, there's different  
12 pieces and parts to this. You're going to have -- you can  
13 check one of the following: Guilty of attempt murder with  
14 dead -- use of a deadly weapon. The State has shown, and has  
15 provided ed — provided evidence beyond a reasonable doubt,  
16 that attempt murder with a deadly weapon has happened here.  
17 This wasn't just a -- a -- a slash or a cut like this. He  
18 came in, he stabbed him, in the chest, slashed in the face.  
19 Showed the malice. Attempt murder with a deadly weapon.

20 Now, you as the jury can also come back with guilty  
21 of attempt murder, if you don't believe a knife was used, or  
22 don't believe that the knife was a deadly weapon.

23 There also is what we call the lesser included.  
24 Guilty of battery with use of a deadly weapon, resulting in  
25 substantial bodily harm. And when we talk about that,

1 basically, it's the same -- it's the same incident, the same  
2 thing that happened, but without that intent to kill, without  
3 that malice to kill. So it's still the battery with a deadly  
4 weapon, with a substantial bodily harm. So the same thing,  
5 but this is if you find that it's without the malice to kill.  
6 It's a lesser included.

7           You can also come -- you can also look at battery  
8 with use of a deadly weapon, if you don't believe that his  
9 injuries were substantial bodily harm. There's also, battery  
10 resulting in substantial bodily harm, if you don't believe  
11 that there was a deadly weapon involved. And then, finally --  
12 or -- also guilty of battery, and then, not guilty.

13           So those, on your verdict sheet -- it's kind of  
14 broken down into -- each one is broken down to the different  
15 pieces. The State has shown, beyond a reasonable doubt,  
16 through the evidence, attempt murder with use of a deadly  
17 weapon. And at the very least, battery with deadly weapon,  
18 with substantial bodily harm. These have been shown through  
19 the evidence.

20           So that's what we've talked about. We talked about  
21 a crime was committed, right? And the second part is, it was  
22 the defendant that committed the crime. Because you have to  
23 know who did it.

24           Now, before we kind of get into that, I just want to  
25 touch on one point because when we had the -- Tammy, Darnella,

1 we had the -- the victim, up here. You noticed some  
2 resistance on some different things. The victim, himself,  
3 didn't want to say much of anything, right?

4 Well, you as the jury, aren't -- we don't bring in  
5 juries because you're robots, or because you're computers.  
6 You're people with life experience, and we ask you to weigh  
7 out, and use your common sense, as to what the situation is.  
8 Your common sense, as to what the testimony received, and what  
9 was the prior words of the vic -- of the people testifying  
10 was, as well.

11 And when you think about the people up here on the  
12 stand who were talking, I want you to think about, what was  
13 their relationship to the parties? Fears. What did we hear  
14 Darnella say? She got threatening phone calls. Fears. We  
15 heard testimony from the detective. A lot of people don't  
16 want to be labeled as a snitch.

17 Motives, opp, and those kind of things. Why -- once  
18 again, only you can determine this, why would they now not  
19 want to be saying what they had said right after the incident?  
20 That's for the jury to determine. But the evidence has shown,  
21 fear, is -- those are the things that are making them afraid,  
22 ends up changing it.

23 And what do we have? We also want you to think  
24 about the opportunity to have observed this matter. Where was  
25 Darnella when all this happened? She was right there. We,

1 through the testimony, and also through some of the clips,  
2 heard her talking about, Shyce had the knife. What Shyce did.  
3 We heard those things, and that's through the testimony.

4 Did she have an opportunity? Yes. Tammy had the  
5 opportunity. We heard the — her whole statement, the details  
6 that she gave. All the different points that she had in that.  
7 Who else? The victim, right? The victim has a pretty good  
8 opportunity to see this. And what did he tell on his taped  
9 statement, that day — later on that day? He talked about  
10 being stabbed, by that same guy from inside who -- with the  
11 hat, who had had that whole pro -- problem inside. The  
12 defendant. So we had all that.

13 We have all those. They had opportunity to  
14 reasonably observe what happened, and their statements right  
15 after what happened coincide what we saw -- all saw on this,  
16 on the videos, on the stills, and in the pictures.

17 Now, the last one I talke -- touched on, but I  
18 didn't go too far into it, they talk about, just bring in your  
19 everyday common sense and judgments. You're reasonable  
20 people, that's why you're sitting here on the jury. At least,  
21 we hope you are. Bring your everyday common sense when you  
22 weigh out this.

23 So what do we hear in the taped interviews, with  
24 Tammy, in the clips with Darnella? What did we hear in the  
25 taped interview with the victim? Details. That's what we

1 heard, right? We heard details. It wasn't kind of vague  
2 assumptions, oh, yeah, this kind of happened, where details,  
3 point by point what happened.

4           You'll notice, what I did with the defendant's  
5 [sic] -- with his statement, as he was -- we were playing  
6 that, we could just walk through his statement with stills  
7 from the video. It matched up, didn't it?

8           MR. GILL: Your Honor, the defendant's statement?

9           THE COURT: Yeah, you mentioned, defendant's  
10 statement. You probably meant --

11          MR. THUNELL: Did I say, defendant?

12          THE COURT: -- the -- the victim.

13          MR. THUNELL: My apologize -- I apologize. The  
14 victim's statement. That's -- my apology.

15               The victim's statement. We heard it in the  
16 beginning. The victim's statement, as you heard it, point by  
17 point, we walked through it with the stills from the video.  
18 Details. It was assured. You heard it in the video. It was  
19 forthcoming, it was consistent. Consistent with each other.  
20 No big -- big changes from each different one.

21               Now, when they were on the stand, what did we hear?  
22 We heard a lot of evasive things, right? All of a sudden,  
23 backpedaling. I can't remember. I was drunk. We heard Tammy  
24 talk about how drunk she was. But you can hear that statement  
25 yourself. Listen to the details, listen to the voice, and ask

1 yourself if you think she was drunk. The officer sure didn't.  
2 He didn't think she was drunk, at all. They're not giving you  
3 any details into something else that happened there.

4 And Darnella also talked about, as we've talked  
5 about, the threats. The things that made her nervous.

6 Now, with the taped interviews, Tammy, she was  
7 separated -- the officer talked about she was separated from  
8 the other people so that she's not there swapping stories or  
9 anything, separated wide -- right away, give -- the statement  
10 was given less than two hours after the incident, and the  
11 officer said, she sure didn't seem intoxicated.

12 Michael Thomas, the victim, it was later the same  
13 day at the hospital. That very same day. And you guys have  
14 heard that statement, too, assured with details. Darnella Lay  
15 was just one week later. All when it would be fresh on their  
16 mind. All when they would still remember these kinds of  
17 things and what had happened.

18 One of my favorite parts of this trial is yesterday.  
19 I don't know if you guys remember it, but I wrote it down, I  
20 scribbled it down, because I thought it was so -- it was so  
21 great. When Michael was up on the stand, he didn't want to  
22 talk about this. He was stonewalling. After we listened to  
23 his statement, he was being asked questions, and he finally  
24 just said -- and I wrote it down word for word, I wanted to  
25 make sure I didn't miss it.

1           Whatever was on that tape, that's what it was. He  
2 couldn't deny it anymore. I mean, he could sit there and not  
3 want to talk about it, but he knew what the statement was.  
4 Whatever was on that tape, that's what it was. And that's  
5 what it was. We already heard it from him.

6           Now, the defendant. Everybody describing the  
7 defendant in this. We have descriptions. Let's hear  
8 Michael's description.

9                           (Audio played.)

10          MR. THUNELL: Okay. So a little bit of a long play,  
11 but there we go. He talks about the defendant, and he doesn't  
12 say the defendant specifically, but he talks about the guy  
13 who's inside. He talks about the fight. Everything that's  
14 going on, the hitting, and all that. Then he describes what  
15 he's wearing, that black hat, all of those things. And then,  
16 the big key question, obviously, and I wrote it up there. Is  
17 that the same guy that stabbed you? Yes. So even though the  
18 victim didn't want to come up there and point him out, he  
19 talks about the guy from inside as the guy who stabbed him,  
20 and he describes him to the T.

21          Darnella, also talks about how she would recognize  
22 him.

23                           (Audio played.)

24          MR. THUNELL: All right. Darnella, what does she  
25 say? She said she would recognize him, Shyce. And she does

1 because what does the officer do, good police officers? They  
2 go through, she was there, she would see it, and also, we're  
3 going to come to it, did the six pack, where she picked him  
4 out.

5 Now, granted, on the stand, and I won't belabor the  
6 point, she didn't want to, all of a sudden. But I'll leave  
7 that to your own reasonable people to weigh the situation  
8 there.

9 One last thing, Tammy.

10 (Audio played.)

11 MR. THUNELL: Tammy knew him for three years, so  
12 that's a really long time. So Tammy knew him three years.  
13 Darnella, she could recognize him, and she said -- and, what  
14 we have here -- and also Joycelyn Boston, she saw Shyce at the  
15 Seven Seas that night, she told us. She saw him in the middle  
16 of the altercation inside the Seven Seas.

17 So no evidence that it's anybody but Shyce who:

18 Is at the Seven Seas.

19 Is involved in the altercation with Darnella.

20 Is there with Tia.

21 Leaves with Tia.

22 And involved in the fight, outside with Darnella.

23 MR. GILL: Judge, can we approach?

24 (Bench conference transcribed as follows.)

25 MR. GILL: I don't have to come up with any evidence.

1 And this slide -- this slide says no evidence was shown. I  
2 don't have to put on any evidence.

3 MR. THUNELL: That's right.

4 THE COURT: Okay.

5 MS. JIMENEZ: It's not talking about the defense  
6 evidence, at all. It's talking about the evidence --

7 MR. THUNELL: It's not talking about the --

8 MS. JIMENEZ: -- that was presented.

9 MR. THUNELL: -- it's just saying with all the  
10 evidence that was shown [indiscernible].

11 MR. GILL: I have no burden in this case.

12 THE COURT: Well, we understand that.

13 MS. JIMENEZ: Nobody's saying that you do.

14 THE COURT: Are you saying that that says you have a  
15 burden?

16 MR. GILL: No evidence was presented. That implies  
17 that I've got to show some evidence that he -- that someone  
18 else --

19 MS. JIMENEZ: We're talking about our own evidence.

20 THE COURT: Well, you can't say, presented no  
21 evidence, that it is legally -- but it's shy.

22 MR. GILL: I'd -- I'd like a limine instruction, and  
23 I know we're beyond instructions and all that, but --

24 MS. JIMENEZ: Judge, that's --

25 THE COURT: Well, it's -- it could be a little --

1 well, I'll look at it.

2 MS. JIMENEZ: Why don't you just rephrase it, none of  
3 the evidence the State presented indicates.

4 THE COURT: All right.

5 MR. THUNELL: Okay. I'll rephrase it.

6 (End of bench conference.)

7 THE COURT: The --

8 MR. THUNELL: I could --

9 THE COURT: Well, yes, just --

10 MR. THUNELL: None of the evidence that the State  
11 gave to you.

12 THE COURT: Well, we all know that the defendant has  
13 no burden of proof in this case, and it's up -- completely up  
14 to the State to prove the defendant guilty upon -- beyond a  
15 rea -- reasonable doubt. And you're talking about, with this  
16 little thing here, what are you talking about?

17 MR. THUNELL: I'm talking about the evidence the  
18 State, from all the evidence, all the testimony, all of the  
19 things that were played, that that shows that it was Shyce who  
20 was at the Seven Seas, involved in the altercation, there with  
21 Tia, leaves with Tia, and involved in the fight outside with  
22 Darnella.

23 THE COURT: All right.

24 MR. GILL: Thank you, Your Honor.

25 MR. THUNELL: Now, I'm going to talk about, just

1 quickly, you've already seen this. When Darnella said she  
2 would recognize him. We have the six pack of the photo  
3 lineup. She recognized him, and I just got to point out one  
4 more time. Identify that No. 3 is a picture of Shyce. He is  
5 the one that was holding -- let's see -- holding, point the  
6 knife parallel to the ground at me. I am 100 percent sure  
7 that this picture identifies Shyce. 100 percent.

8 Tammy Kasper. She also circles the defendant. She  
9 says, I am 100 percent sure that the third photo that I  
10 circled is Antwan Shyce. I was present, and seen Shyce stab  
11 Mike in the lime green shirt. I am 100 percent positive.  
12 They're 100 percent positive. They know who this is. They  
13 recognize him.

14 Even more. Tamara Kasper, she says in her written  
15 statement to the police, I seen Shyce stab the guy in the  
16 green shirt. So there we have it. Identification. Right  
17 after that there's 100 percent. There's no question.

18 Also, there's talk about Tia. The defendant was  
19 there with Tia, and we see the defendant leaving there with  
20 Tia, and Tammy points out to you that he was there with her.

21 (Audio played.)

22 MR. THUNELL: And there they are leaving, the  
23 defendant and Tia.

24 Ladies and gentlemen, the State has proven beyond a  
25 reasonable doubt that it's the defendant, not somebody else,

1 but the defendant, who was the person who went out there, was  
2 involved in that fight, and the one who stabbed the victim in  
3 this case, Michael Thomas.

4 Now, you heard some of the different things about  
5 self-defense. Some of the different instructions. Let me  
6 touch on a few of those. Another question I put a question  
7 mark, because self-defense? Well, let's see.

8 From the instruction. Killing or attempted killing  
9 of another person as self-defense is justified, and not  
10 unlawful, when the person who does the killing, or attempted  
11 killing, actually and reasonably believes that there's  
12 imminent danger that the assailant will either kill him, or  
13 cause him great bodily injury, and absolutely necessary.

14 You don't get to bring a gun, you don't get to bring  
15 a knife to a fistfight. You have to have the imminent danger,  
16 not that you're going to get hurt, or that you're worried,  
17 you're nervous, imminent danger that you were going to be  
18 killed, or have great bodily harm caused to you, and it's  
19 absolutely necessary. That's what the law says.

20 We have the victim, the defendant, and I put a big  
21 circle here because this is the great undiscovered country,  
22 which is step, step back, walk away. Two steps back, walk  
23 away. The victim didn't have any knife. He didn't have any  
24 weapons. Was it absolutely necessary? Not at all. Was there  
25 a -- was he in imminent danger of being killed? No. It's a

1 fistfight up there.

2 Now, to justify the taking a life of another in  
3 self-defense, the circumstances must be sufficient to excite  
4 the fears of a reasonable person. So this isn't -- doesn't  
5 just mean that the -- that the defendant would have been  
6 nervous, but that a reasonable person would have been --  
7 looked at the situation, and thought it that way.

8 You, as reasonable people, get to gauge the  
9 situation. So it's not his belief, it's what a reasonable  
10 person would believe, and see in this situation.

11 Also, they have to act not in revenge. And what had  
12 been happening in there? Well, they had this whole  
13 altercation with Darnella. Darnella, she came around and they  
14 came right out, and boom, the fights on, right there. There's  
15 no talking, hey, leave us alone, we want to get out of here,  
16 let's work this out, fight.

17 And once again, when this fight starts up, where's  
18 the victim? He's back there. He's not in there, he's not  
19 waiting for the defendant. He's not going in there to throw  
20 blows. The defendant jumps right in there. He sees Darnella,  
21 boom, he's right on top of it, him and Tia, and they're  
22 kicking her, they're hitting her. We've heard all those audio  
23 statements. We heard what happened. Boom, it happens. And  
24 that's when the victim jumps in, over there, to help her, to  
25 save her from being beaten.

1           Now, the right of self-defense is not available to  
2 the original aggressor; however, where a person, without  
3 voluntarily seeking, provoking, and biting, or willingly  
4 engaging in a difficulty of his own free will, is attacked,  
5 need not retreat.

6           So who jumps -- what happens here? We see the --  
7 well, as I just said, the defendant and Tia, boom, they're  
8 right on top of Darnella. She's going down, hitting, kicking.  
9 The victim is not the original aggressor. He's not the one  
10 who is starting this fight, looking for a fight. It's the  
11 defendant. Boom, he's right into the fight, there.

12           Additionally, when faced with the threat of deadly  
13 force, once again, I want you to remember, it's not just  
14 force, and it's not just nerves, it's not just, oh, I'm  
15 nervous, deadly force. That's what the law is saying. You  
16 got to be scared of deadly force, if you're going to use  
17 deadly force. The victim has no weapons, nothing. There's  
18 been no evidence of anything like that. Nobody's even  
19 mentioned anything that there was any kind of worry about  
20 weapons or anything like that.

21           Now, original aggressor, the defendant, right in  
22 there and to the fight. The victim comes in to help.

23           All right. If a person kills, or attempts to kill  
24 another in self-defense, it must appear that the danger was so  
25 urgent, and pressing, in order to save his -- to save his own

1 life, or to prevent his receiving great bodily harm, the  
2 killing of another person was absolutely necessary. And he  
3 must have, in good faith, endeavor to decline any further  
4 struggle before the mortal blow was given.

5 The defendant, as in, original aggressor, getting in  
6 there, starting that fight there, the victim's coming in to  
7 try and break it off, and what happens? He's trying to help  
8 this girl. Was it absolutely necessary to try and stab him in  
9 the che -- just to stab him in the chest and slash his face.  
10 Was that absolutely necessary in that mo -- in that moment?

11 The victim, he hadn't been out there beefing with  
12 him, starting a fight, or anything. He came in to try and --  
13 try and help out Darnella.

14 And, did he decline further struggle before the  
15 mortal blow was given. Once again, there's all of that.  
16 There was nothing declined. He's moving forward, at the  
17 victim.

18 Now, there was some talk about there's a lot of  
19 people around and all that, but nobody else was there in that  
20 fight, and nobody else was hitting or stabbing Michael. It's  
21 them.

22 Let's hear what Michael has to say about it.

23 (Audio played.)

24 MR. TRUNELL: 100 percent sure. Nobody else hitting,  
25 nobody else stabbing. Only the defendant.

1           The defendant Lamar Harris, aka, Shyce, he stabbed  
2 Michael Thomas in the chest, slashed his face.

3           Let me just leave you with one last clip. This is  
4 the last one I want to play.

5                           (Audio played.)

6           MR. THUNELL: Michael Thomas didn't have any weapons.  
7 I really like this statement, right there. Even though Tammy  
8 didn't really want — much want to talk to us there, in her  
9 taped statement she says, I think it just happened to be, he  
10 was in the wrong place, and tried to defend somebody,  
11 probably, and ended up getting stuck. That's exactly what  
12 happened. Trying to defend somebody, he got stuck. And  
13 without a doubt, it was Shyce that did it. Absolutely.

14           Ladies and gentlemen, the State has proven beyond a  
15 reasonable doubt that the defendant Lamar Harris, also known  
16 as Shyce, the name that we heard a lot, is guilty of attempt  
17 murder with a deadly weapon. Or, at the very least, if you  
18 find that you don't believe that there was that malice for the  
19 attempt murder, he is guilty of battery with use of a deadly  
20 weapon, resulting in substantial bodily harm.

21           Thank you.

22           THE COURT: All right.

23           Don't converse among yourselves, or anyone else on  
24 any subject connected to the trial, or read, watch, or listen,  
25 to any report of the trial, or form or express any opinion on

1 the trial until the close is finally submitted to you.

2 Mr. Marshal, 10-minutes, and then bring — in  
3 10-minutes from now, bring them in, and get me, all right?

4 THE MARSHAL: Yes, sir.

5 THE COURT: 10-minutes.

6 (Court recessed at 1:33 p.m. until 1:43 p.m.)

7 (In the presence of the jury.)

8 THE COURT: All right. Counsel, stipulate to the  
9 presence of the jury?

10 MR. GILL: Yes, Your Honor.

11 MS. JIMENEZ: Yes, Judge.

12 THE COURT: All right. Mr. Gill, your closing  
13 arguments.

14 MR. GILL: Thank you, Your Honor.

15 DEFENDANT'S CLOSING ARGUMENT

16 MR. GILL: Ladies and gentlemen, this is the last  
17 time I'll have a chance to -- to talk to you. I appreciate  
18 your patience. I think this has moved along -- along quite  
19 quickly. But I do appreci -- appreciate you taking your  
20 service seriously.

21 Why are we here? We're -- we're here to determine  
22 the guilt or innocence of Lamar Harris. And after I presented  
23 my opening statement, I asked you to return a verdict of not  
24 guilty. I'm obviously going to ask you the same thing after  
25 all the evidence has been presented.

1           Beyond a reasonable doubt is something that this  
2 system is based on, the Judge has instructed you on it.  
3 You're going to have those instructions when you go back to  
4 deliberate, and I want you to keep in mind, beyond a  
5 reasonable doubt.

6           And we're talking about April 25, 2011, at 1:50, at  
7 the Seven Seas -- approximately 1:50 a.m. And -- and what  
8 happened there. And I'll submit to you that my client was  
9 inside, diffusing the situation. There was a fight between  
10 females, we've seen the video, and we're going to see it one  
11 last time, I -- but I want you to watch my client's  
12 mannerisms, body language, there -- there's lots of holding  
13 his arms out. There's lots of -- of pushing back, and -- and  
14 trying to diffuse the situation because the mother of his  
15 child is standing behind him.

16           And, remember, the mother of his child, Tia, is not  
17 on trial today. She's not on trial for throwing a bottle of  
18 Heineken. She's not on trial for throwing a shoe. She's not  
19 on trial for acting the way she did at the Seven Seas, that  
20 night.

21           There's obviously many conflicting stories. Every  
22 witness that the -- every lay witness that took the stand,  
23 there's differences between their voluntary statements, and  
24 their preliminary hearing statements. There's difference --  
25 differences between their preliminary hearing statements, and

1 their trial statements that — there's differences between  
2 their voluntary statements and their trial statements.  
3 There's differences within their voluntary statements, within  
4 each individual's voluntary statements.

5           The State would love for you to rely on those  
6 voluntary statements. Why? Because they're not under oath.  
7 They've got their officer there questioning the witness. I  
8 don't get a chance to cross on that voluntary statement until  
9 we get here in trial, or a preliminary hearing.

10           And it's — it's incumbent upon you to take all of  
11 the evidence into consideration. Not just these voluntary  
12 statements that -- that happened the night of, or -- or at the  
13 hospital, or two months later.

14           We've heard instructions on common sense,  
15 reasonableness. You're all reasonable people. You all bring  
16 different backgrounds, different stories to your -- to the  
17 jury box. I want you to keep those in mind, and -- for the  
18 next 20 minutes, or so, as we watch the video. And I want you  
19 to take those -- those notions of common sense, and your --  
20 your sensibilities back to the jury room with you.

21           I'm not going to stop this. I'm going to -- I'm  
22 going to do my best to just let it go, but I think the -- the  
23 videos speak for themselves. The State tried to give you  
24 snippets, and I -- I think, taken as a whole is a much more  
25 powerful story.

1           This is your evidence, people. This is the best  
2 evidence we've got -- the State's got. And I had to put it on  
3 first. I had to --

4           MS. JIMENEZ: Well, Judge, I'm going to object.  
5 That's not accurate, and --

6           THE COURT: He had to? Well, that's probably not  
7 true. He -- you decided to put it on first --

8           MR. GILL: I decided to --

9           THE COURT: -- I don't know you had to.

10          MR. GILL: Thank you, Judge.

11          I decided to put this -- this on first. Because  
12 the -- the State didn't show you the -- the video until today,  
13 their last witness.

14          Go ahead and hit play, please.

15                       (Video played.)

16          MR. GILL: This -- this -- this one cuts to the  
17 chase. You see -- you see a head. You see some people  
18 standing up. Darnella with a shoe -- what looks like a shoe.

19          Take a look at what my client's wearing, the dark  
20 colors, the watch. Take a look at everything in there. Take  
21 a look at the -- this gentleman comes over, quite aggressive,  
22 and what does my client do? He holds up his hands. They're  
23 talking. He's boxing in the women behind him. There --  
24 that's a small space, right there.

25          Tia wasn't escorted out. Darnella was -- was

1 dragged out two or three times. And there's Tia. My client's  
2 still keeping Tia from the — from the other people.

3 Bartenders, it's time to leave, and — and it  
4 probably is. See, and I don't know if this female was ever  
5 identified, but she's still keepin' on. I'd submit to you  
6 that that's Tammy Kasper in the corner, there. The bottle is  
7 going to be broken soon. There it goes.

8 Thank you. And we're almost done with this view.  
9 This — not much else happens. You know, you can see more  
10 ruckus over here at the Lake — Lake Mead entrance.

11 You will see Tia and Lamar in the upper right. You  
12 won't see them go out any door. There they go. It — it --  
13 it's too blurry up there to see what — where the door is,  
14 where -- if there's a door. We know there's a door on that  
15 east side, but it — it's — over here you can see some heads,  
16 possibly. Some more females over on the — the east side of  
17 the bar, there.

18 Then there's the owner — the manager. Everything  
19 is cleared out. It — this — this doesn't play for very much  
20 longer.

21 What we know from — from this angle, now, is that  
22 this area where the — the pushing and the shoving occurred,  
23 it was cleared. That we know. We don't know -- from this  
24 video, we don't know who went out which exit. We know that  
25 they went towards exits. We know that there's -- there's

1 blurs everywhere, but from that video there, we know that  
2 the — the — the corner bar area, where the altercation took  
3 place, is now clear.

4 So if you'd play the next one, please.

5 (Video played.)

6 MR. GILL: This one, I want you to look at closely.  
7 The State's so sure that it's Tia, and that it's my -- my  
8 client, Mr. Harris. I don't even know how we're sure that  
9 that's Darnella. I mean, there's testimony that supports she  
10 was ready for a fight, so I -- I suppose her body language  
11 says as much.

12 One thing we know -- we do know, is the lime green  
13 shirt. That's the one thing we can see. You saw his gray  
14 eyes. Inside he's -- he's got a black hat on. State  
15 presented testimony from Michael Thomas that he didn't --  
16 nobody else could have done this. I mean, use your common  
17 sense, use your -- be reasonable, how many people are out  
18 there? Where's the knife? Where did the stabbing take place?  
19 Who stabbed him? These are all questions for you to answer.

20 It's still going on. He -- he just went back now.  
21 How many people -- for Michael Thomas to say -- if you'll  
22 pause it? For Michael Thomas to say that there's only one  
23 person who could have hit me -- it was, hit me. Michael  
24 Thomas never saw a knife. Michael Thomas didn't know he was  
25 stabbed until he got well back.

1           The only one pers -- for him to say, the one person  
2 that could have hit me was -- was the gentleman in the bar,  
3 it's a little disingenuine. You can see -- not much, but you  
4 can see the mob back there.

5           Okay. Go ahead and play. There's not much else to  
6 this video either.

7                           (Video resumed playing.)

8           MR. GILL: Security running across. You will see  
9 Tammy Kasper come out. She testified she wasn't out here, but  
10 we watch her exit in just a moment.

11           Stacy Monroe. Tammy Kasper. What did they tell you  
12 guys on the stand? I wasn't outside. I didn't see it because  
13 I wasn't outside. The melee is through. Michael Thomas has  
14 his wounds, then they walk outside.

