

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 A Five hours later there would probably be some
2 residual effect. I don't know how much. But yeah, there was
3 -- probably some -- be some residual effect.

4 Q And -- and the -- the level of residual effect
5 of the amnesia would be more than just the one single dose?
6 And -- and I don't know if that made sense.

7 The -- there's an accumulated effect of Versed,
8 right? They give it at 6:00, they give it at 7:00 -

9 A Right.

10 Q -- they give it at 8:00. Do you get what I'm
11 saying?

12 A Yeah. So it's -- but it's actually given as a
13 continuous drip. So --

14 Q Right.

15 A -- so yeah. So it -- there tends to be a
16 cumulative effect.

17 Q That's what I was going for. Okay. And that
18 cumulative effect is where we start the math problem of the
19 half-life and how much it's dissipating over each hour, day,
20 whatever our unit of measurement is, fair?

21 A Correct.

22 Q All right. And then I had two more exhibits in
23 front of you. The -- the handwritten excerpts out of the
24 chart; is that right?

25 A That's correct. Because they're mostly notes

1 from -- one is August 7th and the other is August 8th of 2010.

2 Q Okay. All right. Can we start with August 7th.

3 Do you remember me asking you just to look to see the CPS
4 arrived at the hospital around 2:30 on the one for August 7th?

5 A Yeah. So the one from August 7th, this is your
6 Exhibit K, there's a note by the nurse at 1435, so 2:35. And
7 basically she describes her blood pressure. The nurse -- the
8 doctor was in the area checking labs. They discussed some
9 things about the patient. At the end there is a notation that
10 the CPS worker was at bedside.

11 Q Okay. And then -- well, strike that. It's not
12 uncommon for hospital staff to record any visits or what they
13 call at-beside, right?

14 A They try.

15 Q They try.

16 A So again, the assumption is that I come and go
17 quite frequently, and so oftentimes they don't note every time
18 I come. Or I come and I didn't write any order, so therefore
19 I came and we didn't discuss anything and they happened to be
20 in other rooms. So -- but yes, if they -- usually, in most
21 cases, they -- they're aware that if one of the physicians or
22 nurses or someone who's involved in the patient's care is at
23 the bedside, they will try to record in their notes.

24 Q Right. And let's distinguish you. You're a --
25 you're a surgeon, you're going in there for postoperative

1 care, you're a familiar face. You're not someone that's
2 remarkable or different or that stands out. You're there --

3 A Yeah.

4 Q -- every day?

5 A They were used to seeing me around.

6 Q Exactly. That's different than seeing someone
7 from CPS, for example, right?

8 A Yeah. So if someone comes in they don't know,
9 obviously the first thing I'd ask is who are you and what are
10 you doing here? Because obviously, don't want the people
11 walking in who don't know this patient or shouldn't be in the
12 patient's room.

13 Q Now, did I show you a chart entry from August
14 8th that cover --

15 A So this, again, is the nurse's notes from August
16 8th. This is your Exhibit L.

17 Q Okay. And did I ask you to see if anyone from
18 hospital staff recorded the time or any notation at all about
19 the police being at Devonia's bedside around 4:00?

20 A So as we discussed, the penmanship is maybe less
21 than ideal. But I don't see any notes about anyone being at
22 the bedside in terms of police or a CPS worker. There's
23 several notes about the doctors, either discussing with the
24 doctors or some of the doctors being at beside. But I don't
25 see anything else.

1 Q Okay. Thank you. And then I neglected to ask
2 you, and I apologize, relative to fentanyl, are you aware --
3 well, first off, do you know, or are you familiar with the
4 U.S. National Library of Medicine?

5 A Yes.

6 Q Okay. And they -- they are also one of these
7 groups that will publish material that physicians like
8 yourself can rely on?

9 A Correct.

10 Q Okay. Are you aware of studies they have done,
11 the U.S. National Library of Medicine, relative to the
12 hallucinogenic effect of fentanyl?

13 A Not where I -- not something I read about all
14 the time.

15 Q Okay. It wouldn't surprise you to -- to hear
16 that, though?

17 A No, it wouldn't surprise me.

18 Q All right. And relative to Versed, are you
19 aware of any -- any such studies that have discussed the
20 hallucinogenic effect of Versed?

21 A Again, that's not something I would commonly
22 read about, but I'm sure there are -- there are studies out
23 there.

24 Q Okay.

25 MR. SGRO: I pass the witness, Your Honor.

1 MR. LANGFORD: I have no questions, Your Honor.

2 THE COURT: Any redirect?

3 MS. WECKERLY: Just a few questions.

4 REDIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q Doctor, when the defense counsel asked you to
7 look at the chart on August the 8th with the bad penmanship,
8 that one?

9 A Yes.

10 Q And you didn't see a notation on there I believe
11 that -- that the police entered the room?

12 A No, I don't see any comment or notes about the
13 police being in the room. I just --

14 Q Is that always noted in your experience?

15 A Again, they try. The nurses really do try.

16 Q Sure.

17 A But there's times when -- it's possible that
18 this nurse may have been at lunch. So -- or she may have been
19 dealing with some other problems. So it's possible that
20 things went on that just weren't noted.

21 Q Okay.

22 A Or maybe she just had a really busy day and
23 maybe that's why her penmanship wasn't very good that day and
24 she's trying to catch up at the end of the day and forgot to
25 note things. It's -- it's hard to know. I mean, I wouldn't

1 -- I wouldn't put -- personally, I wouldn't put too much into
2 that, because again, like I said, I come and go a lot and
3 sometimes you'll note that they say Dr. Gosche at bedside --

4 Q Uh-huh.

5 A -- and even sometimes when I've talked to them,
6 they don't note that.

7 Q Right.

8 A And so --

9 Q And you're someone involved in the actual
10 medical care?

11 A That's correct.

12 Q Okay. And a police officer obviously wouldn't
13 be?

14 A That's correct.

15 Q Sir, I was -- in your -- over your career I
16 assume you have actually prescribed fentanyl?

17 A Yeah. We do. We don't use it as much. Again,
18 we deal with a lot of children and so we're very cautious
19 about using too much narcotics on children.

20 Q Okay.

21 A And so for that reason, I don't use a lot of it.
22 But we certainly do use it.

23 Q Do you think that the -- the dosage given in
24 this case, does -- I mean, does that seem like a overdose
25 for her, or does it seem like an appropriate dosage given her

1 weight and size and age?

2 A It seems like a very appropriate dosage.

3 Q Okay. When you have prescribed it, have your --
4 your patients become hallucinogenic?

5 A I've not seen that. But --

6 Q Okay. And you --

7 A -- it's possible that, again, usually something
8 like that happen, you would think the nurse would be saying
9 he's seeing things to -- you know, when we make rounds and --

10 Q Yeah.

11 A -- but I've not seen that.

12 Q Okay. Actually --

13 A But again I -- sometimes, my kids, we can't tell
14 when they're hallucinating because they're just so --

15 Q Because they're too little?

16 A -- so -- too young. So --

17 Q Right. If they're preverbal --

18 A -- you'd have to have a teenager who's verbal.

19 Right.

20 Q Right. And you said -- I think you kind of
21 answered my next question. If someone were hallucinogenic,
22 that should be noted on the chart, right?

23 A Typically, yeah. They'll make comments about
24 the patient.

25 Q Okay.

1 A Because they're -- there are actually
2 conversations -- both -- I think they've had conversations
3 with her and asked her how she's feeling, Are you hurting?
4 And so -- and she's answering. It would seem appropriate.
5 So.

6 Q Okay. So they're actually talking to her and
7 not noting that?

8 A Yeah. And I'm -- I'm not sure, this one -- if
9 we're talking about August 7th, is -- that's the one I have.

10 Q Yeah.

11 A And then the one from August 8th. I'm trying to
12 decide -- okay. Now she has an intratracheal tube in on the
13 8th. So she wouldn't be able to respond verbally.

14 Q Right.

15 A But she would -- they were able to answer -- get
16 her to answer questions with yes, nods and --

17 Q Okay.

18 A -- shaking her head. So.

19 Q I -- and I guess if -- even -- I realize that
20 communication would be difficult with the -- the tube in -- in
21 her. But if she were appearing hallucinogenic, that should
22 have been noted on the -- on the chart?

23 A I would think there would be notes about her
24 being combative.

25 Q Okay.

1 A And I don't --

2 Q Yeah. And then do you -- do you prescribe or
3 have you ever prescribed, I'll say the easier name for it,
4 Versed? Or --

5 A Yes.

6 Q And in your experience, have you seen
7 hallucinations when you prescribe it to children?

8 A Now I have seen that, yes.

9 Q Okay. And you said that it has -- can you
10 describe how those hallucinations manifest or what that would
11 be?

12 A What -- usually what it is, is the child will
13 tell us afterwards --

14 Q Uh-huh.

15 A -- that I saw you, but you had two heads. Or --

16 Q Uh-huh.

17 A -- I saw you in my dream. So it's like they're
18 -- they feel like they're in a dream state.

19 Q Does it affect their memory, though, of, like,
20 something that happened prior to them being in the hospital?

21 A Midazolam, you mean?

22 Q Yes.

23 A The Versed? Yes. It -- it mostly affects the
24 period from the point it's given and for a certain period of
25 time afterwards.

1 Q Okay.

2 A I actually haven't seen that many children who
3 have loss of, in my case, loss of memory of events that
4 occurred much -- much before it was given. So, not like days
5 before, they wouldn't -- they would still have recalled those
6 events. That's been my experience.

7 Q Okay. So it's when it's administered is when
8 the amesiotic [sic] effect or hallucinogenic effect takes
9 over?

10 A Right.

11 Q It happens?

12 A So once the dose is given, then that's -- that's
13 when you start to have those effects. And the length of those
14 effects may vary from person to person.

15 Q Okay. But it doesn't alter, like, two days
16 before maybe the kid was given --

17 A I've not seen that --

18 Q -- the drug?

19 A -- no.

20 Q Okay. And then you said the -- the -- from the
21 time it's given, and I know I'm oversimplifying this, from the
22 time it's given, it's probably the most amnesiac, or if you're
23 going to have a side effect it'll be when the dose is the
24 highest, and then throughout the hours that ensue, have less
25 of an effect?

1 A Yes. So when you give the dose, it's got the
2 greatest concentration in your blood stream, and that's when
3 you'll see the greatest effects.

4 Q Okay. And --

5 A Now, in her case, she was getting a continuous
6 infusion. So she was getting sort of a dose that was smaller
7 than you would give, like, as a one-time dose, but it was
8 given over a period of time to have the same effect that -- in
9 other words, you don't have to give her too high -- too much
10 more of a dose, it's not too extreme dose, but you want to
11 keep that effect going. So the continuous -- that's where we
12 do -- why we do continuous infusions.

13 Q And with the a continuous -- I mean, have you
14 noticed any difference in how children react with a, you know,
15 a continuous low-level dose versus a very big dose at the
16 beginning in terms of amnesia or hallucinations?

17 A When you give a bolus, a big dose, they are
18 usually completely unresponsive. And that's -- so if we're
19 doing this, we do this oftentimes for children who are about
20 to have surgery. If they're really anxious, we'll give them
21 Versed or midazolam. And then usually if we give them a large
22 enough dose they'll be really sleepy or at least much more
23 agreeable.

24 Q Okay.

25 A With the continuous, it's -- we try to adjust it

1 so that they're not completely sedated, but they seem
2 comfortable.

3 Q All right.

4 A Did that -- did that answer your question?

5 Q Yes.

6 A Okay.

7 Q And in your experience with these side effects,
8 do they occur in all patients? Like the hallucinations or the
9 amnesia or anything like that?

10 A The amnesia, yes. Hallucinations, I don't
11 believe they do. But again, it's not -- that's not something
12 I don't really interview all my patients about --

13 Q Right.

14 A -- whether they're hallucinating afterwards.

15 So --

16 Q Okay.

17 A And I'm sure there's been studies that have
18 shown that, you know, it's a certain -- I'm sure there are
19 some people that are more sensitive to it than others.

20 Q And her last dose on the 8th was at 10:00 a.m.?

21 A Which one are we talking about now?

22 Q On the 8th?

23 A Midazolam, you mean?

24 Q Versed.

25 A Okay. The Versed?

1 Q Yes.

2 A Yeah. It looks like she had a continuous
3 infusion going at two milligrams per hour, and it's recorded
4 that it was -- there's nothing recorded in the 11:00 hour. So
5 I presume she got the two milligrams per hour between the
6 10:00 and 11:00 time.

7 Q Okay. And then after that there's no record of
8 her getting any?

9 A There's no record on this chart.

10 Q Okay.

11 A Which I would assume it'd all continue if it was
12 -- it -- it was still going on.

13 Q Okay. It should have been on there if she did?

14 A Yeah. I don't know why they would change to a
15 different sheet.

16 Q Okay. So she -- that was discontinued somewhere
17 between 10:00 and 11:00?

18 A That is correct.

19 Q And then the dose prior to that was at 6:00
20 a.m.?

21 A So she started a continuous infusion again at
22 6:00 a.m. is what it looks like, it started from -- at 6:00
23 a.m., two milligrams per hour continuously between 6:00 a.m.
24 and 11:00 a.m.

25 Q Okay. And then there's no notation of it?

1 A No notation after that.

2 Q And then the -- the first drug, fentanyl, that
3 was constant?

4 A That was -- we're just -- we're just now talking
5 about the 8th?

6 Q Yeah.

7 A So starting at midnight there's a note that it
8 was still going on at 100 micrograms per hour, and it went all
9 the way until it looks like 6:00 p.m.

10 Q Okay. Thank you.

11 MR. SGRO: Very briefly, Your Honor.

12 THE COURT: Yes.

13 RECROSS-EXAMINATION

14 BY MR. SGRO:

15 Q So, Doctor, just very quickly, one of the things
16 you said I think hits the nail on the head, relative to a lot
17 of the symptoms, amnesia, hallucinations, a lot of that comes
18 from physicians that do those sorts of interviews --

19 A That's correct.

20 Q -- when treatment's concluded, correct?

21 A Right. And I'm sure there are -- I mean, again,
22 I'm not a pharmacologist.

23 Q Right.

24 A I'm a surgeon. So I got simple things. I -- if
25 there's something that needs to come out, I take it out.

1 Something needs to be fixed, I fix it. And we -- we're
2 involved in the care postoperatively. But it's not my forte.

3 Q Sure. When you --

4 A I don't worry about -- unless they bring
5 something up, I don't -- I don't make it a point to interview
6 them about everything that happened to them after --

7 Q Correct.

8 A -- or during their procedure.

9 Q Correct. So there's two parts. There's the --
10 the interview that may be conducted by the surgeon, the other
11 part would be self-reporting, right? Yes?

12 A Right. That's correct.

13 Q Okay. And self-reporting is simply, as you gave
14 an example, a patient sometime after the treatment's
15 administered, saying --

16 A Hey I saw you in my dream or something. Yeah.
17 That's typically what I'll get is --

18 Q Okay.

19 A -- Hey, you were in my dream. So.

20 Q Right. And -- and to go from the -- the general
21 to the specific, in terms of the impact, I think you said that
22 fentanyl and Versed and the combination could have an -- an
23 amnesia effect at or about the time of its administration,
24 correct?

25 A It starts at the time of administration.

1 Q Right.

2 A And then it wears off over a period of time.

3 Q Right. And let me ask you this. Because we're
4 not talking about days here. Are you aware that there --
5 there was an incident that preceded Devonian Newman's admission
6 into the hospital? You're -- you treated --

7 A I am not aware of that.

8 Q Okay. Well, you treated a gunshot wound,
9 correct?

10 A That is correct.

11 Q All right. And again, I know you don't know,
12 but if I were to represent to you that an incident occurred
13 around 3:45 a.m. and Ms. Newman arrived at UMC around 6:00,
14 we're talking about only a two-hour or so time span, correct?

15 A That's correct.

16 Q All right. Let me ask you some of the questions
17 that Ms. Weckerly did from a different perspective. I have
18 someone under the influence of Versed and fentanyl, and I go
19 on August 8th, 24 hours or 36 hours after the drugs have been
20 administered, and I begin to ask questions of that person, you
21 would expect some level of deviation and accuracy, right?
22 With that person's ability to perceive, recall, and then tell
23 someone, right? As opposed to -- as opposed to speaking to
24 that same individual that's not under the influence of
25 fentanyl and Versed.

1 A Okay.

2 Q Do you see the --

3 A Now, where -- were we talking about asking about
4 events that occurred since they started the Versed or events
5 before?

6 Q Well, let's -- we're going to -- well, let's
7 break it down.

8 A So if someone's on -- currently on Versed and
9 fentanyl, to some degree at that point, if they're still
10 getting that, they may be a little sedated.

11 Q Right.

12 A And so in that regard it may be harder for them
13 to recall.

14 Q Right.

15 A And carry on a conversation.

16 Q And it may be easier for them to be prompted,
17 correct?

18 A I don't know. It's possible. I hadn't thought
19 about that. But yeah, it's possible.

20 Q Okay. And I guess at the end of the day my
21 question is -- is perhaps self-evident. But if you're going
22 to rely on someone to give you an accurate rendition of
23 detail, you're -- you would rather do it when they're not
24 under the influence of the combination of fentanyl and Versed
25 as opposed to when they are; would you agree with that?

1 A That's correct.

2 Q Okay.

3 A So one of the -- I guess one of my questions,
4 maybe I shouldn't be asking you this, is are you saying that
5 she was interviewed by the police on the 8th; is that what
6 you're -- you think has happened or?

7 Q I'm representing to you that on approximately
8 4:00 p.m. --

9 A Uh-huh.

10 Q -- on August 8th, she's interviewed by the
11 police.

12 A Okay.

13 Q Okay?

14 A I'm trying to find that in the record here, that
15 time.

16 Q That's the one that we asked you to see if it
17 was either --

18 A Right. And I didn't find a note about it.

19 Q Right. And it's not in there, correct?

20 A What I'm wondering about is she was -- in that
21 morning of -- of that -- that same day, she had a tube in her.

22 Q Exactly.

23 A She couldn't speak.

24 Q Right.

25 A So if they were interviewing her, she couldn't

1 speak. So my question is did she -- was there a point during
2 her course between 6:45 in the morning and you say around 4:00
3 p.m. --

4 Q Yes.

5 A -- when they removed that tube so that they
6 could actually have interviewed her?

7 Q Correct. And -- and you're not being called
8 upon right now to answer that particular --

9 A Okay.

10 Q -- question.

11 A Okay.

12 Q But I did -- again, and that's an excellent
13 observation, because one of the things the State just asked
14 you was, well, you know, is it noted in the chart? And you
15 answered, Well, she wouldn't have been able to say anything --

16 A Right.

17 Q -- and we at least know that she's intubated at
18 6:45 a.m., right?

19 A That's correct.

20 Q All right.

21 A And there's going to be a record somewhere when
22 -- if she was extubated on this day, there will be a record
23 somewhere. And I was just trying to see if it's noted here
24 somewhere.

25 Q Fair enough.

1 MR. SGRO: I believe that's all I have, sir.

2 MR. LANGFORD: No questions, Your Honor.

3 THE COURT: Doctor, thank you for being a witness.

4 THE WITNESS: All right.

5 THE COURT: You'll be excused.

6 THE WITNESS: Thank you.

7 THE COURT: Do you want to take your exhibits and --
8 back, Mr. Sgro?

9 MR. SGRO: Oh.

10 THE COURT: Give them to the clerk.

11 MR. SGRO: Here, I'll take those.

12 THE COURT: I don't -- those are his --

13 MR. SGRO: May I approach, Your Honor?

14 THE COURT: You left yours up here. The clerk would
15 like those back.

16 MR. SGRO: Yes, she would.

17 THE COURT: She'll tackle you if you try to take them
18 out of the courtroom.

19 MR. SGRO: Thank you.

20 MR. DiGIACOMO: I need Mr. -- I think Randy's going
21 to go get our next --

22 THE COURT: All right.

23 MR. DiGIACOMO: -- get Ms. Martinez again.

24 THE COURT: All right.

25 MR. DiGIACOMO: If I could just have a second,

1 hopefully this thing won't start blaring at me again while I
2 load it back up.

3 (Pause in proceedings.)

4 THE COURT: I've got a hunch we're going to have a
5 break. Would you guys like a break for a few minutes?

6 THE JURY: Sure.

7 THE COURT: All right. During the recess you're
8 again -- it -- it's your duty not to converse among yourselves
9 or with anyone else on any subject connected with this trial,
10 or to read, watch, or listen to any report of or commentary on
11 the trial from any medium of information including newspapers,
12 television, or radio. You're not to form or express an
13 opinion on any subject connected with this case until it's
14 finally submitted to you.

15 Give you about 10-minute break. How's that?

16 (Jury recessed at 10:33 a.m.)

17 THE COURT: All right. The record will reflect that
18 the jury has left the courtroom. 10-minute break, okay?

19 Apparently, Ms. Martinez is someplace else?

20 MR. DiGIACOMO: I got a text from my investigator
21 that he was in court holding, which I assume means that door
22 right there. So she just may have to come through.

23 THE COURT: You might want to check. I don't know.

24 (Court recessed at 10:33 a.m., until 10:42 a.m.)

25 (Outside the presence of the jury.)

1 THE COURT: We're on the record, folks.

2 (Pause in proceedings.)

3 (Jury reconvened at 10:44 a.m.)

4 THE COURT: All right. State vs. Burns and Mason.
5 The record will reflect the presence of the defendants, their
6 counsel, the district attorneys, and all members of the jury.

7 We're back to playing the video recording of Ms.
8 Martinez. And Ms. Martinez is present. You may.

9 MR. DiGIACOMO: Thank you, Judge. And for the
10 record, we stopped last night at 2:54 and some seconds. I
11 backed up to 2:53 so the -- the context isn't lost. And we'll
12 start there.

13 (State's Exhibit 274 played.)

14 MR. DiGIACOMO: Judge, it's about noon. Would you
15 like to take a break?

16 THE COURT: Is this about the end of the video?

17 MR. DiGIACOMO: About an hour and 26 minutes left.

18 THE COURT: Oh, really?

19 MR. DiGIACOMO: Yes.

20 THE COURT: Okay. All right.

21 Ladies and gentlemen, during the recess it's again
22 your duty not to converse among yourselves or with anyone else
23 on any subject connected with this trial, or to read, watch,
24 or listen to any report of or commentary on the trial from any
25 medium of information including newspapers, television, or

1 radio. You may not form or express an opinion on any subject
2 connected with this case until it's finally submitted to you.

3 We'll be in recess till 1:00.

4 (Jury recessed at 11:58 a.m.)

5 THE COURT: Let the record reflect that the jury has
6 executed the -- exited the courtroom.

7 Anything further on the record?

8 MR. ORAM: Just -- just so that the Court could have
9 the appropriate staff here to deal with Ms. Martinez's shackle
10 situation.

11 THE COURT: I think that the investigator for the
12 DA's office is in charge of Ms. Martinez.

13 MR. DiGIACOMO: That's correct.

14 THE COURT: Okay. You can explain to her she's going
15 to have to be unshackled when we come back. And she can do
16 that first before the jury comes in.