15           This video backs up both of their testimony -- both  
16 Mr. Monroe and Ms. -- Ms. Kasper.

17           I'm not going to show the third video that the State  
18 showed because we -- there are some things that we agreed  
19 upon. Michael Thomas was stabbed. The third video shows him  
20 walking back and forth out in front of the -- out in front of  
21 the establishment. He was stabbed.

22           Again, the witnesses in this case, most did not want  
23 to be here. It was clear. They didn't want to testify. They  
24 didn't want to be in this situation, at all, and it -- I want  
25 you to think about why they didn't want to be here.

1           The State wants you to believe, or -- or has tried  
2 to get you to believe that there was some sort of fear, or the  
3 streets -- Tammy Kasper told you, in her prel -- preliminary  
4 hearing, when she was under oath, that she didn't want to --  
5 she didn't want to be there at the preliminary hearing, or at  
6 trial because -- she didn't want to say something wrong  
7 because she wasn't outside.

8           Not because she's afraid of anybody. I asked her if  
9 she's afraid of my client. She says she's not afraid of Mr.  
10 Harris. She's afraid of not -- she's afraid of lying under  
11 oath. That's why she said what she said. The -- the video  
12 shows -- the video just showed you she came out after the  
13 fight. So for her to go back and -- for the State, it's  
14 just --it -- it doesn't make sense that she's afraid. It  
15 makes more sense that she didn't see what happened.

16           The State's also trying to make a big deal about,  
17 well, they didn't appear drunk. The didn't appear drunk at --  
18 when they gave their statements, when the officer talked to  
19 them. The fact of the matter was, every one of them, Tammy  
20 Kasper, Darnella Lay, Michael Thomas, were drinking at the  
21 time, right up until, the incident took place inside the bar.  
22 Their recollection is cloudy, not while they're giving the  
23 statement, while -- while everything is happening.

24           Many of us have been at bars. Many of us have even  
25 been drunk. Things start happening, if we talk about it two

1 or three hours later, and we're not drunk, we're not going to  
2 appear drunk, we're not going to sound drunk, smell drunk, but  
3 how -- how are we going to -- our memories are going to be  
4 fuzzy going back to those two, three hours ago, or however  
5 long a time.

6 Darnella Lay. Started the night at another bar.  
7 Eight drinks that night. She mentioned blacking out inside  
8 the bar, doesn't remember. She's someone that took the stand,  
9 as well, and she -- she was put under oath. And these are the  
10 things she said, not with an officer.

11 While inside the bar she went to grab her purse.  
12 She even testified that she pushed Lamar. She tried to -- she  
13 sa -- brushed up against him, or -- or bumped him, I think  
14 were her words. She went up, she -- she pushed Lamar, and we  
15 see it on -- on the tape. And Lamar pushed her back, and --  
16 and she tripped over some barstools. It's very difficult to  
17 see, but if you keep your eye on it, that's kind of what  
18 happened down there at the beginning.

19 This case isn't about Darnella Lay. My client very  
20 well may have committed a battery against Darnella Lay, by  
21 pushing her. An unlawful -- or unwanted touching. Darnella  
22 Lay is not listed on the Information. She was -- never been  
23 an -- at issue in this case.

24 I'll submit to you that what happened in that  
25 corner, even if it were a battery, it -- it's not to be

1 considered. It's not -- it was not instigated by my client.  
2 Lamar was pushed when she went over there to grab her purse.  
3 And he responded by trying to diffuse the situation, and keep  
4 the females away from each other.

5 Outside the bar, what does she remember? Nothing.  
6 Don't remember if she was pushed or hit. She just, flat out,  
7 doesn't remember. And when does she not remember? When she's  
8 stand -- sitting on the stand, under oath.

9 And what did I ask her about being afraid? Are you  
10 afraid of Lamar Harris? No. Who are you afraid of? The  
11 State.

12 MS. JIMENEZ: Objection. Mischaracterizes testimony.

13 MR. GILL: That's what she said, Judge.

14 THE COURT: Well, the evidence speaks for itself. I  
15 -- I don't recollect if she said that, but -- if you want to  
16 indicate what you think she said, I'll allow that. I -- I  
17 just don't remember.

18 MS. JIMENEZ: Judge, I don't believe she said that  
19 she was afraid of the State.

20 THE COURT: Okay.

21 MS. JIMENEZ: Those words didn't come out of her  
22 mouth.

23 THE COURT: Well --

24 MS. JIMENEZ: That's not my recollection --

25 THE COURT: -- all right.

1 MS. JIMENEZ: — of the testimony.

2 THE COURT: The evidence speaks for itself.

3 MR. GILL: Shelly Shrum, next testified. She was the  
4 CSA who took pictures of the scene. We -- we sat through 41  
5 photos that were admitted. And she couldn't tell you whose  
6 blood was on the ground. She tried, but she couldn't tell you  
7 where the blood started or finished.

8 She found a bunch of items on the ground. We  
9 couldn't -- we didn't know whose items they were. She  
10 couldn't tell you what the scene actually meant, other than  
11 there was chaos earlier that night. Somebody got hurt. And  
12 all the witnesses had left by the time she got there. You've  
13 got the video for that. We -- we see everything that she was  
14 able to tell us, on the video.

15 Tammy Kasper. She was 100 percent sure, remember,  
16 the State, just now going over, she was 100 percent sure in  
17 her voluntary statement. Well, under oath, and on the video,  
18 she's not even outside. The State brought her here. You saw  
19 her in -- in shackles. She had just gone through the death of  
20 a loved one that day. And her statements about drinking have  
21 been consistent from the start. She was drinking all day  
22 before she arrived at the Seven Seas. Eight to ten drinks,  
23 she said.

24 She also told you that she made up her statement  
25 from peop -- from things that she heard from other people,

1 telling her what sh -- what they had seen, and that's what she  
2 relayed on to the officers. She never went outside. She  
3 didn't go out there until the incident was over, everyone  
4 started to leave, and the video verifies that. It also  
5 verifies that she could not have seen what happened out there.  
6 So for her to be 100 percent sure, one moment, and not even be  
7 outside the next, speaks to her testimony.

8 Jason Vallad. Officer Vallad. He couldn't tell us  
9 too much either. He was the first to arrive. Most people  
10 didn't see anything, he thought maybe two or three had  
11 actually seen what happened. He -- he was sure -- when he got  
12 to interviewing Tammy Kasper, she wasn't intoxicated, despite  
13 her consistent testimony. No breathalyzer, no blood test,  
14 never placed her under oath. And again, Ms. Kasper, not even  
15 outside when the -- the event happened.

16 Mike Young. He got up here and told us, Lamar  
17 Harris has -- goes by the name of Shyce or Shyct.

18 Joycelyn Boston. Also intoxicated, eight to ten  
19 drinks. She stayed at the Seven Seas, she -- she arrived  
20 there by herself. In her words on the stand, Lamar was  
21 getting jumped by a few girls. Obviously, there was a melee  
22 going on in the corner, and in her eyes, my client is getting  
23 jumped. She left the bar before anyone went outside. Never  
24 saw a fight. Never saw anyone get stabbed.

25 Michael Thomas. The victim. Finally, placed under

1 oath here at trial. And what did he tell us? That he was  
2 intoxicated, as well. In his voluntary statement, 18 Millers  
3 was his -- was his statement. He had 18 Millers up until --  
4 throughout the day, and up until the incident. He was  
5 injured. We saw the pictures. Had a stab wound -- possible  
6 stab wound on his neck, possible stab wound to his chest.

7           What doesn't he remember? He told us he didn't  
8 remember what he was wearing. What Lamar was wearing. What  
9 happened outside. Now, we have the video. And then, his 40  
10 minute statement was played. There's conflicting stories  
11 within his statement. There's also mention of -- of a  
12 gray-eyed man. His -- his statement, not given under oath,  
13 under the influence of narcotics, he said he was on a morphine  
14 drip.

15           He was also released from the hospital soon after.  
16 You hear the -- the young lady come on and say, we're going to  
17 discharge you. He received some stitches, given some pain  
18 meds, and sent home that night. Sent home on April 25th.

19           What does Michael Thomas remember? That he talked  
20 to people before the police arrived to question -- to question  
21 him. He mentions Kevin Lay. Kevin called to thank me for  
22 standing up for my -- for my dau -- for his daughter. So he's  
23 obviously talked to people, prior to giving his statement, as  
24 well. Just like Tammy Kasper.

25           He says, the only ones with weapons that night were

1 the security guards. Supposedly, face to face with my client,  
2 and never sees a knife. He was presented with the six pack.  
3 He doesn't select my client.

4           Stacy Monroe. It's a bar, he's drinking that night.  
5 We see him in the bar on the video, he's the gentleman in the  
6 white, on the left when -- when -- the first video we played.  
7 He sees the bottles were thrown, and we see the bottle  
8 breaking up against the ceiling fan. The women were in a  
9 fight. Then he mentions this, Lamar tugging at his waistband.  
10 Did you see a knife in his waistband? No. Anything shiny?  
11 No. Did you see a gun? No. A handle? Grabbing your  
12 waistband does not prove that you used a deadly weapon in the  
13 commission of any crime.

14           What did he see when he went -- when he finally went  
15 outside? Nothing really, until the crowd scatters. He saw  
16 the victim and some blood. And he -- you -- when you watch  
17 the video again, he exited just before Tammy. He's -- he's a  
18 big guy, white shirt.

19           Officer Fletcher. He interviewed Mr. Thomas. He  
20 was the responding detective, at 5 p.m. that night at the  
21 hospital. Again, Thomas never IDd the suspect. And he was on  
22 pain medication -- Mr. Thomas was. Played portions of the  
23 video, or -- or -- or most of the video, and again, the State  
24 waited until their last witness to show you that video.

25           MS. JIMENEZ: Judge, I'm going to object again,

1 because we had a witness available, ready to testify to it,  
2 the defense decided to ask to admit it. They didn't tell us  
3 ahead of time they were stipulating to it. So it's really  
4 inaccurate and inappropriate for the defense to argue that,  
5 and make that statement.

6 MR. GILL: I'll move on, Judge.

7 THE COURT: All right. Yeah.

8 MR. GILL: He also identified Lamar as a suspect, and  
9 I questioned him about being a suspect of a crime, and  
10 actually being guilty of a crime. And then he had this story  
11 about the preliminary hearing, and what happened outside the  
12 courtroom, again, trying to -- to demonstrate some sort of  
13 fear of testifying. He gave us some statements, as well, that  
14 as I finished with him, he just kept adding to.

15 And -- and it seemed like a good story, but the more  
16 he said, the -- the worse it got, for my client, anyway. But  
17 I'll submit to you that -- that nothing happened at the  
18 preliminary hearing that is of any significance out in that  
19 hallway.

20 What did I promise you that we could -- that the  
21 evidence would show in my opening statement? That an  
22 altercation occurred inside the Seven Seas. My client was in  
23 the Seven Seas. He was involved, initially, in the -- in the  
24 altercation with the females, and he diffu -- he attempted to  
25 diffuse that altercation until both parties went their

1 separate ways.

2 And I want you to look at the body language. This  
3 gentleman in the white striped shirt comes over, and you saw  
4 it, you saw his aggression, and what -- what's Lamar's  
5 reaction? Hands up.

6 I told you there was a mob in the parking lot, and  
7 the evidence will show that. We went over it with the -- with  
8 the video. Nobody else -- nobody else could have -- could  
9 have contacted Michael Thomas in there to -- I submit to you  
10 that that's completely untrue. And the video shows that.

11 I told you we -- the State and I agree that Michael  
12 Thomas was stabbed. He was stabbed in his -- in his cheek and  
13 his chest. We told you the -- the images may be graphic, but  
14 I hope those aren't too graphic.

15 And the State -- let me go back to these real -- the  
16 State wants you to check the box, substantial bodily harm.  
17 This was closed with stitches, as was that, sent home, that  
18 evening, with pain medi -- medication.

19 The evidence has also shown us that Lamar Harris  
20 never had a weapon. Ladies and gentlemen, if this is Lamar  
21 Harris, this is State's photo of a blown-up shot, supposedly,  
22 of Lamar Harris. If that's Lamar Harris, where's the weapon?  
23 I'd suggest, where's the black shirt? The complexion looks a  
24 little off. He looks skinnier than my client.

25 But if that's Lamar Harris, where's the knife? It's

1 the best they got, people. That's the best they've got.

2 Lamar Harris never stabbed Mr. Thomas.

3 I told you, at the end of the evidence you would  
4 have no evidence that my client stabbed Mr. Thomas. There's  
5 no direct evidence. They don't need to recover a knife,  
6 that -- you have an instruction on that. But there's no  
7 evidence. There's -- there's -- there's nothing, and there's  
8 plenty of testimony that nobody saw my client with a knife,  
9 even the victim, didn't see a knife. Didn't pick him out of a  
10 six pack.

11 Made a -- I made a strategic decision, along with my  
12 assistant and Mr. Harris, to rest after the State. It is  
13 their burden. He's presumed innocent, and right now, he's  
14 still presumed innocent. Until the State meets that burden.  
15 And I'll submit to you that they have not met that burden of  
16 proof beyond a reasonable doubt.

17 It's your turn to go back there, and check the box,  
18 the last box you can check, with not guilty, and hold the  
19 State to their burden.

20 Thank you.

21 THE COURT: Thank you. Ms. Jimenez.

22 MS. JIMENEZ: Thank you, Judge.

23 STATE'S REBUTTAL ARGUMENT

24 MS. JIMENEZ: The defense says there's no evidence  
25 that Lamar Harris stabbed Michael Thomas. I don't know if we

1 were sitting in the same courtroom for the past few days, but  
2 there's ample evidence that Michael Thomas -- or that Lamar  
3 Harris is the person who stabbed Michael Thomas.

4           We've heard evidence, you've seen photo lineups, and  
5 100 percent sure that Lamar Harris did the stabbing. You've  
6 heard tape recorded statements. Evidence isn't just what  
7 comes from the witness stand, you're instructed to consider  
8 all the evidence in the case, and the cons -- it includes, not  
9 only the testimony from the witness stand, but also all of  
10 these exhibits that are going to go back in the courtroom with  
11 you, including the -- the surveillance video, including the  
12 audio statements, you're going to have a computer back there  
13 that you can go through all of that evidence, all the  
14 pictures, all the photo lineups, and you can go through all of  
15 it yourself.

16           So let's talk a little bit about the witnesses in  
17 the case. Tammy Kasper, let's start with Ms. Kasper. First  
18 of all, the defense suggests to you, and says, well, Tammy  
19 Kasper is on the video and she's coming out after the fight.  
20 Arguments aren't evidence in the case, and actually, Tammy  
21 Kasper never identified herself on the video, if you recall.  
22 She -- you'd think if anybody could identify herself, it would  
23 be her, but she couldn't identify herself. She said she  
24 didn't remember wearing white pants.

25           I would suggest to you that that video on the

1 outside is not as clear as the video on the inside, and that  
2 it's difficult to tell. I'm not going to suggest to you one  
3 way or the other because it's difficult to tell. What I will  
4 say to you is that if that is Tammy Kasper, that doesn't prove  
5 she didn't see the stabbing that happened because what you'll  
6 notice in the video is that that back doorway is open the  
7 entire time that the altercation is outside, and the stabbing  
8 takes place, and if you're standing in that doorway you have a  
9 perfect view of everything that's happening, and as you watch  
10 the video you can see the door moving, you can see someone's  
11 shirt peeking out of it, you can see that there are, in fact,  
12 people standing in the doors. Remember, a lot of the  
13 employees are still inside, and hey, if there's a fight going  
14 on outside, who doesn't go to watch a fight.

15           The mob, supposedly, I don't know how that's a mob,  
16 but the crowd of people who were standing outside watching the  
17 fight, that's just human nature. And when Tammy walks out,  
18 she doesn't walk out like, oh, I didn't know anything was  
19 going on, if that's even her, you know, I don't know what  
20 happened. She walks out with a purpose and she goes looking  
21 for Michael Thomas because she did see what happens.

22           And when you — the other reason you can use to  
23 determine that is by listening to her audio-taped statement.  
24 You know, she can't really have it both ways. She says, well,  
25 I was completely intoxicated. I was so drunk. I don't really

1 remember anything, but the information I gave to police, I got  
2 from other witnesses.

3 Well, if she's so intoxicated and so drunk, how does  
4 she remember that much detailed information. Because this  
5 isn't -- she doesn't just say in her statement, well, the  
6 person who did it was Shyco. She gives detailed descriptions  
7 of what she saw, how he was holding the knife, and he was, you  
8 know, had it against Darnella first, and then going after the  
9 defendant. Listen to that statement again, because she gives  
10 very detailed descriptions that are not something that if  
11 somebody else is giving you this information you're going to  
12 just be able to remember. I mean, that taped statement is two  
13 hours later from the time of the crime, and that would be a  
14 really long time to remember that much detail unless she  
15 actually saw it happening.

16 And it isn't just the detective, or -- or listening  
17 to her statement, but the first patrol officer on scene says,  
18 no, she's not intoxicated. And what person thinks that when  
19 the police tell you, well, we just want you to talk about what  
20 you saw, and not what you heard from other people, that that  
21 means to lie, and say, well, I saw all this other information.

22 And even if she thought that in the early morning  
23 hours, why doesn't she tell the detective that when he comes  
24 to do the photo lineup and say, you know what, I just want to  
25 clarify, I didn't actually see this stuff, I just heard other

1 people say that's what happened. No. She doesn't correct  
2 that.

3 She writes on her photo lineup, I seen Shyce stab  
4 the guy in the lime green shirt, 100 percent sure. This isn't  
5 someone who heard what happened, this is someone who saw it  
6 with her own eyes.

7 The defense mentioned that -- that there was a  
8 note -- that there was -- the statements or the witnesses were  
9 all inconsistent, but actually, there's a lot of consistency  
10 in the witnesses. If you look at Michael Thomas, Tammy  
11 Kasper, Darnella Lay, you look at their taped statements,  
12 pretty consistent about what happened, about what occurred,  
13 about the fight that happened.

14 Now, Michael Thomas, he doesn't identify the  
15 defendant, but he says, well, look, the person I got into the  
16 fight with, or that was in that altercation in the corner in  
17 the bar, that's the same person I was fighting outside. And  
18 we know that that person inside the bar is Lamar Harris.

19 And they were all pretty consistent when they came  
20 in, and nobody wanted to, you know, identify the defendant,  
21 nobody wanted to say they saw the stabbing, nobody wanted to  
22 say they saw what happened. And, you know, if they really  
23 were going to come in -- if that was why they e -- they didn't  
24 want to testify, you know, the defense says, well, Tammy  
25 Kasper said, I didn't want to come in and testify to something

1 wrong.

2 Well, why not just come in and say what she said?  
3 Why try and avoid having to come in. Why have to, you know,  
4 be arrested. That's not fun for anybody. That's not  
5 something the State enjoys doing. That's certainly not  
6 something a witness enjoys.

7 So there's been something else going on here. It's  
8 not just, oh, well, I, you know, didn't want to come in and  
9 say the wrong thing. So take that into consideration. Think  
10 about what's really going on here, and what the motive is, and  
11 why the witnesses don't want to say what they said to the  
12 police when they testified.

13 Darnella Lay. She's also afraid to testify. She's  
14 concerned about retaliation. Afraid of the State, well, the  
15 State's not going to go out there and retaliate against her if  
16 she testifies. I mean, what do you think her fear is. And  
17 she's getting phone calls after she testifies in court. She  
18 doesn't want to testify at the prelim because she's afraid  
19 about what's going to happen on the street.

20 And what happens after she testifies? Her fears are  
21 met. Her fears are justified, and she gets phone calls  
22 saying, hey, don't go to court and testify. We know where you  
23 live. You're a snitch. We're going to kill you. I'm not  
24 saying it's right for her to come in here, and not want to say  
25 what -- what happened that night, but at the same time you can

1 have some level of understanding when these are the kind of  
2 phone calls that she's getting.

3 She lives maybe in an area that maybe some of you  
4 are familiar with, maybe you aren't, maybe some of you know,  
5 kind of how these type of neighborhoods are, maybe some of you  
6 don't, but for her this is a real thing. This is the  
7 neighborhood she lives in, the neighborhood she's grown up in.  
8 People do know where she lives, and she's getting these phone  
9 calls, and there's a reason that it's — coming in here in  
10 court, in this open courtroom, with the defendant here, with  
11 friends and family here, where maybe she doesn't want to say  
12 what she told the police the night — or I guess, shortly  
13 after this happened.

14 And Tammy Kasper, I mean, where — where does she  
15 get this information. You know, she suddenly — supposedly  
16 gets in between the time that the stabbing happens, and the  
17 police arrive, gets this very detailed description of what  
18 happened.

19 Well, first of all, who's saying it? It's got to be  
20 somebody else who was there, if that's really what happened.  
21 You know, somebody else that — that's telling her this  
22 information. And second of all, when is she doing this?  
23 Everybody is dealing with the victim, with Michael Tynan —  
24 Thomas. You can see people on the phone calling 9-1-1. You  
25 know that there were several 9-1-1 calls. You can see that

1 people are trying to get Michael Thomas to sit down.

2 This isn't, hey, this guy is bleeding over here, but  
3 let's all get together, but let's all get together, and let's  
4 talk about, in detail, exactly what happened, and then I'm  
5 going to maybe make some notes, so when I give my statement to  
6 the police I can tell them that I saw it in person, instead of  
7 that you told me what happened.

8 You know, Michael Thomas, law enforcement not  
9 exactly his friend. You know, this is a guy who's been  
10 around, okay? He's got some felony convictions. Doesn't want  
11 to be here. Doesn't want anything to do with it. Maybe as  
12 somebody who has a felony conviction he might have some  
13 sympathy for, you know, hey, I don't really want witnesses to  
14 testify against me, so I don't want to be part of that.

15 But, you know, when it came down to it he said,  
16 well, what I said in the statement, that's what it is. That's  
17 what happened. And again, look at his statement, it's also  
18 very detailed, it's also consistent with what Tammy Kasper and  
19 Dar — Darnella Lay described happening outside. And sure,  
20 there are other people around, but what he says isn't, there  
21 was nobody else who could have possibly stabbed me. What he  
22 says is, the only person I was fighting with is — who  
23 essentially is the defendant, we know through the other  
24 evidence.

25 He says that that's the only person who was punching

1 me. And, yeah, you know, he doesn't realize he's stabbed  
2 right away. And, you know, you see the injuries that he had,  
3 you see the blood that he lost, and it's probably not  
4 surprising that, you know, after kind of going through that  
5 shock, that maybe that realization wasn't there right away,  
6 but he does remember getting hit. He's not saying he doesn't  
7 remember getting hit. He talks about it being more of a  
8 stinging than — than the regular punching, but he remembers  
9 getting hit in the face, he remembers getting hit in the  
10 chest, and he says, the only person who's doing that is the  
11 guy, excuse me, that he got into it with inside the bar.

12           And who else has a motive to be involved in this?  
13 There's nobody else that has a — a reason to care about  
14 what's going on. The defendant is in that bar in the middle  
15 of things, and I'll, you know, I'll submit it, you watch that  
16 video, and you decide if he's trying to diffuse the situation,  
17 you know, because there's a little bit more going on there  
18 than just Darnella trying to get her purse.

19           If you watch that video there's something going on  
20 before she goes over there, and when she's outside of the bar  
21 the altercation is still going on with some other females in  
22 that bar that he's in the middle of, that Stacy Monroe says he  
23 sees him throwing punches at females, that, you know, that's  
24 what Michael Thomas says, that — that he's involved with, and  
25 that he's involved in this altercation.

1           So there's something more than what's going on with  
2 Darnella going on, and in fact, you heard, I believe it was  
3 from Stacy Monroe talking about the heavy-set girl that he  
4 hit, and you'll see from that Lake Mead video, that's the  
5 exit, people coming out, you see a girl, a heavy-set girl, and  
6 you can kind of see her in the video too, as being part of  
7 that altercation, coming out the door, and she's pretty upset,  
8 and she's worked up.

9           I mean, there's -- there's a lot more going on here,  
10 and he's not -- I would suggest to you he's not diffusing the  
11 situation, but you make that determination. And you know  
12 what, even if he is, once he walks out that side door on  
13 Revere, he's certainly right there in it, with Darnella, with  
14 Tia.

15           The defense says, well, you know, they want you to  
16 think that that's not the defendant. Well, did he magically  
17 disappear? Because you see him in the -- in the bar where the  
18 altercation happens, you see him go down that back hallway  
19 towards Revere, and you have the video from the front entrance  
20 and he doesn't come out there, so where else did he go? Of  
21 course that's the defendant.

22           And, you know, the surveillance video, they say  
23 that's the best evidence, but you know what, unfortunately  
24 real life isn't like TV or CSI where you get a video, and then  
25 they suddenly make it, you know, magically super clear, and

1 they get the reflection of the suspect and they do some, you  
2 know, CGI stuff and make it better. Real life isn't like TV,  
3 and this is a video that -- that is, and the lighting out  
4 there is not great, but you can tell this is the same person,  
5 same shirt, same hat, not to mention all the witnesses are  
6 saying, this is the guy who's in the fight with Michael  
7 Thomas, and you see that that's the person who is fighting  
8 with Michael Thomas, and he's the only one fighting with  
9 Michael Thomas.

10           There's a couple other guys, at one point you see  
11 them in the car kind of trying to separate the two, and the  
12 defendant, he goes right back in there and he continues  
13 fighting.

14           You know, Darnella -- that is Darnella waiting  
15 outside of the surveillance video on that Revere exit, and we  
16 know that because she identified herself in the video, so  
17 that's not just a guess. She said, yeah, that's me, I was  
18 waiting there. And look, you know, sure, it -- should  
19 Darnella be pushing this issue? Absolutely not. Nobody is  
20 sitting here saying, you know, Darnella is a saint, or  
21 Darnella should, you know, was a victim. I mean, she should  
22 have just left when she got put out of the bar, but you know  
23 what, she's 22 and she's being 22 and stupid, which, you know,  
24 probably a lot of 22 year olds have -- have been and have  
25 done.

1           So, you know, the fact that she's doing that is  
2 really irrelevant to what the defendant's actions are. And  
3 Michael Thomas, you know, he's trying to help out a friend's  
4 daughter, and he's getting involved, and you see that he's not  
5 involved in the original altercation, but he says, I see the  
6 defendant punching her, and you maybe can't tell exactly  
7 what's happening on the video, but you sure can see the  
8 defendant and Tia engaged in that alt -- altercation with  
9 Darnella.

10           He talks about how she fell to the ground. Darnella  
11 talks about falling to the ground. All consistent with each  
12 other, and with what's going on in the video.

13           There aren't conflicting stories here, and the  
14 evidence is all there for you to come to the -- to your  
15 conclusion and make your decision.

16           Now, the defense talked a little about -- in  
17 opening, about well, it's not as easy as the State says.  
18 Well, the State's not suggesting to you that it's easy. I  
19 guess one thing that you can do is kind of go back there and  
20 say, look, Michael Thomas doesn't want to be here, the  
21 witnesses don't want to be here, who cares. You could do  
22 that. But you took an oath, and it's not often in life that  
23 we do take an oath, but you took an oath to take -- look at  
24 this case.