17 MR. SGRO: Are you going to -- how do you want it?
18 Do you want just the hands free?

19 THE COURT: Yeah. That's all that's necessary.

20 MR. SGRO: All right. Okay.

21 MR. DiGIACOMO: Thank you, Judge.

22 THE COURT: See you then.

23 MR. DiGIACOMO: Thank you.

24 (Court recessed at 12:00 p.m., until 1:08 p.m.)

25 (In the presence of the jury.)

1 THE COURT: All right. State vs. Burns and Mason.
2 The record reflect the presence of the defendants, their
3 counsel, the district attorneys, and all members of the jury.

4 We're still on direct examination and playing the
5 video.

6 MR. DiGIACOMO: It's Exhibit 274, Judge. And we
7 haven't touched it. So hopefully it'll start up right.

8 (State's Exhibit 274 played.)

9 MR. DiGIACOMO: Would you like to take a break,
10 Judge?

11 THE COURT: Let's take a break. All right.

12 Ladies and gentlemen, it's again your duty not to
13 converse among yourselves or with anyone else on any subject
14 connected with this trial, or to read, watch, or listen to any
15 report of or commentary on the trial from any medium of
16 information including newspapers, television, and radio. You
17 may not form or express an opinion on any subject connected
18 with this case until it's finally submitted to you.

19 Be in recess for about 10 minutes.

20 (Jury recessed at 2:36 p.m.)

21 THE COURT: Are you through with the monitor here?

22 MR. DiGIACOMO: I think we should move the monitor so
23 that the jury can all see. There's some other things to
24 watch, but nothing that long.

25 THE COURT: Okay. Record reflect that the jury's

1 left the courtroom. 10-minute break.

2 (Court recessed at 2:36 p.m. until 2:51 p.m.)

3 (In the presence of the jury.)

4 THE COURT: All right. State versus Burns and
5 Mason. The record will reflect the presence of the
6 defendants, their counsel, the district attorneys, and the
7 members of the jury. We're still on direct examination of Ms.
8 Martinez.

9 And, Ms. Martinez, you're still under oath.

10 DIRECT EXAMINATION (Continued)

11 BY MR. DiGIACOMO:

12 Q Ma'am, they took the box away from me so just
13 make sure you speak up for us, okay?

14 THE MARSHAL: I'll put it back.

15 THE WITNESS: Okay.

16 BY MR. DiGIACOMO:

17 Q At the end of this interview there's a
18 discussion about how you're going to go looking to point Job's
19 apartment with the homicide detectives. Do you do that?

20 A No.

21 Q What happens to you?

22 A I come down to booking here at Clark County
23 Detention Center.

24 MR. ORAM: Your Honor, I can't hear.

25 THE COURT: Yeah, we're going --

1 THE MARSHAL: I'm fixing that --

2 THE COURT: -- to use the box again.

3 THE MARSHAL: -- problem right now.

4 THE COURT: There we go.

5 BY MR. DiGIACOMO:

6 Q They take you down to the Detention Center and
7 you are then arrested for the crimes that you wind up being in
8 custody for; correct?

9 A Yes.

10 Q You were arrested for conspiracy to commit
11 robbery?

12 A Yes.

13 Q Robbery with use of a deadly weapon?

14 A Yes.

15 Q And murder with use of a deadly weapon?

16 A Yes.

17 Q Despite the fact that you are now charged,
18 ultimately you get some lawyers appointed to you, is that
19 fair?

20 A Yes.

21 Q Okay. And even while they -- you are
22 continuing to be processed in the criminal justice system, do
23 you continue to have contact with the homicide detectives?

24 A Yes.

25 Q When you left the interview room you had

1 already identified Mr. Mason in the photograph. That's the
2 photograph --

3 MR. ORAM: Objection. Leading.

4 THE COURT: Sustained.

5 BY MR. DiGIACOMO:

6 Q Foundationally, who is the photograph that you
7 kept pointing to saying this is D? Who is that person?

8 A Willie Mason.

9 Q Okay. So that photograph had been identified
10 when you left the interview room?

11 A Yes.

12 Q Towards the end of the interview they come in
13 and show you a photograph of Job-Loc, do you remember that?

14 A Yes, I do.

15 Q Okay. And so when you left the interview room
16 Job-Loc had been identified; is that correct?

17 A Correct.

18 Q When you left the interview room, had you --
19 had they come to you and shown you a picture of D-Shot yet?

20 A No.

21 Q Okay, Mr. Burns?

22 A No.

23 Q How many times or how many different times do
24 you think you had contact with the police where they showed
25 you various photos to see if you could identify D-Shot?

1 A One time.

2 MR. DiGIACOMO: May I approach, Judge?

3 THE COURT: Sure.

4 BY MR. DiGIACOMO:

5 Q I'm showing you what's been marked as State's
6 Proposed Exhibit No. 283 and ask you do you recognize that
7 document?

8 A Yes.

9 Q Okay. Is some of that handwriting on that
10 document yours?

11 A That's my handwriting.

12 Q Okay. And then I'm going to show you the
13 second page. Do you recognize what's depicted on the second
14 page?

15 A Yes.

16 Q Okay. And it's a six-pack lineup for lack of
17 a better term; is that correct?

18 A Okay. Yes.

19 Q Yes? All right. And is this a copy of your
20 photograph, both photo lineup witness instructions, as well as
21 the lineup that you actually viewed and then identified
22 somebody in?

23 A Yes.

24 MR. DiGIACOMO: Move to admit 283.

25 MR. ORAM: No objection.

1 MR. LANGFORD: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 283 admitted.)

4 BY MR. DiGIACOMO:

5 Q Now, prior to them coming to show you a photo
6 lineup, did you have any contact with the detectives when they
7 were showing you other people and asking you if it was D-Shot
8 or not, or is this the only time that you had contact with the
9 detectives?

10 A I remember that incident that -- that time. I
11 don't know if there was another one. I don't remember.

12 Q Okay. I'm going to put up the front page of
13 283 for you. Prior to them showing you the photographs, were
14 you provided the witness instructions that are up here and did
15 you read through those?

16 A I did.

17 Q Okay. And then did you sign off that you
18 acknowledge that you understood the witness instructions?

19 A Yes.

20 Q And the date on this is September 16th of
21 2010. So more than a month after you were arrested, would
22 that be fair?

23 A Yes.

24 Q Okay. And then I'm going to put up No. 2.
25 I'm going to turn it so that it actually is the right way. Is

1 that the photo lineup form that you looked at and then
2 ultimately did you make some mark identifying the person you
3 know as D-Shot?

4 A Yes, it is.

5 Q If you could, did you then -- well, let me ask
6 you did you then write out kind of your own personal statement
7 as to why it is you picked this particular person?

8 A Yes.

9 Q Okay. Will you read to the ladies and
10 gentlemen of the jury what you wrote?

11 A This picture that I circled and initialed is
12 the person I know as D-Shock. I am 100 percent sure D-Shock
13 is the one who was in my car with myself, Willie Mason, who I
14 knew that night as G-Dog, and Stephanie Cousins on August 7,
15 2010.

16 Q And I'm not going to show you what's been
17 marked as State's Proposed Exhibit No. 282, and I'm just going
18 to show you the fifth page and ask you do recognize first the
19 person in that photograph?

20 A Yes, I do.

21 Q And who is that?

22 A It's Job-Loc.

23 Q And is that the photograph that the police
24 showed you during the interview of Job towards the end where
25 there's that discussion about I thought that was a kite at

1 first?

2 A Yes.

3 Q Okay. Now, ma'am, you told the detectives
4 kind of a series of events between the time period where you
5 wound up downtown with Mr. Mason and Mr. Burns, kind of up and
6 through to the time period that the homicide occurred. And
7 I'm going to ask you a couple questions kind of about the
8 timing of various pieces of evidence, okay?

9 A Okay.

10 MR. DiGIACOMO: And, Judge, based upon an agreement
11 from counsel, there has been an agreement to a number of
12 different pieces of surveillance video. They have been marked
13 as the Golden Nugget ATM as State's Proposed Exhibit 270; the
14 Golden Nugget camera 334 as State's Proposed Exhibit 269; the
15 Golden Nugget camera 330, State's Proposed Exhibit 268; the
16 Binion's Hotel & Casino, State's Proposed Exhibit 267; the
17 Opera House Hotel & Casino, or Opera House Casino, State's
18 Proposed Exhibit 275; and the Texas Station, State's Proposed
19 Exhibit 276. I'd offer them at this time.

20 MR. ORAM: No objection.

21 MR. LANGFORD: No objection.

22 THE COURT: They'll be received.

23 (Exhibit 267 through 270 and 275, 276 admitted.)

24 MR. DiGIACOMO: And for the edification of the jury,
25 I have taken small portions of each one of those discs so they

1 don't have to go searching for it.

2 THE COURT: Good.

3 MR. DiGIACOMO: So for the record, State's Proposed
4 Exhibit 271 is the Texas composition, State's Proposed Exhibit
5 272 is the Opera House composite, and State's Proposed Exhibit
6 273 is the downtown area composite and I'd offer those, as
7 well.

8 MR. LANGFORD: No objection.

9 MR. ORAM: No objection.

10 THE COURT: They'll be received.

11 (State's Exhibit 271 through 273 admitted.)

12 MR. DiGIACOMO: Thank you.

13 BY MR. DiGIACOMO:

14 Q Now, ma'am, what I'm going to do is I'm going
15 to start with -- you said when you first came down to
16 downtown, where did you park?

17 A At the Horseshoe parking garage.

18 Q And you said you exited with Mr. Mason and Mr.
19 Burns; is that correct?

20 A Yes.

21 Q And then you said you personally entered the
22 Golden Nugget Hotel & Casino?

23 A Correct.

24 Q And then after the Golden Nugget, you made a
25 phone call to Mr. Mason or Mr. Mason made a phone call to you;

1 is that correct?

2 A Yes.

3 Q And that's how you wound up back in contact
4 with him?

5 A Yes, it is.

6 MR. ORAM: Judge, this is continuously leading.

7 MR. DiGIACOMO: Judge, at this point I'm --

8 THE COURT: Well, it's preliminary, as well, so --

9 MR. DiGIACOMO: Thank you. At this point I'm going
10 to publish 273.

11 THE COURT: All right.

12 (State's Exhibit 273 played.)

13 BY MR. DiGIACOMO:

14 Q I want you to focus on the three people
15 walking past the door there. Did you see those three
16 individuals?

17 A I did.

18 Q Okay. And who were they?

19 A It was -- excuse me, myself, Willie, and
20 David.

21 Q And then the woman whose face is just entering
22 now, who is that?

23 A That's me.

24 Q If you review the top left-hand photograph
25 there is a woman approaching an ATM. Who is that?

1 A That's me.

2 Q I am going to try and drag it so that we don't
3 watch you standing at an ATM the whole time here. The woman
4 now exiting the Golden Nugget?

5 A That's me again.

6 Q And once again I'm going to refer you to the
7 top left-hand video. There's in a moment going to be a woman
8 or a person standing in this area over here. The woman that's
9 standing there using her phone and walking away, can -- are
10 you able to distinguish from that view since you have a pretty
11 small screen there who that is or not?

12 A It's kind of dark. It's hard to tell.

13 Q You said after leaving downtown -- first you
14 went to the Jerry's Nugget; is that correct?

15 A Yes.

16 Q And then ultimately you wound up at the Opera
17 House.

18 MR. DiGIACOMO: I'm going to publish 272, Judge.

19 (State's Exhibit 272 played.)

20 BY MR. DiGIACOMO:

21 Q And so that I can focus you in, there's a car
22 that parked there, and there now appears to be three
23 individuals walking in that direction. Do you recognize the
24 two people in this video?

25 A I do.

1 Q And who is the person in the white shirt?

2 A Willie.

3 Q And who is the person in the overalls?

4 A David.

5 (State's Exhibit 272 played.)

6 BY MR. DiGIACOMO:

7 Q The car that you guys are walking to, is that
8 your silver Crown Victoria in the parking lot?

9 A From this camera view it's hard to tell it's
10 so far back.

11 Q Well, let me ask you this. Is your silver
12 Crown Victoria that you went to the Opera House in?

13 A Yes.

14 Q Okay. And the timing here says 2:57 and
15 almost 2:58 in the morning. Is it from the Opera House where
16 you drive to his cousin's apartment?

17 A Yes.

18 Q You also testified that after the homicide you
19 went alone to the Texas Station. Do you remember that?

20 A Yes, I did.

21 MR. DiGIACOMO: I'm going to publish 271, Judge.

22 (State's Exhibit 271 played.)

23 BY MR. DiGIACOMO:

24 Q Now, you -- you told the detectives, and I
25 believe you testified here, the only time you met Mr. Burns

1 was in that time period from the time you picked him up in
2 California until --

3 MR. ORAM: Object to leading. I don't think that's
4 what she said at all. She said that she met him on the strip
5 about two weeks beforehand. So that's a leading question.

6 THE COURT: I think she -- I think she said both.

7 MR. SGRO: Well, that's the problem.

8 MR. DiGIACOMO: She said that --

9 MR. ORAM: That's the problem.

10 MR. DiGIACOMO: -- at the interview, but she
11 testified that she picked him up in California.

12 THE COURT: She did testify to that.

13 MR. DiGIACOMO: And that was in the interview -- at
14 the end of the interview, as well.

15 THE COURT: Objection is overruled.

16 BY MR. DiGIACOMO:

17 Q You indicated that you only knew Mr. Burns
18 from that weekend, a week and a half before, up and through --
19 or to the homicide a week later. Is that the only time that
20 you knew Mr. Burns or that you had met Mr. Burns?

21 A It is.

22 Q After you went to the Clark County Detention
23 Center, did you have communication with Mr. Burns?

24 A In the course of the four and a half years
25 that I've been here, yes.

1 Q Okay. Has any of it been face to face like a
2 conversation where he's -- where you can see him and he can
3 see you?

4 A Once, yes.

5 Q Okay. And do you remember how long ago that
6 occurred?

7 A It was about the fall of last year, just not
8 too far long ago.

9 Q Is there other times where you had contact
10 with him voice to voice?

11 A Yes.

12 Q Can you describe to the ladies and gentlemen
13 how it is you can have a conversation with somebody at the
14 Clark County Detention Center when you physically can't see
15 them?

16 A Through the air vents.

17 Q And in particular was there an incident this
18 December, just last month, where you were able to have a
19 conversation with Mr. Burns in a vent?

20 A Yes.

21 Q So let me back up. At some point did you enter
22 a plea -- a plea of guilty in this case?

23 A Yes.

24 Q And do you remember approximately when that
25 was?

1 A Around October of last year.

2 Q October of 2014?

3 A Correct.

4 Q And do you remember what crimes you pled
5 guilty to?

6 A I do.

7 Q What crimes did you plead guilty to?

8 A Second degree murder, robbery, and conspiracy
9 to commit robbery.

10 Q And did you know essentially what your
11 sentencing range is for those crimes?

12 A I know the minimum on the robbery and the
13 conspiracy to commit robbery and the second degree is -- it
14 can range anywhere from 10 to life with the possibility of
15 parole.

16 Q And the agreement that you've reached with the
17 State, what position are we taking at your sentencing, do you
18 know?

19 A I don't understand.

20 Q When it comes to time for sentencing, you
21 three charges; correct?

22 A Correct.

23 Q You recognize that you will get a sentence on
24 all three charges; correct?

25 A Correct.

1 Q And do you recognize that those sentences --

2 MR. ORAM: Judge, this is leading.

3 THE COURT: I'm sorry?

4 MR. DiGIACOMO: Foundational.

5 MR. ORAM: Leading. Correct? Correct? He is
6 leading the witness.

7 MR. DiGIACOMO: This is really foundational, Judge.

8 THE COURT: This is -- there's no issue about this,
9 is there?

10 MR. ORAM: I think it's subjective belief of what
11 she's going to receive.

12 THE COURT: Objection is overruled.

13 BY MR. DiGIACOMO:

14 Q You realize there will be three sentences, one
15 for each crime that you've pled guilty to; is that correct?

16 A Yes.

17 Q And that those sentences may be run concurrent
18 or consecutive; correct?

19 A Yes.

20 Q And do you remember what position the State of
21 Nevada is taking as it relates to your guilty plea?

22 A I'm still not understanding what --

23 MR. DiGIACOMO: May I approach, Judge?

24 THE COURT: Yes.

25 BY MR. DiGIACOMO:

1 Q Ma'am, I have what's been marked as State's
2 Proposed Exhibit No. 286.

3 MR. ORAM: Is that the guilty plea, Counsel?

4 MR. DiGIACOMO: It is.

5 BY MR. DiGIACOMO:

6 Q Do you recognize that document as the
7 agreement to plead guilty?

8 A Yes.

9 Q Okay. And looking at that, if you look at
10 line 23 right there --

11 A Okay.

12 Q -- does it say that the State retains the
13 right to argue?

14 A Yes, I just wasn't sure.

15 Q Okay. And if we were to go to the second page
16 of this, each one of those counts has all your possible
17 sentencing ranges included in there, is that fair?

18 A Yes, it does.

19 Q Okay. You just testified that you recognize
20 that at the very least you have to do ten years in prison,
21 that no court can do anything about that. Your minimum parole
22 eligibility is ten years.

23 A Yes.

24 Q Okay. And that a Court -- or do you recognize
25 that a court can potentially give you as much as a minimum of

1 18 years before you're eligible for parole?

2 A Yes, I understand.

3 Q So back to this vent conversation. You enter
4 your plea in October of 2014. In December of 2014, how are
5 you having a conversation with Mr. Burns in the vents?

6 A That evening, it was about 9:30, my neighbor,
7 the girl that was in the cell next to me, I was in the
8 shower --

9 Q Don't tell us what your neighbor tells you,
10 but based upon what she tells you -- well, do you do anything
11 based upon what she tells you?

12 A Yeah, she told me somebody was asking for me,
13 so I went --

14 MR. ORAM: Objection as to what she told her.

15 THE COURT: Well, maybe -- if it's for why she did
16 what she did, not for the truth of it. It -- it's probably
17 inadmissible. Sustained.

18 BY MR. DiGIACOMO:

19 Q Based upon what she told you, what did you do?

20 A I went to the vent and talked to him.

21 Q When you went to the vent, did you know that
22 it was David Burns that was looking to speak to you?

23 A No, I didn't.

24 Q Is it unusual for the women in the jail to
25 talk to other men on other floors of the jail?

1 A Yes. You said is it unusual?

2 Q Yeah, is it unusual.

3 A No, it's not unusual.

4 Q Okay. That's --

5 A It happens all the time. Sorry.

6 Q -- the socialization over at the Clark County
7 Detention Center?

8 A Yes.

9 Q Okay. When you got to the vent, describe for
10 the ladies and gentlemen of the jury the conversation that you
11 had.

12 A I asked for DJ and he asked -- DJ asked me
13 if --

14 MR. ORAM: Judge.

15 THE WITNESS: -- if I knew D-Shock.

16 MR. ORAM: Judge, objection. Who is DJ? And if
17 she's going to talk about who DJ is or what DJ said, it's
18 hearsay.

19 MR. DiGIACOMO: Well, let me clear that up.

20 BY MR. DiGIACOMO:

21 Q Ultimately during the course of the
22 conversation, is the speaker always David Burns?

23 A Yes.

24 Q Okay. Thank you.

25 THE COURT: That's admissible.

1 BY MR. DiGIACOMO:

2 Q So you go to the vent, ask for DJ, and you
3 start having a conversation with someone who says they were
4 DJ, but it's David Burns.

5 A Yes.

6 Q Describe the conversation.

7 A He said do you know D-Shock? And I said yes.
8 He said that's your co-defendant? And I said yes. He said so
9 is it true? And I said, what? And he said that you jumped
10 ship. And I said I was never on his fucking ship. And I was
11 cussing. I was upset because I had been receiving threats.
12 So I was cussing at him. And I asked him if he knew another
13 person up there who was a porter, Straight Up. He goes by
14 Straight Up. And he said, yeah. I said, well, that's the guy
15 that I talked to. And he said, oh. And he said -- he said so
16 what happened? And I said, what do you mean what happened?
17 And I -- I said things that happened that night.

18 Q Things that happened what night?

19 A In the incident of --

20 Q The night of the murder?

21 A Correct.

22 Q Okay.

23 A I said that there -- there was a woman that
24 was executed and her daughter was chased and shot. And then
25 he said -- DJ said, oh, so he should be dealt with. And I

1 said, well, I have nothing to do with that. And he said, oh,
2 that's funny because I'm D-Shock. And then I just stayed
3 quiet. And he said, oh, cat got your tongue? And I said,
4 well, I don't know what you want me to say.

5 Q Based upon that contact that you had with him,
6 did you report that to somebody?

7 A I did.

8 Q And who did you report that to?

9 A Officer Batu.

10 Q Okay. Now, is it unusual for you to be able
11 to have access to a co-defendant or somebody in your case
12 through the vents? Is that the first time you've ever been
13 able to speak to anybody else associated with this case
14 through the vents?

15 A No, I've had -- I've spoken with D-Shock
16 before.

17 Q You've spoken with him before through the
18 vents?

19 A Yes, one time before.

20 Q And how -- you've seen him face to face one
21 time and spoken to him on two separate occasions --

22 A Yes.

23 Q -- is that correct?

24 A Yes.

25 Q Based upon that -- let me back up for a

1 second. Did you also get some written communications from Mr.
2 Burns?

3 A Yes, I received letters from him.

4 MR. DiGIACOMO: May I approach, Judge?

5 (Pause in the proceedings.)

6 MR. DiGIACOMO: Judge, may we approach?

7 THE COURT: Yes.

8 (Bench conference.)

9 MR. DiGIACOMO: In some -- in some of Mr. Burns's
10 letters to other people he indicates that, you know, basically
11 I copped to manslaughter but nothing else. We have agreed to
12 remove that. In this letter he's instructing her what deal to
13 take and not take.

14 THE COURT: That's okay.

15 MR. DiGIACOMO: And, to me, that's completely
16 admissible.

17 MR. ORAM: Judge --

18 MR. DiGIACOMO: They want --

19 MR. ORAM: -- could you --

20 MR. DiGIACOMO: -- they want [inaudible].

21 MR. ORAM: Is there any way we can -- I think we can
22 solve this real quick. Could you just look at the line we're
23 doing and then you can just make a ruling and we'll be done.

24 MR. DiGIACOMO: Oh, sorry, Judge. Yeah, it's starts
25 off with when he's talking about --

1 THE COURT: Where? I mean, I can barely read this.

2 MR. DiGIACOMO: I know. Do you want to take them
3 out and I'll read it to you on the record? He's telling her
4 not to -- not to take a first or second, but if they offer her
5 her own -- her own manslaughter to take it.

6 THE COURT: I mean, it's certainly -- it's certainly
7 admissible for him if it's his statement to her.

8 MR. DiGIACOMO: To her.

9 MR. ORAM: It is. We just thought it is somewhat
10 vague, highly prejudicial, and is more -- more prejudicial
11 than probative, Judge.

12 THE COURT: It's pretty probative.

13 MR. ORAM: Is that a record?

14 THE COURT: It's going to come in.

15 MR. ORAM: Is that a record?

16 THE COURT: That's a record. All right.

17 MR. DiGIACOMO: Thank you, Judge.

18 (End of bench conference.)

19 BY MR. DiGIACOMO:

20 Q Ma'am, I'm going to approach and show you two
21 separate documents. One is State's Proposed Exhibit 285, and
22 the other one is State's Proposed Exhibit 284. So I guess I
23 did that a little backwards. And I'm going to ask you just
24 briefly to look at these and ask you if these appear to be two
25 of the letters that you received from Mr. Burns, excluding the

1 part that has been redacted by agreement of the parties. I
2 don't need you to read it all now because --

3 A Oh.

4 Q -- you're going to read it in a minute.

5 A Okay.

6 Q Does this appear to be a redacted copy of the
7 letter that Mr. -- one of the letters Mr. Burns sent to you?

8 A Yes, it is.

9 Q Okay. And 284 has no redactions, but does
10 this look like a copy of one of the letters that Mr. Burns
11 sent to you?

12 A Yes.

13 MR. DiGIACOMO: Move to admit 284 and 285.

14 MR. ORAM: No objection other than what we've talked
15 about at the bench.

16 MR. LANGFORD: No objection, Your Honor.

17 THE COURT: They'll be received.

18 (State's Exhibit 284 and 285 admitted.)

19 BY MR. DiGIACOMO:

20 Q So now I want to start with the one that's
21 dated October 22, 2012. It has a stamp, a mail stamp on it.
22 And this is the redacted one. And just so we're clear, that's
23 State's Exhibit 285. 284 has a stamp from DSD business on
24 11/10 of '11. So this would be November of 2011, this would
25 be October of 2012, okay.

1 A Okay.

2 Q I want to read the second letter first.

3 A Okay.

4 Q Okay. So what I'm going to ask you to do is
5 I'm going to ask you to start on the first page. I'm going to
6 ask you to read to the jury. If there's anything that you
7 can't read, read all the way to the end. You don't have to
8 read the poem at the end.

9 A Okay.

10 Q Okay. Go ahead.

11 A Also the -- up here in the top?

12 Q Yeah, you can read that all. Read the top and
13 then read the letter.

14 A Okay. It says to you from me. Song, you got
15 to keep your head up by Tupac. Todo esta bien ahora. Buenos
16 dias, Senora Martinez and como esta. Me, same shit, keeping
17 my head up like a permanent nosebleed. Only strong minds make
18 it through tough times. It's hard to free your mind in a
19 place that's not free.

20 I know you miss your kids and they'll miss you.
21 They'll be there. They'll never forget you or about you.
22 Right now it's time to fix yourself. If you can't do that,
23 then you'll be in the same lifestyle you left. Some people
24 didn't have a chance to fix themselves and died stuck in their
25 ways. That's a cold way to go out. Knowing that you could

1 have been better than what you were. It's not over. It's
2 only a time a out, a serious one.

3 Some people go through tough situations and come out
4 on top. It's all in how you dealt with things while you were
5 going through it. If you don't correct yourself now, then
6 people will always remember you how you were. I'm not saying
7 you were a bad person. I'm saying there is always room for
8 correction and improvement. This is not the first or the last
9 holiday, so don't act like it.

10 The day I come out -- the day I come out I talk to
11 you, two hours later I'm off to my new housing. I told you
12 something you needed to hear. It takes a man to put
13 everything aside and say what I have to say. It's probably
14 even hurting my case to write you. Everything happens for a
15 reason.

16 I want you to look through your statement and see
17 that you weren't read your rights. You have the right to
18 remain silent. You have a right to appointed an attorney
19 while being questioned. Anything you say can and will be used
20 against you in a court of law. If you don't have any money an
21 attorney will be appointed for you.

22 I knew a guy who made a statement and fucked his
23 self, but he was not read his rights. I noticed this about
24 your case a year ago. They're going to say you weren't under
25 arrest at the time, but when they handcuffed you, took you out

1 that room and brought you back in, that changed. I don't
2 think Stephanie was read her rights neither.

3 This does not benefit me. The cases are severed.
4 I'm trying to give you the little I know, if any. You were
5 intoxicated during questioning. You admitted that. This does
6 not help me. This is for you. They have the power of
7 throwing the statement away to do -- due to intoxication.
8 Donovan Roland made a statement. When it came time for Grand
9 Jury he got up there and said I was high and drunk when I made
10 this statement. He was thrown out due to this.

11 You're not a little girl. You're a full grown woman
12 with a brain that works at average -- at average capacity.
13 I'm not saying you're the smartest, nor dumbest. I'm saying
14 open your fucking eyes and get in that law work. Have one of
15 your family members go online and get you a used up to date
16 law book. Nolo criminal law books are the best. Keep them
17 bitches out of your business. If you wasn't at work for it --
18 I'm reading it as it says.

19 Q Read it just as it says.

20 A Okay.

21 Q You can't adlib.

22 A If you wasn't at work for it, the Lord you
23 pray to every night only helps the willing. The ones who will
24 help themselves. If your legal help is not doing what you
25 ask, do what you must. If they don't look into what you need,

1 do what you must. Do not lay there like a wounded antelope
2 waiting to be eaten. Do something. It's all for you.

3 They offer you something pretty high. Listen, if I
4 had a car that I'm trying to sell to someone for, let's say, I
5 accept 8,000, I know you got some money so I tell you I'll
6 sell the same car for 18,000. You talk me down to 12,000 and
7 I say no, but I'll accept 14,000. Sold. You think you won
8 because you talked me down four stacks. I really won, though,
9 because I made an extra 6,000. You see where I'm coming from?
10 They're doing the same with sentences, going higher than what
11 they -- than what a charge really holds.

12 Manslaughter holds a possible four to ten, but if
13 they can make you cop to first degree or even second, they
14 won. It's your life. Don't take something stupid because
15 someone tells you it's good or you think you'll be home soon.
16 This is not a time to use your heart. It's a time to use your
17 mind.

18 You're not stupid, you just don't know certain
19 things. It's okay. You can learn. A lot of people come here
20 not knowing the law, and I'm not saying I'm that fresh at it.
21 I'm saying use your mind for something more than reading love
22 novels or being stuck in dream land.

23 If you ever think you have it worse off, think of
24 this. I have to deal with the family members in here. They
25 don't want any story on how I didn't -- how I didn't do

1 nothing or know nothing. They're going to try and do their
2 best to hurt me. I have to protect myself by any means. I'm
3 not saying this is something I'm scared of. I'm saying it's
4 what I'm aware of.

5 Every time someone new comes on a unit of mine, I
6 have to take precaution. Every time I get moved this is a
7 precaution of mine. That is why I always try to keep myself
8 fit, not to mention the people who don't like the
9 circumstances of my case. People don't care who did it. They
10 only care that you're in for it. I can go to the joint and
11 get stabbed or shot in a riot. I'm letting you know how real
12 it is on this side of the fence.

13 I'm your daughter's age, if not younger. That means
14 nothing in this world. A person -- a person with an older
15 mind gets treated older. A young person doesn't get taken
16 serious. If you don't apply yourself you're not to be taken
17 serious. In case you thought you had any privacy around here,
18 you don't.

19 Every single letter you are written, someone made a
20 copy of and printed out. Everyone read your letters. All
21 attorneys, COs who do -- COs who do intel, and anyone on the
22 case who asked for a copy. They will read and make a copy of
23 this. They read and make a copy of anything sent to anyone
24 you write in prison in California, where else.

25 The DA goes to sleep at night with your letters as a

1 bedtime story. For example, all your little freaky tails or
2 how you don't like wearing the panties without a pad because
3 you don't know who they belong to, everything gets read. I
4 thought you knew that. Don't write me talking about -- about
5 no bullshit. You don't want to be broadcasted to 20-plus
6 people. I'm not trying to scare you. I'm trying to prepare
7 you.

8 Don't write no one talking about your case. Them
9 bitches down there will twist something on you faster than
10 these dudes will. Stop telling your business to everyone. I
11 know it's hard, but you and only you are the only ones you can
12 trust. The information I gave you should help. Look up
13 information on witness interrogation. You will need some NRS.
14 If you write me talking about your case, expect me not to
15 write back. I mean it. I only have one envelope right now
16 and I'm using it to write you.

17 I need you to understand something. Everyone you
18 talk to is not your friend. You will get one of the
19 venom-spitting females down there to say fuck me or don't talk
20 to me. At the same time they can offer any advice. You
21 didn't write me before because you said you didn't know what
22 to say.

23 Well, all I want you to do is listen because after
24 all this time you seem lost. Read this, then read it again so
25 you can get an understanding of where I'm coming from.

1 Communication rules the nation. This is what you've got to
2 understand. They want me and you not to talk and to keep us
3 divided. Divided we fall, and together we stand.

4 I'm not asking for any favors. You don't owe me any
5 favors. I'm not trying to make a pact. I just feel it's
6 things you need to know. They want you in the blind and want
7 you to stay there. I'm going to end this, but think of what I
8 said. Until next time, stay safe and out the way.

9 Then he writes something in Spanish and I don't -- I
10 don't know what that is.

11 Q Okay. So at least by October 22nd of 2012, it
12 appears Mr. Burns has reviewed your statement. Would that be
13 a fair characterization?

14 MR. ORAM: Objection. Leading.

15 THE COURT: Sustained.

16 BY MR. DiGIACOMO:

17 Q I want to show you State's Exhibit -- Exhibit
18 284. This one is only one page. I'm going to ask you to read
19 -- just read the quote at the top. Read the two and then just
20 this one page.

21 A Okay. To Momo, from Pretty Boy Floyd. Song,
22 I ain't mad at you, smile for me by Tupac. I laugh and my
23 laughter is not within me; I burn and the burning is not seen
24 outside, Machiavelli.

25 What up Momo? How is the fam-bam? Hope everything

1 is well on that end. Holidays coming up. Don't mean this is
2 the last, just got to sit this one out. I know you fed up,
3 just keep your head up. Keep your mind stress free is the
4 best thing in situations like this. Hope you're not bitter
5 with a young nigga.

6 You'll be home one day, not too quick, not too soon,
7 but just on time. Poor little tink-tink. The only way
8 through a tunnel is to keep moving forward. You'll be
9 alright, ma. Hopefully me striking you is all right and don't
10 make it into the wrong hands. What more could they do? Heard
11 your name three times, so I thought I spit at you. No
12 alternative ego, just seeing what's up.

13 Me, just stuck in knowledge and getting big. I
14 don't know what it says. I think all -- all vain with the
15 young, you dig? I hope you're doing the same. We've got to
16 use this time to meditate on what and where we came from and
17 where we're going. Hope you're working out that gluteus
18 maximus and -- I'm not sure what it says on that line.
19 Something should sit.

20 This is a small stop for a major start and -- for a
21 major start in your life, ma. Me striking you is to let you
22 basically feel where I'm coming from since we never had words.
23 Just misunderstood, but everything is good. No stress and a
24 lot of rest. Be careful how you talk -- who you talk to in
25 them vents. You never know who you're talking to, ma.

1 I hope your loved ones keeping in touch with you. I
2 know they are because you -- you gave -- you gave to get love.
3 Family plays a big part in this. Sometimes they could lighten
4 your day and make you feel better. It's all mental, but the
5 mental controls the physical. What you think is how sometimes
6 you act or what you act upon. No family with me. Solo-bolo.
7 Never been, and how it looks, never will be. It's good for
8 me. Just makes you stronger in my world. Actually, you the
9 only person I wrote ever.

10 Just thought I would give you input on my situation
11 and views on life. Lonely road down a deserted street. After
12 the rain the sun will shine again. Just got to weather the
13 storm, ma. Never let them see you sweat, even in the heat.
14 Take care, ma. Always remember, enough pressure makes
15 diamonds, and too much pressure busts pipes.

16 Q Can I ask you just about one line in here. I
17 think you read, quote, hope you're not bitter with a young
18 nigga. Did you have any reason to be mad at David Burns?

19 A Absolutely.

20 Q What was that reason?

21 A For me being in here. For him shooting
22 Derecia.

23 MR. DiGIACOMO: I have nothing further.

24 MR. ORAM: Court's indulgence.

25 CROSS-EXAMINATION

1 BY MR. ORAM:

2 Q Good afternoon.

3 A Hi.

4 Q I want to ask you some questions and start where
5 the prosecution sort of left off, and that was the negotiation
6 that you received in this case, okay.

7 A Okay.

8 Q Now, originally my understanding is you were
9 charged by way of Criminal Information with conspiracy to
10 commit robbery, correct?

11 A Correct.

12 Q Burglary while in possession of a firearm?

13 A Yes.

14 Q Robbery with use of a deadly weapon?

15 A Yes.

16 Q First-degree murder with use of a deadly weapon?

17 A Yes.

18 Q Battery with a deadly weapon with substantial
19 bodily harm?

20 A Yes.

21 Q Okay. And my understanding is up until October
22 of just a few months ago, those were the charges you were
23 facing?

24 A Yes.

25 Q The same charges that Mr. Burns and Mr. Mason

1 are facing?

2 A I don't know what charges they're facing.

3 Q Well, you know that they're facing the similar
4 acts that you're facing, right?

5 A Yes.

6 Q Okay. And the jury would be well aware, as you
7 would be, that on the murder case alone, first-degree, you
8 were facing a maximum punishment of life without parole, fair?

9 A I don't know what it held. I didn't really look
10 it up.

11 Q Well, you were represented by competent
12 attorneys, were you not?

13 A Yes.

14 Q And you've been in a Clerk County Detention
15 Center for a few years facing these charges, correct?

16 A Yes.

17 Q I imagine that one of the questions you must've
18 wanted to know is, What can they do to me, right?

19 A Yes.

20 Q And surely you are aware that you could be sent
21 to the penitentiary by a jury like this for the rest of your
22 life, without parole?

23 A Yes.

24 Q Okay. So you're aware of that?

25 A Yes.

1 Q Okay. And not only could you have been given
2 life without parole on those charges, you could have been
3 given an additional charge for -- additional time consecutive?
4 Do you know what that means, consecutive?

5 A Yes, I do.

6 Q You've heard the term running wild, right?

7 A I've never heard that term.

8 Q You've been in the jail for all those years;
9 you've never heard running wild?

10 A No.

11 Q Okay. But you know consecutive?

12 A I do.

13 Q And consecutive means not only could you be
14 given life without parole, but then you could have to do extra
15 time, theoretically, on that, right?

16 A Yes.

17 Q On the murder, if you are given life with the
18 possibility of parole, you could have had to do extra time
19 based upon all these other charges?

20 A Yes.

21 Q Okay. And robbery with a deadly weapon,
22 burglary while in possession of a firearm, conspiracy to
23 commit robbery, those all carry tens of years, fair?

24 A Yes.

25 Q You knew, Ms. Martinez, that you were facing the

1 rest of your life in prison without parole?

2 A Yes.

3 Q And that scared you, didn't it?

4 A Absolutely.

5 Q And fair to say, over the years you complained
6 bitterly about your attorneys, didn't you?

7 A I did.

8 Q You felt that they were not helping, correct?

9 A Yes.

10 Q In fact, you complained over the phone to
11 different people about the fact that you felt you were not
12 properly represented?

13 A Yes.

14 Q In fact, you told whoever would listen to you
15 that you felt you were not properly represented?

16 A Yes.

17 Q In fact, you told Mr. Burns that, didn't you?

18 A I did.

19 Q You did. And so what those -- the last letters
20 are Mr. Burns, in his own little mind, trying to give you the
21 best advice he could?

22 MR. DIGIACOMO: Objection. Calls for speculation.
23 She can't possibly know what's going on in Mr. Burns's mind.

24 THE COURT: Its cross-examination. Overruled.

25 BY MR. ORAM:

1 Q Correct?

2 A Could you repeat the question.

3 Q Mr. Burns was trying to give you advice, the
4 best he could? It sounds that way, doesn't?

5 A I didn't understand what he was writing. You're
6 talking about the car?

7 Q No, I'm talking about him telling you to look up
8 the law, have people send you stuff on the law. Do you
9 remember that?

10 A Oh, yes.

11 Q And that's in direct response to you complaining
12 to everybody that your attorneys were not helping you; isn't
13 that right?

14 A Yes.

15 Q So now you make a deal with the State, correct?

16 A Yes.

17 Q A few months ago, right?

18 A Yes.

19 Q And part of this deal, if I understand it
20 correctly, is that you can actually go to a parole board in
21 about five years; is that right?

22 A Yes.

23 Q But it doesn't have to be that way. In other
24 words, your sentencing is going to come down the road, right?
25 You haven't been sentenced?

1 A Right.

2 Q And you can actually be given 18 years to life,
3 correct?

4 A Yes.

5 Q But you're hoping that you get 10 to 25 years,
6 right?

7 A Yes.

8 Q And let's go through carefully how that works,
9 okay, so we all understand it. At some point you or your
10 attorneys make contact with the State, and you agreed to go
11 meet with Mr. DiGiacomo and homicide; is that fair?

12 A Yes.

13 Q When did that occur?

14 A Early on when I got here.

15 Q Okay. Could you be a little more specific.

16 A I don't remember.

17 Q Could you tell me a year?

18 A I want to say maybe 2011.

19 Q 2011?

20 A Possibly, I'm just throwing it out there.

21 Q And what happens in this procedure is you're
22 actually taken from the Clark County Detention Center, and
23 you're brought over to the district attorney's Office, right?

24 A It's in the same building, like where I'm coming
25 to court. I don't remember leaving the building at all.

1 Q So you were in the jail when you met with the
2 district attorney? It's not a trick question. I'm just
3 asking. Where were you when you met with that man, Mr.
4 DiGiacomo? Where were you?

5 A I mean, isn't the building all connected?

6 Q Which building are you referring to?

7 A All I remember is going through elevators.

8 Q Were you in a conference room?

9 A I never left in a vehicle.

10 Q Were you in a conference room?

11 A Yes.

12 Q Big table, lots of chairs around it?

13 A It's about the same size table as that.

14 Q At the district attorney's office, isn't that
15 right?

16 A I don't know where the district attorney's
17 office is.

18 Q Okay. So you were taken out of your cell. You
19 were taken somewhere, but you don't know where it is?

20 A It wasn't by vehicle. So I'm assuming it's the
21 same building.

22 Q So fair to say you don't know where -- you're
23 telling us you don't know where you met with the district
24 attorney in August; is that fair?

25 A I just thought it was the basement.

1 Q Okay. Who was there at this meeting?

2 A Pam and Marc, both of my attorneys and FBI.

3 Q Chris Bunting? Marty Wildemann?

4 A I don't recall.

5 Q Okay. When you say Pam and Marc, for the
6 record, do you mean the two district attorneys over here, Ms.
7 Weckerly and Mr. DiGiacomo?

8 A Yes.

9 Q And your two attorneys are those two attorneys
10 sitting back there in the second row?

11 A Yes.

12 Q What are their names?

13 A Julia Murray and Andrea Luem.

14 Q Okay. And they were with you as well?

15 A Yes.

16 Q And how long was this meeting?

17 A Maybe a couple hours.

18 Q Could it have been longer? three? four? five
19 hours?

20 A I don't think it was that long.

21 Q And when you have this meeting, Mr. DiGiacomo
22 was asking you questions, wasn't he?

23 A Yes.

24 Q And there's something missing or not happening
25 during that meeting. One thing that's not happening is it's

1 not being recorded; isn't that right?

2 A Yes.

3 Q It's not recorded, correct?

4 A Correct.

5 Q It's not videotaped, correct?

6 A Correct.

7 Q There are no notes on this meeting, correct?

8 A I didn't take any.

9 Q And you didn't see anybody else taking any?

10 A I wasn't paying attention. I was nervous.

11 Q Okay. So what we know is there is a lengthy
12 meeting with the prosecutors, an FBI agent, your attorneys,
13 and there's no recording of this whatsoever; fair to say?

14 A Right. We already covered that. Yes.

15 Q And would it be your testimony today that what
16 you said here in this courtroom is what you told those
17 prosecutors?

18 A Yes.

19 Q So what you told the police in this 285-page
20 statement, right -- is what you told the prosecution at that
21 meeting different than this? What does it say?

22 A At the beginning of that statement with the
23 detectives when I was interrogated, I lied a lot.

24 Q You lied a lot, okay. And that's something that
25 I think we've got to go through because, like you said, you

1 lied a lot; is that a fair statement?

2 A Yes.

3 Q In fact, you lied so many times you couldn't
4 even count; fair to say?

5 A Yes.

6 Q Is that funny?

7 A I'm not laughing.

8 Q But your testimony today is when you met with
9 the prosecution you never lied, right?

10 A I held something back, yes.

11 Q Okay. So you mean you met with the prosecutors
12 in this unrecorded statement, and now you're telling us that
13 you've held stuff back from them?

14 A One thing.

15 Q Have you told the ladies and gentlemen of the
16 jury the truth, the whole truth and nothing but the truth?

17 A Yes, I have.

18 Q Would you agree with me that if I am to catch
19 you in a lie while I'm questioning you that that jury should
20 question everything you say on this witness stand?

21 A Sure.

22 Q Did you touch that gun, Monica?

23 A No.

24 Q And is that true?

25 A Yes.

1 Q Okay. Can you explain how it is that scientists
2 are unable to eliminate you as a source of DNA on that murder
3 weapon?

4 MR. DIGIACOMO: Objection. Assumes a fact not in
5 evidence.

6 MR. ORAM: It will be in evidence.

7 MR. DIGIACOMO: It clearly will not be in -- well, it
8 may or may not be in evidence, but it's certainly not now.

9 THE COURT: It's not in evidence now. Sustained.
10 BY MR. ORAM:

11 Q Is your DNA going to be on that murder weapon?

12 A No.

13 Q And if it is, would you see that as a problem,
14 Monica?

15 A Yes.

16 Q It's your testimony in front of this jury that
17 at no time did you ever physically handle the Dirty Harry,
18 Clint Eastwood gun you described?

19 A I never touched that weapon.

20 Q Okay. Ms. Martinez, today you told -- I think
21 yesterday actually, you told the ladies and gentlemen of the
22 jury that after the murder you went to Job-Loc's?

23 A Yes.

24 Q Do you remember telling the ladies and gentlemen
25 of the jury yesterday that a man named Donovan Rowland came

1 over to the house and took the weapon?

2 A No, I didn't say that.

3 Q Did you say, West?

4 A I did, Wes, yes.

5 Q Okay. And West is Donovan Rowland, or do you
6 not know?

7 A I know that now.

8 Q Okay. So did you tell the ladies and gentlemen
9 of the jury that the person we all know as Donovan Rowland,
10 West, came over to the house and then took the gun?

11 A Yes.

12 Q And we've just heard your 285-page statement.
13 You never mentioned Donovan Rowland or West one time in that
14 statement, did you?

15 A I don't recall.

16 Q But you just heard it, right?

17 A Yes, I did.

18 Q And do you remember the detective specifically
19 asked you if, when you were at Job-Loc's after the murder,
20 anyone else was there, other than you calling him G-Dogg and
21 D-Shot and Job-Loc? Do you remember that?