25           And this isn't Michael Thomas versus the defendant,

1 this is the State of Nevada versus the defendant. The  
2 legislature, the people who put these laws into effect, they  
3 represent the community, and the community has said, look, you  
4 can't go stab a guy in the chest and in the cheek and say —

5 MR. GILL: Judge, I'm going to object as to raising  
6 up the community and it's the community against my client.  
7 That's inappropriate.

8 THE COURT: Well, the -- the State of Nevada is  
9 proper -- they're -- it's the State versus -- just rephrase it  
10 a little bit --

11 MS. JIMENEZ: Sure.

12 THE COURT: -- other than community, all right?

13 MS. JIMENEZ: There's nothing in the instructions  
14 that's going to tell you, well, if you think that Michael  
15 Thomas, you don't like him that much, that you don't have to,  
16 you know, decide the case, or, you know, if you think that,  
17 you know, he didn't want to be here, and so it's not worth the  
18 time, that you don't have to deliberate on the case.

19 Look, nobody is asking you to invite Michael Thomas  
20 over to your house for dinner. You're here to make a  
21 determination about what happened in this case, and there's  
22 nothing in the law that says that, if you're Michael Thomas  
23 and you don't want to have to testify that you're not entitled  
24 to justice. There's nothing that says that, hey, that maybe  
25 if you live in an area of town where people aren't likely to

1 come forward and talk to police that you're not entitled to  
2 the same justice that everybody else is, and the same time and  
3 consideration that everybody else is.

4 This is, you know, this is something that — that  
5 you do have to look at, and you do have to decide. And I know  
6 we're getting towards the end of the day, I know you've  
7 already put time into this, and I know we're coming up on a  
8 three day weekend.

9 But I am going to ask you to go back there, and to  
10 look at everything, and to take the time to look at their  
11 statements, and think about — about why people testified as  
12 they did, and not to just say, well, we don't — we don't care  
13 about Michael Thomas, or we don't care because this is a  
14 neighborhood that isn't cooperative with law enforcement, and  
15 that's not what you're here to determine. It's not a  
16 popularity contest, it's not about who you like and don't  
17 like, it's about what happened on the night that this  
18 occurred.

19 The defense talked about reasonable doubt, and  
20 reasonable doubt — the instruction tells you that, doubt to  
21 be reasonable must be actual. Not mere possibility or  
22 speculation. There's always a lot of possibilities. I mean,  
23 we know that, if nothing else, from Hollywood, right? I mean,  
24 anything you can think of they can make a movie out of or TV  
25 show out of, and there's all kinds of possibilities.

1 But doubt has to be reasonable and actual. Not  
2 speculation, not possibility. It's speculation to say, well,  
3 yeah, somebody else in that crowd that nobody saw, and nobody  
4 knows who it is, and nobody talks about, stabbed Michael  
5 Thomas. That's speculation.

6 MR. GILL: Objection, Judge. I wasn't allowed to  
7 quantify reasonable doubt.

8 MS. JIMENEZ: I'm not quantifying reasonable doubt.  
9 I'm arguing about what speculation and possibility are.

10 THE COURT: All right. Well, I don't think it's  
11 being quantified right now, but be a little careful, all  
12 right, Ms. Jimenez?

13 MS. JIMENEZ: Yes, Judge.

14 I would suggest to you that what the evidence shows  
15 is that the defendant, Lamar Harris, is the one who was out  
16 there. He's the one who had the motive, the State doesn't  
17 have to prove motive, but he's got the motive, he's the —  
18 basically the only male involved in the altercation, that you  
19 see him coming out on the video, that you see him engaging in  
20 the altercation, and you have Darnella Lay, you have Tammy  
21 Kasper, identifying in photo lineups, you have the defend --  
22 or, excuse me, Michael Thomas, saying the guy in the bar did  
23 it, and you have, you know, Stacy Monroe.

24 We're not saying that just because he gestured to  
25 his pants that means he's had — he had a weapon, but that's a

1 piece of the puzzle when you're putting all of this together,  
2 that you can make your determination on.

3 Ladies and gentlemen, there is not reasonable doubt  
4 in this case. The evidence does show that this is the person  
5 who stabbed Michael Thomas in the chest, and in the face, the  
6 two most vulnerable parts of the body. And we are asking you,  
7 after looking at all that evidence, to return a verdict of  
8 guilty for attempt murder with use of a deadly weapon.

9 Thank you.

10 THE COURT: Thank you, Ms. Jimenez. Clerk will swear  
11 the officers to take charge of the jurors, please.

12 (Officers sworn)

13 THE COURT: All right, ladies and gentlemen. The  
14 orde — this case is submitted to you. The marshal is in  
15 charge of your deliberations. Please follow him.

16 Mr. Alternate Juror, would you remain in the  
17 courtroom, please.

18 (Jurors recess for deliberations at 2:30 p.m.)

19 THE COURT: All right. As you know, you're an  
20 alternate juror, and I could have you keep around here for the  
21 day, whatever it is, but what I'd rather do is I give you the  
22 admonition, and I want you to come here and give our clerk  
23 some numbers where you could be reached tomorrow, just in case  
24 somebody gets sick, if they don't come with a verdict, or  
25 somebody gets sick, then you're going to get called. Probably

1 in the vehicle, or we meet them at their residence, so they  
2 actually aren't giving the statement to the public -- or in  
3 front of the public, so they're not labeled as a snitch, and  
4 then, usually they cooperate during that time, and then again,  
5 once they come to trial, they're put in a public forum, and at  
6 that time, again, they don't want to be labeled or perceived  
7 as a community as someone who told on -- on another fellow  
8 member of that community. So they are, again, fear of  
9 repercussions for that testimony.

10 Q Okay. Thank you very much, Detective.

11 MS. JIMENEZ: I have nothing further.

12 THE COURT: All right. Mr. Gill, cross-examination?

13 MR. GILL: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. GILL:

16 Q Officer, you testified about a suspect,  
17 initially.

18 A Excuse me?

19 Q The initial suspect that you identified in this  
20 case.

21 A Yes.

22 Q To be Shyct or Shyce -- Lamar Harris?

23 A Yes.

24 Q Any other names that came up?

25 A That was the only name. It was Young Shyce --

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1 Shyct.

2 Q There wasn't a Terry Day that -- that came up,  
3 initially?

4 A No, not that I know --

5 Q There wasn't a Terry Day found over at the --  
6 the apartments across the way that was hiding in a bathroom?

7 A He was hiding in the bathroom, and I did talk to  
8 him, the marshal had him in custody, and he stated to me that  
9 he --

10 Q That was just -- was -- was his name Terry Day?

11 A Yes.

12 Q Okay. And then, if someone's a suspect in a  
13 crime, would you agree that that doesn't necessarily mean  
14 they've done anything wrong?

15 A If someone's a --

16 Q A suspect.

17 A A suspect?

18 Q Are they guilty of a crime?

19 A We had an eyewitness stated that they saw him  
20 stab --

21 Q Are they guilty of a crime for being a suspect?

22 A Oh, no, of course not.

23 Q All right. Are they guilty of a crime for being  
24 charged?

25 A Are they -- no, they're not. They're only

1 accused of that crime.

2 Q Oaky.

3 A If we have probable cause.

4 Q Which is not a guilty.

5 A It's not a guilty.

6 Q Okay. We watched the video. Were you present

7 that night?

8 A I was not present that night.

9 Q During the playing of -- of everything that

10 happened on that video?

11 A No, I was not there at the scene.

12 Q When did you arrive?

13 A I arrived -- we were dispatched, I want to say,

14 approximately, probably 0230 hours.

15 Q And what time did you go to UMC?

16 A The following day because the victim was not

17 able to talk to us because of the treatment he was receiving.

18 Q What time?

19 A Well, according to the -- I would have to look

20 at my --

21 Q Approximately? You don't need an exact.

22 A I think the taped statement maybe took an hour

23 before the photo lineup.

24 Q So in the evening?

25 A It's in the evening, yeah.

1 Q Okay. And you said that he received treatment,  
2 and you were aware that he was under treatment for his wounds?

3 A Yes, sir.

4 Q His stab to the chest, stab to the face, you --  
5 you witnessed those. And did you ask him about any medication  
6 that he may have been given?

7 A I had -- we asked if he was on medication. We  
8 also assumed he was on medication because of the wounds that  
9 he had received, yes.

10 Q And prob -- he was probably on very strong  
11 medication, wouldn't you agree?

12 A I am not a doctor, so I don't know what type of  
13 medication they actually gave him.

14 Q He -- if you got stabbed in the chest, do you  
15 think you'd want some strong medication?

16 A What I think, and what they gave him are two  
17 different things, but it's possible.

18 Q I'm asking you what you think.

19 MS. JIMENEZ: Objection. Speculation.

20 MR. GILL: Judge, if he gets stabbed, I think it's --  
21 it's relevant.

22 THE COURT: Overruled.

23 THE WITNESS: Okay.

24 BY MR. GILL:

25 Q You'd want strong medication?

1           A    I'd want something that I didn't feel the pain.  
2           Q    I would too.  
3           A    Okay.  
4           Q    And also, the photo lineups were shown.  You --  
5   you gave out quite a bit of those, didn't you?  
6           A    Yes.  
7           Q    Tammy Kasper?  
8           A    Yes.  
9           Q    Michael Thomas?  
10          A    Yes.  
11          Q    Who else?  
12          A    Tammy Kasper, Michael Thomas, Stacy Monroe,  
13   Darnella Lay, Cannetia Woods, and Kimby Clark [phonetic].  
14          Q    So you gave each one of them, and -- and either  
15   they read it, or you read it.  
16          A    I read it.  
17          Q    You read it every time?  
18          A    I read it every single time.  
19          Q    And Lamar Harris was in position 3, every time?  
20          A    Yes.  
21          Q    And you gave these throughout the course of how  
22   many days?  What did it take you to track down all of the  
23   individuals you listed?  
24          A    If I can look at the last one, could I have  
25   my --

1 Q Absolutely.  
2 A -- book --  
3 Q Absolutely.  
4 A -- the last one? Okay.  
5 Q And whose is that, just for the record?  
6 A And this should be Kimby Clark. I think she  
7 was --  
8 Q Okay.  
9 A -- the last one, so -- oh, actually, you know  
10 what, the last one was actually Joycelyn Boston. So that was  
11 the --  
12 Q Okay. Correct.  
13 A -- last person.  
14 Q Correct.  
15 A So the last person being Joycelyn Boston, which  
16 is from the witness list that you gave to the district  
17 attorney's office, was on 8/23 of 2011.  
18 Q So I witnessed -- I know this Jocelyn Boston --  
19 Joycelyn Boston, I think.  
20 A Joycelyn, yeah.  
21 Q Okay.  
22 A So, and then prior to that, Kimby --  
23 Q And what was that date? I'm sorry.  
24 A 8/23/2011.  
25 Q Okay.

1           A    And then, prior to that --  
2           Q    You can give a -- an estimate on the one  
3 product.  
4           A    I think Stacy Monroe may have been the last one.  
5 If I look -- if I look at all the dates, I'll be able to  
6 specifically tell you.  
7           Q    Well, I don't -- I don't know if we need  
8 specifics.  
9           A    Okay.  
10          Q    If you just want to guess on Stacy, that's the  
11 -- your best -- your best estimate?  
12          A    The -- the 3rd.  
13          Q    Of?  
14          A    5 -- 5/3 of 2011, so --  
15          Q    Okay. So early May. But over the course of the  
16 summer -- you gave your first one on April 25th?  
17          A    Yep.  
18          Q    And the last one on August 23rd?  
19          A    Mm-hmm.  
20          Q    So over the cour -- course of the summer, you've  
21 given six or seven of these?  
22          A    Approximately, what -- whatever is in the --  
23          Q    And Lamar was in No. 3, every time?  
24          A    Yes.  
25          Q    Okay. You also talked about the preliminary

1 hearing that we had in this case.

2 A Okay.

3 Q And Ms. Jimenez was the prosecutor?

4 A Yes.

5 Q Mr. Harris was here with a different attorney,

6 my associate Bret Whipple.

7 A Okay.

8 Q Is that correct?

9 A Yes.

10 Q And you were outside with Ms. Lay?

11 A Yes.

12 Q And you were -- you also noticed Tia?

13 A Tiff -- Tiffany Thomson.

14 Q Tiffany -- Tiffany Thomson, I'm sorry.

15 A Okay.

16 Q We've been calling her, Tia, these last few

17 days. So you -- you did notice that Tia was out there?

18 A Yeah, she was.

19 Q Did she say anything to you?

20 A No. The only thing is, I had a -- I had -- was

21 sitting across from her, and then, in between the time I was

22 going --

23 Q The question --

24 A -- up to testify --

25 Q -- I'm sorry, Officer, but the question was, did

1 she say anything to you?

2 A She stated, no, she didn't want to give a  
3 statement to me.

4 Q You -- you tried to get a statement from her?

5 A Yeah, of course --

6 Q Because she's a --

7 A -- because she's a possible witness.

8 Q Okay. And did she say anything to Darnella Lay?

9 A No.

10 Q Did you recognize anyone else that was with her?

11 A No. From the scene? No.

12 Q For any other reason.

13 A No. There was just people that actually were  
14 coming up, talking to her, and there was actually another  
15 female, who was a blonde female, that was kind of hanging  
16 outside with her at that time.

17 Q Okay. But you didn't know who the blonde female  
18 was?

19 A I don't know her name.

20 Q Because -- the reason I ask, you stated to Ms.  
21 Jimenez that she was related. A bunch of people that Tif --  
22 Tiffany was related to were outside. You don't know if they  
23 were related?

24 A Not related by blood, but they -- they knew  
25 Tiffany to the point to where they were coming in and out of

1 the courtroom, and they were -- from in the courtroom, they  
2 were going out, talking to Ms. Thomson --

3 Q They just looked like they were together.

4 A -- going back into the courtroom --

5 Q Together?

6 A Yes.

7 Q Not related?

8 A Yes.

9 Q Okay. And did Narl -- did Denarla -- did --  
10 excuse me. Did Darnella ever tell you she didn't want to  
11 testify?

12 A Yes, she did.

13 Q Did she tell you why?

14 A Because she was afraid of what might happen  
15 because of the testimony.

16 Q On the streets?

17 A On the streets.

18 Q Oaky. And -- and you -- you talked about the  
19 location of the Seven Seas, and how that's rough, and all. Do  
20 you know where Mr. Harris was living on April 25th?

21 A I have no idea where he was living at that time.

22 Q So you wouldn't be able to tell -- if I told you  
23 he was living in North Las Vegas, you wouldn't be able to  
24 verify or deny that?

25 A The only thing I have is, I believe during Ms.

1 Kasper's statement, she had -- he was possibly living at 215  
2 and Durango, in that area when we --  
3 Q That was her statement --  
4 A -- wanted to --  
5 Q -- to you.  
6 A Actually, you know what, she did also tell me  
7 that at the Seven Seas, so --  
8 Q Okay. So you -- 215 and Durango north or south?  
9 A North end of town, by the Walmart, up there.  
10 Q And that's how far away from the -- the scene,  
11 here?  
12 A Maybe 20 minutes drive time.  
13 Q 20 minutes drive? Okay. And Darnella is -- did  
14 she ever tell you who her dad was?  
15 A Kevin Lay, K. Lay.  
16 Q And Kevin Lay is well known in -- in the  
17 neighborhood; is that fair to say?  
18 A He's well known in the neighborhood.  
19 Q Is he somebody to be afraid of?  
20 MS. JIMENEZ: Objection. Relevance.  
21 MR. GILL: Judge, they're -- they're saying he --  
22 they're trying to get out that -- that these people are afraid  
23 of my client, and it just simply isn't true. They're --  
24 they're -- they've got their own --  
25 THE COURT: I don't want to just --

1 MS. JIMENEZ: Well --

2 THE COURT: -- I want a --

3 MS. JIMENEZ: -- yeah.

4 THE COURT: -- there's an objection, relevancy.

5 MR. GILL: I'll move on.

6 THE COURT: What?

7 MR. GILL: I'll move on, Judge.

8 THE COURT: All right.

9 MR. GILL: I actually have no further questions.

10 Thank you. Thank you, Officer.

11 THE COURT: All right. Thank you. Anything else?

12 MS. JIMENEZ: Yes, Judge.

13 REDIRECT EXAMINATION

14 BY MS. JIMENEZ:

15 Q You were asked a little bit by Mr. Gill about  
16 Terry Day, who was found hiding across the street, I guess?

17 A Yes.

18 Q Well, why don't you describe what happened with  
19 that.

20 A Basically, it was brought to our attention that  
21 an individual was found hiding in the bathroom across the  
22 street from -- by the Doolittle Library -- Doolittle Community  
23 Center. There's a bathroom in that area. Marshals had him in  
24 custody. When I went to go talk to him, while he was being  
25 detained by the marshals, and I believe, he may even have had

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1 warrants, so they actually did end up transporting him.

2 But I interviewed him, and he basically said that he  
3 was hiding in the bathroom because he was with a prostitute at  
4 the time, and when this all happened, he heard the police  
5 sirens, and he knew the police were going to be looking, so he  
6 stayed there because he didn't want to get arrested with a  
7 prostitute.

8 Q Okay.

9 A And that area, that bathroom, specifically, is  
10 known by the officers in the area as a bathroom that they use  
11 for prostitution.

12 Q And in -- and additionally, you said he had some  
13 warrants, and probably wouldn't have wanted to be arrested on  
14 those either?

15 A Right. Yes, ma'am.

16 Q Okay. When you spoke with Michael Thomas at the  
17 hospital -- any time you interview somebody at the hospital,  
18 do you make an assessment of whether or not you feel that they  
19 can give a statement to you? That they can understand your  
20 questions, and give appropriate responses?

21 A Well, what we do is we go ahead and we talk,  
22 we -- we make small talk with the person to make sure they  
23 actually are coherent because, obviously, if they are drunk,  
24 slurred speech, and everything else like that, when we do take  
25 a statement from them, it -- it might become a problem, if it

1 does to a court.

2 So we make an assessment prior to us doing the  
3 interview.

4 Q And did you do that with Michael Thomas?

5 A Yes.

6 Q And did you feel that he understand what you  
7 were saying and was giving appropriate responses, as far as  
8 understanding your questions?

9 A He had enough wherewithal to give a statement.

10 Q And -- let's see. Once -- you talked about the  
11 fact that after you showed these photo lineups, that then, you  
12 know, an arrest warrant was issued. Does your investigation  
13 stop at that point?

14 A No, it doesn't.

15 Q And, in fact, there were a -- a few things you  
16 did after that, correct?

17 A Yes, I did.

18 Q You said that at the preliminary hearing you  
19 tried to take a statement from Tiffany Thomson?

20 A Yes.

21 Q And she was unwilling to give you a statement,  
22 correct?

23 A Yes, correct.

24 Q You also said that last week you became aware  
25 that the defense had noticed a witness by the name of Joycelyn

1 Boston, correct?

2 A Yes.

3 Q And had you previously been aware that she was  
4 present at the Seven Seas the night this happened?

5 A No, I was not.

6 Q And upon being provided that information, did  
7 you go out and conduct an interview with her?

8 A I immediately went out there and -- once I had  
9 the information to conduct that interview.

10 Q And you showed her a photo lineup, as well,  
11 correct?

12 A Yes, I did.

13 Q Okay. Were you able to verify whether or not --  
14 you said that you mentioned that Ms. Kasper said that she  
15 thought the defendant lived at Durango and 215. Did you ever  
16 verify that information?

17 A Yes, there was an address that was in that area,  
18 but what -- we actually had officers go to that location to  
19 verify if he and whoever he was living with was living at that  
20 house, and they did a knock and talk at that address, and they  
21 no longer lived at that address.

22 Q Okay. So you're not sure, at the time of the  
23 crime, exactly where the defendant was living, at that time?

24 A I had no idea where the defendant was.

25 Q Okay. Thank you.

1 MS. JIMENEZ: Nothing further.

2 THE COURT: All right. Anything else?

3 MR. GILL: Just a couple things, Judge.

4 RECROSS-EXAMINATION

5 BY MR. GILL:

6 Q When you were interviewing Michael Thomas, did  
7 he ever say -- prior to you asking him, did he ever say he was  
8 afraid of his life -- for his life?

9 A He said he -- as far as the repercussions of  
10 actually testifying?

11 Q No. During the -- after he was stabbed.

12 A After he was stabbed, he stated that he didn't  
13 want to -- he didn't want to pursue this, really, anymore  
14 because of the possible repercussions of who this guy is  
15 because he heard this guy was a bad dude.

16 Q When did he say that?

17 A When we were talking.

18 Q When -- it -- and it's in here?

19 A It's inside the statement? I'd have to  
20 specifically look at a statement, but during the course of the  
21 conversation.

22 Q Well, look at the statement because --

23 A Okay.

24 Q -- if you recorded it, I'd -- I'd like to know  
25 that.

1           A     And again, it may have been something that was  
2 after what was said. Because there was conversations between  
3 myself and Detective Patton, prior to and after the actual  
4 statement.

5           MS. JIMENEZ: And, Judge, if it will help, I would  
6 agree that the statements that the detective just testified  
7 to, are not within the recorded statement that we have a --

8           THE COURT: All right.

9           MS. JIMENEZ: -- transcript of.

10          THE COURT: Then that stipulation --

11          MS. JIMENEZ: That may help move things.

12          THE COURT: -- be entered into, so, you know, it's  
13 not in the statement, but go ahead. Proceed.

14          MR. GILL: Okay. Thank you. If you can give me just  
15 one more moment, Judge.

16          THE WITNESS: I'll --

17          THE COURT: Just a minute. Hold on.

18 BY MR. GILL:

19          Q     So prio -- prior to you asking --

20          MR. GILL: -- and this is page 39 --

21 BY MR. GILL:

22          Q     -- did you --

23          MR. GILL: -- of -- of Thomas's statement.

24 BY MR. GILL:

25          Q     Did you ever think at any time, I'm going to die

1 because it, you know, because you got all this blood and  
2 everything? Do you remember asking that?  
3 A If it's in the statement, I asked it.  
4 Q Would it refresh your recollection, if I -- if I  
5 showed you?  
6 A All right. That's fine.  
7 Q And his response was, uh-huh, yeah, it crossed  
8 my mind. And then you said, Okay, so you were scared that you  
9 were possibly going to die because this guy just stabbed you,  
10 right?  
11 A If -- if you're reading it, it's there.  
12 Q What -- and -- you had asked him that because  
13 you want this to be an attempt murder investigation, correct?  
14 A I have to ask them that question.  
15 Q And -- and you can satisfy an element of that  
16 crime, if he's afraid that he was going to die.  
17 MS. JIMENEZ: Well, Judge, I'm going to object as to  
18 the legal conclusion. That's something --  
19 THE COURT: Yeah, I don't --  
20 MS. JIMENEZ: -- for the jury.  
21 THE COURT: -- think we want to talk about law or  
22 elements. That's something I'll -- I'll instruct the jury at  
23 the appropriate time.  
24 MR. GILL: Okay.  
25 BY MR. GILL:

1 Q And just back to Tia, briefly. If she's —  
2 she's at the bar that night, correct?  
3 A Yes.  
4 Q You said she didn't want to give you a  
5 statement.  
6 A When I talked to her in the hallway the day of  
7 the prelim, she did not want to --  
8 Q The prelim, right.  
9 A -- give a statement.  
10 Q If somebody's involved, or if somebody's --  
11 somebody's present, and they may have thrown a bottle or  
12 thrown a punch, is -- would that be reason why they might not  
13 want to talk to you? Is that common, that people who -- who  
14 might be involved wouldn't want to talk to an officer --  
15 A On top --  
16 Q -- outside of a courtroom?  
17 A Yes, but also, as everyone has a right to give a  
18 statement, or whether or not to give a statement. I had -- I  
19 gave her the opportunity --  
20 Q They got a right to an --  
21 A -- to give her statement.  
22 Q -- attorney, as well, before they talk to  
23 anybody, if -- if you're going to take them in custody, or if  
24 they think they've done anything wrong, right?  
25 MS. JIMENEZ: Well, Judge, I'm going to object.

1 That's A, not accurate, and B, again, not appropriate  
2 testimony.

3 THE COURT: Yeah, I don't think it's accurate either,  
4 so — sustained.

5 BY MR. GILL:

6 Q Is it uncommon for someone who may or may not  
7 have been involved in a crime, to not want to talk to you?

8 A It's — it works both ways. Sometimes they want  
9 to go ahead and tell us their side of the story, and sometimes  
10 they do not. So it just depends —

11 Q Sure.

12 A -- on the person, themselves.

13 Q They don't want to, maybe, incriminate themselves?

14 A That -- it depends on the person. I get —

15 Q So you --

16 A -- yes.

17 Q -- you've been refused many times before?

18 A Yes, I have.

19 Q Okay.

20 MR. GILL: No further questions.

21 THE COURT: All right. That completes the testimony,  
22 now?

23 MS. JIMENEZ: Can I ask just one follow up, Judge?

24 THE COURT: Yes.

25 FURTHER REDIRECT EXAMINATION

1 BY MS. JIMENEZ:

2 Q I just wanted to follow up, back on the Michael  
3 Thomas statements that you talked about. You said you spoke  
4 with him a little bit before, and after the tape recorded  
5 statement, correct?

6 A Yes.

7 Q And so that very well could be when he made  
8 those comments to you about being afraid for — with  
9 cooperating with law enforcement?

10 A Yeah. He made the comments either before or  
11 after, and he also made the comments the day before the  
12 preliminary hearing, when I tried to contact him to make sure  
13 he was going to come to court. And he had stated to me over  
14 the phone, that he was afraid to come to court, and he had  
15 been bouncing from house to house because of fear of  
16 repercussions of testifying.

17 Q And, in fact, he didn't come to court for the  
18 preliminary hearing.

19 A And he did not come to court.

20 Q Thank you.

21 MS. JIMENEZ: Nothing further. Thank you.

22 THE COURT: Well —

23 MR. GILL: Judge, I -- I just need one question on  
24 that.

25

FURTHER RECROSS-EXAMINATION

UNCERTIFIED ROUGH DRAFT

1 BY MR. GILL:  
2 Q Did he ever tell you he's afraid of Lamar  
3 Harris?  
4 A Yes.  
5 Q He -- he said, I'm afraid that Lamar Harris --  
6 A I'm afraid of what that boy is going to do, if I  
7 testify.  
8 Q That boy. What boy?  
9 A The suspect that stabbed him, and testify  
10 against --  
11 Q He said, the suspect that stabbed him?  
12 A That boy -- he said, I sa -- I explained to him  
13 that his preliminary hearing, would he be there to testify,  
14 and he said, no, I'm not. I don't want to come. He initially  
15 said, no, I don't want to testify.  
16 Q Well -- well, we're trying to figure out who,  
17 that boy, is. Did he say, I'm afraid of Lamar Harris?  
18 A He did not say he's afraid of Lamar Harris.  
19 Q Did he say, I'm afraid of Shyce?  
20 A He did not say, Shyce.  
21 Q Or Chad? Or Chaz? Or -- or Little Chyce?  
22 A He said, the -- the boy that stabbed him.  
23 Q And so now he said, the boy that stabbed him?  
24 A The stabbing, yes. The one that committed the  
25 crime against him.