22 A Yes.

23 Q And your testimony was -- or your statement to
24 the police was, No, right?

25 A Can I see it?

1 Q Sure. You don't remember? You don't remember?

2 A I'm asking to see it.

3 Q No, that was my question. I'll show it to you.

4 A Okay. What is your question?

5 Q You don't remember what you said to the police
6 on that statement?

7 A At the end of the part, yes, I do.

8 Q What do you think you said? Do you think you
9 told them you -- that other people were there?

10 A When we got there, it was just the four of us
11 there. Wes didn't show up until the next day.

12 Q Okay. So West didn't show up at 5 a.m., an hour
13 and 10 minutes after the murder; is that your testimony?

14 A I don't know what time he showed up there.

15 Q But --

16 A It was -- I know it was daytime.

17 Q Well, you said it was the next day. What day
18 are you talking about that he showed up?

19 A The 7th.

20 Q Okay. So the day -- the murder happened on the
21 7th?

22 A Yeah, that happened early morning. Yes.

23 Q When did West show up?

24 A I don't know what time he was there, but it was
25 -- it was still in the daytime.

1 Q So it was the same day as the murder?

2 A Yes.

3 Q And you just so happened not to remember that
4 until when?

5 A I don't know.

6 Q You don't remember when you remembered?

7 A I don't remember when I said it. I was still
8 keeping things that -- I mean, there were so many times in the
9 statement that I eliminated things or didn't say.

10 Q Okay. So listen to my question carefully. When
11 did you remember that West had shown up to take the gun?

12 A I don't know.

13 Q Was that after you read discovery and realized
14 that's what he had said?

15 A Who's "he"?

16 Q West. Did you read the Grand Jury?

17 A Once, yes.

18 Q Did you read his testimony?

19 A I may have.

20 Q See, because you never mentioned -- the jury
21 just heard it. You never mentioned anything about this
22 cleaning of the weapon with the sheet. You said it yesterday?

23 A I did.

24 Q Yeah, and that's what Donovan Rowland said,
25 isn't it?

1 A I don't remember.

2 Q You don't remember?

3 A I've been here four and a half years. I didn't
4 -- I don't continuously read my statement. I don't
5 continuously read the discovery.

6 Q Are you telling the jury that you've lied a lot
7 in this case, but as a person, you're pretty straightforward?
8 A pretty honest person?

9 A I -- I lied in the interrogation.

10 Q I understand that, but, you know, lying in the
11 interrogation is one thing, and I understand that, but would
12 you like to represent to the jury that besides this
13 interrogation that you're a pretty truthful person?

14 A Yes.

15 Q I'd like to talk to you about your job at the
16 pharmaceutical company, okay. At the pharmaceutical company,
17 kind of give us a picture of what you do there.

18 A I answer phones. I make outgoing calls.
19 Sometimes when it's slow we have to go outside recruiting.

20 Q Who comes in? I mean, who are they? Are there
21 patients? Are there -- what is this place?

22 A It's clinical trials.

23 Q So do people come for trials to get help?

24 A No, they -- we test medication -- prescribed
25 medication, generic versus name brand.

1 Q For people who need medical help?

2 A No, ours is a Phase 3. You don't have to have
3 the ailment. We're not -- we're not testing to see if it
4 actually works. We're testing to see if the generic
5 medication is being absorbed and eliminated at the same time
6 as the name brand.

7 Q So at some point, that firm is storing the names
8 of honest citizens in our state; is that right?

9 A Yes.

10 Q People like Albert Davis, right?

11 A Yes.

12 Q Who is Albert Davis?

13 A I don't know him personally.

14 Q It's somebody who needed something, right, some
15 kind of help that this pharmaceutical company had the records
16 on his Social Security, height, weight, information, right?

17 A I don't know if he needed help. It's not --
18 it's third --

19 Q Forget -- let's say he didn't need any help at
20 all. The pharmaceutical company had his name, Social Security
21 number, date of birth, this type of personal information of
22 this man, fair?

23 A Yes.

24 Q And you stole it, didn't you?

25 A Yes.

1 Q And you stole it as an honest person, outside of
2 this interrogation, to help someone, right?

3 A Yes.

4 Q Okay. And that's because you wanted to help
5 Osama, right?

6 A Yes.

7 Q Who is Osama? Who is that person?

8 A Job-Loc.

9 Q Mohammed?

10 A Yes.

11 Q Jamal? Am I getting the names right?

12 A I don't -- I never referred to him as Jamal.

13 Q It's Osama. It's -- and so this man, Job-Loc --
14 is it Job-Loc or Job-Lock?

15 A Job-Loc.

16 Q Job-Loc. And this man needs some type of
17 surgery -- he claimed -- because he hurt himself during a
18 crime, right?

19 A Yes.

20 Q And he commits this crime with who?

21 A Wes and his two cousins.

22 Q In what vehicle?

23 A Mine.

24 Q And as an honest person, that concerns you that
25 Job-Loc had been hurt while committing a serious offense,

1 right? Right?

2 A I don't know that he was committing a serious
3 offense.

4 Q Oh, okay.

5 A I wasn't there.

6 Q And so then he needed to go to a hospital, and
7 you wanted to make sure that that hospital performed medical
8 services on him, correct?

9 A Yes.

10 Q Some surgeon performing surgery on him, correct?

11 A Yes.

12 Q Somebody paying for all of this, correct?

13 A Yes.

14 Q And I imagine when he walked into the hospital
15 in Utah he didn't just walk up there and say, Hey, I'm
16 Job-Loc, I'm Osama, Can I come in as Albert Davis, did he?

17 A No.

18 Q In fact, he must've had some kind of fake ID,
19 right?

20 A No.

21 Q Oh, he didn't?

22 A No.

23 Q Oh, he didn't?

24 A No.

25 Q Well, did they -- how did he get any type of

1 service?

2 A He told them he didn't have an ID.

3 Q And then what happened?

4 A He filled out the necessary paperwork, and he
5 went through triage -- is that what you call it -- where they
6 take the vitals and everything. And then they took x-rays.

7 Q So you took him to Utah? It was you driving,
8 right?

9 A Yes.

10 Q Under the guise that this so-called Albert
11 Davis, who's some innocent poor guy here, using his name in an
12 effort to have hospitals and insurance pay for this, fair to
13 say?

14 A Yes.

15 Q Do you see that as dishonest?

16 A Yes.

17 Q And then you brought him back to Sunrise
18 Hospital?

19 A Yes.

20 Q And you tried the same here?

21 A Yes.

22 Q And did he get surgery?

23 A Yes, he did.

24 Q Under the name Albert Davis?

25 A Yes.

1 Q How was that paid for?

2 A I don't know.

3 Q You don't care either, do you?

4 A I didn't know.

5 Q Okay. My question is: You don't care?

6 A Well, I do now. I didn't then, no.

7 Q You do now. I mean, have you ever heard the
8 term identity theft?

9 A Yes.

10 Q Is that identity theft?

11 A Yes.

12 Q So you're working at this company as an office
13 worker, and you're stealing people's identity, fair to say?

14 A Yes.

15 Q Would you agree with me then -- let's discount
16 this 285-page statement you gave to the police. This event
17 you've done, this identity theft makes you look like a
18 dishonest person, doesn't it?

19 A Yes.

20 Q I'm sorry?

21 A It does.

22 Q So when you told the jury just a couple minutes
23 ago that besides this statement you were pretty much an honest
24 person, it's not true, is it?

25 A Why not?

1 Q Because --

2 A Well, all of that happened prior to me talking
3 to the jury.

4 Q Oh. So what you're saying is that you were --

5 A My statements and that was prior to me
6 testifying in here today.

7 Q So did you -- you became honest when you came in
8 here today?

9 A The truth is all out there. There's no reason
10 to lie anymore.

11 Q Well, now, Monica, at some point you hope your
12 attorneys are going to stand up and tell the Judge, She did a
13 good job on the witness stand. The defendants were convicted.
14 Mr. Burns was sentenced to death, and we'd like to give her
15 the minimum sentence for her efforts. That's what you're
16 hoping?

17 A I am hoping for the minimum sentence.

18 Q Right. And you really would be worried that
19 what happens is the State comes in and said, We think Monica
20 did a terrible job. We want her to do a lot more time. That
21 would be very worrisome to you; isn't that right?

22 A It's not worrisome to me.

23 Q No. It isn't worrisome to you because you're
24 not worried about spending time in the penitentiary?

25 A A woman's life was taken. Her daughter was

1 shot.

2 Q That's right. And then -- and that was
3 upsetting to you, wasn't it?

4 A Yes.

5 Q And I remember that part because you said you
6 were scared. You told the jury you were scared after. Do you
7 remember that?

8 A Yes.

9 Q And then you went to Job-Loc's house. You were
10 at the Texas. You were by a security guard, right?

11 A Yes.

12 Q And he had a gun, right?

13 A I didn't pay attention.

14 Q Didn't pay attention. And you didn't say, Oh,
15 my God, a woman's life is being taken? I've heard screams.
16 Help me. You didn't do that, did you?

17 A No, I didn't.

18 Q You didn't say, Help, help a child, did you?

19 A No.

20 Q But today you're worried about it?

21 A I didn't say I was worried about it.

22 Q And you were so concerned and so worried about
23 it that when you went to Job-Loc's house that night, you went
24 and had sex with him, right?

25 A I did.

1 Q Does that to you sound like somebody who gave a
2 rat's about those people that had lain there dying in a house?
3 Does it?

4 A No, it doesn't.

5 Q Because it sounds almost like a celebration,
6 doesn't it?

7 A No.

8 Q I'm going to go through some of your statement,
9 and I'm going to figure out, okay, what's true and what's a
10 lie, okay. So if you just tell me -- and the reason I wanted
11 to do this is because at the end, you see, Mr. Sgro and myself
12 are going to get up, and we want to be able to say what you
13 say is true and what you admit is false, okay?

14 A Okay.

15 Q And you realize that there's been so many
16 different lies that it's kind of difficult to tell; would you
17 agree with that?

18 A Okay.

19 Q Would you agree with that?

20 A If you're reading it, yes, I guess it would be.

21 Q Page 4. You told the detective, You know more
22 than I do; do you remember that?

23 A Yes.

24 Q Was it true or was it a lie?

25 A I don't know what he knew. I told him he

1 probably knows more than I do. Whether that's true or not,
2 how am I supposed to know?

3 Q You would know the detective wasn't sitting
4 right outside the apartment hearing screams and having the
5 people who have done this get in your car? You know the
6 detective wouldn't know that, right? Right? Right Monica?

7 A Please repeat the question.

8 Q Monica, do you recall Detective Wildemann, right
9 at the beginning of the tape, he tells you, Don't tell me how
10 to do my job? Do you remember that?

11 A I remember that in the statement yes.

12 Q And you saw it on videotape?

13 A Yes.

14 Q And you remember it from actually seeing it
15 happen, right? Because that's when you said, What did you
16 want them to do, pull a rabbit out of your ass? Isn't that
17 what you said?

18 A Yes.

19 Q And that didn't make him very happy, did it?
20 Did he seem very happy to you?

21 A No. Can I see that part of the statement?

22 Q No.

23 A Can I see that part of the statement?

24 Q No, you can listen and answer my questions,
25 okay. We've all seen the statement. We've all seen the

1 video.

2 A Yeah, but I'm -- I'm questioning what you're --
3 what you're asking me though.

4 Q Okay. Let me do it this way. Do you not
5 remember the detective getting up and storming out of the
6 room, right, in the beginning?

7 A But you said Wildemann. I don't remember it
8 being Wildemann. So I'd like to see the statement.

9 Q Who did you think it was? You tell us who you
10 think it was.

11 A Can I see the statement?

12 Q The way this works is you are going to answer my
13 questions, okay. Okay. And if they have an objection,
14 they'll do so. Okay. So you're saying you don't know what
15 detective that was, right?

16 A I'm not saying that I don't know. I just don't
17 remember.

18 Q The detectives were very frustrated with you
19 that day, weren't they?

20 A Yes. Off and on, yes.

21 Q And that's because you kept saying things like,
22 Well, I lied, right? Do you remember that?

23 A Uh-huh. Yes.

24 Q You told the detective on the way to homicide
25 that you you had taken numerous drugs on the night of the

1 murder, the night and into the early morning hours. Do you
2 remember telling the detectives all the different narcotics
3 you had ingested?

4 A I don't remember all the different narcotics I
5 told them. I just remember Xanax and weed.

6 Q That's all you remember ingesting that night?

7 A And alcohol.

8 Q Is that all?

9 A Yes.

10 Q Not PCP?

11 A No.

12 Q So if a police officer put that in a report,
13 that wouldn't be accurate, would it?

14 MR. DIGIACOMO: Objection.

15 THE WITNESS: Correct.

16 THE COURT: Sustained.

17 BY MR. ORAM:

18 Q Did you ingest PCP that night or tell anybody,
19 any police officer that you had ingested PCP?

20 MR. DIGIACOMO: Objection. Compound question.

21 MR. ORAM: I'll rephrase it.

22 BY MR. ORAM:

23 Q Did you ingest PCP that night?

24 A No.

25 Q Did you tell law enforcement that you had

1 ingested PCP that night?

2 A No.

3 Q Okay. Page 8, you told the detective that you
4 were so stoned at that time you didn't even know what day it
5 was; do you remember that?

6 A Yes.

7 Q Is that true, or is that a lie?

8 A It's a lie.

9 MR. SGRO: Your Honor, I'm sorry to interrupt,
10 especially my own counsel. We need to approach very briefly.

11 (Bench conference.)

12 MR. SGRO: I'm paying attention to the witness, Your
13 Honor, but Mr. Langford advises me she's getting signals from
14 the back from her lawyers.

15 THE COURT: I've been watching the lawyers. I
16 haven't seen them do a thing.

17 MR. SGRO: Can I --

18 MR. LANGFORD: I saw -- (Inaudible).

19 THE COURT: Well, I haven't seen it.

20 MR. SGRO: So Mr. Langford -- just because he's far
21 away from the microphone --

22 MR. LANGFORD: Tell the lawyers not to signal the
23 witness.

24 MR. SGRO: Mr. Langford, just for the record, just
25 indicated that they were nodding.

1 MR. LANGFORD: Tell them right now.

2 MR. SGRO: I'm going to --

3 THE COURT: Do you want to take a recess?

4 MR. SGRO: Pardon me?

5 THE COURT: Do we need a recess?

6 MS. WECKERLY: That's fine.

7 THE COURT: Are you going to be a while?

8 MR. ORAM: (Inaudible.)

9 THE COURT: Sure.

10 MR. SGRO: And we'll just keep an eye on them then,
11 Your Honor. Thank you.

12 (Bench conference ends.)

13 BY MR. ORAM:

14 Q You told the police on page 11 that you had had
15 drinks on the night of the murder and Xanax; is that true?

16 A I had alcohol that night only.

17 Q In your statement, you talked about three bars
18 of Xanax. I don't know what a bar of Xanax is.

19 A We had two bars in the bag.

20 Q Did you ingest Xanax that night?

21 A No.

22 Q So when you told the police that, that was a
23 lie?

24 A Yes.

25 Q You told the police you had drinks. That was

1 true?

2 A Yes.

3 Q You told the police that you were loaded on the
4 night of the incident. Is that true, or is that a lie?

5 A I was not loaded.

6 Q So is that true or a lie?

7 A I told them I was.

8 Q And it wasn't true?

9 A Correct.

10 Q So it's a lie?

11 A Yes.

12 Q You told the police about a person named Albert
13 Davis. We heard it. I mean, you were listening, right? You
14 said it over and over and over. You talked about Albert
15 Davis, didn't you?

16 A Yes.

17 Q And I think we get to almost page, like, 210
18 before you ever -- strike that. It's past page 200 before the
19 police actually realize that is just a lie. You just
20 manufactured a name for Job, right?

21 A Yes, I did.

22 Q And you did it because you wanted to cover up,
23 fair?

24 A To cover up what?

25 Q To cover up for your lover, Job-Loc.

1 A But to cover up what? Are you talking about the
2 incident or his injury? I used the name --

3 Q You covered up his identity, fair?

4 A I used the name Albert Davis to get him medical
5 treatment.

6 Q To cover up his identity, correct? You wanted
7 to cover his identity when you were talking to the police,
8 correct?

9 A Yes.

10 Q And the reason you do that is because otherwise
11 we are -- I mean, we are not stupid. If you didn't want to do
12 it, you'd say, This is Jerome Thomas, right?

13 A Yes.

14 Q And so it's fair to say that you led the police
15 for what, 10 hours, trying to give them the belief that your
16 lover -- no, strike that. That there was this man in the
17 picture named Albert Davis, that's what you wanted to convince
18 the police of, right?

19 A Yes.

20 Q And you did it over and over and over, didn't
21 you?

22 A I did.

23 Q And those were all lies, right?

24 A Yes.

25 Q The police asked you: Who is he? Are you okay?

1 A I'm fine.

2 Q The police asked you who was in the back of that
3 vehicle. Do you remember that?

4 A Yes.

5 Q They asked you the seating arrangements of that
6 vehicle, right?

7 A Yes.

8 Q And you said in the back was a man wearing
9 jeans; do you recall saying that?

10 A Yes.

11 Q Is that true, or is that a lie?

12 A Well, the overalls were a jean material.

13 Q That's pretty good. So when you said jeans, you
14 really meant overalls with jean material?

15 A When I said jeans, I meant pants.

16 Q You said the man in the back had braids; do you
17 remember saying that?

18 A Yes.

19 Q And in fact you said that six, seven, eight
20 times, talked about the man with the braids; do you remember
21 that?

22 A Yes, I do.

23 Q And you even were able to talk about -- do you
24 remember you were talking about the length of the braids? Do
25 you remember that?

1 A Yes.

2 Q And that was important, wasn't it? You wanted
3 to give a good description, right?

4 A Yes.

5 Q And then so you were thinking, well, how long
6 was it; do you remember? And then there was even discussion
7 about beads; do you remember?

8 A Uh-huh.

9 Q Is that yes?

10 A Yes.

11 Q They were old braids, weren't they, I think you
12 said?

13 A Yes.

14 Q So you really tried to give them a visual of
15 what they would be looking for, the police, right?

16 A Yes.

17 Q And is that true, Monica, or is it a lie?

18 A It was a lie.

19 Q It wasn't just one lie. It was a constant lie
20 is what you're telling the jury, right?

21 A Of the description, yes.

22 Q And you told the police that the person in the
23 backseat, you didn't know the nickname of that person. Do you
24 remember that?

25 A Yes.

1 Q And that was a lie, right?

2 A Yes.

3 Q That's your testimony today?

4 A Yes.

5 Q It's a lie. How many times did you throw up
6 that evening?

7 A One.

8 Q Where?

9 A The Texas.

10 Q Well, I thought you threw up at Bonanza and
11 Nellis? Remember, they asked you -- you pulled over to the
12 side of the road to -- you threw up; do you remember that?

13 A I remember saying it.

14 Q Was that a lie?

15 A Yes.

16 Q You thought you'd just lie to the police about
17 throwing up in different places?

18 A Yes.

19 Q Is that because you thought if you said that
20 you'd sound more believable?

21 A Yes.

22 Q And that's -- that's what a good liar does,
23 isn't it? A good liar tries to make people believe things,
24 right? Right?

25 A Yes.

1 Q A good liar may look someone in the eye and try
2 to convince them of something that's not true, fair?

3 A I don't know.

4 Q Do you think you're a good liar?

5 A No.

6 Q Well, the police sure believed a lot of what you
7 said at first, didn't they?

8 MR. DIGIACOMO: Objection, Your Honor.

9 MR. ORAM: I'll rephrase.

10 THE COURT: Sustained.

11 BY MR. ORAM:

12 Q So we know now that you didn't throw up at
13 Bonanza and Nellis. We can conclude that that's false, right?

14 A Right.

15 Q You hesitated. It's false, right?

16 A I'm saying what -- in my head what you're asking
17 me before I answer.

18 Q Do you remember when the police put you under
19 oath?

20 A Yes.

21 Q And they seemed a little fed up with you, didn't
22 they?

23 A Yes.

24 Q And then they asked you to tell the truth, no
25 more half-truths, and you agreed. You said, I'm going to do

1 it, right?

2 A Yes.

3 Q And right after that they ask you if there was
4 still the same description of the person in the backseat; do
5 you remember that?

6 A Yes.

7 Q And you said it was, right?

8 A Yes.

9 Q Is that true, or is that a lie?

10 A It was a lie.

11 Q So even after they had tried to use techniques
12 on you to get you to tell the truth, you admitted you'd lied.
13 Now, you admitted you were going to tell the truth. You
14 continued to lie, right?

15 A Yes.

16 Q Did you say you worked at the Glitter Gulch?

17 A Yes.

18 Q As a dancer?

19 A Cocktail waitress.

20 Q And you've told the ladies and gentlemen of the
21 jury -- and I don't mean to be rude about this -- but that you
22 have worked as a prostitute, fair?

23 A Yes.

24 Q And one of the things you do in that profession
25 is you know kind of how to work men, fair?

1 A No.

2 Q You don't. Well, would you agree when you
3 watched that video and you had that lean-over moment where you
4 just got real close and have that nice moment with Detective
5 Bunting -- do you remember that, where you held hands?

6 A Yes.

7 Q You were doing that to try to convince Detective
8 Bunting that now you were -- you were really going to tell the
9 truth, right?

10 A No.

11 Q Well, what was that then? Explain to the ladies
12 and gentlemen of the jury what holding hands in a homicide
13 investigation had to do with anything. What was the purpose?

14 A I don't know it had to do anything with the
15 investigation.

16 Q Let me ask this another way. Did you see
17 yourself do that?

18 A Yes.

19 Q Put your head down, grasped his hands, what were
20 you thinking?

21 A I needed support.

22 Q And you continued to lie even after you got that
23 support, right?

24 A I was being interrogated by -- by detectives.
25 Yes, I did continue to lie.

1 Q You told the police you didn't know how you got
2 to the Texas Station that evening. Do you know how you got to
3 the Texas Station that night?

4 A Yes.

5 Q So that was a lie, right?

6 A Yes.

7 Q You told the police that you were in and out.
8 You were blacking out at times; is that true?

9 A I didn't say I was blacking out.

10 Q Were you in and out?

11 A Yes, that's what I said.

12 Q You don't remember saying blacking out? Being
13 in and out, what did you mean?

14 A I was zoning in and out.

15 Q Zoning in and out?

16 A Yes.

17 Q Do you recall saying, Chris, I was blacking,
18 inaudible, in and out?

19 MR. DIGIACOMO: Counsel, can I have a page, please.

20 MR. ORAM: Mister DiGiacomo, it's on page 30 and 38.
21 It's the very last line.

22 MR. DIGIACOMO: Thank you.

23 BY MR. ORAM:

24 Q We'll wait until he gets there, okay. I want to
25 ask you if you remember --

1 MR. ORAM: Are you there, Counsel?

2 BY MR. ORAM:

3 Q Do you make the following statement: Chris, I
4 was blacking, inaudible, in and out? Do you remember saying
5 that?

6 A Yes.

7 Q What did you mean?

8 A I don't know.

9 Q Was it just some made up story?

10 A Quite possibly, yes.

11 Q You told the police that you don't even know
12 when certain people got in and out of the vehicle; do you
13 remember saying that?