1 Q You just said, he's afraid of that boy.

2 A He's afraid of that boy —

3 Q So now we got more specific?

4 A He's afraid of the boy, he doesn't want to  
5 testify on him being stabbed.

6 MR. GILL: No further questions.

7 THE COURT: That's it. Thank you, Officer.

8 THE WITNESS: Okay.

9 THE COURT: What else do you have, Ms. Jimenez?

10 MS. JIMENEZ: Judge, I don't have any other further  
11 witnesses. I do have, for the record, two exhibits to move  
12 for the admission of. One is, State's Proposed Exhibit 100.  
13 This is simply a CD that contains the audio recordings of the  
14 clips that we played yesterday, during Darnella Lay's  
15 testimony. And so, it's just to make the record for that, and  
16 I'd move for its admission.

17 THE COURT: Any objection?

18 MR. GILL: No, Your Honor.

19 THE COURT: So 100, will be admitted.

20 (State's Exhibit 100 admitted.)

21 MS. JIMENEZ: And then, I haven't had this marked  
22 yet, but I'm going to ask to mark as next in more — next in  
23 order, State's Proposed 101, which is an audio recording of  
24 the clip from Stacy Monroe's audio statement, which was played  
25 today during his testimony, and I'd move for that ad — that

1 admission.

2 MR. GILL: No objection.

3 THE COURT: All right. You'll -- you'll mark 101,  
4 and admit it.

5 (State's Exhibit 101 admitted.)

6 MS. JIMENEZ: And, Judge, I believe, everything that  
7 we've moved for admitted, is shown as admitted, and so, at  
8 this time the State will --

9 THE COURT: Well, I mean, you -- you didn't move to  
10 admit certain ones. I took a look at it before, and I think  
11 it's 88, 90 --

12 MS. JIMENEZ: I can just check with the list.

13 THE COURT: -- 91, 92. That's about it. Is that  
14 correct, Ms. Clerk? Do you have a --

15 MS. JIMENEZ: That's correct, Judge.

16 THE COURT: So you don't want to admit those?

17 MS. JIMENEZ: No, there's been no --

18 THE COURT: All right.

19 MS. JIMENEZ: -- motion to admit those.

20 THE COURT: So at this time, the State rests?

21 MS. JIMENEZ: Yes, Judge.

22 THE COURT: All right. Ladies and gentlemen, the  
23 State has rested its case now. Let's take a 10-minute recess.

24 Don't converse among yourselves, or with anyone  
25 else on any subject connected to the trial, or read, watch, or

1 listen, to any report of the trial, and don't form or express  
2 any opinion on the trial until the close is finally submitted  
3 to you.

4 We'll be at ease until the jury leaves. 10-minutes.

5 (Jury recessed at 10:41 a.m.)

6 THE COURT: Here, look at this note. I -- I should  
7 have gave it, but it's -- I couldn't do anything about it,  
8 right now.

9 MS. JIMENEZ: Oh.

10 THE COURT: Show that to Mr. Gill, too.

11 MS. JIMENEZ: Adam?

12 MR. GILL: I'm sorry? Discharged? So what does that  
13 mean?

14 MS. JIMENEZ: His care -- like when he was discharged  
15 from the hospital. I don't know what that means. I mean, I  
16 guess, like if a family member was there, or something.

17 MR. GILL: I don't know how that helps them, at all,  
18 Judge.

19 THE COURT: Well, it doesn't matter how it helps  
20 them. I -- I don't know if we could answer the question  
21 because --

22 MR. GILL: I mean, I don't --

23 THE COURT: -- we'd have to call him back, but we  
24 ain't calling --

25 MR. THUNELL: Yeah.

1 THE COURT: -- this Michael back.  
2 MR. GILL: I don't care if it's asked. I mean, it  
3 doesn't matter.  
4 MR. THUNELL: I just don't --  
5 MS. JIMENEZ: Well, I don't know that we'd --  
6 THE COURT: Well, it -- it could be --  
7 MS. JIMENEZ: -- have someone --  
8 THE COURT: -- asked, but there's no answer. All  
9 right.  
10 MR. GILL: I have --  
11 THE COURT: I just wanted to let you know.  
12 MR. GILL: I have no position.  
13 THE COURT: I'll make this part of the record. All  
14 right.  
15 MR. GILL: The record --  
16 THE COURT: So the record will reflect that the -- we  
17 have a note from Juror No. 1. Whose care was the victim  
18 discharged to, if anyone other -- other than a -- than to  
19 himself?  
20 So that question should have been asked when the  
21 victim was on the stand, but since he's not on the stand now,  
22 and -- and no attorney has a -- I -- I'm just going to make  
23 this part of the record, all right?  
24 MR. GILL: Thank you, Judge.  
25 MS. JIMENEZ: Thank you, Judge.

1 MR. GILL: And, yes, no position from the defense.  
2 THE COURT: Yeah. Mr. Gill, what's your pleasure  
3 now? What are you going to do?  
4 MR. GILL: You can just admonish my client. I'm not  
5 going to call anybody, Judge.  
6 THE COURT: Okay. Well, I'm not -- I gave him --  
7 MS. JIMENEZ: He admonished yesterday.  
8 THE COURT: -- the waiver of right against --  
9 MR. GILL: And he will not be --  
10 THE COURT: -- self-incrimination, and I --  
11 MR. GILL: -- testifying.  
12 THE COURT: -- asked him to talk to the lawyer, and  
13 that's your right.  
14 MR. GILL: We discussed it --  
15 THE COURT: You do what --  
16 MR. GILL: -- and he's not going to be testifying.  
17 THE COURT: So you're just going to rest when we come  
18 back?  
19 MR. GILL: We're going to rest when we come back.  
20 THE COURT: So what do you want to do? Do you want  
21 to -- what do you want to do now?  
22 MS. JIMENEZ: Well, Judge, I think -- we'd be happy  
23 to argue today, but we still need to settle jury instructions.  
24 I know it's a little bit early, but do you want to give the  
25 ju -- the jury an early lunch? We can --

1 THE COURT: Yeah.  
2 MS. JIMENEZ: -- discuss jury instructions --  
3 THE COURT: I guess we should.  
4 MS. JIMENEZ: -- and --  
5 THE COURT: I mean, what -- why waste the whole day,  
6 right?  
7 MR. GILL: Yes.  
8 MS. JIMENEZ: Yeah, and we -- we're ready -- we're  
9 all ready to go. So we're fine with that.  
10 THE COURT: But what -- when do you want to do this?  
11 Do you want to -- do you want to -- take -- tell them to take  
12 an hour, an hour and a half, or something, and then come back,  
13 and then we'll just do it.  
14 MR. GILL: Perfect.  
15 MS. JIMENEZ: Yes, if we could give them an hour and  
16 a half --  
17 THE COURT: So we'll do a half hour --  
18 MS. JIMENEZ: -- that would be great.  
19 THE COURT: -- for jury instructions, and --  
20 MS. JIMENEZ: Sure.  
21 THE COURT: -- anything you need to type up, we'll  
22 type.  
23 MS. JIMENEZ: Sure.  
24 THE COURT: And then have them come back, and -- so,  
25 let's see, it's 11 -- it's 10:45, now.

1 MR. GILL: Give them until 12:15?  
2 THE COURT: How about -- yeah, 12:15; is that good?  
3 MS. JIMENEZ: Yeah, that should be fine, Judge.  
4 THE COURT: Well, should we bring them in, and tell  
5 them that you rest -- let's do it the official way. Bri --  
6 bring the jury --  
7 MS. JIMENEZ: Okay.  
8 THE COURT: -- back in.  
9 MS. JIMENEZ: Yeah, have the defense rest, and then  
10 you can --  
11 THE COURT: Exactly.  
12 MS. JIMENEZ: -- yeah.  
13 THE COURT: All right.  
14 MS. JIMENEZ: That sounds good, Judge.  
15 THE COURT: Thank you so much. Then we'll go into  
16 the jury room, and look at the -- what we have here.  
17 MS. JIMENEZ: Okay. Thank you, Judge.  
18 THE CLERK: Ms. Jimenez, I don't see your Proposed  
19 B7, up here. I don't know --  
20 MS. JIMENEZ: Yeah, you know what --  
21 THE CLERK: -- if you have the --  
22 MS. JIMENEZ: -- I'm going to try and get ahold of  
23 the detective. I'm wondering if he accidentally put it in his  
24 binder, and walked out with it, so.  
25 MR. THUNELL: I think that's what he did. Because he

1 was holding it, so I think that's exactly what happened.

2 THE COURT: Is everybody here, or do they need a  
3 little time?

4 THE MARSHAL: They need a little time. Some are  
5 using the rest room.

6 THE COURT: Okay. Yeah, I -- I figured that. All  
7 right. So as soon as they are ready -- I'm going to be back,  
8 and then bring them in and --

9 THE MARSHAL: Yes, Judge.

10 THE COURT: I guess we can go ahead and start, you  
11 know, if you want?

12 MS. JIMENEZ: Sure. Sure.

13 THE COURT: There's nothing else, then, for the  
14 record, by the State?

15 MS. JIMENEZ: Correct.

16 THE COURT: You know what, I -- is Mr. Gill here?

17 MR. GILL: I am, Judge. I'm --

18 THE COURT: I just want to -- because I always like  
19 you to make a record on whatever because that could be a  
20 parachute, if he's ever convicted. You know, but that's -- so  
21 I want --

22 MR. GILL: I appreciate it.

23 THE COURT: -- I want to be clear. There was some  
24 testimony by a witness that -- well, either -- the gang unit  
25 came, and I left, so I want to explore that one second.

1 MR. GILL: Yes, Judge, and I -- I'm not --

2 THE COURT: Will the State explain how you did  
3 admonish your witnesses.

4 MS. JIMENEZ: Correct. We -- he was here yesterday,  
5 and we didn't quite get to him, and we spoke with him  
6 yesterday, and made the admonishments about -- basically, I  
7 say, don't say anything gang related, and I usually tell them,  
8 don't say the word, gang, whatsoever.

9 Also, we had him -- he didn't get on the stand, so  
10 we had him here in the witness room this morning, and right  
11 before he testified, I went in, and I admonished him again,  
12 because I get, you know, concerned about that. I made the  
13 same admonishment, don't use the word, gang.

14 THE COURT: All right.

15 MS. JIMENEZ: You know, I was not eliciting that  
16 information when he --

17 THE COURT: No.

18 MS. JIMENEZ: -- testified. He said it  
19 spontaneously, and I kind of moved on, so as not to draw  
20 attention to it, but I understand, of course, the defense, you  
21 know, had to object. But it wasn't intentional, and I did  
22 follow through with my duty, and admonish him two different  
23 times not to say that word.

24 MR. GILL: And, Judge, I have not doubt that the  
25 State admonished Mr. Monroe correctly. I just -- I wasn't

1 sure, at the time when I made the objection, if it was going  
2 to get any bigger. So I wanted to stop it in its tracks. I  
3 also don't want the jury, you know, instructed or --

4 THE COURT: A limiting instruction --

5 MR. GILL: -- I -- I just don't want to bring any  
6 more attention to it. I objected because I wasn't sure where  
7 it was going to go.

8 THE COURT: All right.

9 MR. GILL: I heard the word, gang, and I'm sure, like  
10 most defense attorneys, when -- when we kept something out,  
11 and you hear the word, you instinctively --

12 THE COURT: Sure.

13 MR. GILL: -- rise. So I do want to make a record  
14 that I -- I objected to that portion of the testimony;  
15 however, I think it -- it speaks for itself.

16 THE COURT: All right. Well, I -- you did properly  
17 preserve that, and I -- I don't see any -- it wasn't like  
18 related to the defendant, as such, it was just a -- the gang  
19 unit came along, and so --

20 MS. JIMENEZ: Right.

21 THE COURT: -- whatever -- whatever, I don't think  
22 it's a, you know, the State didn't elicit that, and the State  
23 didn't do anything they weren't supposed to. So, you know,  
24 any motion for mistrial, whatever, is denied. So we'll  
25 proceed, all right?

1 MR. GILL: Thank you for letting me preserve that,  
2 Judge.

3 MS. JIMENEZ: Okay. Thank you.

4 THE COURT: So -- all right. You have the -- let's  
5 just go in there, but we'll be in the -- leave the defendant  
6 in here. As soon as the jury is ready, I'm going to tell them  
7 that -- to go -- go have lunch, and -- and you could take the  
8 defendant and bring him back, but as soon as they're ready,  
9 you let me know, all right?

10 Let's go in there.

11 MS. JIMENEZ: Thank you.

12 (Pause in the proceedings.)

13 (Jury entering at 10:49 a.m.)

14 THE COURT: All right. Counsel, you stipulate to the  
15 presence of the jury?

16 MS. JIMENEZ: Yes, Judge.

17 MR. GILL: Yes, Your Honor.

18 THE COURT: All right. As you know, ladies and  
19 gentlemen, the State has rested its case in chief. And, Mr.  
20 Gill, on behalf of the defense, what is your pleasure?

21 MR. GILL: Judge, we don't -- there's no witnesses  
22 that I'm going to call, that haven't already been called. At  
23 this time, we don't feel like we need to belabor the point,  
24 and we are going to rest.

25 THE COURT: Thank you, Mr. Gill. Well, ladies and

1 gentlemen, the defense has rested. Now, do you -- you did  
2 have a few Exhibits, A through G, photographs. I don't know  
3 if they were in the State's exhibits, or --

4 MR. GILL: They were, Judge. They were included  
5 within the --

6 THE COURT: So you're not going to move to admit any  
7 exhibits?

8 MR. GILL: No, Your Honor.

9 THE COURT: All right. So the exhibits are State  
10 submitted, and he -- he's not going to move to admit any of  
11 these exhibits.

12 All right. Ladies and gentlemen, the case is -- the  
13 evidence is concluded, now. What -- what we need to do -- I  
14 need some -- a little time to work on the instructions of the  
15 Court. I told you I was going to instruct you with what the  
16 law is, but, you know, I don't want to hang you around here.

17 What I'd like to do is, I'm going to let you take  
18 a -- an early lunch break, and a little -- a little more, and  
19 then I'll work on the instructions of the Court, and at -- to  
20 you, the instructions to the jury. And then we'll come back.  
21 When we come back, I'll instruct you as what the law is.  
22 We'll hear some brief closing arguments, and the case will be  
23 submitted to you, all right?

24 So come back around 12:15. So put that down, around  
25 12:15. We should be ready, but if not, 12:30, but be back out

1 there at 12:15. This way we can move this case along, all  
2 right? And I want to thank you so much, and we'll see you at  
3 12:15.

4 (Jury recessed at 10:52 a.m.)

5 THE COURT: All right. We're outside the presence of  
6 the jury. This is time set for settlement of instructions.  
7 Is the State familiar with the Court's Proposed Jury  
8 Instructions, 1 through 34?

9 MS. JIMENEZ: Yes, Judge.

10 THE COURT: Does the State object to any of the -- to  
11 the giving of any of those instructions?

12 MS. JIMENEZ: Judge, the only instructions that I had  
13 objected to, were the self-defense instructions proposed by  
14 the defense. I felt that there was not any evidence of  
15 self-defense in this case, and so that they were not  
16 appropriate; however, I did tell the Court that I thought if  
17 the Court was going to give them, that they should give all of  
18 the instructions. The defense had only provided about three.

19 So if the Court's giving them that -- the  
20 instructions, as in the packet, I do not have an objection to,  
21 other than, I don't think there was evidence of self-defense.

22 THE COURT: Mr. Gill?

23 MR. GILL: And -- and, Judge, I think the video does  
24 show a couple altercations, and -- and the likelihood of a --  
25 a need for self-defense with my client, when he -- especially,

1 when he comes outside in State's Exhibit 95, the outside  
2 video, when he comes outside he's confronted with a -- a  
3 crowd, a mob, and I think self-defense is applicable for that  
4 reason.

5 THE COURT: Well, it's -- it's sort of slim, but I --  
6 I think that in an abundance of caution, over the State's  
7 objections, I'm going to give the self-defense instructions  
8 that the State provided -- over objections by the State, but I  
9 think they're more appropriate, and you have no objection to  
10 that, right?

11 MR. GILL: Correct, Your Honor.

12 THE COURT: All right. Does the State have any  
13 additional instructions to propose?

14 MS. JIMENEZ: No, Judge.

15 THE COURT: All right. Is the defendant familiar  
16 with the Court's Proposed Instructions 1 through 34?

17 MR. GILL: Yes, Your Honor.

18 THE COURT: Does the defendant object to the giving  
19 of any of those instructions?

20 MR. GILL: No, Your Honor, I just did have a couple  
21 that I had proposed.

22 THE COURT: Right. And you -- you did request that a  
23 -- the defendant is not compelled to testify, and you  
24 requested that, and the State had no objection, and that's in  
25 there.

1 MR. GILL: Correct.

2 THE COURT: That's Instruction No. 30.

3 MR. GILL: Yes.

4 THE COURT: All right. Does the defendant have any  
5 additional instructions to propose?

6 MR. GILL: Judge, I -- I did. I had, Defendant's  
7 Proposed A, was a -- a reasonable doubt instruction. And in  
8 the -- and -- as well as Defendant's Proposed B, which is a  
9 presumed innocent instruction, and my proposal was -- was to  
10 separate those two out. To have reasonable doubt as one, and  
11 the presumption as -- as its -- a sole instruction. And I'll  
12 submit it, Judge.

13 THE COURT: And -- but the -- the Defendant's  
14 Proposed A, is really a little different than --

15 MR. GILL: Yes, Judge, you --

16 THE COURT: -- the standard one, but --

17 MR. GILL: -- you're correct. The Defendant's  
18 Proposed A, was -- was correctly objected to, I believe,  
19 for -- for older caselaw, and had we explored the idea of  
20 breaking the two up, the A and B, I -- I -- I would have  
21 agreed to using the State's proposed reasonable doubt  
22 instruction, as well as just separating the State's  
23 proposed --

24 THE COURT: All right.

25 MR. GILL: -- presumption of innocence.

1 THE COURT: State?

2 MS. JIMENEZ: And, Judge, the — there's a statute  
3 that specifically defines reasonable doubt. The instruction  
4 directly quotes the statute, and the Supreme Court has made it  
5 very clear that that is the instruction that is to be given,  
6 and there's to be no variation from it, which would include  
7 splitting it into two parts.

8 So I think that what's given is appropriate, and we  
9 did object to Defense's Proposed A and B.

10 THE COURT: All right. I agree — I agree with the  
11 State, and all due respect, I'm not going to give A and B.  
12 It's not a big deal, but we're going to mark those as not  
13 given, all right?

14 MR. GILL: Thank you, Your Honor.

15 THE COURT: Does the State or the defendant object to  
16 the proposed verdict form?

17 MS. JIMENEZ: No, Judge.

18 MR. GILL: No, Your Honor.

19 THE COURT: All right. So that's the verdict form.  
20 All right. We're going to -- any objection that we argue  
21 before closing — that I give the instructions prior to  
22 closing arguments?

23 MS. JIMENEZ: No, no. Go ahead --

24 MR. GILL: No.

25 MS. JIMENEZ: — please do that.

1 THE COURT: Everybody's ready? Bring the jury in.  
2 MR. THUNELL: Your Honor?  
3 THE COURT: Yes.  
4 MR. THUNELL: For two seconds, just before we do, can  
5 I just make sure my audio works? I just want to — I'd hate  
6 to have it halfway through, starting the closing, and it's  
7 just not working.  
8 MS. JIMENEZ: Did you unmute it?  
9 MR. THUNELL: What's that?  
10 MS. JIMENEZ: It's on mute, so hold on. Let me  
11 unmute it.  
12 MR. THUNELL: It's on -- okay. That -- that would be  
13 a good place to start fixing it.  
14 MS. JIMENEZ: Only because I've done it about three  
15 times.  
16 (Pause in the proceedings.)  
17 (Jury entering at 12:25 p.m.)  
18 THE COURT: All right. Will counsel stipulate to the  
19 presence of the jury?  
20 MS. JIMENEZ: Yes, Judge.  
21 THE COURT: All right. Ladies and gentlemen, I'm  
22 about to instruct you upon the law, as it applies to this  
23 case. I'd like to orally instruct you, but I think it's best  
24 that I read these carefully prepared instructions. And I  
25 think you have a copy, so you can follow along with them.

1           These instructions are long. Some — some are  
2 complicated, but bear in mind, that you're going to be able to  
3 take the instructions with you into the jury room, and all  
4 exhibits, and all that we've admitted into evidence in forms  
5 or verdicts for your convenience.

6           So what we're going to do is read the instructions,  
7 and thereafter, we'll hear some brief closing arguments, and  
8 the case will be submitted to you, all right?

9           (Jury instruction read, not transcribed.)

10          THE COURT: That completes the reading of the  
11 instructions. You might — take those — you know — those  
12 instructions away.

13          Now, we'll listen to closing arguments. Since the  
14 State has the burden of proof, ladies and gentlemen, they have  
15 so-called two bites of the apple. The State will give their  
16 argument, then the defense will give their closing argument,  
17 and the State will be allowed to give a rebuttal argument. So  
18 we're going to have three arguments, and we'll begin with the  
19 State.

20          Are you ready, or you need time?

21          MS. JIMENEZ: We -- I think we've got it.

22          MR. THUNELL: I think we've got it, Your Honor.

23          THE COURT: Oh, good.

24          MS. JIMENEZ: We found a workaround, Judge --

25          THE COURT: Good. Thank you.

1 MS. JIMENEZ: -- so I think we're fine.  
2 THE COURT: If you don't, let me know, all right?  
3 MS. JIMENEZ: Thank you.  
4 MR. THUNELL: I appreciate it, Judge.  
5 THE COURT: Mr. Thunell, you going to do the --  
6 MR. THUNELL: Yes, Your Honor.  
7 THE COURT: All right.  
8 THE CLERK: Do you want me to switch over?  
9 MR. THUNELL: Please.

10 STATE'S CLOSING ARGUMENT

11 MR. THUNELL: Michael Thomas. On April 25, 2011,  
12 what he did was he went to the aid of the daughter of one of  
13 his friends. He went out there, he saw her getting hurt, he  
14 ran over to give her -- to give her aid, to help her out. For  
15 his good deed, for the thing that he did, he got a slash to  
16 the face, and a stab to the chest.

17 Ladies and gentlemen of the jury, you've heard the  
18 evidence. You've been here for the last few days. I  
19 appreciate your patience. What I'd like to do is just walk  
20 through a little bit of this, and also, walk through a little  
21 bit of the law. I know that sometimes it feels like the Judge  
22 comes in with the dump truck, and kind of dumps the law on  
23 your lap, and your job is to take that law, take the  
24 situation, and the evidence, and put it together.

25 And so I'm just going to walk through the evidence

1 that was brought forward, so we can kind of talk about what  
2 happened here.

3 So where are we at? We're at the Seven Seas, right?  
4 Seven Seas over there on Lake Mead. And here's that door to  
5 the Seven Seas, going right over into the Lake Mead. That's  
6 the door that we see in the video that Darnella Lay is coming  
7 in and out of, over there, and over here, on the side, is  
8 where it happens.

9 We've heard from the CSA, the blood splat -- blood  
10 spatter, all those different spots moving down, over around,  
11 over this way. And there's that back door. That side door  
12 going over to the other street, where they went out on that  
13 side for Revere. Where the defendant and Tia came out of.

14 And, before that happened, what kind of got all this  
15 rolling, right? Everybody's there, it's the last song,  
16 everybody's having fun, and this is where this happens. This  
17 is where you have that incident between the defendant and  
18 Darnella. Which we catch on the video camera that's right up  
19 there, that's showing us there.

20 So first, before we walk through this, what I'd like  
21 to do -- and I know we heard Michael's statement yesterday,  
22 I'd just like a little snippet of Michael's statement, so we  
23 can hear in his words, what happened.

24 (Audio played.)

25 MR. THUNELL: I'll just pause it there, for a second.

1 So what's he telling us about? There's that fight, right?  
2 The fight over there in the corner. There's Darnella.  
3 There's the defendant, Shyce, over there. Obviously there's  
4 words exchanged. Other people get involved over there in that  
5 corner. Darnella told us that she went over, she wanted her  
6 purse. She was trying to go around, words exchanged, and  
7 things got kind of heated there.

8 (Audio resumed playing.)

9 MR. THUNELL: So we heard the statement that he had  
10 originally -- that he gave, that day, later on that day, to  
11 the police, there in the hospital. And it follows what we  
12 talked about. This is going back, just a little bit.  
13 Basically, he talks about how he goes in, he checks out after  
14 Darnella -- he goes out and talks to Darnella, comes back in  
15 to check it out. Inside, Darnella had gone back in. Tia,  
16 threw that Heineken bottle, boom, shatters. Everybody, get  
17 out. Get out. The bartenders kicking them all out.

18 Darnella, still kind of hot about the situation,  
19 goes around to the other side. And, Mr. Thomas, still being  
20 the good friend to her -- to her father, still trying to watch  
21 out for her, goes to see where she's at. And we see -- as  
22 he's going around over there, there goes defendant and Tia,  
23 out that side door.

24 There's Darnella waiting. She's still -- still hot,  
25 and wants to talk to -- talk about it. Wants to get in their

1 face. And here comes the defendant, and here comes Tia. They  
2 come out, and right away -- they come out, and the fight's on.  
3 Boom. They're right after her.

4 And what do we hear Mike talk about? Kicking,  
5 hitting, she's down. He sees his friend's daughter down  
6 there. So what does he do? He comes in. Now, look, when  
7 they come in, you can see that -- back there, there's Tia,  
8 coming right down on her. Where's Michael? He's back there.  
9 Back there 10, 15 feet, back behind a car. He comes in to  
10 save her, to help her out. And then that -- well, that's  
11 when he gets stabbed, by the defendant.

12 Ladies and gentlemen, the State must prove two  
13 things. The first thing is that a crime was committed. The  
14 second thing is, that it was the defendant that committed the  
15 crime. So I got to break this into two parts, real quick.  
16 I'm going to start with, a crime was committed. And this is  
17 the part where we kind of get into the instructions. So, you  
18 can -- the nice thing is you'll have the instructions back  
19 there, you can go back and look at these. There's just a few  
20 of the instructions I want to kind of touch upon and talk  
21 about.

22 So attempted murder. He's charged with, first of  
23 all, attempted murder with a deadly weapon, right? Attempted  
24 murder is the performance of an act or acts, which tend, but  
25 fail, to kill a human being, when such acts are done with

1 express malice, namely, with the deliberate intention  
2 unlawfully to kill.

3           So then it comes to express malice. What is that?  
4 It is, That deliberate intention unlawfully to take away the  
5 life of a human being, which is manifested by external  
6 circumstances capable of proof.

7           So what is it that shows that malice? That's what  
8 the que -- that's what the question becomes. What's that  
9 express malice. Well, the next -- next instruction helps us  
10 out.

11           The intention to kill may be ascertained or deduced  
12 from the facts and circumstances of the killing, such as -- so  
13 these are some of the different things that you can look at.  
14 You can look at, The use of a weapon calculated to produce  
15 death. Was there a weapon involved? The manner of its use.  
16 And the attendant circumstances characterizing the act.

17           In this case, the use of a weapon. Was there a  
18 weapon? Most definitely. As we can see, this isn't from a  
19 punch. This isn't from a -- a hit with the elbow. That is  
20 from a knife. A big, gaping wound, right there on the chest.  
21 Definitely a use of the weapon. Slash across the face. Once  
22 again, that's not going to happen from a punch. That is a  
23 slash with a knife.

24           And the blood that came out of there. The use of  
25 the weapon, calculated to produce death. That's what that

1 injury did. The profuse bleeding coming from it.

2 And the manner of its use. When was this knife  
3 used? In the middle of a fight. What was it being used for?  
4 It was being used to cut down, to stab the defendant [sic] in  
5 the face and in the chest. Those are the most vital parts of  
6 the body to keep you alive, the head and the chest. And  
7 that's exactly where the defendant stabbed the victim, in this  
8 case.

9 So that shows express malice. He's using a weapon,  
10 and the way he's using it, he's stabbing, it's not kind of  
11 back here, it's stabbing, he's doing that, and he's using it  
12 in a fight.

13 Also, the attendant circumstances characterizing the  
14 act. What's going on? It's a fight. And the defendant has  
15 pulled out the knife, and he's coming after the victim.

16 Those are the things that you can look at to show  
17 you the malice and the attempt murder. And the defendant,  
18 most definitely, showed that malice by what he did. And you  
19 can see -- you saw the wound, you saw the blood, you can see  
20 what that produced. He showed that malice, it is attempt  
21 murder.

22 Now, when a person is accused of committing a  
23 particular crime, and at the same time by the same conduct may  
24 have committed another off -- offense of lesser grade or  
25 degree, the latter is called -- it's basically called a lesser

1    offen -- a lesser included offense.

2               So in this case, with attempt murder, there's a  
3    lesser included offense, so even with the same act, you could  
4    still -- it would be a lesser one than this, it would be  
5    battery. So from attempt murder, a lesser included act would  
6    be battery.

7               And battery is the willful and unlawful use of force  
8    or violence upon the person of another. That's what battery  
9    is. So let's talk about battery for a second here. Battery  
10   with a deadly weapon resulting in substantial bodily harm.  
11   There's kind of three parts to that.

12              So you first have battery, right? We talked about  
13   battery, that's the willful and unlawful use of force or  
14   violence on the person of another. So let's first of all,  
15   let's talk about deadly weapon. And the attempt murder, and  
16   battery, both have the deadly weapon part of the charge, as  
17   you guys heard. Attempt murder with a deadly weapon, that's  
18   what he's being charged with.

19              So you're instructed that, if you find the defendant  
20   guilty of attempt murder, or battery, you must also determine  
21   whether or not a deadly weapon was used in the commission of  
22   this crime. Was a deadly weapon there? That's -- that's kind  
23   of part of -- part of your determination that you have to make  
24   as a jury.

25              If you find beyond a reasonable doubt that a deadly

1 weapon was used in the commission of such an offense, then you  
2 would return back with -- with use of a deadly weapon.

3         So how do we know? How do we know that a deadly  
4 weapon was used in this case? Well, let's first of all  
5 discuss what a deadly weapon is. A deadly weapon is any  
6 instrument, which, if used in the ordinary manner contemplated  
7 by its design and construction, will or is likely to cause  
8 substantial bodily harm or death.

9         Let's start right there. A knife. I mean, this  
10 is -- a knife is kind of one of your most basic of the -- of  
11 the deadly weapons, guns and knives. I mean, what are -- what  
12 guns and knives can be used for to cause substantial bodily  
13 harm, and to cause death. And so that's exactly what this is  
14 here. This is a knife. And this is a knife that, obviously,  
15 slashed through his face, slashed through the chest, caused a  
16 lot of bleeding. It can cause substantial bodily harm, or  
17 death. So under that definition of a deadly weapon, most  
18 definitely a knife would -- would qualify under there. And if  
19 you look at what this knife did, most definitely.

20         Now, let's talk about knife, and the defendant. Did  
21 the defendant have a knife? Well, what did we hear from Stacy  
22 Monroe? We heard Stacy Monroe earlier today. What did he  
23 say? He said he saw defendant make a gesture to his  
24 waistband, and this is his statement to the police. Statement  
25 to the police said that he saw him make a gesture to his

1 waistband, and made him believe that he had a weapon. One of  
2 those kind of gestures.

3 There's Tammy's statement about the knife.

4 (Audio played.)

5 MR. THUNELL: All right. So we heard from Tammy,  
6 right? So we have Stacy Monroe talks about -- he doesn't see  
7 a knife, but he sees a gesture to the waistband. Tammy's  
8 taped statement with the police, just a few hours after this  
9 happened, she talks about a knife. She's very specific.  
10 She's not vague, like -- and Tammy, we heard her say, oh, I  
11 was really intoxicated, and all that, but you guys have heard  
12 her statement. She's not slurring her words. She's not  
13 confused about details. This is very specific. She sees a  
14 knife. Not just any knife. She's, once again, very detailed.  
15 It's a switchblade, I couldn't quite see the length. If she's  
16 making this up, she could have made up a length, but she's --  
17 couldn't quite see the length, but she could definitely see  
18 the knife. See the switchblade there. So we have Tammy's  
19 statement.

20 Who else did we hear about about the knife? We have  
21 a few statements from Darnella.

22 (Audio played.)

23 MR. THUNELL: There's a few others.

24 (Audio played.)

25 MR. THUNELL: So she's out there, and she sees him

1 pull the knife during the fight.

2 (Audio played.)

3 MR. THUNELL: And just so we're clear, if Darnella  
4 saw a knife?

5 (Audio played.)

6 MR. THUNELL: I hope I didn't belabor the point too  
7 much there, but what did we hear? We heard testimony from  
8 multiple people about the knife. And these testimony that  
9 they're getting, Tammy's just right afterward, Darnella, with  
10 her taped statement just a week later.

11 MR. GILL: Judge, I'm going to object. It wasn't  
12 actually testimony. It was the voluntary statements that  
13 were —

14 MR. THUNELL: I'll re — I'll restate that. Thank  
15 you.

16 Their voluntary taped statement. Oh, but — that  
17 is — we remember the difference here, but the taped statement  
18 that was given, just right after the incident. We heard from  
19 Tammy, saw the knife. Darnella, just one week later, talking  
20 about the knife. All the different things, details, very  
21 detailed on what was going on.

22 And, once again, we see the wounds. Obviously, this  
23 is not wounds made from a punch, made from a ring, or anything  
24 like this. Obviously, these are wounds that would be made  
25 with a knife. Wounds that could kill. Wounds that have that

1 pimp. She's working for him. Or, this is business.

2 So I just wanted to make a record, and object, and  
3 ask for a mistrial on those grounds.

4 THE COURT: Now, this is a wri — a statement that  
5 you redacted?

6 MS. JIMENEZ: I did redact it, Judge.

7 THE COURT: And you gave a copy to the defense  
8 attorney.

9 MS. JIMENEZ: I did.

10 THE COURT: Prior to — and the copy kept in, works  
11 for.

12 MS. JIMENEZ: That's correct.

13 THE COURT: I was just wondering why you didn't bring  
14 that up, and say, ought oh, wait a minute, I want that also  
15 redacted?

16 MR. GILL: That's correct, Judge, and -- and I — I  
17 tried to open the redacted. I'm not blaming the State in any  
18 way. I got the email, but the -- the reason that I didn't  
19 read through it was it was on my phone, and it had a trouble  
20 opening it for whatever reason.

21 So, Your Honor, I — I understand, completely, the  
22 Court's ruling.

23 MS. JIMENEZ: And -- and I just want to add, for the  
24 record, Judge, that there's nothing on its face, I mean, we  
25 know -- because we know there's the other information about

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1 being -- the defendant being a pimp, when you know that  
2 information, if you put it together, there's that implication,  
3 but on its face, what was played before the jury, there is no  
4 direct or even indirect implication that the defendant's a  
5 pimp. So...

6 MR. GILL: I'll submit it on that, Judge.

7 THE COURT: Now, I mean, I -- I'm going to deny a  
8 motion for a mistrial. I don't think it's that -- that  
9 egregious. I mean, I -- you know, if you want a limiting  
10 instruction, you ignore the fact that they said -- but I don't  
11 know if you want that?

12 MR. GILL: I don't think I do, Judge, but I --

13 THE COURT: I'd be glad to give it to you.

14 MR. GILL: -- I appreciate the option.

15 THE COURT: But -- all right. So -- but you -- you  
16 made the motion, but the mistrial is denied.

17 MR. GILL: Thank you.

18 THE COURT: And then the del -- the other one was  
19 regarding the police officer, he said that he goes by Shyce.

20 MR. GILL: Well -- well, Judge, his testimony was  
21 limited to -- to what he goes by, so my original concern was  
22 that -- well, this guy is from a robbery detail because of the  
23 dates that were given. Why he was even investigating?  
24 Whether or not he's from the robbery, or investigating him as  
25 a -- as a gang member, my objection, and -- and my motion for

1 a mistrial was based on him objecting -- or even bringing up  
2 that one year ago he was investigating my client.

3 THE COURT: I understand. But the --

4 MR. GILL: And I do understand that --

5 MS. JIMENEZ: I don't --

6 MR. GILL: -- he was limited to testifying just to  
7 what his -- what his moniker is.

8 THE COURT: Right. All right, now --

9 MS. JIMENEZ: I don't recall him saying anything  
10 about investigating his client. He was asked if he came into  
11 contact with his client. We met specifically with the  
12 witness, and told him that we were not going to mention the  
13 circumstances he came into contact with him.

14 I had a conversation with Mr. Gill at the break,  
15 letting him know we were going to lead the witness, somewhat,  
16 just to avoid any potential issues, and all that was brought  
17 up was that he came into contact with the defendant, and the  
18 defendant told him that he went by the moniker of Young Shyce.

19 So we did redact it. I had conversations with Mr.  
20 Gill about it. We even had some pictures we were going to  
21 admit, but when there was an objection, we didn't even bother  
22 admitting them because we were just -- he was able to identify  
23 him in court, so we didn't really need them.

24 THE COURT: Okay.

25 MS. JIMENEZ: And the point was the moniker, so...

1 THE COURT: And the relevancy was that's an  
2 independent of the other --

3 MS. JIMENEZ: Exactly. And we've obviously had  
4 witnesses here who have not wanted to come forward, have not  
5 been cooperative, and so I think it was important to have an  
6 independent witness verify that this is Shyce, who all the  
7 witnesses are referring to because they haven't come in, and,  
8 you know, testified, certainly, at least according with what  
9 they originally told police.

10 So it was relevant, and I had let Mr. Gill know that  
11 we were going to bring it in.

12 THE COURT: All right.

13 MS. JIMENEZ: Thank you.

14 THE COURT: I don't think there's a problem with  
15 that. They did -- we approached the bench, and they -- the --  
16 I said, well, just say he had contact with him, there's no  
17 investigation of him, which indicates, well, he's a bad  
18 character, evidence of other crime. Just contact, and -- so  
19 whatever motion you have, a mis -- mistrial is denied.

20 MR. GILL: Thank you for letting me --

21 THE COURT: But you have a --

22 MR. GILL: -- make my record.

23 THE COURT: -- record on it.

24 MR. GILL: I do. Thank you.

25 THE COURT: Anything else? Any other motions?

1 MR. GILL: Not for me, Judge. Thank you.

2 THE COURT: Any other thing -- anything you have?

3 MS. JIMENEZ: No, I just missed what time and what  
4 courtroom tomorrow?

5 THE COURT: Yeah, it --

6 THE CLERK: 9:15, and 11B.

7 THE COURT: Yeah, Barkers, 11B. 9:15. So I think we  
8 could -- how many witness you have left?

9 MS. JIMENEZ: No more than three or four, Judge.

10 THE COURT: Okay. Good.

11 MS. JIMENEZ: We've moved right along, and we were  
12 able to eliminate some, kind of based on how the testimony  
13 came out.

14 THE COURT: Good. Good.

15 MS. JIMENEZ: So I think we'll be done fairly  
16 quickly, and, I guess --

17 THE COURT: Are you going to get -- look at  
18 instructions?

19 MS. JIMENEZ: Yes, I have them ready. I'll email  
20 them tonight, if Mr. Gill will get me any that he has.

21 MR. GILL: Perfect. I'll take it.

22 MS. JIMENEZ: And --

23 THE COURT: I wanted -- yes, go ahead.

24 MS. JIMENEZ: No, I was just going to ask  
25 scheduling-wise, are we anticipating closing tomorrow?

1 THE COURT: No, let's -- well, I mean, let's see  
2 where we're at. I -- you know.

3 MR. GILL: Well, Judge, to be frank with the Court, I  
4 don't know how many other witnesses I would even call, based  
5 on who the State has called.

6 THE COURT: I know.

7 MR. GILL: So I --

8 THE COURT: Well, we'll play it by ear. I mean --

9 MS. JIMENEZ: Okay.

10 THE COURT: -- if you want to start the -- I guess,  
11 Friday we could start at 10:00, and argue it, and argue it  
12 from 10 to noon, or whatever it is, then have them go to  
13 lunch. I mean, do you want to do that? I'm accommodating to  
14 anything you need to do, all right? I -- I don't want to rush  
15 you, all right?

16 MS. JIMENEZ: Okay. Thank you, Judge.

17 MR. GILL: Thank you, Your Honor.

18 THE COURT: So you -- you can talk among yourselves,  
19 whatever you want to do.

20 MR. GILL: Thank you.

21 MS. JIMENEZ: Okay. Thank you.

22 THE COURT: I just want to say, before -- for the  
23 record, I -- the waiver of right against self-incrimination,  
24 while I have a minute, I'm going to talk to you, sir.

25 Before a defendant takes or refuses to take the

1 stand, I have to read this admonition to the defendant outside  
2 the presence of the jury. The Court should further advise  
3 counsel to confer with his client, with the view of having the  
4 defendant voluntarily make a knowing and understanding  
5 decision, as whether or not you should testify.

6 Now, under the Constitution of the United States,  
7 and under the Constitution of the State of Nevada, you cannot  
8 be compelled to testify in this case; do you understand that?

9 THE DEFENDANT: I -- I cannot be compelled to  
10 testify.

11 THE COURT: Yeah.

12 MR. GILL: You can't be forced to testify.

13 THE COURT: Nobody can force you to testify.

14 THE DEFENDANT: Oh, okay. Yeah.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yeah. Yeah, I understand.

17 THE COURT: But you may, at your own request, give up  
18 this right, and take the witness stand, and testify. If you  
19 do, though, you will be subjected to cross-examination by the  
20 deputy district attorney, and anything that you may say, be it  
21 on direct or cross, will be the subject of fair comment when  
22 the deputy district attorney speaks to the jury in their final  
23 argument; do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: If you choose not to testify, the Court

1 will not permit the deputy district attorney to make any  
2 comments to the jury because you have not testified. In other  
3 words, they can't say to the jury, why didn't he testify; do  
4 you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: But if you elect -- and if you elect not  
7 to testify, the Court will instruct the jury, but only if your  
8 attorney specifically requests as follows. The law does not  
9 compel a defendant in a criminal case to take the stand and  
10 testify, and no presumption may be raised, and no inference of  
11 any kind may be drawn from the failure of the defendant to  
12 testify.

13 So do you have any questions about your rights?

14 THE DEFENDANT: No, sir.

15 THE COURT: Now, you're further advised that you --  
16 if you have a felony conviction, and more than 10 years has  
17 not elapsed from the date you have been convicted or  
18 discharged from prison, parole, whichever is later, and the  
19 defense has not sought to preclude that from coming in, and  
20 you elect to take the stand and testify, the dep -- the deputy  
21 district attorney, in the presence of the jury, will be  
22 permitted to ask you, have you ever been convicted of a  
23 felony? What the felony is, and so they would know that  
24 you're an ex-felon, the jury, if you testify.

25 If you don't testify they won't know you're an

1 ex-felon; do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: So you'll talk to your client about what  
4 he wants to do, all right?

5 MR. GILL: Absolutely, Judge.

6 THE COURT: Well, all right. Well, thank you so  
7 much. I'll see you, hopefully we'll start at 9:15 tomorrow  
8 morning.

9 MS. JIMENEZ: Okay. Thank you, Judge.

10 THE COURT: I don't have a calendar tomorrow, so I'm  
11 going -- I'm going to be there, and --

12 MS. JIMENEZ: Okay.

13 THE COURT: -- probably the same place in the jury  
14 room. We'll -- we'll see.

15 MS. JIMENEZ: Okay.

16 THE COURT: All right.

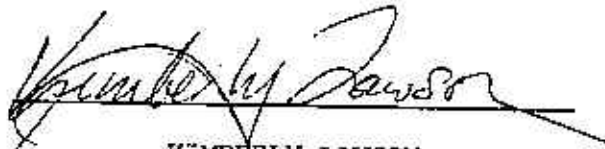
17 MS. JIMENEZ: Thank you.

18 MR. GILL: Thank you.

19 (Court recessed for the evening at 4:20 p.m.)  
20  
21  
22  
23  
24  
25

ACKNOWLEDGMENT:

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

A handwritten signature in cursive script, appearing to read "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

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FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

2012 APR 16 P 4:01

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*[Signature]*  
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

LAMAR ANTIWAN HARRIS,

Defendant.

CASE NO. C274370  
DEPT NO. V

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE JOSEPH BONAVENTURE, SENIOR JUDGE

-JURY TRIAL - DAY 3

THURSDAY, SEPTEMBER 1, 2011

APPEARANCES:

For the State: SONIA V. JIMENEZ, ESQ.  
Chief Deputy District Attorney  
PETER THUNELL, ESQ.  
Deputy District Attorney

For the Defendant: ADAM L. GILL, ESQ.

RECORDED BY RACHELLE HAMILTON, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

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## **I N D E X**

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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 1, 2011, 9:30 A.M.

2 P R O C E E D I N G S

3 THE MARSHAL: District Court, Department 5 is now in  
4 session. Senior Judge, Bon -- Joseph Bonaventure, presiding.  
5 Please be seated.

6 THE COURT: All right. Are we ready to go then?  
7 Bring in the jury?

8 MS. JIMENEZ: Yes, Judge.

9 THE COURT: All right. Bring in the jury.

10 (Jury entering at 9:31 a.m.)

11 THE COURT: All right. Counsel, stipulate to the  
12 presence of the jury?

13 MS. JIMENEZ: Yes, Judge.

14 THE COURT: Mr. Gill, stipulate to the presence of  
15 the jury?

16 MR. GILL: I will, Your Honor. Thank you.

17 THE COURT: All right. Good morning, ladies and  
18 gentlemen. We're still on the State's case in chief, so we'll  
19 start promptly. The State will call its next witness, please.

20 MS. JIMENEZ: Yes, Judge, State calls Stacy Monroe.

21 THE COURT: All right. Mr. Monroe, please remain  
22 standing up over here. Remain standing, raise your right  
23 hand, and be sworn by the clerk, right here.

24 STACY MONROE, STATE'S WITNESS, SWORN

25 THE COURT: All right.

1 THE CLERK: Please state your name, and spell it for  
2 the record.

3 THE COURT: Have a seat --

4 THE WITNESS: Stacy Monroe --

5 THE COURT: -- state your name --

6 THE WITNESS: -- S-T-A-C-Y, M-O-N-R-O-E.

7 THE COURT: All right. Thank you, sir. Ms. Jimenez.

8 MS. JIMENEZ: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MS. JIMENEZ:

11 Q Mr. Monroe, are you familiar with the Seven Seas  
12 Restaurant and Bar?

13 A Yes, ma'am.

14 Q And have you been employed there before?

15 A Yes, ma'am.

16 Q In what capacity? What did you do?

17 A Bartender.

18 Q Bartender? Okay. Did you also go there  
19 socially on your own time, to hang out on occasion?

20 A Yes, ma'am.

21 Q Okay. Were you there the night -- or, I guess,  
22 the early morning hours of April 25th of this year, when  
23 Michael Thomas, ultimately ended up being stabbed?

24 A Yes, ma'am.

25 Q Okay. And were you there working that night, or

1 were you there just socially?

2 A Socially.

3 Q Okay. While you were there at the bar that  
4 night, or the early morning hours, did something happen that  
5 attracted your attention?

6 A Yeah, there was some females, I believe,  
7 yelling, arguing on the other side of the bar.

8 Q Okay.

9 A And a bottle or a shoe, I'm not sure which one  
10 came first.

11 Q Okay. So you said a bottle or a shoe. Did you  
12 see — what did you see happening about a bottle or a shoe?

13 A A bottle came across my head.

14 Q Okay. Did it actually hit you, or did it go  
15 right over your head?

16 A It went right over my head.

17 Q Okay. So that's something that's going to draw  
18 your attention, right?

19 A Yeah.

20 Q Okay. Let me show you State's Exhibit 19. It  
21 should come up on the screen there. Do you see where the  
22 altercation happened? The part of the bar where the  
23 altercation happened?

24 A Yeah.

25 Q Okay. If you touch the screen, you should,

1 hopefully, be able to draw on it. So can you make a mark  
2 where you saw the argument and --

3 A When it initially started, it was back here.

4 Q Okay. Is that where the female was who threw  
5 the bottle at you?

6 A Yeah.

7 Q Okay. And can you draw another circle,  
8 approximately where you were standing at the bar when that  
9 happened?

10 A (Witness complied.)

11 Q Okay. So when you looked up after the shoe or  
12 the bottle had been thrown, what did you see at that point?

13 A I really couldn't tell you. I can't remember  
14 too much, but they gathered all here, in the corner, right  
15 here.

16 Q Okay. So then on that corner that's closest to  
17 the Lake Mead entrance, that's sort of -- they ended up moving  
18 over there?

19 A Right.

20 Q Okay. And when that happened, did you see --  
21 what did you see happening?

22 A People fighting.

23 Q Okay. Do you remember there being a male, kind  
24 of, involved there with the females?

25 A I don't know who was hitting who. I just saw a

1 -- I seen the gentleman swinging across the bar.

2 Q Okay. So you saw the gentleman swinging his arm  
3 across the bar, as though swinging at somebody, correct?

4 A I suppose so.

5 Q Okay. What -- who was he hitting on?

6 A I couldn't see.

7 Q Do you remember telling the police that he was  
8 hitting at a female?

9 A I don't know.

10 Q Well, would it help refresh your memory to look  
11 at your statement?

12 A If I -- if I wrote it down.

13 Q Okay. You -- if you wrote it down, that's what  
14 your memory of what happened then, correct?

15 MS. JIMENEZ: And I'm going to draw defense counsel's  
16 attention to page 3 of his statement.

17 BY MS. JIMENEZ:

18 Q And so on page 3 of his statement, you stated  
19 that -- well, let me ask you this, just for a second, before I  
20 get to who was hitting who. Did you go over, when you saw the  
21 bottle being thrown, to what was happening in the corner?

22 A Yeah.

23 Q Okay. And did you go over to talk to the  
24 gentleman who was involved?

25 A Yeah.

1 Q Is that yes?  
2 A Yeah.  
3 Q Okay. What did he — what were you going to say  
4 to him? Or what did you say to him?  
5 A I asked him to grab his girl because she was  
6 throwing the bottle, and I almost got hit in the head with the  
7 bottle.  
8 Q Okay. So you wanted him to grab his girl, and  
9 basically, get her to stop throwing stuff?  
10 A Yeah.  
11 Q Okay. And so — going back, then, to page 3 of  
12 your statement, you told the police that, I got up out of my  
13 seat to go tell the guy he needed to grab his girlfriend, and  
14 another gentleman grabbed me. Upon him grabbing me, the other  
15 people went out -- actually, they didn't go out the other side  
16 because the dude was punching at the girl. The guy started  
17 punching at a girl, at Nella Lay, I guess her name is. Okay.  
18 So —  
19 A That all -- that all happened before I walked  
20 around the bar.  
21 Q Okay. That was before you went over there?  
22 A Yeah.  
23 Q Okay. You said, also, still on page 3 that, And  
24 he threw -- he looked like he was -- threw a couple punches at  
25 her, but she didn't look like she got hit because she didn't

1 fall. Do you remember telling the police that? No. But if  
2 it's in your statement, would you agree that that's what you  
3 said, and that's what you remembered seeing?

4 A Right.

5 Q Okay.

6 MS. JIMENEZ: And going to page 18, for defense  
7 counsel.

8 BY MS. JIMENEZ:

9 Q You also said -- this is the bottom of page 3,  
10 that, He -- referring to the guy that you're talking about,  
11 again, Was reaching over, I mean, I don't know how -- how good  
12 you all could see on that camera, but he threw like three  
13 punches. And so, do you remember, today, saying that to the  
14 police? Is that no?

15 A No.

16 Q Okay. You have to answer out loud because  
17 they're recording.

18 A No.

19 Q Okay. But again, you'd agree that if that's in  
20 your statement, that's what you said, and that's what you  
21 remembered happening at that time?

22 A Right.

23 Q Okay. So after you saw that happening, you said  
24 that you walked over there to tell the guy to get his girl,  
25 basically, to kind of get her under control, and what did he

1 do at that time?

2 A He started backing up, and he grabbed like he  
3 was pulling at his pants, and toward his waist.

4 Q Okay. So he was reaching for his waistband?

5 A Yeah.

6 Q And what did that mean to you?

7 A Shit, I'm not in -- I -- I backed up off of him.

8 Q Okay. And why did you back up off of him?

9 A The guy grabbed me, for one.

10 Q Okay. What was it about him grabbing at his  
11 waistband that made you back up?

12 A I didn't know what he might have in his  
13 waistband.

14 Q Okay. And did you, in fact, tell the police  
15 that you believed that he may have a weapon in his waistband?

16 A No.

17 Q You don't recall saying that?

18 A No.

19 Q Okay.

20 MS. JIMENEZ: This is going to be for counsel, pages  
21 16 through 17. And if you'll give me just a moment, I'm going  
22 to ask to switch to the computer. Okay. And I'm ready to  
23 switch over. Thank you.

24 (Audio played.)

25 BY MS. JIMENEZ:

1 Q Okay. Is that your voice on the recording?  
2 A Yeah.  
3 Q Okay. And that's the recording that you gave to  
4 the detective after this incident, correct?  
5 A Correct.  
6 Q Okay. You -- after the altercation happened in  
7 the bar, did people eventually go outside?  
8 A Yeah.  
9 Q Okay. Did you go outside at that point?  
10 A No.  
11 Q When you ended up going outside, what did you  
12 see when you went outside?  
13 A That's when Mike came around the corner, he was  
14 bleeding.  
15 Q And did you know Mike previously?  
16 A Yeah.  
17 Q Okay. And so, when you went out, Mike was  
18 already bleeding?  
19 A Right.  
20 Q So you were not outside when he got injured or  
21 stabbed?  
22 A No.  
23 Q Okay. Where did you see Mike bleeding from?  
24 A His chest and his face, his mouth.  
25 Q Was he trying to talk?