14 A Yes.

15 Q Is that true?

16 A No.

17 Q So that was a lie?

18 A Yes.

19 Q Monica, you told the jury yesterday that you
20 were lying to protect certain people. Do you remember that?

21 A Yes.

22 Q And you said one of the people you were lying to
23 protect was David Burns; do you remember that?

24 A Yes.

25 Q And I want to ask you about that because in your

1 statement -- do you remember the police ask you at first, Have
2 you ever seen the man with braids? And that's -- I guess at
3 that time that's what you were saying was the man in the back
4 of the car. You said you had never seen him before. Do you
5 remember saying that to the police?

6 A Yes.

7 Q And then you changed it, and you said that in
8 fact you had met David Burns down on The Strip. You guys were
9 going to get ecstasy, and you exchanged phone numbers. Do you
10 remember that?

11 A I remember saying that.

12 Q And so the police would have an image. I mean,
13 I'm sure we all have an image, okay; however, it was dark.
14 There was Burns and you. You were trying to get dope. Do you
15 remember that? Do you remember it?

16 A I remember saying that, yes.

17 Q And that was just a fantasy, wasn't it? It was
18 all made up, a big lie, right?

19 A Well, we did go down on The Strip before.

20 Q You told the police -- remember, the police got
21 upset with you about that. You said, I hadn't really met him
22 on The Strip. Do you remember saying that?

23 A Yeah, I didn't meet him on The Strip.

24 Q So that's my point. It was a fantasy. You made
25 it up?

1 A Yes.

2 Q It was a lie, right?

3 A Yes.

4 Q And it was a lie to help David Burns to tell
5 them that you knew this guy you'd met on The Strip, yet you're
6 getting dope? It was a lie to help Mr. Burns?

7 A What do you mean, It was a lie to help him? I
8 don't understand the question.

9 Q You said yesterday that you were covering up to
10 help Mr. Burns. Do you see? Do you see that? That's what
11 you said?

12 A I said yesterday that I was covering up because
13 I was scared.

14 Q But you also said yesterday that you were
15 covering up for people; do you remember?

16 A Yes.

17 Q And you included Mr. Burns, didn't you?

18 A Yes.

19 Q And so what I'm really asking you is, if you're
20 trying to cover up for somebody -- see, now, I would see if
21 you're covering up for somebody so you used a fake name, like
22 Albert Davis. See -- I see that, but what I'm struggling to
23 understand, if you could help us understand, is why would you
24 make up a fantasy, something that didn't even happen that
25 makes Mr. Burns look bad in an effort to help him? It doesn't

1 make sense, does it, Monica? Does it?

2 A I don't understand what you're asking me. I
3 mean, how does it make it look bad that I was trying to make
4 up a lie about where I met him?

5 Q The police originally asked you on page 43 if
6 you had a boyfriend. Do you remember that?

7 A Yes.

8 Q You said you didn't, right?

9 A Yes.

10 Q And that was a lie?

11 A Yes.

12 Q The police asked you -- now before I go any
13 further, you gave the statement to homicide on August 10,
14 2010, at 12:45 p.m, so right after noon. Right after lunch
15 time started you started; do you remember that?

16 A Yes.

17 Q And you told the police you hadn't seen Albert
18 Davis in a week, right?

19 A Yes.

20 Q So essentially what you're telling the police is
21 -- the murder happened on the 7th, right?

22 A Yes, it did.

23 Q Just three days later, you're in homicide
24 talking to them, right?

25 A Yes.

1 Q And you're trying to convince the police that
2 you haven't seen Albert Davis in a week, right?

3 A Correct.

4 Q And that was in an effort to cover for Job-Loc,
5 wasn't it?

6 A Yes.

7 Q The guy with the murder weapon, right?

8 A It was his gun. Is that what you're asking me?

9 Q Yes.

10 A Yes, it was his gun.

11 Q You always saw him with that big gun, didn't
12 you?

13 A It wasn't the only one I seen him with.

14 Q Did you see him with the big gun often?

15 A Yes.

16 Q Job-Loc, yes or no?

17 A I said yes.

18 Q You see him -- did he carry it in a designer
19 bag? Did he?

20 A Yes.

21 Q That's right. And you saw -- yesterday -- you
22 told us yesterday you saw Donovan Rowland with that murder
23 weapon, right?

24 A Yes.

25 Q And you saw Job-Loc cleaning that murder weapon,

1 right?

2 A Yes.

3 Q And you saw Donovan Rowland take it out of
4 there, being instructed, Bury it, get rid of it, sell it,
5 right?

6 A Yes.

7 Q Has west been in your vehicle?

8 A Has he been in my vehicle?

9 Q Yes.

10 A He was in my vehicle.

11 Q When was the last time he was in your vehicle
12 around this time period?

13 A The last time that I can remember was when Job
14 got in the accident, when he broke his leg.

15 Q When was that in comparison to the murder?

16 A I have no idea.

17 Q When was the last time you cleaned that vehicle?

18 A I hardly ever washed my car. I don't know.

19 Q You loved Job-Loc?

20 A Yes.

21 Q And Job-Loc and Donovan Rowland are
22 extraordinarily close, aren't they?

23 A They appeared to be, yes.

24 Q Almost like -- I know that it's not the right
25 age but almost like a father-son kind of thing, right?

1 A No.

2 Q How would you describe it?

3 A I would I describe it -- Job was like his older
4 homie.

5 Q That's a better term. So we'll use that one.
6 So Job is the older homie of Donovan Rowland. They're close.
7 They're homies, right? Right?

8 A I don't know how close they were. They hadn't
9 known each other very long.

10 Q Close enough so that maybe Donovan could break
11 him out of prison?

12 A I don't -- I don't know.

13 Q Did I hear you correctly on that tape say that
14 Job-Loc had a murder in California -- another murder in
15 California?

16 A No, I didn't say that.

17 Q You didn't say that?

18 A No.

19 Q On that video, you didn't say that?

20 A I didn't say that.

21 Q What did you say?

22 A I didn't say anything about him having a murder.
23 I said that he was on the run and he was wanted.

24 Q From what?

25 A I don't know.

1 Q So he's on the run from California, right?

2 A Yes.

3 Q But he's running to California, right?

4 A Yes.

5 Q And he's got an apartment here, right?

6 A He stays --

7 Q Torrey Pines, right?

8 A He stays at his cousin's apartment, yes.

9 Q And he stays with you a lot, right?

10 A Yes.

11 Q And Donovan Rowland stays with you a lot, right?

12 A He stayed a couple of times.

13 Q Not every other day?

14 A No.

15 Q So if --

16 A If he was there, I was at work.

17 Q So he could've been there every other day. You
18 were just at work and don't know?

19 A Yes.

20 Q But you know, don't you, that Mr. Burns lived in
21 California, right?

22 A Job told me he was homeless.

23 Q He was homeless, okay. That's what -- that's
24 what Job told you?

25 A Yes, that's why he wanted to bring him out here.

1 Q And Job was a truthful person, wasn't he?

2 A No.

3 Q You wrote a lot of those jail letters to
4 Job-Loc, didn't you?

5 A At the beginning, when I got here, I wrote some
6 letters, yes.

7 Q Professing your love, right?

8 A Yes.

9 Q And he professed his love?

10 A Yes.

11 Q Did you send him those summaries of discovery
12 that he asked for?

13 A No.

14 Q Why didn't you?

15 A It was illegal.

16 Q Job-Loc was worried he was going to be
17 identified at the crime scene by the, Smoker bitch; isn't that
18 what he said?

19 A I don't know what he said.

20 Q You don't. Do you recall, Monica, that Job was
21 concerned that he could be identified at the scene in a lineup
22 by someone he referred to as, The smoker bitch?

23 A I don't remember that.

24 Q If I showed you the letter, would it help
25 refresh your memory?

1 A Yes.

2 MR. ORAM: Court's indulgence.

3 BY MR. ORAM:

4 Q Were you ever pregnant with his child?

5 A No.

6 MR. ORAM: Permission to approach?

7 THE COURT: Is it marked?

8 MR. DIGIACOMO: Judge, can I see it before he
9 approaches the witness with it?

10 MR. ORAM: No, I'm going to see if I can refresh her
11 memory with the letter.

12 THE COURT: Well, she can refresh her recollection
13 from anything, but --

14 MR. ORAM: Thank you.

15 THE COURT: -- counsel is entitled to see it.

16 MR. ORAM: Do you want it now?

17 MR. DIGIACOMO: I'm entitled to see it. If it's a
18 letter from Job, I think we should approach.

19 MR. ORAM: Well, Judge, he says --

20 THE COURT: Well, I tell you what. Let's take our --

21 MR. DIGIACOMO: Oh, Mr. Oram --

22 THE COURT: Timeout. Let's take our evening recess
23 now.

24 Ladies and gentlemen, during the recess, it's again
25 your duty not to converse among yourselves or with anyone else

1 on any subject connected with this trial or to read, watch or
2 listen to any reports of or commentary on the trial from any
3 medium of information including newspapers, television, radio,
4 and you may not form or express an opinion on any subject
5 connected with this case until it is finally submitted to you.

6 We'll be in recess until 9:30 tomorrow morning.

7 (Jury recessed 4:39 p.m.)

8 THE COURT: We'll do it in the morning. The record
9 will reflect that the jury has left the courtroom.

10 MR. DIGIACOMO: Judge, it appears Mr. Oram is going
11 to try and elicit the hearsay statements of Job-Loc --

12 THE COURT: Well, if it refreshes her recollection --

13 MR. DIGIACOMO: -- as to what Job-Loc said --

14 THE COURT: -- maybe --

15 MR. DIGIACOMO: Well, I have an objection to --

16 THE COURT: I don't -- well, she was asked what
17 Job-Loc said.

18 MR. DIGIACOMO: He said -- he said, Do you remember
19 Job-Loc saying something to you. She said, No. Now he wants
20 to show her this, and he was going to read what Job-Loc said.

21 THE COURT: No. No. He doesn't have to read it. He
22 just shows it to her. She says, yes, I've refreshed my
23 recollection, or, no, it doesn't.

24 MR. DIGIACOMO: Right.

25 THE COURT: And if it does, then she can answer the

1 question.

2 MR. DIGIACOMO: Okay. But I'm moving to prevent the
3 question as not relevant because it's his hearsay statement.
4 What does it matter what Job says or doesn't say? It's
5 irrelevant.

6 MR. ORAM: Well, Judge, I thought that was very
7 interesting. I objected numerous times to what Job-Loc said,
8 and the State every single time was able to get it in under
9 this co-conspirator statement. She's a conspirator. The
10 State has said so.

11 THE COURT: I agree. It ought to come in.

12 MR. DIGIACOMO: Okay. So every statement of Job-Loc
13 comes in?

14 THE COURT: I think it ought to come in.

15 MR. DIGIACOMO: Because every statement that's made
16 to Mr. Burns, Mr. --

17 MR. ORAM: Judge, it's a--

18 MR. DIGIACOMO: I just want to make sure the record
19 is clear.

20 MR. ORAM: No, but --

21 MR. DIGIACOMO: Every statement made to Mr. Burns and
22 Mr. Mason from Job-Loc will come in. If that's the record, I
23 have no objection.

24 THE COURT: If he is a co-conspirator, at least after
25 the fact --

1 MS. WECKERLY: That's --

2 THE COURT: -- I --

3 MR. DIGIACOMO: I appreciate --

4 MS. WECKERLY: Accepting that they're relying on
5 that, we'll accept that.

6 MR. DIGIACOMO: That's acceptable.

7 MR. ORAM: Judge, first of all, let me just say
8 something so the record is clear and not emotion. I objected
9 commonly during the times. The Court overruled, and I
10 understood that. I didn't make statements like, Well, okay
11 then everything is coming in. I didn't. I brought in this
12 one statement because I thought I had a right to. I stopped.
13 I've made my record.

14 THE COURT: He is a co-conspirator, at least there is
15 an argument that he assisted in cleaning up afterwards, at
16 least after the fact.

17 Anything else we can do tonight?

18 MR. DIGIACOMO: No, that's fine.

19 MR. ORAM: Nothing.

20 THE COURT: See you at 9:30 tomorrow morning.

21 (Court recessed for the evening 4:41 p.m.)
22
23
24
25

CERTIFICATION

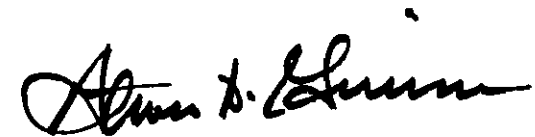
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 9

FRIDAY, JANUARY 30, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

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1 **LAS VEGAS, NEVADA, FRIDAY, JANUARY 30, 2015, 9:39 A.M.**

2 *** * * * ***

3 (In the presence of the jury.)

4 THE COURT: Good morning, ladies and gentlemen. This
5 is State of Nevada vs. Mason and Burns. The record will
6 reflect the presence of the defendants, their counsel, the
7 district attorneys and all members of the jury.

8 We're still on cross-examination of Ms. Martinez, and
9 Mr. Oram. And I had indicated that because Job-Loc was a
10 co-conspirator, at least insofar as the covering up of the
11 act, that asking her to relate what was said in the course and
12 in furtherance of that co-conspiracy would be admissible.

13 You may continue.

14 MONICA MARTINEZ, STATE'S WITNESS, PREVIOUSLY SWORN

15 CROSS-EXAMINATION - (Continued)

16 MR. ORAM: Thank you.

17 BY MR. ORAM:

18 Q Good morning.

19 A Good morning.

20 Q Now, when we ended last night, I'd like to know
21 if you have spoken to anybody about this case since last
22 night.

23 A No.

24 Q You did not meet with your attorneys?

25 A No.

1 Q You have met with anyone from the district
2 attorney's office?

3 A No.

4 Q You have talked to no one about this case?

5 A No.

6 Q Okay. Now, you would write love letters to
7 Jerome Thomas, Job-Loc, after you were arrested, fair?

8 A Yes.

9 Q And he would write you love letters, fair?

10 A Yes.

11 Q And in one of the letters that you wrote, do you
12 recall telling him, I told the police you weren't there?

13 A I don't recall, no.

14 Q You don't recall saying that?

15 A I don't remember.

16 Q Okay. Do you recall that Job-Loc was very
17 concerned -- or was -- or was concerned that he was going to
18 be identified out of a lineup as being present at the scene of
19 the crime?

20 MR. DiGIACOMO: Objection as to form of the question,
21 as to Job-Loc's state of mind. He can ask about the
22 statements. But what was in Job-Loc's mind at the time he
23 said it this witness would have no personal knowledge of.

24 MR. ORAM: I'll rephrase it.

25

1 BY MR. ORAM:

2 Q Did you receive a letter from Job-Loc where he
3 talked to you about being identified at the scene of a -- at
4 the scene of the crime in a lineup?

5 A I don't remember the contents of any of the
6 letters that I received from him.

7 Q If I showed you a copy, would that refresh your
8 memory?

9 A Yes.

10 MR. ORAM: Permission to approach?

11 THE COURT: Yes.

12 MR. ORAM: I'm going to show for the record
13 Defendant's Proposed Exhibit M.

14 BY MR. ORAM:

15 Q Do you recognize the writing on that?

16 A Yes.

17 Q Do you see a date at the top?

18 A Yes.

19 Q Is the date October 22, 2010?

20 A Yes, it is.

21 Q I want you to read the first portion of it, and
22 specifically I would like you to read just past the
23 highlighted portion and let me know when you're done.

24 A You said this?

25 Q I'd like you to read from the top all the way

1 down two lines past the highlighted portion and let me know
2 when you're done.

3 A Okay. To my everything --

4 Q No. Just read it to yourself.

5 A Oh. Oh, I'm sorry.

6 Q Have you had an opportunity to read that?

7 A I'm still in the highlighted -- okay.

8 Q Does that refresh your memory as to the letter
9 that Job-Loc wrote you?

10 A Yes.

11 Q And in that letter, he indicated to you that he
12 was worried that if the smoker bitch told them I was there,
13 she can't pick me out of no lineup and even if she did, it
14 documents saying my leg is broke, I couldn't even walk or run.
15 Is that what he's telling you?

16 A Yes.

17 Q Okay. Now, this is your lover, right?

18 A Yes.

19 Q And you're telling the ladies and gentlemen of
20 the jury that he wasn't there at the scene of the crime,
21 right?

22 A Yes.

23 Q Okay. And if he wasn't at the scene of the
24 crime, then he would know that he wasn't at the scene of the
25 crime, right?

1 A Yes.

2 Q And yet he's having a conversation with you
3 about his concern that he could be identified at the scene of
4 this crime.

5 MR. DiGIACOMO: Object to the form of concerned.

6 THE COURT: It's argumentative as well.

7 MR. ORAM: Okay.

8 BY MR. ORAM:

9 Q He tells you in this letter about the belief
10 that the smoker bitch -- who is the smoker bitch?

11 A Stephanie Cousins.

12 Q That he gives you advice on what to say, doesn't
13 he, on the fact that he may be identified and what to say if
14 he is, right?

15 A I don't remember reading that part in there.

16 Q Doesn't he say that he had a broken leg and he
17 couldn't even walk or run?

18 A Yes.

19 MR. ORAM: Move for its admission.

20 MR. DiGIACOMO: We have no objection.

21 MR. LANGFORD: I have no objection, Your Honor.

22 THE COURT: It'll be received.

23 (Defendant's Exhibit M admitted.)

24 BY MR. ORAM:

25 Q Do you recall in that same letter he's talking

1 to you about discovery?

2 A I don't recall.

3 Q If I showed it to you, would that refresh your
4 memory?

5 A Yes.

6 MR. ORAM: Permission to approach?

7 THE COURT: Yes.

8 BY MR. ORAM:

9 Q Showing you page 2, in the middle. If you could
10 read the highlighted portion to yourself and let me know when
11 you're done.

12 A [Complies.]

13 Q Have you finished that?

14 A Yes.

15 Q Does that refresh your memory as to what he told
16 you?

17 A Yes.

18 Q Does he tell you, Since you get your discovery,
19 write me something brief on everybody that said something?

20 A Yes.

21 MR. ORAM: Can you put up Exhibit 2, is that
22 possible, Counsel?

23 MR. DiGIACOMO: Sure.

24 MR. SGRO: I'm sorry, Your Honor. I had it switched
25 because I know we have some things.

1 MR. ORAM: That's fine. I can do it another time.
2 That's fine.

3 MR. DiGIACOMO: Well, you just switch it back to me
4 and --

5 THE COURT: I have no idea what you're talking about.

6 MR. DiGIACOMO: I think the court reporter knows,
7 Judge.

8 MR. ORAM: Yes.

9 BY MR. ORAM:

10 Q Can you see that on your monitor?

11 A Yes, I can see it.

12 Q Now, do you see where the pin is?

13 A Yes.

14 Q That's the scene of the crime, correct?

15 A Yes.

16 Q And you know that area really well, don't you,
17 Monica?

18 A Further north, not so much as the -- I'm more
19 familiar with the south part of like towards Charleston,
20 Washington.

21 Q Well, how far do you live from there? How far
22 did you live from there, Monica?

23 A About a major block or two over.

24 Q A major block or two over. So really close?

25 A Yes.

1 Q So most people -- how long had you lived at that
2 area where you lived on -- it's Cinnabar, right?

3 A I had just moved there. About two months.

4 Q So you had been in that area for two months?

5 A Yes.

6 Q So you must have been reasonably familiar with
7 it, right?

8 A Yes.

9 Q And if I understood you, you said to the ladies
10 and gentlemen of the jury that there were actually two
11 stoplights between the crime scene and your house?

12 A About one or two, yes.

13 Q Isn't it in fact true that if you come out of
14 that house and go left and then take a right, you don't have
15 to stop at any stoplights?

16 A Are you talking about on the dark street?

17 Q Yes.

18 A Yes.

19 Q So you don't have to, do you?

20 A No.

21 Q So why did you tell the jury that there were two
22 major -- or there were two stoplights if you don't --

23 A I was talking about from Nellis, the major
24 streets.

25 Q So it'd be fair to say that it would only take

1 you a matter of minutes to get from your house to that crime
2 scene, fair?

3 A Taking the side streets?

4 Q Yes.

5 A Yes.

6 Q Especially at 3:00 in the morning, right?

7 A Yes.

8 Q And you notice that your house, your street is
9 actually not on there, is it?

10 A No. It's -- well, I haven't examined it enough
11 to know.

12 Q Point to the direction for the jury, touch your
13 screen to where you think your house would be approximately.
14 Can you draw an arrow so we can see?

15 MR. ORAM: May I approach the witness, Your Honor?

16 THE COURT: Maybe her screen doesn't --

17 MR. ORAM: Just because I can't --

18 THE COURT: I thought it did though.

19 MR. DiGIACOMO: If she pushes hard enough it will.
20 She might just be pushing too light.

21 THE COURT: These are the John Madden screens. You
22 know John who used to do this at football?

23 THE WITNESS: It was right there.

24 BY MR. ORAM:

25 Q Okay. Do you see Cinnabar on there?

1 A Yes.

2 Q I don't think the jury can see.

3 MR. ORAM: Judge, do you mind if I approach the big
4 screen so I can imitate where she's pointing and --

5 THE COURT: Sure.

6 MR. ORAM: Your point -- do you see where it says
7 Google on there?

8 THE COURT: Why don't you do it on your screen, can
9 you do that?

10 MR. DiGIACOMO: She's now got a mark there, or close
11 to it.

12 THE COURT: Oh, she's got a mark there. Yeah.

13 BY MR. ORAM:

14 Q Okay. So that's where you're saying you lived
15 approximately?

16 A Yes.

17 Q Right before the murder, Monica, you would have
18 had to drive [inaudible] easily have driven right by your
19 house to go to that scene, couldn't you?

20 A Can you repeat the question?

21 Q Where had you come from directly before that
22 murder? Where?

23 A From the other apartment where they said that
24 the guy had a gun in the window.

25 Q And where would that be on this map?

1 A It wouldn't be on this map.

2 Q Would it be lower out like if you looked at your
3 screen, would it be lower?

4 A Yes.

5 Q So in order to get from that apartment that you
6 just referred to, to that murder scene, you could easily have
7 gone right by your house; isn't that right?

8 A Yes.

9 Q And you'd only be a minute or two away, right?

10 A Yes.

11 Q Yesterday when we were watching the video, on
12 page 46 of our transcript you told -- the police asked you had
13 you ever been to Job-Loc's house. Do you remember those
14 questions?