1 A I can't remember.

2 Q Okay. Do you remember telling the police that  
3 when he tried to talk, blood was just gushing out of his  
4 mouth?

5 A You mean, the gang unit dude, or — because I  
6 never — I didn't stay for the police when the police got  
7 there. I was gone.

8 Q I'm talking about --

9 MR. GILL: Objection, Judge. Can we approach?

10 THE COURT: Yeah.

11 (Bench conference transcribed as follows.)

12 MR. GILL: I know it's --

13 MS. JIMENEZ: I know. I told him not to say it.

14 MR. GILL: I know the State didn't elicit, but he did  
15 mention the gang unit.

16 THE COURT: Okay.

17 MS. JIMENEZ: I told him not to say it two different  
18 times, and I was just going to move on, and not bring  
19 attention to it, and obviously, you know, lead a little bit to  
20 get around that. I'm almost done with this testimony.

21 THE COURT: All right.

22 MR. GILL: That just blew everything.

23 THE COURT: Yeah, well, we'll-- well, for later, if  
24 you want to do something, we will.

25 (End of bench conference.)

1 BY MS. JIMENEZ:

2 Q And just to clarify, I'm talking about the  
3 detective that you gave the recorded statement to, that we  
4 heard part of, and just yes or no, did you tell him that when  
5 Mike was trying to talk, that blood was gushing out of his  
6 mouth?

7 A Yeah.

8 Q Okay. Thanks. Were you also asked to look at a  
9 photo lineup?

10 A Yes.

11 MS. JIMENEZ: And if we can go back to the ELMO,  
12 please. And, Judge, I have State's Proposed Exhibit 87. I'd  
13 move for its admission. It's the photo lineup.

14 MR. GILL: No objection.

15 THE COURT: 87, will be admitted in evidence.

16 (State's Exhibit 87 admitted.)

17 BY MS. JIMENEZ:

18 Q I'm going to show you the top of the first page  
19 of 87, or I guess, the middle. Is that your signature there  
20 in the middle of the page?

21 A Yes.

22 Q And is that your signature here at the bottom?

23 A Yes.

24 Q I'm going to turn to this next page. Did —  
25 were you asked to look at these photos?

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UNCERTIFIED ROUGH DRAFT

1           A     Yeah.

2           Q     And is that -- there's a circle and a signature  
3 by Picture No. 3, is that your handwriting?

4           A     Yeah.

5           Q     Okay. And then going back to the first page,  
6 did you also write this section that says, statement?

7           A     Right.

8           Q     Okay. And you wrote, Absolutely positive, this  
9 is the individual. 100 percent positive this is the person  
10 involved in altercation, and person whom I had ve -- verbal  
11 altercation with, and reached towards his pant's waist, as if  
12 he had a weapon, correct?

13          A     Yeah.

14          Q     Okay. I also just want to show you in State's  
15 Exhibit 57, do you see yourself there in that picture?

16          A     Yeah.

17          Q     Could you go ahead and circle where you are?

18          A     Okay.

19          Q     And showing you also, State's Exhibit 62. Do  
20 you see yourself there, too?

21          A     Yeah.

22          Q     And you're -- are you ducking at that point?

23          A     Yeah.

24          Q     Is that when one of the bottles is thrown?

25          A     It could have been a bottle, could have been a

1 shoe.

2 Q Okay. A bottle or a shoe, one of the objects  
3 thrown?

4 A Right.

5 Q Okay.

6 MS. JIMENEZ: Thank you, Judge. No further  
7 questions.

8 THE COURT: All right.

9 MS. JIMENEZ: Pass the witness.

10 THE COURT: Thank you. Cross, please.

11 MR. GILL: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GILL:

14 Q Hello, how are you today?

15 A All right. How are you doing?

16 Q I just want to ask you a few questions, get some  
17 clarification. You were questioned by Ms. Jimenez a moment  
18 ago, about what you saw that night. And you did give a  
19 statement to a detective?

20 A Right.

21 Q And Ms. Jimenez read some of that statement. I  
22 just want to read the next —

23 MR. GILL: — this is page 3 —

24 BY MR. GILL:

25 Q — the next question. She — the — the first

1 -- the question that you were asked about was to tell a little  
2 bit about what you witnessed that night, and Ms. Jimenez went  
3 on to describe that the shoe, or whatever, was thrown across  
4 the bar; do you remember that?

5 A Yeah.

6 Q Do you remember that question from the  
7 detective?

8 A I don't know.

9 Q If I showed you a -- a copy of that, would --  
10 would that refresh your recollection?

11 A I mean, if -- if you all got it, and you all say  
12 he did it, he did it. I mean, I answered the questions, like  
13 when he asked me.

14 Q I'm going -- I'm going to -- I'm going to  
15 approach you with the -- with the statement, and then I want  
16 to ask if you remember giving it, okay? I'm just going to  
17 have you read it to yourself. Yeah, just start reading, right  
18 here, to yourself, and then go to the page, right there.

19 A (Witness complying.)

20 MR. GILL: It's 3-2-4, Counsel.

21 THE WITNESS: Yeah.

22 BY MR. GILL:

23 Q Okay. Do you remember making that statement?

24 A Yeah.

25 Q Okay. And that statement was, And he threw --

1 he looked like he was -- threw a couple punches at her, but  
2 she didn't look like she got hit because she didn't fall. She  
3 was bleeding, at least from what I could tell. I had been  
4 drinking so, but --

5 A Bleeding? No, I never sa -- not bleeding.

6 Q She wasn't bleeding?

7 A No, I didn't -- I didn't sa -- I didn't even see  
8 the girl.

9 Q And, she, we're talking about Darnella Lay?

10 A Yeah.

11 Q Okay. So you didn't see her bleeding?

12 A No.

13 Q You -- had you been drinking?

14 A Yeah.

15 Q I had -- and I'm going to continues. I had been  
16 drinking, so -- but anyway, they went out the -- the back side  
17 door. I came back to the bar, talked to the bartender, and  
18 they ushered everybody out of the building.

19 A Right.

20 Q That's when I came out the door, when security  
21 opened the side door, here, that's when the boy, Mike, came  
22 around the corner, and that's when I seen him bleeding.

23 A Correct.

24 Q Correct? So you never did see Darnella  
25 bleeding, you saw Mike bleeding?

1 A Right.

2 Q When you went out of the bar, which exit did you  
3 go out?

4 A The side door.

5 Q East side, onto Revere?

6 A Yeah.

7 MR. GILL: Counsel, 18, is where I'm going next.

8 BY MR. GILL:

9 Q And Ms. Jimenez asked you some questions about  
10 the actual altercation between the females -- with the  
11 gentleman involved, correct?

12 A Yeah.

13 Q And in your -- in your voluntary statement, the  
14 officer asked you to describe that, as well; do you remember  
15 that? If I showed you a copy of it, would it refresh your  
16 recollection?

17 A No, you don't have to show me a copy, but I  
18 don't -- I don't --

19 Q I'm going to have you read it, and just tell me  
20 if you remember saying it, okay? Right by that page there.

21 MR. GILL: Near the top of 18.

22 THE WITNESS: From here?

23 BY MR. GILL:

24 Q Just read this -- this -- this A, section.

25 A (Witness complied.)

1 Q Okay?

2 A Yeah.

3 Q Thank you. And you said -- he asked you what

4 happened after that, and you said, That's when the other

5 dude -- the other dude grabbed me. That's when he grabbed me,

6 and he was like, come on, man, come on, man, we got it, we got

7 it, and backed up. Do you know the guy's name at all? Nope.

8 Is that correct?

9 You also mentioned that you couldn't remember too

10 much from that night.

11 A Man, that was so long ago.

12 Q It was back in April, correct?

13 A Yeah.

14 Q You've been at that bar how many times since

15 then?

16 A A few times.

17 Q Do you still work there?

18 A Temporarily, sometimes, when he calls me in.

19 Q And you also mentioned, when the fight first

20 started, somebody saying, Grab your girl. Was that you that

21 said, Grab your girl?

22 A Yeah.

23 Q And why was that? Was that because you -- the

24 girls were fighting?

25 A No, they was throwing -- she was throwing a

1 bottle. I'd almost got hit in the head with a bottle, and a  
2 shoe.

3 Q Did it appear to you that she was throwing the  
4 bottle at another girl?

5 A I don't know -- I don't really know who the  
6 altercation was with, at all.

7 Q Okay. It's possible that she was throwing it at  
8 another girl, or just throwing it, correct?

9 A Right. I just seen a group of girls arguing and  
10 screaming on one side of the bar, and then another girl on the  
11 other side.

12 Q You also mentioned that you saw this gentleman  
13 inside the bar reach for his waistband. Do you remember that  
14 discussion you had, just momentarily --

15 A Right.

16 Q -- with Ms. Jimenez? Did you see any --  
17 anything?

18 A No.

19 Q Did you see a knife?

20 A No.

21 Q Did you see a gun?

22 A No.

23 Q Did -- you didn't see any shiny object of any  
24 kind? Did you see a black handle? A brown handle? He could  
25 have been pulling his pants up?

1 A Yeah.

2 Q Were his pants baggy?

3 A I mean, I don't know. I mean, like I said, I  
4 don't know -- I can't remember what he had on, nothing, but, I  
5 mean --

6 Q You don't know what color of T-shirt he had on?

7 A No.

8 Q Jeans? But you do remember him reaching for his  
9 waistband?

10 A Yeah.

11 Q And he touched by the -- he possibly could have  
12 been pulling up his pants?

13 MR. GILL: No further questions.

14 THE COURT: All right. Anything else?

15 MS. JIMENEZ: Just briefly.

16 REDIRECT EXAMINATION

17 BY MS. JIMENEZ:

18 Q You said that you couldn't remember the clothing  
19 he was wearing that night, correct?

20 A True.

21 Q Okay. But --

22 MS. JIMENEZ: Page 11, for counsel.

23 BY MS. JIMENEZ:

24 Q You told the police, when you gave your  
25 statement, I'm telling you, I mean, if you showed me a picture

1 of the dude, I know -- I'll know the dude's face. Do you  
2 remember saying that?

3 A Yeah.

4 Q And you did recognize the face in the photo  
5 lineup, correct?

6 A Yeah.

7 Q Okay. Do you see that person here in court  
8 today?

9 A Yeah.

10 Q Can you please point to him, and identify what  
11 -- what color he's wearing.

12 A There on that gray suit, right there.

13 Q Okay. At the end of the table, to my left?

14 A Yes, ma'am.

15 MS. JIMENEZ: May the record reflect identification  
16 of the defendant?

17 THE COURT: Yes.

18 MS. JIMENEZ: Nothing further.

19 THE COURT: Anything else?

20 MR. GILL: Yes, just briefly.

21 RECROSS-EXAMINATION

22 BY MR. GILL:

23 Q And Mr. Harris is the gentleman you saw inside  
24 the bar?

25 A Yes.

1 Q Not outside?

2 A Correct.

3 Q You ever see him outside?

4 A No.

5 MR. GILL: No further questions.

6 THE COURT: All right. Thank you so much for  
7 testifying. You're excused now. Next witness, please.

8 MS. JIMENEZ: It's going to be Detective Mike  
9 Fletcher.

10 THE COURT: All right. Remain standing up, over  
11 here, raise your right hand to be sworn.

12 MICHAEL FLETCHER, STATE'S WITNESS, SWORN

13 THE CLERK: Please state your name, and spell it for  
14 the record.

15 THE WITNESS: It's Detective Michael Fletcher,  
16 M-I-C-H-A-E-L, F-L-E-T-C-H-E-R, my P No. is 6725.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION

19 BY MS. JIMENEZ:

20 Q Sir, are you currently employed as a detective  
21 with the Las Vegas Metropolitan Police Department?

22 A Yes.

23 Q How long, total, have you been working for  
24 Metro?

25 A Approximately 11 wee -- 11 years.

1 Q Did you start out as a patrol officer?

2 A I started out patrol officer, and moved my way  
3 up to detective.

4 Q And you have to test to become a detective,  
5 correct?

6 A Yes. Yes, you do.

7 Q Okay. And how long have you been working as a  
8 detective?

9 A This is my second time. The first time was  
10 approximately two years, as a firearms investigative  
11 detective, and this is -- I'm on my second time in the  
12 Detective Bureau, and I'm about two and a half years.

13 Q Okay. So you've had -- worked in a couple of  
14 different assignments, correct?

15 A Yes, ma'am.

16 Q Okay. And were you working, then, as a  
17 detective in the early morning hours of April of 2011 -- April  
18 25th?

19 A Yes, ma'am.

20 Q Okay. And did you -- were you called out to  
21 investigate a stabbing that had occurred at the Seven Seas  
22 Restaurant and Bar?

23 A Yes, ma'am. We were actually called out by  
24 patrol to respond to that incident location.

25 Q And how does patrol get the information -- or

1 how did they get the information in this case, to respond to  
2 the Seven Seas?

3 A Basically, what happens, there's a call of  
4 service that's initiated to where an individual calls and says  
5 they need police response, police respond to the scene, they  
6 determine whether or not detectives need to be called out,  
7 regarding the classification of the crime.

8 Q Okay. And so in this particular case, were  
9 there several 9-1-1 calls that were made that initiated the --  
10 the case and the response?

11 A Yes.

12 Q Okay. And so you, as a detective, were called  
13 out, correct?

14 A Myself and my partners on the investigative  
15 team, yes.

16 Q Okay. And so do you -- when you're a detective  
17 do you work with a squad of detectives?

18 A Yes, we do.

19 Q And one of you is assigned as, essentially, the  
20 lead detective to -- to each incident, would that be fair to  
21 say?

22 A One of us is assigned the primary detective,  
23 then we have the additional detectives that help us out with  
24 interviews, and anything else that needs to be completed.

25 Q Okay. So in this particular case, you were

1 assigned as the primary detective?

2 A Yes.

3 Q And you had other detectives who are helping  
4 you?

5 A Yes.

6 Q Okay. What's the first thing that happened when  
7 you arrived at the crime scene?

8 A Basically, what happened, when the team arrives  
9 at the crime scene, we go to whoever is going to give us the  
10 brief, the initial brief at the scene, so we actually know  
11 what happens, and we received a brief from patrol officer  
12 there at the scene.

13 Q Okay. And when you received that briefing from  
14 the patrol officer, was there already a name associated to a  
15 suspect in the case that the patrol officer provided you?

16 A There was a -- a name, or an -- an alias of a  
17 person, known as Shyct, or Shyce, and patrol officers prior to  
18 us getting out there had completed a records check, and  
19 possible identified that individual as Lamar Antwan Harris.

20 Q Okay. And did you have some information that  
21 there was a -- a Facebook page that was looked at, and through  
22 that other information you were able to identify that name?

23 A One of the eyewitnesses at the scene --

24 Q Is -- sorry.

25 A Yes.

1 Q Just yes or no --  
2 A Yes.  
3 Q -- at this point.  
4 A Yes.  
5 Q Okay. And so you were there, you had the other  
6 detectives there, after your briefing, do you start assigning  
7 detectives to do some interviews?  
8 A Yes -- yes, ma'am.  
9 Q Okay. And is one of the detectives who was  
10 working with you, Detective Andre Carter?  
11 A Yes, ma'am.  
12 Q And was he assigned to conduct the interview  
13 with Tammy Kasper?  
14 A Yes, ma'am.  
15 Q Okay. Now, traditionally, when you're out at a  
16 crime scene like that, where there's, you know, a business,  
17 but then the scene is actually at the parking area, where is  
18 it typical for detectives to conduct interviews of witnesses?  
19 A At a scene like that, and if there's nowhere for  
20 us to go, specifically on that night, the interviews were  
21 conducted within our unmarked vehicles.  
22 Q Okay. So the detective sits down with the  
23 witness inside the vehicle, they're there, just the two of  
24 them, or if there's a second detective, the three of them, and  
25 the interview is conducted; fair to say?

1 A Yes.

2 Q Okay. As part of your investigation, as you  
3 were assigning other detectives to do interviews, did you also  
4 take it upon yourself to get surveillance video from the  
5 incident?

6 A During the crime scene walk-through, I noticed  
7 that there were security cameras throughout -- on the outside  
8 the business, and also, inside the business. So, yes, I did.

9 Q And how did you go about getting the  
10 surveillance video?

11 A That night we were unable to get surveillance  
12 video, but it was documented that they did have surveillance,  
13 so the next day I did meet with the owner of the  
14 establishment, Louis Conner, at which time we went ahead and  
15 reviewed the surveillance video, and that video surveillance  
16 was copied from the system, and he gave me a copy of that  
17 through one of his employees.

18 Q Okay. And you provided that on a disc, correct?

19 A Yes.

20 Q Okay. And although the -- the time stamp was  
21 off, the date was correct, and this was the video that was  
22 consistent with what witnesses described happening,  
23 essentially, correct?

24 A Yes. Yes.

25 Q Okay.

1 MS. JIMENEZ: And, Judge, we've already stipulated to  
2 admit State's Exhibit 95, and at this point there's -- I'm  
3 going to move to publish and play videos from the file, and  
4 we're going to start from the --

5 THE COURT: So ordered.

6 MS. JIMENEZ: -- inside video.

7 THE COURT: It will.

8 MS. JIMENEZ: Thank you. And if you'll switch over?  
9 Thanks.

10 THE CLERK: I'm sorry, do what?

11 MS. JIMENEZ: Switch over to the laptop, thanks. And  
12 so, just for the record, we're now playing the inside video  
13 from the inside of the bar.

14 (Video played.)

15 MS. JIMENEZ: And go ahead and stop the video here at  
16 2:36:54. And you can switch back to the ELMO. Thank you.

17 BY MS. JIMENEZ:

18 Q And, Detective, is it fair to say that on the  
19 disc that's been admitted into evidence, there's -- you had a  
20 few minutes of video, kind of before the action starts, as  
21 well as at the end of the action, correct?

22 A Yes.

23 Q And so what we've watched here is essentially  
24 when the action happens, but there's a few more minutes on  
25 either end that's on the disc?

1 A Yes.

2 Q Okay. You said that you obtained the  
3 surveillance video, did you also go to UMC, where Michael  
4 Thomas was being treated?

5 A That morning -- or, at the start of our shift,  
6 at 15 -- because we were called out to the call, and at 1500  
7 hours we went down to the hospital to conduct an interview  
8 with the victim because he was not available to be interviewed  
9 that night. Due to --

10 Q I'm going to show you State's Exhibit 42. Who  
11 is that person in that picture?

12 A That's the victim, Michael Thomas.

13 Q And did you, as well as one of your fellow  
14 detectives, Detective Joseph Patton, conduct a taped interview  
15 with Michael Thomas?

16 A Yes, we did.

17 Q And is he the only person you conducted a taped  
18 interview with, who said on the tape that his name was Michael  
19 Thomas?

20 A Yes.

21 Q Okay. And he's the only person that you  
22 interviewed at UMC, correct?

23 A We -- a taped interview, yes.

24 Q Okay. And after you had conducted your  
25 interviews, you said that you had identified Shyce as Lamar

1 Antwan Harris, correct?

2 A Yes.

3 Q And do you see him here in the courtroom, today?

4 A He's seated to my right.

5 Q Okay. To your far right?

6 A My far right.

7 MS. JIMENEZ: May the record reflect the witness has

8 identified that defendant?

9 THE COURT: The record will so reflect.

10 BY MS. JIMENEZ:

11 Q Okay. What was your next step, then, once you

12 had identified the defendant? Were you able to get a picture

13 of him?

14 A Yes, I did.

15 Q And what did you do with that picture?

16 A With that picture I created a photo lineup.

17 Q I'm going to show you State's Exhibit 87. And

18 are you familiar with this photo lineup witness instruction

19 form?

20 A Yes.

21 Q And is that the same form that you use any time

22 you do a photo lineup?

23 A We're required to use these forms, yes.

24 Q Okay. And looking at the top of the form,

25 there's a taped portion of that form, correct?

1 A Yes.

2 Q And what do you do with that typewritten portion  
3 -- not taped, but typewritten?

4 A We read that, verbatim, to the individual that's  
5 going to observe the photo lineup.

6 Q Okay. And so you actually read it out loud to  
7 the witness?

8 A Yes, we do.

9 Q And did you do that for each of the witnesses in  
10 this case?

11 A The photo lineups, yes, ma'am.

12 Q I'm going to go ahead and bring it up to you,  
13 and ask you to go ahead and read out loud just that typed  
14 paragraph.

15 A Right now?

16 Q Go ahead. Yeah, out loud.

17 A In a moment I'm going to show you a group of  
18 photographs, this group of photographs may or may not contain  
19 a picture of the person who committed the crime, now being  
20 investigated. The fact that these photos are being shown to  
21 you should not cause you to believe, or guess, that the guilty  
22 person has been caught.

23 You do not have to identify anyone. It's just as  
24 important to free innocent persons from suspicion, as it is to  
25 identify that those that are -- who are guilty. Please, keep

1 in mind that hair styles, beards, and mustaches, are easily  
2 changed.

3 Also, photographs do not always depict the true  
4 complexion of a person. It may be lighter, or darker, than  
5 shown in the photo. You should pay no attention to any  
6 markings or numbers that may appear on the photos. Also, pay  
7 no attention to whether the photos are in color, or black and  
8 white, or any other differences in the type or style of  
9 photographs.

10 You should study only the person shown in each  
11 photograph. Please, do not talk to anyone, other than police  
12 officers, while viewing the photos. You must make up your —  
13 in — you must make up your own mind, and not be influenced by  
14 other witnesses, if any.

15 When you have completed viewing all the photos,  
16 please, tell me whether you — whether or not you can make an  
17 identification. If you can, tell me in your own words, how  
18 sure you are of the identification. Please, do not indicate  
19 in any other way to other witnesses that you have or have not  
20 made an identification.

21 Thank you.

22 Q And so, you were the person who showed photo  
23 lineups to Stacy Monroe, Tamara Kasper, and Darnella Lay,  
24 correct?

25 A Yes.

1 Q Okay. And I'm going to start with State's  
2 Exhibit 85, and I'm going to show you the second page of that  
3 exhibit. Did you put a photograph of the defendant in this  
4 photo lineup?

5 A Yes.

6 Q And which position is the defendant in?

7 A No. 3.

8 Q And that's the person that Ms. Kasper circled,  
9 correct?

10 A Circled and signed with her name acknowledging  
11 it.

12 Q And going back to the first page, do you mark  
13 the date and time that the pho --

14 MR. GILL: Judge, I'm going to object. This seems a  
15 bit cumulative. I mean, we've already had testimony --  
16 they've testified that they, in fact, were the ones that  
17 filled out these. I don't -- I don't see the relevancy, and I  
18 think it's just adding on, at this point.

19 MS. JIMENEZ: Well, Judge, I'm -- I have to have him  
20 identify who the defendant is in the photo lineup. I'm  
21 directing his attention, now, to the date and time that the  
22 interview took place, and then I'm going to discuss some  
23 things from his conversations with Ms. Kasper.

24 THE COURT: Yeah, I -- I -- thank you very much for  
25 your objection, but I don't know if it's cumulative. I think

1 it's the detective has his own perspective. We had the other  
2 witnesses' perspective, and we'll get them together, and --  
3 I -- you know, you're not going to belabor this, I'm sure?

4 MS. JIMENEZ: I'm not, Judge.

5 THE COURT: And so I -- I think I'm going to allow it  
6 over your objection. But thank you, Mr. Gill.

7 MR. GILL: Thank you, Your Honor.

8 BY MS. JIMENEZ:

9 Q And so, what was the date and the time that this  
10 photo lineup was shown to Ms. Kasper?

11 A It was 4/25 of 2011, at 6:14 p.m.

12 Q Now, you previously testified that you were not  
13 the person who did the taped statement with Ms. Kasper,  
14 correct?

15 A No. Detective Carter actually did.

16 Q When you were showing the -- the photo lineup to  
17 Ms. Kasper, though, later on in the day -- I guess it was the  
18 evening hours of April 25th, did she make any comments to you  
19 about what she saw that night?

20 A That she again, reiterated and cooperated her  
21 statement that Shyce had, in fact, stabbed the individual  
22 outside of the business. That she had known Shyce for  
23 approximately -- or, Lamar Harris, for approximately three  
24 years, from prior employment, and also with the relationship  
25 that she had with Mr. Harris, and also, his girlfriend, at the

1 time, Tiffany Thomson. So that she -- she knew them, as  
2 also -- as friends, at one time, but the relationship -- that  
3 they weren't friends anymore.

4 She also stated that Lamar Harris, or Shyce, she --  
5 that he 100 percent did it. Doesn't -- that the victim,  
6 Michael Thomas, didn't deserve to be stabbed, and she was  
7 absolutely, positively sure that that was the person that did  
8 it.

9 Q Did she ever tell you that she hadn't actually  
10 seen Lamar Harris do the stabbing, but that other people had  
11 just told her that's what happened?

12 A No, she was -- she was very positive that she  
13 had saw Shyce stab the victim.

14 Q Did she ever tell you that when she was at the  
15 Seven Seas, she was so intoxicated that she didn't really  
16 remember anything that happened?

17 A At no time did she say that.

18 Q You mentioned the -- that Ms. Kasper said that  
19 she knew the defendant through his girlfriend, and -- and you  
20 used the name, Tiffany Thomson. I'm going to show you State's  
21 Exhibit 94. Is that who you know as Tiffany Thomson?

22 A Yes, but she referred to her as, Tia.

23 Q Okay. And is that how other witnesses referred  
24 to her --

25 A Yes.

1 Q -- also? Okay. So, Tia, Tiffany Thomson,  
2 that's the same person, and that's the person in this exhibit?

3 A Through the investigation, that's who identified  
4 as, Tia.

5 Q You had talked about a picture of the defendant,  
6 and showing you --

7 MS. JIMENEZ: -- or, I have State's Proposed Exhibit  
8 93. I'd move for its admission, Judge. It's State's Proposed  
9 93.

10 MR. GILL: No objection, Judge.

11 THE COURT: 93, will be admitted.

12 (State's Exhibit 93 admitted.)

13 BY MS. JIMENEZ:

14 Q I'm going to show you State's Proposed Exhibit  
15 93. Is this a photograph of defendant Lamar Harris?

16 A Yes, it is.

17 Q And is the date of this photograph May 23rd, of  
18 2011?

19 A Yes.

20 Q Okay. So that would be, essentially, the  
21 closest in time to when the incident occurred?

22 A Yes.

23 Q Okay. Did you, after conducting your  
24 interviews, getting the surveillance video, creating photo  
25 lineups, did you eventually get an arrest warrant for the

1 defendant Lamar Harris?

2 A Yes, I did.

3 Q Okay. And are you also aware that after the

4 defendant -- after that process took place, that a preliminary

5 hearing was held in the case?