15 A Yes.

16 Q And you started talking about how you'd been to
17 rooms. Do you remember that?

18 A Yes.

19 Q And they, the police asked you what do you mean,
20 rooms, right?

21 A Yes.

22 Q And you talked about hotel rooms, motel rooms;
23 am I getting that right?

24 A Yes.

25 Q And was that true or was that a lie?

1 A It was a lie.

2 Q The police asked you if Job-Loc had ever been to
3 your residence. Do you remember that?

4 A Yes.

5 Q And you said he hadn't, right?

6 A Yes.

7 Q And that was a lie?

8 A Yes.

9 Q You told the police you don't know if you had
10 seen Albert that night, the night of the crime; Albert being
11 Job-Loc, also known as Jerome Thomas, also known as
12 [inaudible]. Had you seen him that night?

13 A Yes.

14 Q So that was a lie?

15 A Yes.

16 Q At one point during the interview you asked the
17 police do you think there's something wrong with me. Do you
18 recall that?

19 A Yes.

20 Q Did you mean psychologically?

21 A Yes.

22 Q Were you asking a legitimate question, or were
23 you -- was this something made up?

24 A Well, I was being interviewed, so I was nervous
25 and it was legitimate.

1 Q So you think there's something wrong with you
2 mentally?

3 A Well, at the time. I was suicidal.

4 Q Did you think they would have the answers?

5 A No.

6 Q At one point during the interview, page 60, you
7 told the police you don't know where the guy with the braids
8 went that evening. Do you recall that?

9 A Yes.

10 Q Was that made up?

11 A Yes.

12 Q So it was a lie?

13 A Yes.

14 Q Yesterday I asked you questions about meeting
15 with the district attorneys. Do you remember that?

16 A Yes.

17 Q You talked about you don't know what building
18 you were in exactly, but you were at some building, there was
19 an FBI agent, you thought, DA's or attorneys, right?

20 A Correct.

21 Q And you told the ladies and gentlemen of the
22 jury that you even then withheld information from the district
23 attorneys, fair?

24 A Yes.

25 Q So you deceived them, correct?

1 A Yes.

2 Q You looked them in the eye, these two
3 prosecutors, and you deceived them, right?

4 A Yes.

5 Q And that was years after this incident, correct?

6 A The first time, no.

7 Q There were multiple times?

8 A Just recently.

9 Q Okay. So the first time you admit that you
10 deceived them, correct?

11 A Yes.

12 Q When did you meet with them again?

13 A I think it was like one or two weeks in this
14 last month.

15 Q I'm sorry. I didn't hear you. Say that again.

16 A Like one or two weeks in this last month.

17 Q So just within this last month?

18 A Yes.

19 Q Where did this occur?

20 A I don't -- I don't know where it was at.

21 Q They brought you out of your jail cell and they
22 took you somewhere, correct?

23 A Yes.

24 Q And who was present at this meeting?

25 A Both of my attorneys and Marc and Pam.

1 Q Was it video-taped?

2 A No.

3 Q Was it audio-taped?

4 A Not to my knowledge.

5 Q Any notes on this meeting?

6 A I didn't take any.

7 Q How long did it last?

8 A A few hours.

9 Q Monica, did Mr. DiGiacomo and Ms. Weckerly go
10 over cellphone records with you?

11 A No.

12 Q It was never discussed in any of your meetings?

13 A Not to my recollection.

14 Q So is it your testimony that the only time you
15 went over cellphone information was with the detective?

16 A That I remember, yes.

17 Q During your interview with the police, you told
18 the police that they had pulled more out of you than you could
19 pull out yourself, and that was page 61. That wasn't true,
20 was it?

21 A No.

22 Q It was a lie?

23 A Yes.

24 Q I asked you yesterday about your attorneys, and
25 you said that you had complained about your attorneys to

1 anybody who would listen, right?

2 A You said that.

3 Q Is it true?

4 A Yes.

5 Q And you complained to different people in the
6 jail, right?

7 A Yes.

8 Q You complained over the phone to different
9 people that you have relationships with, family members and
10 such, right?

11 A Yes.

12 Q She's not here right now, but one of your
13 attorneys has black hair. Do you remember she was here
14 yesterday?

15 A Yes.

16 Q Ms. Luem, right?

17 A Yes.

18 Q And Ms. Luem is actually attending court right
19 now on a pro bono basis; is that right?

20 A I don't know where she's at.

21 Q Do you know what pro bono means?

22 A [No audible response.]

23 Q Pro bono means to do something to help a client
24 for free.

25 A Okay.

1 Q Is she helping you for free right now?

2 A No.

3 Q She's being paid?

4 A I don't know what -- I don't know what's going
5 on with her right now. She's through the public defender.
6 She was appointed to me through the PD's office.

7 Q Okay. And now she's a private attorney; is that
8 right?

9 A [No audible response.]

10 Q You don't know?

11 A I don't know.

12 Q All right. Did you feel that they had not done
13 a good job for you?

14 A At times, yes.

15 Q And yet you're going to be eligible for parole,
16 you're hoping, in five years?

17 A Yes, I'm hoping.

18 Q You indicate in several letters that you're here
19 behind a man. Do you remember saying that?

20 A Yes.

21 Q You said that to numerous people in numerous
22 letters, didn't you?

23 A Yes.

24 Q And what you meant was you were talking about
25 how as a woman you've got yourself in a relationship with --

1 you've been in some bad relationships with men, right?

2 A Yes.

3 Q And here you are in this situation because of a
4 bad relationship with a man, right?

5 A Yes.

6 Q Because you're blaming in those letters Job-Loc,
7 right?

8 A Yes.

9 Q You feel he's victimized you, right?

10 A Yes.

11 Q Your attorneys have not done a good job, right?

12 A [No audible response.]

13 Q Right?

14 A Are you asking me like --

15 Q Yes, I'm asking you.

16 A -- directly?

17 Q Yes.

18 A I feel that they -- now I feel that they've done
19 what they can.

20 Q You told the police on video that you were as
21 much a victim -- you were a victim in this case. Do you
22 remember saying that?

23 A I do.

24 Q And the police weren't very happy about that,
25 were they?

1 A No.

2 Q They reminded you that a woman had been shot in
3 the face and a child chased down, right?

4 A Yes.

5 Q And you persisted saying that you were still in
6 your mind sort of a victim, right?

7 A Yes.

8 Q Now, my understanding is you've told the judge
9 that you're guilty of murder, right?

10 A Second degree.

11 Q Second degree murder?

12 A Yes.

13 Q You've said you're guilty. You are guilty,
14 aren't you?

15 A Yes.

16 Q And so if you're guilty of the murder of this
17 lady, how are you a victim?

18 A I mean, that was 4 1/2 years ago when I made
19 that statement.

20 Q You would agree with me that you're not a victim
21 at all, correct?

22 A Not in comparison to everything, no, not at all.

23 Q I don't mean any kind of comparison. I'm asking
24 you do you feel like you're a victim of this circumstance?

25 A Of this circumstance, no.

1 Q The police asked you for DNA. Do you recall
2 that?

3 A Yes.

4 Q And there was a portion of the video where we
5 see them take a buccal swab from you. Do you recall that?

6 A Yes.

7 Q And you seemed quite nervous about that, Monica.
8 Do you remember that?

9 A Yes.

10 Q Do you remember you kept asking, where's the
11 warrant, I want to see it? Do you remember that?

12 A Yes.

13 Q And Detective Hardy said to you, look, if
14 it's -- if we don't have one -- he kept assuring you we have
15 one, right?

16 A Yes.

17 Q And do you recall that you said at one point,
18 does the DNA -- is it on my -- are you guys looking at the
19 house, in the house? Do you remember that?

20 A No, I don't.

21 Q You don't remember that. You were nervous,
22 Monica, because you thought DNA was going to harm you; isn't
23 that right?

24 A No.

25 Q Okay. Yesterday the prosecutor asked you if you

1 had had a chance to review discovery. Do you remember that?

2 Do you remember the prosecutor asking you that question?

3 A If I had a chance to what?

4 Q Review discovery in this case.

5 A If I had a chance to review it, yes.

6 Q And you have?

7 A Yes.

8 Q And tell the ladies and gentlemen of the jury
9 what you understand discovery to mean.

10 A All statements, witness statements, any DNA a
11 medical examiner --

12 Q Any DNA. And you had a chance to review it
13 because you just told us that, right?

14 A Yes.

15 Q Now, without telling me anything that DNA report
16 says, were you concerned about the DNA?

17 A Not at all.

18 Q Not at all. You're telling the truth to the
19 jury?

20 A Yes.

21 Q It wouldn't concern you whether your DNA was on
22 a murder weapon?

23 A No.

24 Q Because you never touched that murder weapon,
25 right?

1 A Correct.

2 Q You're lying, aren't you?

3 A No.

4 Q During the interview with the police you asked
5 the police, and you say, I don't know if Albert's involved.
6 You say that on page 104. Albert being Job-Loc, correct?

7 A Yes.

8 Q You were worried they were going to implicate,
9 get Job-Loc in trouble, weren't you?

10 A Yes.

11 Q And here at that point you're saying you don't
12 know if he's involved, right?

13 A Yes.

14 Q Was that true or was that a lie?

15 A That was true. I didn't know if he was
16 involved. Like he wasn't there, but I don't know if he put
17 them up to anything.

18 Q Okay. Well, although you don't say it on your
19 statement to the police, you have told the ladies and
20 gentlemen of the jury you saw Job-Loc wiping down a firearm,
21 right?

22 A Yes.

23 Q The firearm had to have been in your car, right?

24 A Yes.

25 Q You had to be driving that vehicle with that

1 firearm to that crime scene, right?

2 A Yes.

3 Q Away from that crime scene?

4 A Yes.

5 Q You're seeing your lover wiping it down, right?

6 A Yes.

7 Q You're seeing another man being told to bury it,
8 get rid of it, right?

9 A Yes.

10 Q And you don't know if Albert's involved, right?

11 A Yes.

12 Q During your statement to the police, you tell
13 the police that the defendant, Mr. Burns, gets out of the car
14 at some point after the Opera House. Do you recall that?

15 A No.

16 Q Did you see the defendant leave your vehicle
17 after the Opera House and before going to that murder scene?
18 Think, Monica.

19 A Only the time when we got -- when we walked into
20 the Opera House and then he got back in with us.

21 Q Oh, Monica. Help me understand this. Are you
22 telling the ladies and gentlemen of the jury he gets back in
23 after the Opera House and he never leaves that seat until he
24 gets to the murder scene; is that what you're trying to
25 tell us?

1 A Yes.

2 Q Oh, but what about those other robberies?

3 Remember, you go pick up Stephanie Cousins, right?

4 A Yes.

5 Q And then you go to do a robbery, right?

6 A Yes.

7 Q And they get out of the vehicle?

8 A Yes.

9 Q So he does get out of the vehicle.

10 A Oh, I thought you meant like permanently, like
11 he was no longer in the vehicle. So it was a
12 misunderstanding.

13 Q Okay. So he gets out of the vehicle at times
14 according to you --

15 A Yes.

16 Q -- right?

17 But it's your testimony he gets back in that vehicle?

18 A Yes.

19 Q And at one point he gets back in that vehicle
20 and he has blood on him, right?

21 A That's what he said.

22 Q And you've looked at that DNA report, haven't
23 you?

24 A [No audible response.]

25 Q Haven't you?

1 A I don't remember.

2 Q You don't remember looking at the DNA report?

3 A [No audible response.]

4 Q Do you remember telling the police that you
5 didn't need to protect Stephanie Cousins because you didn't
6 know Stephanie Cousins?

7 A Yes.

8 Q So fair to say that if you don't really know
9 somebody very well, you don't feel any obligation to protect
10 them, right?

11 A I guess. I don't know. I mean --

12 Q Well, I'm asking you.

13 A -- they had told me that she pointed me out, so.

14 Q You thought you'd give her back some?

15 A No. I didn't think that at all.

16 Q Well, when you said, I don't need to protect her
17 because I don't know her, what'd you mean?

18 A I just didn't know her.

19 Q So you didn't need to protect her?

20 A Correct. That's what I said, yes.

21 Q Fair to say in your mind if you really care
22 about somebody then you need to protect them, right?

23 A Yes.

24 Q Like your kids?

25 A Yes.

1 Q Do you remember on that video when the police,
2 in an effort to assist your children, asked you where are your
3 children? Do you remember that?

4 A I do.

5 Q They said they wanted to make sure your children
6 were safe. Do you remember that?

7 A That's what they said, yes.

8 Q And you didn't even know where your children
9 were.

10 A I did know where my children were.

11 Q Oh, so you were lying to them?

12 A Yes.

13 Q You were lying to the police about the
14 whereabouts of your children?

15 A I'm not going to tell anybody where my children
16 were.

17 Q Monica, one of your children was 12 years old at
18 the time that you were in that police station, correct?

19 A Yes.

20 Q And the police wanted to make sure that those
21 children would be safe, correct?

22 A I don't know that. I didn't know that.

23 Q What did you think they were going to do?

24 A Try to take them away.

25 Q You were going to be arrested for murder.

1 A I understand that, but they were better off with
2 my family.

3 Q The night of the incident, you tell us that you
4 go to Texas Station and then up to Job-Loc's, right?

5 A Yes.

6 Q You have sex, you fall asleep, right?

7 A Yes.

8 Q Where are your kids?

9 A At home.

10 Q Do you recall the police say you don't even care
11 about your children?

12 A I do.

13 Q Do you recall the police say you care about one
14 person, Monica, and that person is a woman that you see when
15 you look in the mirror?

16 A Yes.

17 Q And that's pretty accurate, isn't it, Monica?
18 You care about yourself.

19 A No, that's not -- it wasn't accurate.

20 Q They even said that they thought you had a
21 heart, but you don't?

22 A Yes.

23 Q After telling the police numerous times about
24 this person with braids in the back seat, you change it to
25 curly hair, right?

1 A Yes.

2 Q And then just like with the braids, you go on a
3 really good description about the hair, right?

4 A Yes.

5 Q The -- how the curls are. Do you remember that?
6 You even described a film I was unfamiliar with, Vern or
7 something like that.

8 A Yes.

9 Q And so we could have a visual of the curls,
10 right?

11 A Yes.

12 Q And at one point you pointed at Marty Wildemann.
13 Do you remember Detective Wildemann?

14 A Yes.

15 Q He was the man who had stormed out in the
16 beginning. And you start showing him how his hair has
17 similarities to the person in the back seat's hair. Do you
18 remember that?

19 A Yes.

20 Q And at one point you say the hair is as short as
21 Marty Wildemann's, don't you?

22 A I don't remember.

23 Q Well, were you watching the video yesterday?

24 A Yes.

25 Q And you weren't -- were you paying attention to

1 the video?

2 A Yes.

3 Q I mean, this was something that you were
4 pointing at his hair and saying, hey, Marty, you know, do you
5 remember that?

6 A Yes.

7 Q So you do remember.

8 A But I don't remember making the statement of the
9 comparison of the shortness.

10 Q So you just let the video speak for itself; fair
11 to say?

12 A Yeah.

13 Q And so you gave the details of the curls because
14 you wanted the police to be able to apprehend the killer,
15 right?

16 A Yes.

17 Q But at that point, Monica, they had asked you
18 about a hat, and you had said that the person didn't have a
19 hat on. Do you remember that?

20 A Yes.

21 Q Was that true or was that a lie?

22 A It was a lie.

23 Q And later in your statement you tell the police,
24 oh, he had a hat on, right?

25 A Yes.

1 Q The police, fair to say, were extraordinarily
2 frustrated with you because you lied so often; is that fair?

3 A Yes.

4 Q You told the police you didn't know if the
5 person with the braids or the curls or the hat or the jeans or
6 the overalls had light skin or dark skin. Do you remember
7 saying that?

8 A Yes.

9 Q Is that true or is that a lie?

10 A It was a lie.

11 Q We talked about the person you're saying is Mr.
12 Burns saying he had blood on him. Is that true or is that a
13 lie?

14 A He did say that.

15 Q You haven't washed your car -- you hadn't washed
16 your car in quite a while before that murder, had you?

17 A Not that I remember.

18 Q And we all see pictures of the inside of your
19 car. Your car was pretty dirty. And I don't mean it in a bad
20 way. I just mean it hadn't been cleaned, just like you say.
21 You told the truth.

22 A Yes.

23 Q You told the police you couldn't identify the
24 person you're saying is Mr. Burns. Do you recall saying that?

25 A Yes.

1 Q So that's a lie?

2 A Yes.

3 Q And I just want to make sure, Monica, I'm
4 talking -- I've been talking now in the -- about things you've
5 been saying in the mid-hundreds of this statement. Okay.
6 When I say mid-hundreds, I mean we've been going through pages
7 146 through 180. You've already taken this oath that they've
8 put you under, right? Right?

9 A For the court, yes.

10 Q Say again.

11 A You're talking about being sworn in?

12 Q No. You remember the police put you under oath
13 a couple times?

14 A Oh, yes.

15 Q And then you had the hand holding moment for
16 moral support, and we're talking about things you're lying
17 about after that point, right?

18 A Yes.

19 Q You told the police you had a bad memory. Do
20 you have a bad memory?

21 A I tend to not remember everything.

22 Q So that was true?

23 A Yes.

24 Q You told the police that Job had nothing to do
25 with this. Do you remember saying that?

1 A Yes.

2 Q And that was a lie?

3 A I don't know that. He wasn't there. That's
4 the -- he wasn't there when everything happened. That's what
5 I was implying.

6 Q That letter he sent you, that must have been
7 shocking to you, just to think, well, why would you think --
8 why would you be worried about being identified at the scene
9 by the smoker bitch when you and I both know you weren't
10 there.

11 MR. DiGIACOMO: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. ORAM:

14 Q You told the police -- do you remember the
15 police asked, what's going on, who are you hiding, who are you
16 covering up for? Do you remember that?

17 A Yes.

18 Q And you told the police you were covering up for
19 Job-Loc?

20 A Yes.

21 Q And a few pages later Marty Wildemann tells you,
22 I don't understand, why are you covering up for somebody who
23 has no involvement. Do you remember that on the video?

24 A Vaguely.

25 Q Do you want me to show it to you?

1 A Sure.

2 MR. ORAM: Page 220, Counsel.

3 Permission to approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. ORAM:

6 Q Okay. In the middle of the page on 220, if you
7 could read to yourself where it says, MW, Marty Wildemann, if
8 you could just read what I have in that box to yourself and
9 let me know when you're done.

10 A Okay.

11 Q Does that refresh your memory as to the
12 detective asking you how could you be essentially covering up
13 for somebody who has no involvement?

14 A That's not what he said.

15 Q That's not what he says. Does he say, "I don't
16 want to get into that. I want you to get into the whole I'm
17 protecting Job-Loc, because right now I don't even understand
18 why, why you would be protecting Job-Loc because you haven't
19 told me anything that would need protecting"? Do you remember
20 him saying that?

21 A Yes. Yes.

22 Q It seems like a legitimate question, doesn't it?

23 A Yes.

24 Q And as you sit here today, Monica, you're still
25 protecting Job-Loc, aren't you?

1 A No.

2 Q In that video, you knew that homicide was
3 desperately trying to apprehend people involved in this crime.
4 I mean, that's obvious, right?

5 A Yes, it is.

6 Q And of course one of the things that they would
7 have liked to have known is where the murder weapon is. That
8 would be a great thing, wouldn't it?

9 A Yes.

10 Q And you knew. You had seen that murder weapon
11 pass hands, hadn't you?

12 A After the incident?

13 Q Yes.

14 A Yes.

15 Q You had seen it be given to Donovan Rowland,
16 right?

17 A Yes.

18 Q The same man who you'd let use your vehicle to
19 commit crime with Job-Loc just weeks before?

20 A I don't know that they were committing any
21 crime.

22 Q And you knew that he had possession of that
23 murder weapon, right?

24 A Yes.

25 Q And you failed to tell the police anything about

1 that murder weapon. We watched the video. You don't mention
2 it.

3 A I described what the gun looked like. I did
4 mention it.

5 Q That's right, you did.

6 A Yes.

7 Q You talked about the Dirty Harry thing.

8 A Yes.

9 Q Right. And it was a big gun. And that was the
10 big gun they were looking for, right?

11 A Yes.

12 Q And you knew that's what they were looking for,
13 right?

14 A Yes.

15 Q And you lied and deceived and covered it up,
16 didn't you?

17 A They didn't ask about the weapon early on. So
18 when they did ask about it, I described it.

19 Q Twelve hours you're in that room, correct?

20 A Yes.

21 Q And is it your testimony in front of this jury
22 that you didn't think maybe that was something important to
23 tell them?

24 MR. DiGIACOMO: Well, objection to argumentative.

25 THE COURT: Yeah, that is argumentative.

1 BY MR. ORAM:

2 Q Did you think it was important to tell the
3 police, hey, I saw the murder weapon, it was being wiped down
4 by Job-Loc, handed over to Donovan Rowland and it could be
5 buried or sold, go quickly and find it? Did you say anything
6 along those lines?

7 A No.

8 Q You just -- that wasn't really important, was
9 it?

10 A I was nervous. I was there for an extended
11 amount of hours.

12 Q I understand. I understand you're nervous and
13 you were there -- but what I'm asking about is the murder
14 weapon. Did you think maybe it'd be a little bit important to
15 tell the police about that?

16 A I wasn't thinking like that, no.

17 Q You've just lied to this jury, haven't you? You
18 just lied. You know that's important, you knew it was
19 important at the time.

20 A Yeah, I know it was important, but I wasn't
21 thinking to saying anything.

22 Q Do you recall the police in the video are going
23 over your cellphone records with you?

24 A Yes.

25 Q And they're talking about how you talked to

1 Job-Loc all the time?

2 A Yes.

3 Q And that you can't go 15 minutes without talking
4 to your lover?

5 A Yes.

6 Q Did Job-Loc change phones often?

7 A A couple of times, yes.

8 Q Did he have multiple phones?

9 A I don't remember.

10 Q Did he have multiple -- did he have multiple
11 phones that night? Like maybe if we went to his house and
12 took pictures of his house right around that time period we'd
13 see multiple phones on countertops, something you'd remember
14 maybe?

15 A No. I wouldn't remember.

16 Q You wouldn't remember that. Okay. Is that
17 true?

18 A Yes.

19 Q I want to ask you a little bit about the
20 cellphone records from your memory. In the hours, let's say
21 two hours leading up to the crime, how many times did you
22 speak to Job-Loc on the phone?

23 A I don't remember speaking to him. You mean from
24 the time that I picked up Willie and David?

25 Q Listen to my question carefully.

1 A Okay.

2 Q Within two hours of the crime, how many times
3 did you speak to Job-Loc on your cellphone?

4 A I don't remember.

5 Q Did you speak to him shortly before the crime?

6 A Not that I remember.

7 Q Was he at your house?

8 A No.

9 Q Was he at your house just minutes before that
10 crime?

11 A No.

12 Q Did you pick him up --

13 A No.

14 Q -- at your house?

15 A No.

16 Q Did you pick up Donovan Rowland at your house?

17 A No.

18 Q And we can rely upon you because you're being
19 truthful today, correct?

20 A Yes.

21 Q Now, yesterday, I want to make sure it's
22 absolutely clear, you talked about this meeting where you had
23 previously met Mr. Burns and, I believe, Mr. Mason on the
24 Strip, and you tried to tell the police that's how you knew
25 Mr. Burns. And it is your testimony that that is a false

1 statement, you made it up, correct?