6 A Yes.

7 Q And were you present at that preliminary

8 hearing, which was on June 22nd, of this year?

9 A Yes, I was.

10 Q And you, in fact, testified, correct?

11 A Yes.

12 Q Okay. Did you see any other witnesses who are

13 present?

14 A That day? Dar --

15 Q Yes.

16 A -- Darnella Lay was present with me.

17 Q And was there, as there sometimes is, down in

18 justice court, was there a bit of a wait before it was the

19 turn for this case to go, and for the testimony of the

20 witnesses?

21 A Yes. We had to wait outside in the hallway.

22 Q And when you were waiting outside, were you

23 waiting out with Darnella Lay?

24 A Yes, I was.

25 Q And while you were outside waiting what did you

1 observe going on?

2 A There was -- specifically, Tiffany Thomson was  
3 seated outs -- outside, directly across from us when we were  
4 seated out there waiting for our call to come in to the actual  
5 courtroom to testify, and also, several parties related to the  
6 defendant Lamar Harris, or Tiffany Thomson because they did --  
7 seemed to congregate a -- around myself and Darnella Lay,  
8 which made Darla -- Darnella Lay extremely upset, to the point  
9 where she was crying, and did not want to testify because of  
10 that.

11 Q And that's something that you witnessed and  
12 observed, correct?

13 A Yes.

14 Q Okay. You -- have you investigated other crimes  
15 in the same area where this event occurred at the Seven Seas,  
16 or even at the Seven Seas, itself?

17 A Yes.

18 Q And in this particular area of town, how would  
19 you characterize cooperation with the police?

20 A Cooperation with police is discouraged upon by  
21 persons that live within that community, to be where as, if  
22 you --

23 MR. GILL: Judge, I'm going to object as to relevance  
24 to this case. I -- I think he's going beyond what this case  
25 is all about.

1 MS. JIMENEZ: Given the way the witnesses testified,  
2 I think it's absolutely relevant what the nature of the --

3 THE COURT: I do, too, and all due respect. There's  
4 some reluctance here, so I -- I -- I think I'm going to allow  
5 it. He's a detective, he's been around a long time. You have  
6 a right to cross-examine. So overruled. Proceed.

7 MS. JIMENEZ: Thank you.

8 BY MS. JIMENEZ:

9 Q Go ahead and continue with your answer.

10 A A lot of times on cases that we go to, a lot of  
11 witnesses and victims don't want to cooperate or testify with  
12 us because they don't want to be labeled as what's called a,  
13 snitch, someone that tells on someone within the community.  
14 And they also fear to the fact that they may be labeled a  
15 snitch, or it's known that the people have testified against  
16 possible suspects, or suspects in trials, or the  
17 investigation, that there may be repercussions because of that  
18 testimony.

19 Q Would you -- has it been your experience that  
20 there is a difference, sometimes, between talking to a police  
21 officer, maybe in a vehicle, or in somebody's home, and coming  
22 into an open courtroom to testify?

23 A More often than not, all the -- the interviews  
24 that we do take have to be in an area secluded from the  
25 public, where they cannot see them. Like you stated, either

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       **LAMAR HARRIS.**  
                  Appellant.

4       vs.  
5       **THE STATE OF NEVADA**  
                  Respondent.

Supreme Court No.: 70679  
District Court Case No.: C274370

Electronically Filed  
Aug 19 2016 09:59 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

6  
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8  
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1 witnesses, and taped off the scene to preserve evidence.

2 Q Okay. And so what — what's the purpose of  
3 separating witnesses?

4 A So that they discontinue talking to each other,  
5 and trying to make up stories, so that their story becomes  
6 independent to themselves, and not they get information from  
7 other people, and kind of embellish on their own story.

8 Q Okay. And so that's something that's one of the  
9 first things that you do upon arriving on scene?

10 A Yes.

11 Q And you arrived on scene within a minute or two  
12 of the call coming out, would that be fair to say?

13 A Yes.

14 Q Okay. When you arrived you said there were  
15 about five to six people. Did you talk with those people, and  
16 find out if they had seen anything related to the incident?

17 A Yeah, once they were separated, we kind of went  
18 through and the scene was made safe, and the victim was tended  
19 to, as far as medical purposes go. We started to talk to  
20 them, and determined who had actually witnessed the incident  
21 that happened, and who was not important to the situation  
22 there.

23 Q Okay. And what did most of the people who were  
24 there tell you?

25 A Most of the people said they didn't see

1 anything, they just saw the aftermath, and were there, I  
2 think, maybe two or three that were still around had stated  
3 that they had witnessed the -- the fight outside, and then  
4 that the subject had got stabbed.

5 Q I want to show you what's been admitted as  
6 State's Exhibit 69. Do you recognize this as the Revere side  
7 of the Seven Seas?

8 A Yes.

9 Q And you can see from the surveillance video  
10 still, that there are several vehicles there in the parking  
11 lot, correct?

12 A Correct.

13 Q By the time you had gotten there, were those  
14 vehicles still present?

15 A They were not.

16 Q Okay. And you said there was only about five or  
17 six witnesses who were present, at all, correct?

18 A Correct.

19 Q Okay. Is one of the people who indicated that  
20 they had seen something, a woman by the name of Tamara, or  
21 Tammy Kasper?

22 A Yes.

23 Q Okay. And when you find out that a witness  
24 indicates, yes, I -- I -- I know what happened, what do you do  
25 with that person?

1           A     Well, we made sure that -- we'd make sure that  
2 she's in contact with some Metro personnel at all times, so  
3 that she doesn't leave the scene, and so that she doesn't make  
4 contact with anyone else at the scene.

5           Q     Okay. And is part -- is part of your job to get  
6 some preliminary information about a potential suspect?

7           A     Yeah, we always obtain that information, so that  
8 we can get out some information over the radio, for other  
9 units that are ATL in the area, and get it out to other area  
10 commands, in case that subject has left the area.

11          Q     Okay. And ATL, that means, attempt to locate?

12          A     Yes, it does.

13          Q     So you're going to look for someone in the area  
14 of the crime scene, but -- after it happens, correct?

15          A     Correct.

16          Q     Okay.

17          A     Based on the information that we get from  
18 witnesses.

19          Q     And did Ms. Tammy Kasper give you a nickname of  
20 a person who had committed the stabbing?

21          A     She did.

22          Q     And what was that nickname?

23          A     She -- she had mentioned that the nickname was  
24 -- she said she recalled it to be Shyst --

25          Q     Okay.

1 A -- with a T.

2 Q And did she tell you that she knew that he had a  
3 Facebook page?

4 A She -- yeah, she stated that she recognized him  
5 on Facebook, and that someone else in the bar had known who he  
6 was, and that he was on Facebook.

7 Q And, in fact, did you even on -- I don't know  
8 whose phone it was, but on somebody's phone, get on and -- on  
9 the Internet, and look up his Facebook page?

10 A Originally, what happened -- she had -- after I  
11 went to do some more work at the scene, and someone was with  
12 her, getting her ready to do a voluntary statement, waiting  
13 for detectives, she had -- when I went back to make contact  
14 with her -- had came to me and said that the female that was  
15 working at Seven Seas had used the computer, and found Shyst  
16 on the -- on the Facebook, and she showed me on that.

17 Q And so, was the name on the Facebook, Young  
18 Shyce?

19 A Yes, it was.

20 Q And showing you what's been admitted as State's  
21 Exhibit 89. Does this appear to be the -- the Facebook page  
22 of the individual that she showed on the computer?

23 A Yes, it does. I can't recall if that was the  
24 exact same picture he had at the time, but I -- I'm fairly  
25 certain it was.

1 Q That same person in the photograph, correct,  
2 that --  
3 A Yep.  
4 Q -- you saw, and same name?  
5 A Yes.  
6 Q Okay. Did you have Ms. Kasper do a handwritten  
7 statement?  
8 A Yes, I did.  
9 Q I'm going to show you what's been admitted as  
10 State's Exhibit 96. Do you recognize this as the handwritten  
11 statement that she filled out?  
12 A Yes.  
13 Q Okay. And at the bottom, here, do you also sign  
14 this handwritten statement?  
15 A I do.  
16 Q If you go and touch the screen, will you circle  
17 where your signature is.  
18 A (Witness complied.)  
19 Q And what's the purpose of having a patrol  
20 officer sign the statement?  
21 A So that we can verify at a later date that this  
22 per -- that this person is the one that did the -- the  
23 statement, and that they did it correctly.  
24 Q Okay. So if someone comes in and tries to say,  
25 I didn't write that, you are the witness who can say, yes,

1 that's the person who wrote that?

2 A Correct.

3 Q And do you, in fact, verify witnesses  
4 identification through a driver's license, or with some form  
5 of ID?

6 A Yeah. And if they don't have ID, then through  
7 our computer system.

8 Q Okay. And so you, as a patrol officer, one of  
9 your jobs is once you've gotten the scene sort of settled  
10 down, to have witnesses write out a handwritten statement?

11 A Yes.

12 Q Okay. Now, you're not the investigating person  
13 — the person who does the taped statement would be one of the  
14 detectives who responds, correct?

15 A Correct.

16 Q Okay. Did you have those — fair to say you had  
17 some interaction with Ms. Kasper?

18 A Yes.

19 Q Okay. During your interaction with her, did you  
20 notice whether or not she was intoxicated?

21 A No, she was not intoxicated.

22 Q Okay. And what makes you say that?

23 A There was no odor of alcohol, her eyes, her --  
24 her ability to walk and stand normally, and also, I knew that  
25 with a — how she was presenting herself and talking, she

1 didn't slur her words or anything.

2 Q Okay. And you as a police officer, I'm  
3 presuming you've come into contact before with some  
4 intoxicated people?

5 A Yes.

6 Q And so that's something that you're familiar  
7 with the signs of intoxication?

8 A Correct.

9 Q Did she have a vehicle with her at the scene?

10 A Yes.

11 Q And, in fact, at the -- when she was all --  
12 everything was said and done, did she leave in that vehicle?

13 A Yeah, she was concerned about getting to the  
14 airport, I bel -- to pick up her daughter.

15 Q Okay. So she wanted -- she said she had to get  
16 to the airport to get her daughter?

17 A Yes.

18 Q And would you have let her leave, and drive that  
19 vehicle, if you believed her to be intoxicated, at all?

20 A No, I would not.

21 Q That would be a problem for you as a police  
22 officer; fair to say?

23 A Correct.

24 Q Okay. When you were speaking with her, was she,  
25 you know, understanding your questions, able to answer your

1 questions?

2 A Yes.

3 Q Okay. What do you tell a witness when you ask  
4 them to write out one of these handwritten statements?

5 A I basically explain to them the instructions on  
6 how to fill it out fully and completely, and -- and just  
7 explain to them to put in detail what happened, and what they  
8 believe they saw, in detail, and then sign at the bottom.

9 Q Okay. Did you ever tell Ms. Kasper that, if she  
10 had heard what happened, that she should lie on her statement,  
11 and write and say that she actually saw it happen?

12 A No.

13 Q Okay. Do you tell her what to write, as far as  
14 content, at all?

15 A No.

16 Q You just ask her to write what she's seen; fair  
17 to say?

18 A Correct.

19 Q Okay. And did she seem to have any problems --  
20 was she willing to do that?

21 A She was slightly hesitant, but then she -- she  
22 was willing to do it later on during the situation.

23 Q Okay. And you said that part of her concern was  
24 she was saying she had to leave to get to the airport?

25 A Correct, because --

1 Q Okay.  
2 A — it was taking too long, and she wanted to  
3 leave.  
4 Q And eventually, detectives did arrive on scene,  
5 correct?  
6 A Yes.  
7 Q And are you aware if a taped statement was also  
8 done with her, were you --  
9 A I was not present, but to my knowledge, one was.  
10 Q Okay.  
11 MS. JIMENEZ: I have not — nothing further, Judge.  
12 Pass the witness.  
13 THE COURT: Cross.  
14 MR. GILL: Briefly, Your Honor.  
15 CROSS-EXAMINATION  
16 BY MR. GILL:  
17 Q What time did you arrive, Officer?  
18 A I would have to look at my CAD statement to find  
19 that exact time.  
20 Q When did you get the call; do you remember?  
21 A I know it was sho -- shortly after -- I know it  
22 was sometime after midnight. It was probably around 1, 1  
23 something.  
24 Q You -- you received the call around midnight?  
25 A No. No. Like I said, it was months ago. I

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1 would have to recall back to my CAD statement.  
2 THE COURT: Well, do you have the report, and any  
3 direction, if you want to ask him?  
4 MR. GILL: I'm just asking if he remembers.  
5 THE COURT: All right.  
6 BY MR. GILL:  
7 Q And you -- and you did, at some point, make a  
8 cog -- contact with Tammy Kasper?  
9 A Yes.  
10 Q And you testified earlier that you're sure she  
11 wasn't intoxicated?  
12 A Yes.  
13 Q Did you breathalyze her?  
14 A Did not.  
15 Q Did you take any blood out, test it?  
16 A No, no real -- no cause for that.  
17 Q Did you ask her if she'd have any -- if she'd  
18 had any incidents -- life-changing incidents happen that day?  
19 A Nope.  
20 Q Did you put her under oath when you asked her to  
21 write the statement?  
22 A No.  
23 Q Okay.  
24 MR. GILL: No further questions.  
25 THE COURT: All right. Anything else?

1 MS. JIMENEZ: Just briefly, Judge.

2 REDIRECT EXAMINATION

3 BY MS. JIMENEZ:

4 Q You were asked about what time you arrived.  
5 Would looking at a printout from a computer-aided dispatch  
6 help you figure that out?

7 A Yes.

8 Q Okay. I'm going to approach with that. Hold  
9 on. I'm going to show you both the log, as well as the call  
10 sheet that shows your call sign.

11 If you'll take a moment to look at those, and let me  
12 know when you're done looking at them.

13 A (Witness complying.)

14 Q And, I guess if it helps, let me direct your  
15 attention to where your call sign is.

16 A I'd say at approximately 0156 hours, 1:56 a.m.

17 Q Okay. So that would be the time you arrive,  
18 correct?

19 A Yes.

20 Q And the call came out at 0154 hours, correct?

21 A Correct.

22 Q And the reason we know what time you arrived, is  
23 that because when you arrive at a location, you provide that  
24 information to dispatch, so they know where you're located?

25 A Yeah, with the computer.

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1 Q And that's what this log creates, showing when  
2 people arrive, et cetera?

3 A Yes.

4 Q Okay. Thank you.

5 MS. JIMENEZ: Nothing further.

6 THE COURT: All right. Thank you very much, Officer.  
7 You're free to go.

8 MR. GILL: Judge, if I can just ask one -- one final  
9 question?

10 THE COURT: About the log? That's all she wrote, but  
11 you -- go ahead, I don't care. Go ahead.

12 MR. GILL: It's just about his arrival.

13 THE COURT: Yes.

14 RECROSS-EXAMINATION

15 BY MR. GILL:

16 Q When you did arrive, you said, most people that  
17 you talked to didn't see anything?

18 A Correct.

19 MR. GILL: Thank you, Judge.

20 THE COURT: All right, sir. You're free to go.

21 THE WITNESS: Thank you.

22 THE COURT: Next witness, please.

23 MR. THUNELL: The State would call Officer Young.

24 THE COURT: Officer, remain standing up over here,  
25 please. Raise your right hand, and be sworn by the clerk.

1 THE WITNESS: Yes, sir.

2 MICHAEL YOUNG, STATE'S WITNESS, SWORN

3 THE COURT: Have a seat. State your name, and spell  
4 your first and last name.

5 THE WITNESS: My name is Michael Young, Michael is,  
6 M-I-C-H-A-E-L, Young is, Y-O-U-N-G.

7 MR. THUNELL: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. THUNELL:

10 Q Officer Young, do you work for Metro?

11 A I do.

12 Q On April 9, 2010, were you working at a -- as a  
13 patrol officer in the area of 1112 North Durango?

14 A Yes.

15 Q And did you come into contact with anybody that  
16 you see here in court today?

17 A He's sitting over there, in the gray suit.

18 MR. THUNELL: If the record would reflect  
19 identification, please.

20 MR. GILL: Judge, can we approach? This is -- I'd  
21 like to approach, please.

22 THE COURT: Sure.

23 (Bench conference transcribed as follows.)

24 THE COURT: What date was that?

25 MR. THUNELL: April 9.

1 MS. JIMENEZ: [Indiscernible.]  
2 THE COURT: I can't hear you.  
3 MR. THUNELL: [Indiscernible.]  
4 MR. GILL: We've already established that he's got a  
5 nickname of Shyce.  
6 MR. THUNELL: Yes.  
7 MR. GILL: What do you --  
8 MS. JIMENEZ: Well, we've established it through  
9 witnesses who have all backtracked about what they're  
10 testifying to, so...  
11 MR. GILL: I mean, do I just --  
12 THE COURT: So you're going to -- you're going to  
13 [indiscernible].  
14 MR. THUNELL: Just [indiscernible].  
15 THE COURT: Before [indiscernible], that's a --  
16 MR. THUNELL: Nope.  
17 MS. JIMENEZ: No, not we're not getting into that.  
18 MR. GILL: Because, Judge, then why is he  
19 investigating my guy two weeks prior to -- this is April 9,  
20 this is --  
21 MS. JIMENEZ: It's of 2010. 2010.  
22 MR. GILL: That's [indiscernible], a year and a half.  
23 I mean, over a year --  
24 MS. JIMENEZ: Well, listen, Judge, I mean they -- I  
25 talked to them about the fact we were calling this witness

1 right before -- during the break.  
2 THE COURT: You did?  
3 MS. JIMENEZ: And, I mean --  
4 MR. GILL: Well --  
5 MS. JIMENEZ: He's -- all that we're going to ask him  
6 is did he know [indiscernible], his name is William Shyce.  
7 MR. GILL: There was no discussion of the dates.  
8 There was no discussion of the dates.  
9 THE COURT: Listen, have you had any contact, or not?  
10 MS. JIMENEZ: That's what we're doing.  
11 MR. GILL: I'd stipu -- contact is fine. I'd  
12 stipulate that the --  
13 THE COURT: Listen, you got a [indiscernible].  
14 MS. JIMENEZ: No, we're not getting into that, at  
15 all.  
16 THE COURT: But -- but keep it -- you've got time to  
17 [indiscernible].  
18 MS. JIMENEZ: Yeah, just ask him what he's -- where  
19 he spotted [indiscernible].  
20 THE COURT: All right.  
21 MR. GILL: I'll make a record later.  
22 MS. JIMENEZ: [Indiscernible] and leave it at that.  
23 MR. THONELL: Okay.  
24 THE COURT: A record on what? I don't understand.  
25 (End of bench conference.)

1 THE COURT: All right. Go ahead, Counsel.  
2 MR. THUNELL: Thanks, Your Honor.  
3 BY MR. THUNELL:  
4 Q Officer, when you came in contact with the  
5 defendant, did he tell you that he also goes by the nickname  
6 of Young Shyce?  
7 A Yes.  
8 MR. THUNELL: We'll go and pass the witness.  
9 THE COURT: All right. Anything?  
10 MR. GILL: Not a thing, Judge.  
11 THE COURT: Okay. Thank you. You're excused. Next  
12 witness.  
13 MS. JIMENEZ: Judge, may I just check the hallway,  
14 please?  
15 THE COURT: Mm-hmm.  
16 MS. JIMENEZ: The State calls Joycelyn Boston.  
17 THE COURT: Okay. And please remain standing up over  
18 here. Remain standing, and raise your right hand, and be  
19 sworn by the clerk, right here, please.  
20 JOYCELYN BOSTON, STATE'S WITNESS, SWORN  
21 THE COURT: Have a seat. I'd like you to state your  
22 name, and spell your first name, and spell your last name.  
23 THE WITNESS: Joycelyn Boston, J-O-Y-C-E-L-Y-N,  
24 B-O-S-T-O-N.  
25 THE COURT: Okay.

1 MR. THUNELL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. THUNELL:

4 Q Ms. Boston, on April 24th of -- were you located  
5 -- of this year -- were you located anywhere at the Seven  
6 Seas?

7 A Uh-huh.

8 Q And what were you doing?

9 THE COURT: Say, yes. You got to say --

10 THE WITNESS: Yes.

11 THE COURT: -- a yes or no because --

12 THE WITNESS: Okay.

13 THE COURT: -- we're taking everything down, and  
14 huh-huh doesn't sound good on the record, all right?

15 THE WITNESS: Okay. Yeah.

16 THE COURT: Or, mm-hmm.

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 BY MR. THUNELL:

20 Q Well, what were you doing there that evening?

21 A I was drinking. Just hanging out.

22 Q So you just went over to -- to hang out?

23 A Yeah.

24 Q Did you go with anybody?

25 A No.

1 Q On that evening, did you come into contact with  
2 anybody that you see here in the courtroom today?  
3 A Did I come in contact?  
4 Q Did you see anybody there that evening --  
5 A Yeah.  
6 Q -- that you see here in court today?  
7 A Yes.  
8 Q Would you point that person out, and describe an  
9 article of clothing they're wearing?  
10 A A gray suit, right over there.  
11 Q Okay.  
12 MR. THUNELL: If the record will reflect  
13 identification?  
14 THE COURT: The record will so reflect identification  
15 of the defendant.  
16 BY MR. THUNELL:  
17 Q And -- and how do you know the defendant?  
18 A I just know him, just from around.  
19 Q And what name do you know him by?  
20 A Shyce.  
21 Q So Shyce?  
22 A Mm-hmm.  
23 Q So you were there at -- that evening, over  
24 there, and did you come into contact with -- with a Tammy, by  
25 chance?

1 A She's a bartender. She's a bartender there.

2 Q Tammy Kasper?

3 A I don't know her last name, but she's a  
4 bartender.

5 Q So a bartender. Did you come into contact with  
6 her also, the evening?

7 A Uh-huh.

8 THE COURT: Yes?

9 THE WITNESS: Yes.

10 MR. THUNELL: Yes. Thank you, Your Honor.

11 BY MR. THUNELL:

12 Q With Tammy, did you -- did you see Tammy  
13 drinking, at all?

14 A No, I don't recall her drinking.

15 Q Did she seem intoxicated to you?

16 A I wasn't really paying attention. It -- it  
17 really didn't -- I know I was, so she probably -- I don't  
18 know.

19 Q So you don't know?

20 A No.

21 Q Okay. And -- now, as far as the -- as far as  
22 Shyce, where was he seated to where you were seated at?

23 A I was sit -- I was seated on the far side of the  
24 bar, so we'll say near the exit door, on the far side of the  
25 bar.

1 Q And if I may — if I can just get it. I'm  
2 showing you State's No. 20. Do you recognize this?  
3 A I do.  
4 Q And wha — what's this?  
5 A Seven Seas.  
6 Q The Seven Seas? Okay. Do you know — do you  
7 know -- do you know where were you — you were seated, about,  
8 from what you're looking at here?  
9 A Yeah, on the side where them pictures at.  
10 Q Oh, where the pictures are at?  
11 A Yeah, on that side.  
12 Q And do you know where the defendant was seated?  
13 A He wasn't seated. He was just standing,  
14 probably over -- on the same side, though.  
15 Q Okay. So standing. Was he there -- was he  
16 there alone, that you could tell?  
17 A Yeah.  
18 Q Was the defendant there with anybody?  
19 A I don't know.  
20 Q Okay. Did you see anything transpire that  
21 evening?  
22 A There was a bar fight.  
23 Q A bar fight. What — what — what happened?  
24 A I don't know what happened. I just looked up,  
25 and it was just a bunch of stuff throwing, and bottles pushed

1 and smashed, and I got up out of there.

2 Q Okay. Now, let me back up just a little bit.  
3 Did you see the -- the defen -- when there was this bar fight  
4 going on, did you see the defendant anywhere in that vicinity?

5 A He looked like he was getting jumped, like --  
6 like he was in the middle, and a whole bunch of girls was  
7 like, hitting him and stuff, so...

8 Q So -- so you saw the defendant and some girls,  
9 and this would have been, do you know about where -- where  
10 this was going on? This fight?

11 A At Seven Seas.

12 Q No, at -- I -- let me be more specific. I'm  
13 sorry, Joycelyn.

14 A Oh.

15 Q Where -- where at in the Seven Seas? Where --  
16 which part?

17 A It was like right over in this corner, right  
18 over in the corner like where the fan at, but on the other  
19 side.

20 Q And so while that's happening -- so you see the  
21 defendant's there, do you see -- do you know the defendant, if  
22 he has a -- a girlfriend or wife?

23 A I know he got a girlfriend, but I don't know  
24 what the relationship is, but I know he got a girlfriend, I'm  
25 sure he does.

1 Q Okay. Do you see that person there?  
2 A Yeah.  
3 Q Okay. And do you know what -- what she -- what  
4 was going on with her? Did you -- could you tell?  
5 A I couldn't really tell what was going on with  
6 her because I don't -- I wasn't really paying attention to her  
7 like that, so...  
8 Q Okay. So but you did see, kind of -- this --  
9 you said, this -- this fight going on over in the corner?  
10 A Mm-hmm.  
11 Q Now, what did -- what did you do when you saw  
12 this fight?  
13 A I got up out of there.  
14 Q And so, where did -- how did you exit out of the  
15 place?  
16 A On the same side I was sitting, it's a side  
17 door, right there. As soon as you open the door, it beeps.  
18 It go beep, beep, beep, and you -- you leave out.  
19 Q And I have here State's Exhibit No. 17. Do you  
20 recognize this?  
21 A I do.  
22 Q Okay. What are we looking at here?  
23 A Seven Seas.  
24 Q All right. And where -- and where -- from here,  
25 could you show us where -- where you were seated, and where

1 you headed out to.

2 A That black door -- it look black, but that --  
3 that door right there on the side.

4 Q So that's the door that you left out of?

5 A It is.

6 Q And at what point after the -- the fight inside,  
7 at what point do you decide to -- to leave, to take off?

8 A Soon as -- soon as it, pretty much erupted, I  
9 got up out of there.

10 Q Now, did you see anything that transpired  
11 outside?

12 A No, I didn't.

13 Q And when you -- when you went out, had anything  
14 already happened, or did you get out before anything happened  
15 outside?

16 A I got out before.

17 Q All right.

18 MR. THUNELL: Court's indulgence. I'll go ahead and  
19 pass the witness.

20 THE COURT: Do you have anything, Mr. Gill?

21 MR. GILL: Real, real, real briefly, Judge.

22 CROSS-EXAMINATION

23 BY MR. GILL:

24 Q Ms. Boston, thank you for being here today.

25 A Mm-hmm.

1 Q You -- you testified that you were intoxicated  
2 that night?  
3 A Mm-hmm.  
4 Q How many drinks did you have; do you know?  
5 A Not honestly.  
6 Q Yeah --  
7 A About eight or nine.  
8 Q And was -- were they -- were they all at the  
9 Seven Seas?  
10 A They was before.  
11 Q And where were you before?  
12 A At -- at home, probably, drinking.  
13 Q Drinking at home?  
14 A Mm-hmm.  
15 Q Okay. And you sat on the picture with -- or the  
16 side of the bar with the pictures, correct?  
17 A Yes.  
18 Q And you said the -- Mr. Harris was sitting over  
19 there at that same side?  
20 A Yes.  
21 Q Now, are you a -- how often do you go to the  
22 Seven Seas?  
23 A I just left there last night.  
24 Q Okay. So you --  
25 A So it's often.