2 A Yes.

3 Q It was a lie?

4 A Yes.

5 Q That night, the 6th of August 2010, you were
6 stressing about money, weren't you?

7 A That night I was tired. But yes, I was under
8 the stress of money, yes.

9 Q And Job-Loc was stressed about money?

10 A Yes.

11 Q He needed money, right?

12 A Yes.

13 Q Because he had a case and he needed an attorney,
14 right?

15 A Yes.

16 Q Attorneys sometimes aren't cheap, right. It's
17 not something you're going to turn a trick and be able to pay
18 for the attorney, right, because this was a serious case he
19 had; is that fair?

20 A I didn't know that, but yeah.

21 Q You didn't know that. You didn't know that it
22 was a serious case that he had, right? Fair? I mean, I
23 understand that. Okay.

24 A Yes.

25 Q Tell the jury you didn't know. So you can

1 affirm that you did not know, right?

2 A Yes.

3 MR. ORAM: The Court's indulgence.

4 BY MR. ORAM:

5 Q Do you remember when I asked you that agreement
6 we could make about whether you wouldn't lie to the jury? Do
7 you remember that?

8 A Yes.

9 Q Is murder a serious case?

10 A Yes.

11 Q If I showed you what the detectives were talking
12 to you about, Job-Loc's other case that we all watched
13 yesterday, would that refresh your memory?

14 A Yes.

15 MR. ORAM: Permission to approach. Page 217, in the
16 middle.

17 BY MR. ORAM:

18 Q Monica, I'd like you to read to yourself what
19 Detective Wildemann says to you, and your answer. And let me
20 know when you're done.

21 A Okay.

22 Q Okay. The detectives are talking to you. They
23 start off with Jamal Mohammad. Do you remember that?

24 A Yes.

25 Q You even say that he's got a warrant for murder

1 out of California and he ran from LVMPD, Las Vegas
2 Metropolitan Police Department recently driving your car. I
3 mean, that's how much you're running your mouth to this woman,
4 right? And your answer was, yes --

5 A Yes.

6 Q -- you nodded your head. You even say he's got
7 a warrant for murder out of California, right?

8 A That's what the detective said, yes.

9 Q And you affirmed it? You agreed?

10 A I nodded my head, yes.

11 Q And they were commenting on the fact that you're
12 telling some woman about it, right?

13 A Yes.

14 Q And I thought you just told us that you didn't
15 know if it was a serious case or not.

16 A I didn't. That's what the police said. That's
17 not what I said.

18 Q Monica, what are the police saying to you?
19 They're saying that you've been running your mouth; do you
20 understand what that means?

21 A Yes.

22 Q That you've told some woman that there's a
23 Job-Loc or Jamal or Mohammad or whatever has a warrant for
24 murder, right?

25 A Yes.

1 Q And you've been running your mouth about this,
2 right?

3 A That's what the police said, yes.

4 Q And when they asked you that, you say yes, you
5 nod your head yes?

6 A Yes.

7 Q So you knew it was very serious.

8 That night after the incident, Job-Loc is turning off
9 his phone and directing people to do things, turn off their
10 phones, be careful, right?

11 A Yes.

12 Q Including you, right?

13 A Yes.

14 Q And that's because he's savvy to the fact that
15 cellphones can hurt a person in a criminal case, correct?

16 A I don't know.

17 Q But when the police asked you, you remembered
18 that Job-Loc was doing that, right?

19 A Yes.

20 Q This man who you didn't know had any involvement
21 was doing things with his phone, right?

22 A Yes.

23 Q And a couple days later he got a new phone,
24 didn't he?

25 A Yes.

1 Q He turned off the old phone, right?

2 A Yes.

3 Q And he told you, didn't he, how to deal with the
4 whole phone situation, didn't he?

5 A What phone situation?

6 Q He told you about his concern with cellphones,
7 right?

8 A He just asked me to get him a new number.

9 Q That must have made you suspicious, right?

10 A No. I was at work that day. I was busy. I
11 didn't have time to do anything.

12 Q See, Monica, you knew that Job-Loc and West or
13 Donovan Rowland, West being Donovan Rowland, they were close,
14 right? You called them Little Homie, Big Homie kind of thing?

15 A Yes.

16 Q And you've told the ladies and gentlemen of the
17 jury that Job-Loc had pointed a gun at you in the past --

18 A Yes.

19 Q -- on multiple occasions. Maybe just once?

20 A Once or twice.

21 Q So you would know not to mess with Job-Loc,
22 fair?

23 A Yes.

24 Q And you would know not to mess with his little
25 homie, right?

1 A I wasn't scared of Donovan.

2 Q But you were scared of Job?

3 A Yes.

4 Q And you're scared of Job's relationships with
5 other people?

6 A Some.

7 Q Fair to say that was his closest person to him
8 other than you at the time, right? Him and Donovan Rowland
9 were pretty tight at the time, right?

10 A They got close in the short time, yes.

11 Q Do you recall at one point during the interview
12 the detectives asked you if you had seen the person, you were
13 identifying him as Mr. Burns, with a firearm? Do you remember
14 that?

15 A Yes.

16 Q And you told them at one point, yes, I did see
17 it. Do you remember that?

18 A I don't remember that, no.

19 Q Do you remember -- maybe this will refresh your
20 memory, because right when you're done with that, you look at
21 him, kind of smile and say, I lied; do you remember? And they
22 didn't like that very much. Do you remember that little
23 scenario?

24 A No.

25 Q No? Don't you remember, and then you started to

1 explain, oh, no, no, it was the way he had his hand in his
2 pocket?

3 A Oh, yes.

4 Q You remember that?

5 A Yes.

6 Q They seemed really irritated with you, didn't
7 they?

8 A Yes.

9 Q Because you keep saying things like, oh, I said
10 it, no, I lied, right?

11 A Yes.

12 Q Almost like it's funny, right?

13 A Yes.

14 Q Almost like today. It kind of looked that way
15 today. Monica, this isn't funny, is it?

16 A No.

17 Q Now, the police asked you about why you didn't
18 just drive away. Do you recall that?

19 A Yes.

20 Q You had heard gunshots, right?

21 A Yes.

22 Q And you don't just drive away. And what you
23 answer is because you would have had to answer to Job's
24 consequences.

25 A Yes.

1 Q Not Mr. Burns' consequences, right?

2 A No.

3 Q You've got a man that you're telling this jury
4 he's running around with a gun just shooting people, right?

5 A Say that again.

6 Q You have a man running around, getting in and
7 out of your car shooting people, right?

8 A Yes.

9 Q And you're not worried about the consequences of
10 that man, you're worried about Job-Loc, right?

11 A Yes.

12 Q Does that make any sense to you at all? Does
13 that make --

14 MR. DiGIACOMO: Objection. Argumentative.

15 THE COURT: Sustained.

16 MR. ORAM: Okay.

17 BY MR. ORAM:

18 Q The police asked you what's up with the loyalty
19 to Job-Loc. Do you remember that?

20 A Yes.

21 Q And excuse my language, you say, "He mind fucks
22 me, mind fucks me." Do you remember that?

23 A Yes.

24 Q What does a mind fucking consist of?

25 A Mind games. Having control.

1 Q And because he plays games and has control,
2 you're scared of the consequences?

3 A Yes. Scared of -- yes, I was scared of him.

4 Q And you're scared of him for good reason,
5 weren't you? You had good reason to be frightened of him?

6 A Yeah. He used to hit me.

7 Q He'd hit you as well?

8 A Yes.

9 Q And he'd pointed a gun at you and you'd seen him
10 with the murder weapon, right?

11 A Yes.

12 Q Now, at the time you're saying you didn't know
13 Donovan Rowland as Donovan Rowland, you knew him as Wes; is
14 that right?

15 A Wes, yes.

16 Q Now, when I -- just so we're saying the same
17 thing, is this north, south, east, west, or is it Wes without
18 the T?

19 A Without the T.

20 Q You never mention that man in ten hours of
21 video, do you?

22 A Wes?

23 Q Yes.

24 A No.

25 Q The police had asked you who was over at

1 Job-Loc's that night, and you've told the jury that he was
2 over there, West was over there at one point, right?

3 A He arrived later. He wasn't there when I got
4 there.

5 Q But that's not what the police asked you,
6 Monica.

7 A Then I didn't understand what they were asking.

8 MR. DiGIACOMO: Objection. Argumentative.

9 THE COURT: That is argumentative.

10 MR. ORAM: Okay. The Court's indulgence.

11 (Pause in proceeding.)

12 MR. ORAM: Page 242, Counsel. Your Honor, may I have
13 permission to approach the witness?

14 THE COURT: She hasn't indicated that she's...

15 BY MR. ORAM:

16 Q If I showed you a copy of your statement where
17 they're asking who's present at Job-Loc's after the shooting,
18 would that refresh your memory as to the police asking was
19 there anybody else at the house?

20 A Yes.

21 MR. ORAM: Permission to approach.

22 Page 242. If you could read from approximately
23 line 2, down to where my finger is.

24 The last full paragraph, Counsel.

25 Let me know when you're done.

1 THE WITNESS: Okay.

2 BY MR. ORAM:

3 Q Have you had a chance to read that?

4 A Yes.

5 Q Does that refresh your memory?

6 A Yes.

7 Q The police asked you who was present at
8 Job-Loc's that night?

9 A Yes.

10 Q And they ask you in the end was there anybody
11 else there?

12 A Yes.

13 Q And you shake your head no?

14 A Yes.

15 Q And that was a lie?

16 A No. Donovan didn't go until later. He wasn't
17 there when I got there. That's when I got back there. At the
18 top of it, it says I asked to go back over there, he told me
19 to go ahead and come through.

20 Q Okay. Did they ask you who you're hanging out
21 with over there? Did they use that word? "So you were
22 hanging out at Job's with the shooter and G-Shock [sic]?" Do
23 you remember that?

24 A Yes.

25 Q You say D-Shock, they say D-Shock, and you talk

1 about you don't know the name. And then they say and Job, or
2 you say and Job, and they say and Job, and then they say,
3 Anybody else in there? And you say -- you shake your head no.

4 A Right.

5 Q You knew what they were looking for, Monica. I
6 mean, we're not playing games. You knew what they wanted to
7 know, right?

8 MR. DiGIACOMO: Objection. Argumentative.

9 THE COURT: Sustained. And you got to delete the
10 argumentative questions.

11 BY MR. ORAM:

12 Q Did you know what they were trying to figure
13 out?

14 A No. They say was anybody else there, so I took
15 it as the present. There was nobody else there but them.

16 Q Well, at present you were in a homicide
17 interrogation room, right?

18 A Yes.

19 Q And I would imagine they're trying to figure out
20 who is at that residence; is that fair?

21 A Yes. I told them --

22 THE COURT: That she would imagine is not something
23 she --

24 BY MR. ORAM:

25 Q They asked you directly who you were hanging out

1 with there, right?

2 A And I told them.

3 Q And so if we wanted to include Wes, what would
4 have been the correct answer that these experienced homicide
5 investigators didn't ask you? What -- what would --

6 MR. DiGIACOMO: Objection. Argumentative.

7 BY MR. ORAM:

8 Q Well, what would be the right question to have
9 elicited that information?

10 THE COURT: What would be the right question?

11 MR. ORAM: Yes.

12 BY MR. ORAM:

13 Q What would they have to have asked you to get
14 you to say that you'd seen Wes leave with the murder weapon?

15 MR. DiGIACOMO: Objection. Argumentative.

16 MR. ORAM: How is that argumentative?

17 THE COURT: I don't know that that's argumentative.

18 THE WITNESS: I guess did anybody else go there
19 later, did anybody else show up there later.

20 BY MR. ORAM:

21 Q You were put under oath when you first came in
22 here. Do you recall that?

23 A Yes.

24 Q And you take that seriously, right?

25 A Yes.

1 Q We've gone over the fact that the police would
2 have loved, we all watched it, that you know they wanted to
3 know if you knew where the murder weapon was. You know they
4 would have wanted to know that, right?

5 THE COURT: You need to speak up, Mr. Oram.

6 BY MR. ORAM:

7 Q You would have -- they would have wanted to know
8 that, right? You know that?

9 A Yes.

10 Q And never once, Monica, does a murder weapon,
11 that being the murder weapon and the whereabouts of that
12 murder weapon, do you ever discuss it?

13 A Until later.

14 Q Until what?

15 A Until later.

16 Q What do you mean?

17 A I had discussed it later when they asked about
18 it. When they said, Who showed up, I told them -- it's in the
19 statement.

20 Q What is in the statement?

21 A That I told them that Job was wiping it down and
22 he told Wes to get rid of it.

23 Q You think you say that in your statement?

24 A It's in there.

25 Q You heard that on the video?

1 A [No audible response.]

2 Q I mean, you watched the video yesterday. You're
3 saying that you heard that you at some point are saying to the
4 ladies and gentlemen of the jury that -- when they watched the
5 video over the last two days, that you say that he was wiping
6 it down and then he gave it to Donovan Rowland? You're
7 telling the jury that that's what you said?

8 A I don't remember. You've got me all confused.
9 I don't remember.

10 Q These -- in this statement, Monica, these aren't
11 your words, correct?

12 A Yes.

13 Q They're not my words, correct?

14 A Right.

15 Q When you told the police you were in love with
16 Job, was that true?

17 A Yes.

18 Q Do you remember towards the end of the statement
19 the detective says to you words to the effect of you told me
20 20 times you're lying, we can't even tell what the truth is?
21 Do you remember that?

22 A Yes, I do.

23 Q Do you -- would you agree with me that when
24 somebody lies so many times it becomes hard to tell what the
25 truth is?

1 A Yes.

2 Q And would you agree with me that's exactly what
3 you've done in this case?

4 MR. DiGIACOMO: Objection. Argumentative.

5 MR. ORAM: No, that she's lied so many times it's
6 hard to tell what the truth is.

7 MR. DiGIACOMO: Then I'm going to object on
8 relevance.

9 THE COURT: No. It's overruled. She can -- if she
10 can answer if she wants to answer.

11 THE WITNESS: I would agree.

12 BY MR. ORAM:

13 Q Do you recall these conversations you were
14 having with the police about your work, and right before the
15 police showed up you were giving instructions to a co-worker
16 to like call certain people if --

17 A Yes, I do.

18 Q Do you recall if a person named Anthony called
19 for you at work?

20 A I don't remember.

21 Q Do you know an Anthony Lassetter?

22 A I don't remember.

23 Q If this would be a guy with sort of bushy hair
24 and really striking blue eyes, does that refresh your memory,
25 or no?

1 A No.

2 Q You talked about a man named Shawn. I guess --
3 do you recall that?

4 A In the interview?

5 Q Yes.

6 A Yes.

7 Q And who is Shawn to you?

8 A A guy I used to see. He's an ex.

9 Q He was the person that Job-Loc stole you away
10 from?

11 A Yes.

12 Q I don't believe I've seen a picture or we've
13 seen a picture, so I'd like to approach, and I'm not sure if
14 these are him, and to have you tell me if one of these is him.

15 A Okay.

16 Q Do that. Does he have a nickname?

17 A S-Loc.

18 Q He's an S-Loc.

19 A Or Callie [phonetic].

20 Q S-Loc or Callie.

21 MR. ORAM: Permission to approach.

22 MR. DiGIACOMO: May I see them, Judge?

23 MR. ORAM: Sure.

24 THE COURT: If you're asking her to identify
25 somebody, I guess you have to mark the picture.

1 MR. ORAM: Judge, I'm just -- there's quite a few and
2 I'm --

3 THE COURT: Well, if she identifies it, then you'd
4 better mark it.

5 MR. ORAM: That's fine. Because I just do not --

6 MR. DiGIACOMO: Well, I mean, maybe we should --

7 THE COURT: Are these a whole bunch of pictures?

8 MR. DiGIACOMO: There's at least, I think -- I mean,
9 I'd be happy to mark it as a packet. I have no objection to
10 all -- the admission of all the documents.

11 MR. ORAM: Oh, no. I'm not going to -- I'll show you
12 the ones I'm going to ask her.

13 MR. DiGIACOMO: Okay. So why don't you pick the ones
14 you're actually going to show her, we'll mark them, because we
15 need to keep a record of them.

16 MR. ORAM: Judge, what I want to do is once I get
17 one, then I may want it --

18 MR. DiGIACOMO: I'd like to know what he's showing
19 the witness as part of the record.

20 THE COURT: It may be that for a record we should
21 have all of them marked, and if there's a particular one that
22 she identifies -- where did you get all this?

23 MR. ORAM: Discovery.

24 (Pause in proceedings)

25 MR. ORAM: Permission to approach the clerk.

1 THE COURT: Sure.

2 (Pause in proceeding.)

3 BY MR. ORAM:

4 Q By the way, do you know Anthony -- or do you
5 know a person named Cricket?

6 A Yes.

7 Q Does Cricket have sort of bushy hair with
8 striking blue eyes?

9 A No.

10 Q What does Cricket look like?

11 A He's Mexican.

12 MR. ORAM: Okay. May I approach?

13 THE COURT: Sure.

14 BY MR. ORAM:

15 Q Are any of these S-Loc or Shawn? If you'll just
16 flip through them. Is that S-Loc?

17 A Yes.

18 Q That's S-Loc?

19 A Yes.

20 MR. DiGIACOMO: For the record, I'm sorry, what
21 defense exhibit is that?

22 MR. ORAM: N. N as in Nancy.

23 MR. DiGIACOMO: Okay.

24 MR. ORAM: Okay. That's S-Loc.

25 THE WITNESS: It's too dark.

1 MR. ORAM: Okay.

2 THE WITNESS: That's Shawn.

3 BY MR. ORAM:

4 Q That's Shawn?

5 A Yes. And also right here.

6 Q That's Shawn?

7 A Yes.

8 Q Who is that, do you know, on the left?

9 A It's too dark to tell.

10 Q Okay.

11 A That might be him.

12 Q That's Shawn?

13 A Might be him, yes.

14 Q Okay. Next one, please.

15 A I can't tell.

16 Q Can't tell?

17 A No. It's messed up there.

18 MR. ORAM: Judge, the one of them she can't tell,
19 should I just rip that off? Do you want me to do that, Judge?

20 THE COURT: I don't care.

21 MR. ORAM: Okay. Can I publish?

22 MR. DiGIACOMO: Well --

23 MR. ORAM: Can I publish?

24 THE COURT: Sure.

25 (Pause in proceeding.)

1 BY MR. ORAM:

2 Q That's S-Loc?

3 A Yes.

4 Q That's Shawn?

5 A Yes.

6 Q That's the person you were with, your boyfriend
7 before Job-Loc?

8 A Correct.

9 Q You just said you thought that was him, or was
10 that too dark?

11 A That's too dark.

12 Q That's definitely Shawn?

13 A Yes.

14 Q Shawn on the right-hand side?

15 A In the blue, yes.

16 Q Shawn pointing a gun at us?

17 A Possibly, yes.

18 Q Shawn?

19 A Yes.

20 MR. ORAM: Move for the admission of Defense Proposed
21 Exhibit N.

22 MR. DiGIACOMO: No objection.

23 THE COURT: It will be received.

24 (Defendant's Exhibit N admitted.)

25

1 BY MR. ORAM:

2 Q Do you recall telling the police that you were
3 unsure whether Shawn had any involvement in this?

4 A Yes.

5 Q They hadn't asked you about Shawn, right? You
6 just sort of brought up Shawn?

7 A Yes.

8 Q And so out of the blue you bring up your concern
9 that maybe he had involvement, you weren't sure if he had
10 involvement?

11 A I wasn't sure.

12 Q Is that true or is that a lie?

13 A He didn't have any involvement.

14 Q And you knew that at the time?

15 A Yes.

16 Q So it was a lie?

17 A Yes.

18 Q And you did that because you thought maybe the
19 police will start to go in that direction, right?

20 A Yes.

21 Q It was the hope to put a murder and send the
22 police out in a direction of a completely innocent man, right?

23 A Yes.

24 Q So it's fair to say that at the time you were
25 being interviewed by the police that you didn't mind trying to

1 imply that an innocent man was guilty, right?

2 A Yes.

3 Q You told the ladies and gentlemen of the jury
4 that Job-Loc lived off you?

5 A Yes.

6 Q He sold dope, right?

7 A I'm sorry?

8 Q He sold narcotics?

9 A Yes.

10 Q But he was still living off you?

11 A Yes.

12 Q How often would Job-Loc stay at your house?

13 A Whenever he felt like it.

14 Q I understand that answer. But if you could give
15 us a description of twice a week on average, five times a
16 week, once a week, something more like that.

17 A I don't -- I can't give a time. He was just
18 there when I begged him to come over or when he wanted to,
19 when he wanted to get away.

20 Q Was that quite frequently, would you say?

21 A Frequently.

22 Q Now, you've told the jury that the two
23 defendants, Mr. Burns and Mr. Mason, were staying at your
24 house for a couple weeks before the crime. Do you remember
25 that?

1 A No.

2 Q You don't remember saying that?

3 A No.

4 Q Where were they staying?

5 A You said a couple of weeks before the crime. I
6 didn't say that they were staying at my house --

7 Q Maybe I've asked a poor question.

8 A Yes.

9 Q Where were Mr. Burns and Mr. Mason staying the
10 day before the crime, the day before that, the day -- where
11 were they staying in that time period according to you?

12 A With Job.

13 Q Not at your house?

14 A They had been to my house a few times.

15 Q Monica, didn't you tell us on Wednesday that
16 they had stayed at your house for the preceding two weeks?

17 A No. They weren't there continuously for two
18 weeks.

19 Q Okay. And I'm not saying there, you know,
20 continuously like they never left the house. But were they
21 sort of sleeping on the sofas?

22 A Yes. They did spend the night there a few
23 nights, yes.

24 Q Okay. So I want to get specific about that.

25 Okay.

1 A Okay.

2 Q The night before the murder, the 5th, do you
3 know where they were staying?

4 A No, I don't remember.

5 Q The 4th?

6 A Don't remember.

7 Q You're not going to remember any of it, are you?
8 Third, 2nd, if I keep asking, will you remember?

9 A No.

10 Q So you don't know if they're at your house, you
11 don't know if they're at Job's house?

12 A It's 4 1/2 years ago. I don't remember exactly
13 what nights they were there.

14 Q You were selling narcotics at the time, right?

15 A Yes.

16 Q And what were those narcotics?

17 A Marijuana.

18 Q And what else?

19 A Ecstasy.

20 Q And what else?

21 A I don't remember anything else.

22 Q The night of the 6th, so late night 6th going
23 into the 7th, where do you first see the person you've said is
24 Mr. Burns and Mr. Mason? Where did you first see them?