1 Q -- go there quite frequently?  
2 A Yeah.  
3 Q When you come in that front door, where's the  
4 bar? The front door off of Lake Mead.  
5 A It's -- you -- you walk directly into the bar.  
6 So it's like right there, as soon as you --  
7 Q And then --  
8 A -- come in.  
9 Q -- the -- the space behind --  
10 MR. GILL: If I could just have State's 20 then, I'm  
11 tired. Thank you.  
12 BY MR. GILL:  
13 Q And this is -- this is State's 20. Okay. So  
14 you recognized this earlier, what we were looking at, correct?  
15 A I do.  
16 Q And -- and it -- how big is that space back --  
17 that we're looking at?  
18 A Oh, it's very small. It's not big, at all.  
19 Q How many people you think could fit through  
20 there at one time?  
21 A About 12, 13.  
22 Q No. No. No. I mean, if -- if we're walking --  
23 if I'm coming down that -- that -- that bar, or the side of  
24 the bar there, and you were walking at me --  
25 A Mm-hmm.

1 Q — would it -- would I be -- easily be able to  
2 get around you?

3 A Huh-uh. It's like about two, like real step,  
4 and you got to --

5 Q It's very tight?

6 A — step, step — very, very tight.

7 Q Okay. You also mentioned that it looked like  
8 Lamar Harris was getting jumped?

9 A Mm-hmm.

10 Q So from where you were --

11 THE COURT: Say, yes. You got to say --

12 THE WITNESS: Yes.

13 THE COURT: — yes or no. I don't want to have to  
14 keep telling you that, all right?

15 THE WITNESS: Yes.

16 BY MR. GILL:

17 Q And you didn't hear what was being said?

18 A I didn't.

19 Q Okay. So it just looked to you like — like  
20 girls were attacking my client?

21 A Yes.

22 Q Thank you.

23 MR. GILL: No further questions.

24 THE COURT: Anything else?

25 MR. THUNELL: Nothing for the State.

1 THE COURT: Thank you so much for testifying.  
2 THE WITNESS: Thank you.  
3 THE COURT: You're excused. Next witness, please.  
4 MS. JIMENEZ: Michael Thomas.  
5 THE MARSHAL: Judge, the next witness is coming up.  
6 THE COURT: All right. I mean, should we be at ease  
7 here?  
8 MS. JIMENEZ: Judge, I can call a --  
9 THE COURT: Well, if it --  
10 MS. JIMENEZ: -- well --  
11 THE MARSHAL: It's coming up, right now.  
12 MS. JIMENEZ: Okay. That's fine. It should just be  
13 a minute.  
14 THE COURT: This is mister?  
15 THE MARSHAL: Thomas.  
16 MS. JIMENEZ: Thomas.  
17 THE COURT: Mike -- Michael Thomas?  
18 MS. JIMENEZ: Yes, Judge.  
19 THE COURT: All right. Mr. Thomas, I want you to  
20 remain standing up over there, and I'd like you to raise your  
21 right hand, and be sworn by the clerk.  
22 MICHAEL THOMAS, STATE'S WITNESS, SWORN  
23 THE WITNESS: I'll do my best.  
24 THE COURT: Have a seat. I'd like you to state your  
25 name, and spell your first name, and spell your last name.

1 THE WITNESS: Michael Thomas, M-I-C-H-A-E-L,  
2 T-H-O-M-A-S.

3 THE COURT: Thank you. Ms. Jimenez.

4 MS. JIMENEZ: Thank you, Judge.

5 DIRECT EXAMINATION

6 BY MS. JIMENEZ:

7 Q Mr. Thomas, are you a Las Vegas local here?

8 A Yes.

9 Q Okay. You've lived here pretty much your whole  
10 life?

11 A Pretty much.

12 Q Okay. And are you familiar with a restaurant or  
13 a bar in town called the Seven Seas?

14 A I'm familiar with it.

15 Q You're familiar with it, yes?

16 A Yes.

17 Q Okay. And is that someplace that you've been to  
18 before to have a drink, get some food, that sort of thing?

19 A Yes.

20 Q Okay. Was there a night that you went there in  
21 April where you ended up getting stabbed?

22 A That's what I was told.

23 Q Okay. So you're not sure if you were stabbed,  
24 or not?

25 A I winded up in the trauma center.

1 Q Okay. So let me ask you this. Maybe let me put  
2 it this way. You were injured, correct?

3 A Yeah.

4 Q Okay. And you ended up going to the hospital,  
5 correct?

6 A Yes.

7 Q Okay.

8 MS. JIMENEZ: And I have State's Proposed Exhibits 43  
9 through -- it's 43 through 49. That's fine? Judge, I'd move  
10 for their admission. I believe there's --

11 MR. GILL: No objection.

12 MS. JIMENEZ: -- it being admitted as --

13 THE COURT: All right. I think 43 is already  
14 admitted, but 44 --

15 MS. JIMENEZ: Oh, sorry. Thank you.

16 THE COURT: -- through 49, will be admitted.

17 MS. JIMENEZ: Okay.

18 (State's Exhibit 44 through 49 admitted.)

19 BY MS. JIMENEZ:

20 Q So let me show you what we've got admitted as  
21 State's Exhibit 43. It's going to come up on the screen,  
22 there. Is that you, sir?

23 A Yeah, that's me.

24 Q I'm sorry, I couldn't hear you.

25 A Yeah.

1 Q Okay. I'm just going to move the microphone a  
2 little bit closer to you, so we can hear you, and it will help  
3 things go a little faster, okay?  
4 THE COURT: Scoot up a little closer, if you can.  
5 Right. Yeah. We have to just hear you. Thanks. All right.  
6 Go ahead.  
7 MS. JIMENEZ: Okay.  
8 BY MS. JIMENEZ:  
9 Q And is that an injury there to your cheek?  
10 A That's what it look like.  
11 Q Okay. And showing you State's 44. Is that that  
12 same injury, with your mouth open? Is that yes?  
13 A Yeah, that's me.  
14 Q Okay. That's still yourself, correct?  
15 A Yes.  
16 Q Okay. Did you also have an injury to your chest  
17 that night?  
18 A Yeah.  
19 Q Okay. And I'm going to show you State's Exhibit  
20 46. Is that the injury that you had to your chest?  
21 A I guess so.  
22 Q Okay. You had to go to the hospital, correct?  
23 A Yes.  
24 Q And you were treated by the doctors there,  
25 correct?

1           A    Yes.

2           Q    And you originally had a shirt on that night,  
3 correct?

4           A    I don't remember.

5           Q    Well, let me show you State's Exhibit 46. Do  
6 you recognize that as the shirt you were wearing that night?

7           A    That's hard to say.

8           Q    Okay. Do you recall wearing a lime green shirt  
9 the night that you got stabbed?

10          A    I don't even remember the -- the color I was  
11 wearing, no.

12          Q    Okay. Do you remember bleeding in the shirt  
13 that you were wearing? Is that no?

14          A    No.

15          Q    Okay. You have to answer out loud because  
16 they're recording everything, okay? So let me ask you then --  
17 well, let me ask you a couple things. You're here in custody,  
18 correct? Is that correct? Is -- you have to answer out loud,  
19 I'm sorry.

20          A    Yes.

21          Q    Okay.

22          A    Yes. Yes.

23          Q    And that's because you were arrested on a  
24 material witness warrant, correct?

25          A    Something I never heard of, but yeah, I guess

1 so.

2 Q Okay. And would it be fair to say that, if you  
3 had your choice, you'd rather not be here?

4 A I don't think nobody would rather be here.

5 Q Okay. Fair enough. And let me also ask you  
6 this. You do have some prior felony convictions; is that  
7 correct?

8 A Yes.

9 Q Okay. And I — there's just a few specific  
10 things I'm going to ask you about those. Do you have a  
11 conviction from 2006, here in Nevada, for a possession of a  
12 controlled substance, with intent to sell?

13 A I believe so.

14 Q Okay. And do you also have a conviction from  
15 1999 for burglary?

16 A Yes, I don't — I don't know.

17 Q If I told you that's what your — the court  
18 records show, would you agree with me?

19 A I don't know, whatever the records show, I  
20 guess.

21 Q Okay. Do you know a woman by the name of Nella,  
22 or Darnella Lay?

23 A Do I know of her?

24 Q Do you know of her, sure.

25 A I heard of her, sure.

1 Q Okay. Do you know someone by the name of Kevin  
2 Lay?

3 A Sure.

4 Q Is that someone you're friends with, or  
5 associate with?

6 A Well, I read about him in the law books.

7 Q Okay. And do you know Nella or Darnella to be  
8 his daughter? Is that kind of how you know who she is?

9 A Yes.

10 Q Okay. Did you see Darnella at the Seven Seas  
11 the night that you got injured?

12 A For a split second.

13 Q Okay. And what happened when you saw Darnell —  
14 Darnella Lay?

15 A She was dancing.

16 Q Okay. Do you remember a point in time when a  
17 fight occurred?

18 A Nope.

19 Q Was that no?

20 A No.

21 Q Okay. So you don't remember anything about a  
22 fight?

23 A Nope.

24 Q Okay. Do you remember a fight that happened  
25 inside the bar?

1 A There was a scu -- a scuffle.  
2 Q Okay.  
3 A With the security guards.  
4 Q Okay. Do you recall being involved, or over at  
5 the fight when that happened?  
6 A I wasn't involved with it.  
7 Q Okay. Do you remember being near it when it  
8 happened?  
9 A No. I wasn't there. I was on the dance floor.  
10 Q Okay. Do you remember there being a fight  
11 outside of the -- of the Seven Seas?  
12 A I don't remember.  
13 Q Okay. Do you remember --  
14 A Recall it or --  
15 Q -- how you got injured?  
16 A From my understanding, I slipped and fell on  
17 some glass. I don't know.  
18 Q Okay. So that's the only thing that you know  
19 about how you got injured that night? Is that -- you  
20 shrugged, is that -- is that yes?  
21 A I -- I guess.  
22 Q Okay. Do you recall when you were in the  
23 hospital giving a taped statement to the police?  
24 A They came in.  
25 Q Okay.

1 A They --  
2 Q Do you remember them asking you some questions?  
3 A Vaguely. I don't --  
4 Q Vaguely?  
5 A -- remember.  
6 Q Okay. Do you remember after you were released  
7 from the hospital, going to a police station, and filling out  
8 a handwritten report?  
9 A Yeah.  
10 Q Okay. You do remember doing that? Okay.  
11 A I went downtown and got a police report.  
12 Q Okay. Well, let's start with your tape recorded  
13 statement.  
14 MS. JIMENEZ: And, Judge, if I can approach with a  
15 copy of that, and mark it next in order?  
16 THE COURT: Yeah. I guess that would be 98, Ms.  
17 Clerk?  
18 MS. JIMENEZ: And I would move for its admission, and  
19 move to publish.  
20 THE COURT: Any objection?  
21 MR. GILL: Oh, no, Your Honor.  
22 THE COURT: All right. 98, will be admitted.  
23 (State's Exhibit 98 admitted.)  
24 THE COURT: And you could publish.  
25 MS. JIMENEZ: Excuse me, Judge. If you'll give me

1 just a moment to get set up. Okay. And I am --

2 THE CLERK: Are you ready?

3 MS. JIMENEZ: Sorry, just a moment. I did that  
4 wrong. Yes, I'm ready, if you want to switch over. Except I  
5 don't have the volume on. And third time is the charm,  
6 hopefully.

7 (Audio played.)

8 BY MS. JIMENEZ:

9 Q So after the taped statement, you were asked to  
10 look at a photo lineup; do you remember that, at all?

11 A Vaguely.

12 Q Vaguely, you said?

13 MS. JIMENEZ: Judge, I have State's Proposed 84, I'd  
14 move for its admission.

15 THE COURT: Any ob --

16 MR. GILL: No objection.

17 THE COURT: No objection. 84, will be admitted.

18 (State's Exhibit 84 admitted.)

19 MS. JIMENEZ: If you'll switch back over. Thanks.

20 BY MS. JIMENEZ:

21 Q Okay. Is this your signature here, on the  
22 middle of the first page of State's Proposed 84? Do you  
23 recognize that?

24 A Mm-hmm.

25 Q Is that yes?

1 A Yes.

2 Q Okay. So that's your signature?

3 A Yes.

4 Q And you looked at this group of photographs,  
5 correct?

6 A Yeah.

7 Q Okay. And then going back to the first page,  
8 you wrote that you did not recognize anyone in the photos,  
9 correct?

10 A If that's what it say.

11 Q Okay. Is that your handwriting?

12 A Yeah.

13 Q Okay. And when we listened to the tape  
14 recorder, you -- you said you didn't remember giving the  
15 statement, or the details of it, but you'd agree that that was  
16 your voice on the recording, correct?

17 A Well, whoever that was, was talking a little bit  
18 too much, you know what I'm saying?

19 Q Okay. But it would be fair enough to say,  
20 that's your voice?

21 A Yeah.

22 Q Yeah?

23 A I guess.

24 Q Okay. You said that you wrote a handwritten  
25 statement, as well, correct? I'm going to show you what's

1 been marked as State's 99. Is that your handwriting on those  
2 two pages?

3 A Oh, yeah.

4 Q Is that yes?

5 A Yes.

6 Q And that's your signature, as well?

7 A Yes.

8 Q Thank you.

9 MS. JIMENEZ: Judge, I'd move for the admission of  
10 State's Proposed 99.

11 THE COURT: Any objection?

12 MR. GILL: Judge, just — are you going to admit the  
13 — the copy with the highlighted version, or just — do you  
14 have one that's —

15 MS. JIMENEZ: I can replace it with one that's not.

16 MR. GILL: Yeah.

17 MS. JIMENEZ: This is just the only one I have with  
18 me, right now.

19 MR. GILL: If — if you just have one that's blank.  
20 I may even have one. I'll trade you.

21 THE COURT: So with the understanding it's blank, do  
22 you have any objection?

23 MR. GILL: No, Your Honor, and I'll provide —

24 THE COURT: Then 99, will be admitted.

25 MS. JIMENEZ: We've got a blank over here.

1 THE COURT: Just give the clerk the --  
2 MR. GILL: Okay. No objection.  
3 THE COURT: All right.  
4 MS. JIMENEZ: Thank you.  
5 (State's Exhibit 99 admitted.)  
6 MS. JIMENEZ: And, Judge, I have no further  
7 questions.  
8 THE COURT: All right. Cross.  
9 MR. GILL: Yes, Judge. Thank you.

10 CROSS-EXAMINATION

11 BY MR. GILL:

12 Q Mr. Thomas, how are you today?

13 A I could be better.

14 Q You don't want to be here, do you? Why are you  
15 here?

16 A Like I said, nobody don't want to be here.

17 Q Why are you here today?

18 A I guess, it's a -- a arrest warrant was out for  
19 me. For a material witness.

20 Q For a material witness warrant? And who  
21 arrested you? You could just say yes or no, all right? I  
22 know we're harping on you, but yes or no, so we can record it.

23 A I don't know who the arrest was -- two Metro  
24 officers.

25 Q Two Metro officers?

1           A     Yeah.

2           Q     And we had a chance to talk the other night,  
3 briefly, at the jail. And I asked you to -- to tell the truth  
4 here today?

5           A     Yeah.

6           Q     And you do understand that you're under oath?

7           A     Yeah, I understand that.

8           Q     I just want to go through that night with you.

9           A     I don't want to go through the night, you got my  
10 statement, man, and I'm -- whatever -- whatever that was said  
11 on that -- on that tape, that's what it -- that's what it was.  
12 I mean --

13          Q     Okay. But on the cha -- and with the --

14          A     I mean --

15          Q     -- with the six pack that Ms. Jimenez just  
16 showed you, you didn't pick out anybody?

17          A     I didn't pick out nobody.

18          Q     Do you know who stabbed you that night?

19          A     I still don't know.

20          Q     Okay. It could have been anybody in that group  
21 of people that was out in the parking lot?

22          A     It could have been anybody.

23          Q     Okay. And -- and you know you saw --

24          A     There was a crowd of people, you know what I  
25 mean, like I said, it was people out there. I was drunk. I

UNCERTIFIED ROUGH DRAFT

1 had been drinking all day and all night, so, I mean...

2 Q Okay. Yeah, you've said you had 18 beers,  
3 approximately?

4 A Yeah, I had drunk an 18 pack.

5 Q Okay. And then when you were at the hospital,  
6 did they give you any — any pain medi — medication?

7 A Yeah, I was on morphine.

8 Q Morphine? Did they give you anything else?

9 A The morphine drops and — I — I can't remember  
10 the other ones.

11 Q Did the officers ask you if you'd been  
12 administered pain medication before their — or during your  
13 statement?

14 A No, I don't think.

15 Q They just asked you about the beer? At the very  
16 end of that statement?

17 A At — at the end, yeah, they had asked me about  
18 that.

19 Q Okay. And when did the officers come by the  
20 hospital? Was it later on that evening?

21 A No, that was like right after I — right after I  
22 got put into the room.

23 Q Okay.

24 A About an hour or so.

25 Q Now, initially, on your statement, you did say

1 that Darnella Lay gave you information as to what this Chad or  
2 this Chaz was wearing; is that correct?

3 A Yeah, at the -- the initial -- when she was  
4 outside the club.

5 Q She -- yeah, when you first talked to her, you  
6 asked her what was he wearing; is that right?

7 A Yeah.

8 Q And what did he look like?

9 A Yeah.

10 Q And -- and she told you what he had on, correct?

11 A Right.

12 Q Hat, shirt, she gave you a quick description?

13 A Right.

14 Q And you hadn't really noticed him before that,  
15 had you?

16 A No.

17 Q Because you were in the back left corner eating?

18 A Right.

19 Q Eating a snack, I think catfish is what you had?

20 A Right.

21 Q Okay. And when you first saw the commotion in  
22 the front of the bar, what did it look like to you? That --  
23 that front corner where Darnella was talking about, what did  
24 it look like happened?

25 A Like I said, when the -- when the DJ had said

UNCERTIFIED ROUGH DRAFT

1 they was fighting, it was -- it was a fight up there at the  
2 bar, I just spun around, and all I seen was girls arguing back  
3 and forth, throwing shit back and -- oops, excuse me, throwing  
4 stuff back and forth, and --

5 Q So did it appear to you --

6 A -- an event.

7 Q -- initially, that it was a fight amongst  
8 females?

9 A The initial thought was that it was -- it was  
10 females that was fighting, with a guy in -- in the middle.

11 Q Could the guy have been breaking up the fight,  
12 or trying to hold the females back?

13 A I -- I don't -- I don't know. That's the thing.

14 Q Is that possible?

15 A I just jumped -- that's possible. I just --

16 Q I mean, if you're in the middle of females  
17 fighting, instinct might tell you to -- to try and hold people  
18 back, females, males, anybody, hold people --

19 A Right.

20 Q -- back.

21 A Right.

22 Q Would you agree with that?

23 A I wou -- yeah.

24 Q Okay. And there were a lot of people outside,  
25 correct?

1 A Yes.

2 Q How many people, would you say?

3 A That night, give or take, with the workers,

4 probably about 50.

5 Q Okay. 50? 5-0?

6 A Yeah.

7 Q Okay. And -- and on the -- there's one thing I

8 noticed on the -- on the tape, the officer asked you if you

9 were afraid to die. If you were afraid that you were going to

10 die. Did that thought cross your mind before he asked you

11 that question? Is that a no?

12 A No.

13 Q And how many stitches did you receive?

14 A I don't remember.

15 Q Was it -- do you have a guess? I mean, or an

16 estimation?

17 A I don't even remember. I didn't even ask them.

18 Q Okay. But you were discharged that same day, on

19 April 25th?

20 A Yes.

21 Q You also testified on that statement that the

22 only one you saw with a weapon was a security guard?

23 A With the -- the security guards had the guns,

24 and the -- the tasers, I guess.

25 Q And that's the only weapons --

1 A I know two of them had put — had guns on them.  
2 Q Okay. But you didn't see any other weapons that  
3 night?  
4 A No.  
5 Q Not on my client? Not on yourself? Is that a  
6 no?  
7 A No.  
8 MR. GILL: No further questions.  
9 THE COURT: All right. Anything else? Or that's it?  
10 MS. JIMENEZ: No, Judge.  
11 THE COURT: All right. Could the -- then I'm going  
12 to release the --  
13 MS. JIMENEZ: Yes, thank you, please.  
14 THE COURT: Okay. You're going to be released today,  
15 all right? You're going to -- you'll be released forthwith,  
16 right? You're free to go now.  
17 THE WITNESS: Thank you.  
18 THE COURT: Let's — we got a few legal arguments  
19 here, and I've got to talk to the jurors, so I -- I think  
20 that's about it today.  
21 MS. JIMENEZ: Okay.  
22 THE COURT: All right. So, ladies and gentlemen,  
23 don't converse among yourselves, or with anyone else on any  
24 subject connected to the trial, or read, watch, or listen, to  
25 any report, don't form or express any opinion on the trial

1 until the close is finally submitted to you.

2 We got through some good -- a lot of witnesses, so I  
3 was told that -- this court sharing, this is a -- that I  
4 could use -- start using the department, I think it's 11B, but  
5 so it's on the same floor. Just be in the same spot, and the  
6 bailiff will pick you up around 9:15, all right? Hopefully  
7 we'll get -- we'll get into the court 9:15, 9:30.

8 So be back outside at about 9:15 tomorrow morning.  
9 And I want to thank you very much, and we'll proceed with this  
10 case, all right?

11 Now, I'd like Ms. Mary Arena to wait in the  
12 courtroom. The rest of the jury is excused.

13 (Jury recessed at 4:08 p.m.)

14 THE COURT: All right. This is outside the presence  
15 of the other jurors. I -- thank you for your note, by the  
16 way. I remember I told you that, initially, I always say, are  
17 you acquainted with any of the witnesses that the -- that the  
18 State has read to you. And I even said it after, if you  
19 remember, or something comes in your mind, you have not  
20 previously disclosed this to me, please do so, write a note,  
21 and you -- per -- you followed my instructions.

22 But you -- you did -- you wrote, I think I may know  
23 Tamara Kasper.

24 JUROR NO. 7: Right.

25 THE COURT: What's the situation?

1 JUROR NO. 7: And can I elaborate on that? Tamara,  
2 the name — I didn't recognize — I don't — don't recognize  
3 her physically, but when — it just started dawning on me that  
4 I have a family member that used to date a bartender, and her  
5 name was Tamara, and he told me that she looks like, you know,  
6 that her physical appearance was like that. So I'm not quite  
7 certain --

8 THE COURT: Yeah, you're --

9 JUROR NO. 7: — if that's her or not.

10 THE COURT: — not quite certain.

11 JUROR NO. 7: But it's just something that, you know,  
12 just --

13 THE COURT: Something that's good. You disclose  
14 anything to me.

15 JUROR NO. 7: Right. Right. Just to keep you  
16 updated.

17 THE COURT: But that's fine, and it might not be the  
18 same person.

19 JUROR NO. 7: Exactly, it might not.

20 THE COURT: And even if it were --

21 JUROR NO. 7: And even if it was --

22 THE COURT: — I don't know --

23 JUROR NO. 7: -- I cannot discuss it with my family  
24 member until after the trial.

25 THE COURT: Right. But even -- this is not going to

1 affect your deliberation in this case, is it?  
2 JUROR NO. 7: Right.  
3 THE COURT: Is it?  
4 JUROR NO. 7: No, absolutely not. No.  
5 THE COURT: Yeah. Any questions?  
6 MS. JIMENEZ: No, Judge. No, that's fine. Thank  
7 you.  
8 THE COURT: Any questions?  
9 MR. GILL: No, Your Honor.  
10 THE COURT: All right. Thank you so much. Enjoy  
11 your break, and I'll see you tomorrow, all right.  
12 JUROR NO. 7: It's okay. Thank you.  
13 THE COURT: 9:15.  
14 (Juror No. 7 recessed at 4:10 p.m.)  
15 THE COURT: I'll make this note part of the record.  
16 All right. Does anybody want to say anything about  
17 the -- the juror? I don't see any prejudice, at all.  
18 MS. JIMENEZ: No, I don't see any prejudice, Judge.  
19 I think she said -- she's not sure if she knows her, and she  
20 said --  
21 THE COURT: Right.  
22 MS. JIMENEZ: -- she -- it's not going to affect her  
23 decision.  
24 THE COURT: Same thing.  
25 MR. GILL: I think it's such a remote --

1 THE COURT: Yeah.

2 MR. GILL: -- possibility that she even knows her,  
3 Judge.

4 THE COURT: So there's no motions --

5 MR. GILL: No -- no comment on that.

6 THE COURT: -- on it, there's no ruling. All right.  
7 I'll make that note part of the record.

8 MR. GILL: Thank you.

9 MS. JIMENEZ: I did just want to comment, Judge, if  
10 you would maybe, tomorrow, when you tell the jury, is let them  
11 know that we're not allowed to talk to them. I did that same  
12 juror --

13 THE COURT: I thought I did. I -- I said --

14 MR. GILL: I think the marshal has been.

15 THE MARSHAL: I've mentioned that a couple times,  
16 where you guys aren't being mean, you know.

17 MS. JIMENEZ: Okay. Great. I just --

18 THE COURT: That was part of my instruction. I said,  
19 they're not being antisocial, they're just being professional,  
20 they don't want to contaminate the jury, but I'll say it  
21 again, or you remind me, or give me a little note, then.

22 MS. JIMENEZ: That's fine. I just -- we were on the  
23 same elevator this morning, she said, hi, I didn't respond at  
24 all.

25 THE COURT: Okay.

1 MS. JIMENEZ: I didn't even look at her.

2 THE COURT: All right.

3 MS. JIMENEZ: And I couldn't remember if you'd  
4 already said that.

5 THE COURT: I did, I said it, so but anyway, we'll --

6 MS. JIMENEZ: I think she may have realized, as soon  
7 as she said, hi, but, you know, you -- you don't want them to  
8 think you're being rude.

9 THE COURT: Right. Right.

10 MS. JIMENEZ: So -- and then --

11 THE COURT: Now, there's a few motions that -- and I  
12 want you to make a record, I mean, because --

13 MR. GILL: Thank you.

14 THE COURT: -- that's proper, but there was one --  
15 there was one, during a -- what was it, during a statement --

16 MR. GILL: During a voluntary statement, Judge. If I  
17 may?

18 THE COURT: Yeah.

19 MR. GILL: The comment was, that she was working for  
20 him, and then later, the comment was, this is business. I  
21 think it was during Ms. Kasper's testimony. And it -- and --  
22 and the State, I know the State's tried to keep out any  
23 mention of pimp because there was some direct references to  
24 pimp, and he's a pimp. I know him as a pimp. But -- but this  
25 indirectly puts my client in the same position that he is a