25 A At Job's apartment.

1 Q Okay. Now, do you remember in the video you
2 specifically talk about how you meet them down at Fremont
3 Street?

4 A Yes.

5 Q So you neglected to tell the police that you'd
6 actually picked them up at Job-Loc's beforehand?

7 A Initially, I did.

8 Q So that was a lie?

9 A Yes.

10 Q And you have changed your testimony because of
11 cellphone records, haven't you?

12 MR. DiGIACOMO: Objection, as to changed your
13 testimony.

14 THE COURT: Saying she changed her testimony or --

15 MR. DiGIACOMO: She hasn't changed her -- at all.

16 THE COURT: -- changed from her statement? The
17 testimony isn't her statement.

18 MR. DiGIACOMO: And I apologize, but if he's going to
19 ask her did she change in her statement to where she picked
20 them up, I think that would be the foundational question
21 before he can ask is her testimony different.

22 THE COURT: Well, the statement is a statement,
23 testimony is testimony, so.

24 BY MR. ORAM:

25 Q When did you decide to change -- okay.

1 Originally you say that you meet them down at Fremont Street,
2 right?

3 A Yes.

4 Q When did you decide to change that?

5 A To say that I picked them up at the apartment?

6 Q Yes.

7 A I believe it's toward the end of the statement.

8 Q You heard this description how you went to Job's
9 and picked them up in your statement, you heard that on the
10 video?

11 A Yes, I believe so.

12 Q Well, I'm sure that the prosecutor will be able
13 to show you that portion when he questions you.

14 A Okay.

15 Q You didn't change that for your testimony here,
16 did you?

17 A What do you mean?

18 Q That wasn't something you decided to say for the
19 first time here in this courtroom; you're saying you said it
20 in your statement, right?

21 A Yes.

22 Q You're confident of that?

23 A Yes.

24 Q You have seen cellphone records with the police,
25 right?

1 A Yes.

2 Q And you realize that you were telling them --
3 they were asking you about your phone, right?

4 A Yes.

5 Q And you knew that these cellphones ping off
6 towers, right?

7 A I know that now.

8 Q And Fremont Street's a long way from the
9 Brittnae Pines apartments.

10 A Yes.

11 Q Do you remember telling the jury yesterday that
12 when you went to Jerry's Nugget the defendants wanted to rob a
13 security man for his gun?

14 A Yes.

15 Q And you never mentioned that in your statement,
16 did you?

17 A No.

18 Q That was something that you've remembered since?

19 A Yes.

20 Q But Monica, in your statement you tell the
21 police that they go someplace to rob a drug dealer, do you
22 remember?

23 A Yes.

24 Q And that they look through the window and they
25 see a gun.

1 A Yes.

2 Q And that they don't want to rob somebody who has
3 a gun.

4 A Yes.

5 Q But they wanted to rob a security guard at a
6 casino with a gun?

7 A Yes.

8 Q And that's something -- when did you remember
9 that fact?

10 A I don't remember.

11 Q When was the first time you told anybody that
12 fact?

13 A I don't remember.

14 Q Do you recall telling the ladies and gentlemen
15 of the jury that after you pick up Stephanie you don't
16 remember where Mr. Burns, the person you're describing as Mr.
17 Burns went, that he was out of your sight for some period of
18 time?

19 A No, I don't remember that.

20 Q Do you remember saying that you left Stephanie's
21 apartment and then came back?

22 A Before the incident?

23 Q Yes.

24 A Yes.

25 Q Okay. So let me -- let me run through this. We

1 know -- we're going to know what time you leave the Opera
2 House, fair, because we've seen the video?

3 A Right.

4 Q You see there's a timer at the bottom. I just
5 want to run through this quickly to see all the different
6 things that happen. Okay.

7 A Okay.

8 Q After the Opera House, where do you go to next?
9 Where's the first place you drive your vehicle?

10 A To Stephanie's.

11 Q And then you leave Stephanie's and where do you
12 drive your vehicle to next?

13 A The apartment where they said that the guy had a
14 gun.

15 Q And then you drive back to Stephanie's?

16 A No.

17 Q When do you drive back to Stephanie's before the
18 incident?

19 A We don't go back to Stephanie's.

20 Q I thought I just asked you if you went back
21 to --

22 A It's in my statement.

23 Q So that's a lie?

24 A Well, I mean, I don't remember how everything
25 happened.

1 Q Okay. Really what I want to ask is I just want
2 you to do it this way, okay. Just like the police were
3 saying, don't make me pull this out of you. I just want you
4 to tell us --

5 MR. DiGIACOMO: Objection to the commentary, Judge.

6 MR. ORAM: Judge, I'll make this quick.

7 THE COURT: Sustained.

8 BY MR. ORAM:

9 Q From the time you leave the Opera House until
10 the time you arrive at the scene of the murder, just tell the
11 jury, just, you know, just quick like this, just say, okay, we
12 went to Stephanie's, we went to this place, we went to this
13 place. Just tell us that.

14 A We left the Opera House, went to Stephanie's.

15 Q Okay.

16 A We went to the apartment where they said the guy
17 had the gun.

18 Q Okay.

19 A And then we went to the crime scene.

20 Q Well, weren't you going to -- weren't you guys
21 going to rob a white guy in Stephanie's apartment complex?

22 A There was a discussion.

23 Q You didn't actually go anywhere there?

24 A No. That was in Stephanie's apartment complex,
25 in her own --

1 Q So your testimony is you went to Stephanie's,
2 you go to the apartment to rob the guy, the drug dealer with
3 the gun that doesn't happen, and then straight to the crime
4 scene?

5 A Yes.

6 Q You told the ladies and gentlemen of the jury
7 that before you talked to the police about this incident you
8 didn't talk to anybody else.

9 A Yes.

10 Q Is that true?

11 A Yes.

12 Q Okay. So let me make sure I understand it.

13 Okay. The murder occurs, you're over at Job's. Besides
14 talking to Job-Loc about this, you talked to nobody else. The
15 police pick you up and now you're being questioned. Is that
16 how that happened?

17 A Right.

18 Q And in the meantime you don't tell anybody about
19 the crime?

20 A Right.

21 Q You told your grandmother something about this
22 crime, right?

23 A I didn't tell her anything about the crime. I
24 just told her something bad happened. I didn't tell her
25 anything about the crime.

1 Q So you do talk to your grandmother about what
2 happened that night?

3 A Yeah. No, not about what happened, just that
4 something bad happened, and I let her watch the news.

5 Q And that there are people in the car and that
6 you heard screaming, and you didn't tell her those things?

7 A No.

8 Q She gave a recorded statement, Monica. You know
9 that, don't you?

10 A No, I didn't.

11 Q You didn't see that in your discovery, your
12 grandmother's statement?

13 A Yeah. I saw her statement.

14 Q Do you remember that at one point, we've gone
15 over it, Marty Wildemann leaves the room, then at some point
16 Detective Bunting, he's the one you held hands with, he gets
17 up, he's a little bit cross with you, he leaves the room? Do
18 you remember? On the video you saw this, right?

19 A Will you say that again.

20 Q Monica, do you remember a third detective comes
21 in, a Detective Hardy, and he decides to ask you some
22 questions?

23 A Yes.

24 Q And you ask him, are you going to hit me; do you
25 remember that?

1 A Yes.

2 Q Monica, did you really believe that Detective
3 Hardy was going to hit you?

4 A I have never been arrested before. The way they
5 were so aggressive off and on I didn't know -- from seeing TV,
6 I didn't know what was going to happen.

7 Q So when we watched that video, it's your
8 testimony those detectives were aggressive with you?

9 A Yeah.

10 Q To the point where you thought it -- you were
11 worried one of them may hit you?

12 A Mm-hmm. It was a question.

13 Q Or was that a form of trying to manipulate them?

14 A No.

15 Q You've told the ladies and gentlemen of the
16 jury, when the prosecutor asked you questions, that even at
17 the end of that very lengthy video you still hadn't come
18 clean, right?

19 A I'm sorry. Repeat the question.

20 Q When the prosecutor asked you questions on
21 Wednesday, he asked you during that entire video had you ever
22 come clean and told the truth, the whole truth to the police.
23 Do you remember when the prosecutor asked you a question like
24 that?

25 A Yes.

1 Q And you told the ladies and gentlemen of the
2 jury that even at the end of the video you had not come clean,
3 right?

4 A Yes.

5 Q And now you've told the ladies and gentlemen of
6 the jury in your first meeting with the district attorneys
7 that you had withheld at least one piece of information,
8 correct?

9 A Yes.

10 Q And in the last meeting a couple months ago, did
11 you still withhold information from them?

12 A I don't remember.

13 Q But today you have told the truth, right?

14 A Yes.

15 Q You don't remember in the third meeting or the
16 second meeting with the DA's whether you withheld evidence?
17 You don't remember --

18 A I don't remember if I said anything to them or
19 not.

20 Q Say that again. I didn't hear you.

21 A Okay. What did you say?

22 Q At the second meeting with the district
23 attorney's office, okay, with Pam and Marc --

24 A You mean at the -- with the two weeks within the
25 last month?

1 Q Yes. Did you withhold evidence from them, or
2 are you not sure?

3 A I'm not sure.

4 Q So it's fair to say that within the last couple
5 of months you're still not sure if you've told the whole
6 truth, right?

7 A No. There's just the one piece.

8 Q You're just dying to tell us, so tell us. What
9 is this one piece of evidence that you have that you haven't
10 told anybody? Wait. Have you told the jury?

11 A No.

12 Q Oh. You mean you've withheld something from
13 this jury?

14 A It wasn't in my statement. It hasn't been
15 brought up.

16 Q That wasn't my question. Have you withheld
17 something from this jury?

18 A It wasn't asked.

19 Q So Mr. DiGiacomo has not asked the question?

20 A Not that I remember, no.

21 Q I have not asked the question?

22 A I haven't told you, so how would you know to
23 ask?

24 (Pause in proceeding.)

25

1 BY MR. ORAM:

2 Q Do you remember the detectives asked you if you
3 ever got out of the car at the scene of the crime? Do you
4 remember that?

5 A Yes.

6 Q And there was a big long pause, Monica. Do you
7 recall that?

8 A Yes.

9 Q I mean, that seems like a very simple question,
10 right --

11 A Yes.

12 Q -- did you get out of the car?

13 I mean, that must have been a horrific few moments,
14 right, Monica?

15 A Yes.

16 Q And you would think that somebody would know
17 whether they got out of the car or not, right? I mean, it
18 seems like no or yes, right?

19 A Yes.

20 Q What were you thinking about when you had that
21 big long pause?

22 A I don't remember what I was thinking.

23 Q You asked the detectives, did I hurt anybody; do
24 you remember that?

25 A Yes.

1 Q Well, did you?

2 A No.

3 Q Why would you ask them that?

4 A Because there was -- when I watched the news,
5 there was a DUI incident, and I was still pretending to be
6 under the influence. So I was talking about the DUI incident.

7 Q Okay. I'm -- I'm sorry, but could you -- I'm
8 kind of lost. What do you -- what are you talking about, a
9 DUI incident? They're investigating a murder, right? I mean,
10 we're there for a murder, right?

11 A Yeah. And when they asked me what did I see on
12 the news, I told them about the shooting and also a DUI
13 incident.

14 Q And so you were referring did I hurt anybody to
15 a DUI incident?

16 A Yes.

17 Q Okay. Monica, you know they weren't asking
18 about a DUI incident, right?

19 A Right.

20 Q So that was just a made-up fantasy lie, right?

21 A Yes.

22 Q Something to throw the detectives off?

23 A Yes.

24 Q At one point the detective says to you, okay,
25 there's at least three of you in the car, do you recall that?

1 Page 42. Do you remember that?

2 A No, I don't remember.

3 Q If I showed that to you, would it refresh your
4 memory?

5 A Yes.

6 MR. ORAM: Page 42, Counsel.

7 Permission to approach.

8 THE COURT: Do any of the jurors need a mid-morning
9 recess? Okay. Let's take a recess now.

10 Ladies and gentlemen, it's again your duty not to
11 converse among yourselves or with anyone else on any subject
12 connected with this trial, or to read, watch or listen to any
13 report of or commentary on the trial from any medium of
14 information, including newspapers, television or radio, and
15 you may not form or express an opinion on any subject
16 connected with this case until it is finally submitted to you.

17 Be in recess for about ten minutes.

18 (Jurors recessed at 11:02 a.m.)

19 THE COURT: The record will reflect that the jurors
20 have left the courtroom.

21 MR. SGRO: We do need a second on the record. Do you
22 want to do it at the end of the break, Your Honor?

23 THE COURT: We can do it right now.

24 MR. SGRO: Two quick things. First of all, one just
25 has to do with the decorum in the courtroom. During

1 cross-examination, and Mr. Oram can't see this, Mr. DiGiacomo,
2 in a loud -- loud enough for me to hear, turns to Ms. Weckerly
3 but looks at the jury panel and makes comments, giggles,
4 laughs, points to things. And effectively he's trying to
5 communicate to the jury, well, wait until I show them this.
6 And those are my words.

7 The decorum has to be one way or another. And we
8 have not done that. Now, if we want to start engaging in that
9 battle, Your Honor, where I'm going to throw up --

10 THE COURT: I don't want anybody to do that.

11 MR. SGRO: Okay. Thank you.

12 THE COURT: And Mr. DiGiacomo, to the extent that you
13 may have done it, let's not do it --

14 MR. DiGIACOMO: Yeah. I'd like the Court to make a
15 record that he had seen me do that. Mr. Sgro has accused
16 Ms. Murray and Ms. Luem of unethical behavior. Mr. Oram
17 yesterday almost committed an unethical act as the jury's
18 walking out of the room.

19 THE COURT: Everybody's going to behave themselves
20 and act civil, and we will have a clean trial to the end of
21 it.

22 MR. DiGIACOMO: Well, make a record that the Court
23 did not notice that. Mr. Sgro just makes stuff up and I know
24 that that's what he does in the courtroom.

25 THE COURT: I haven't noticed anything, but Mr. -- if

1 it's true, then you're not going to do it anymore and Mr. Sgro
2 isn't going to do it anymore.

3 MR. SGRO: And I didn't say anything, by the way,
4 about Ms. Murray or Ms. Luem. I was told that certain conduct
5 was occurring and all I did was --

6 THE COURT: I haven't seen anything that they did.

7 MR. SGRO: Right. And all I did was ask the Court to
8 observe it. And I get why Mr. DiGiacomo's upset. His witness
9 is imploding in front of his eyes. I get the emotional
10 response instead of the professional one. I totally
11 understand it.

12 Relative to the jail letters, I see a number of jail
13 letters being fanned out across Mr. DiGiacomo's desk. Before
14 we -- before we get into anything relative to the jail
15 letters, we're going to have to have some sort of hearing,
16 because I don't know what he intends to show.

17 Now, I understand we admitted a letter today. We
18 have a letter, Your Honor, because we tried to get from the
19 jail all the letters that were written amongst all the parties
20 in the case. Right. We sent a subpoena. Well, what we
21 learned is that they don't copy all the letters. What we
22 learned is that the DA basically turns on and off the switch
23 of when to copy letters. Right. They will -- and this, I'm
24 being garbage in, garbage out.

25 I'm not sure, but this is what we're told. The DA,

1 we're told, can say start copying letters amongst these people
2 starting today, and then they make a decision as to when those
3 letters stop getting copied. So under some cases about duty
4 to turn over evidence and that sort of thing, without knowing
5 in advance what the letters are that he intends to use, we
6 don't know how to best make the record relative to --

7 THE COURT: He can only use things that have been
8 discoverable and offered to you.

9 MR. SGRO: But that's -- but -- yes, sir. But here's
10 the problem. If there is a letter that is sent, and I'm just
11 picking dates out of the air, January 1, 2012, and then the
12 State says stop copying letters on January 2, 2012, we would
13 have no way to respond to those letters because of the
14 unilateral -- in other words, we can't call down there and say
15 start making copies.

16 THE COURT: Let's worry about it when we get there.
17 I don't know what he's going to offer.

18 MR. SGRO: I just wanted to --

19 MR. DiGIACOMO: Just so that the record is clear, the
20 homicide book is what I have in front of me, the book that's
21 been reviewed on at least six occasions during this case.
22 There is no letter that we have. We don't decide when to turn
23 on the mail and not to turn on the mail.

24 The homicide detective collects the items that are
25 used in this case. They have every piece of paper that I

1 have, and I intend to use those pieces of paper that I have
2 previously turned over.

3 THE COURT: If it's part of the discovery he can
4 use it. We'll be in recess.

5 (Court recessed at 11:06 a.m. until 11:19 a.m.)

6 (Jury entering at 11:22 a.m.)

7 THE MARSHAL: All rise for entering jury, please.
8 Jurors, please.

9 THE COURT: All right. State of Nevada vs. Burns and
10 Mason. The record will reflect the presence of the
11 Defendants, their Counsel, the district attorneys, and all
12 members of the jury.

13 Ladies and gentlemen, the -- a couple scheduling
14 issues. First of all, Judge Togliatti is the Judge in the
15 department next to us, she has a jury too. There's only one
16 jury room in this court -- on this floor -- and so her jury,
17 they tell me, is going to go out about 1:30 this afternoon.
18 So when we recess for lunch, we think we'll be recessing about
19 a quarter after twelve, you're going to have an hour and
20 fifteen minutes for lunch -- you're going to have an hour and
21 fifteen minutes rather than an hour because the marshal has to
22 get you downstairs to pay you or something -- something to do
23 with paying you. I don't know the details, but they said an
24 hour and fifteen minutes today they wanted me to give you. So
25 that's fine.

1 When you get back, you're going to have to take all
2 of your things with you and put them in the break room because
3 we -- the jury next door is going to be using the jury room
4 where you've been while they're deliberating. But you're
5 going to get the break room instead of the jury room and we
6 won't let the staff have the break room. How is that? That's
7 the best I can do.

8 A couple of other scheduling things. Next week --
9 there are other things going on in the world besides this
10 case. I know that you don't think so and I don't think so,
11 but the lawyers have other commitments, and they have some
12 other things going on Monday, Tuesday, and Wednesday. And so
13 next week you're going to have Monday, Tuesday, and Wednesday
14 off. You're going to come back Thursday morning at 9:30 and
15 we're going to resume the trial then.

16 So you're going to be -- we're going to be dark for
17 three days. And -- so you've got Monday, Tuesday, and
18 Wednesday off, but you're for sure coming back Thursday at
19 9:30 and we're going to resume the trial then. Any questions
20 or problems with that?

21 All right. If any of you have a problem tell a
22 marshal and we'll -- we'll work it out.

23 We are on cross-examination by Mr. Oram.

24 MR. ORAM: Thank you, Your Honor.

25 BY MR. ORAM:

1 Q Yesterday the prosecutor showed you a couple
2 letters from Mr. Burns --

3 A Yes.

4 Q -- do you remember that?

5 A Yes.

6 Q And at one point when you were reading it he
7 refers -- Mr. Burns -- refers to intel; do you remember that?

8 A Yes.

9 Q Now, having been in the jail for a while, you
10 recognize that "intel" means, Intelligence within the jail?

11 A Yes.

12 Q And that there's a division and he's referring
13 to that that they confiscate letters and then they distribute
14 them to the appropriate authorities?

15 A Well, I'm not sure what their job title is -- I
16 don't -- I mean, their description is, I don't know what they
17 do.

18 Q Do you recall in the letter Mr. Burns says, I
19 know the DA uses this as bedtime reading?

20 A Yes.

21 Q So it seems, from what you read, that there's at
22 least statements to you that the District Attorney is reading
23 these letters at bedtime reading?

24 A Yes.

25 Q Are you telling the ladies and gentlemen of the

1 jury that Mr. Burns was threatening through those vents?

2 A Yes.

3 Q And those letters prove it?

4 A There wasn't any threats in the letter.

5 Q So in order for us to believe that you've been
6 threatened we have to believe you? In other words, there's no
7 audio recording of anything like that, right?

8 A Correct.

9 Q So we should -- so we have to believe that
10 through the vent that he is threatening you, right?

11 A Yes.

12 MR. ORAM: May I approach the clerk?

13 THE COURT: I guess.

14 MR. ORAM: I just need --

15 THE COURT: But kind of what you're doing? Oh, okay.

16 MR. ORAM: Counsel?

17 Court's indulgence.

18 MR. DIGIACOMO: Can we -- can we just approach and
19 pull 286?

20 THE COURT: I don't know what you're doing?

21 MR. LANGFORD: All counsel?

22 MR. ORAM: No.

23 MR. DIGIACOMO: No, I just -- he's got an unfiled
24 version of what is a filed version. I just want to make sure
25 it's the same one.

1 THE COURT: I think I know what it is. Use the filed
2 version. It should be an exhibit. Isn't it an exhibit, Mr.
3 DiGiacomo?

4 MS. WECKERLY: It is.

5 THE COURT: But it's a -- its been marked? I suspect
6 I can take judicial notice of it. I suspect I can take
7 judicial notice of it and it should be admitted, right?

8 MR. DIGIACOMO: No, I was making sure that I have the
9 -- I have the file stamped copy, he had a nonfile stamped
10 copy. I was just making sure that he uses the file stamped
11 copy for the courtroom.

12 MR. ORAM: And, Judge, I have so many papers over
13 here, I'm bound to keep this. So, you know...okay.

14 BY MR. ORAM:

15 Q Monica, you remember when you were originally
16 charged they charged you by way of information. That's a
17 technical term. Do you know what I'm talking about?

18 A No.

19 Q Okay. You -- there's a thing called a "charging
20 document," maybe if I showed it to you that would refresh your
21 memory?

22 A Okay.

23 Q Okay?

24 MR. ORAM: Can I approach?

25 THE COURT: Sure.

1 BY MR. ORAM:

2 Q Does that appear to have your name on the top?

3 A Yes.

4 Q It -- does that appear to be your charges?

5 A Yes.

6 Q Okay.

7 MR. ORAM: Move for the admission of Defendant's
8 Proposed Exhibit Q?

9 MR. DIGIACOMO: No objection, Your Honor.

10 THE COURT: Received.

11 (Defendant's Exhibit Q admitted.)

12 BY MR. ORAM:

13 Q So those were the original charges that you were
14 facing, Monica, okay?

15 A Okay.

16 Q And then on October 15, 2014, I have -- or a
17 guilty plea agreement that you reached with the State of
18 Nevada was filed in court. I could show it to you for the
19 date. Do you want me to do that?

20 A I -- I remember.

21 Q Okay. And part of that agreement is that you
22 plead to the murder and conspiracy to commit murder and
23 robbery, right?

24 A No. You said, "Conspiracy to commit murder"?

25 Q I'm sorry. Conspiracy to commit robbery,

1 robbery, and second-degree murder?

2 A Correct.

3 Q And that's what you've agreed to plead to?

4 A Yes.

5 Q And as I understand it, at some later date the
6 Judge can make a determination whether you get up to 18 years
7 to life?

8 A Correct.

9 Q And you're hoping for the 10 to 25 years?

10 A For the minimum, yes.

11 Q Okay. And as part of this agreement with the
12 State you also signed an agreement to testify?

13 A Yes.

14 Q And in this agreement, it's signed by you, and
15 it talks about your obligation to tell the truth, right?

16 A Yes.

17 Q And that that's the one thing that you've really
18 got to do in this case is tell the truth, right? That's
19 your --

20 A Yes.

21 Q And if you don't tell the truth, then the State,
22 those two prosecutors could withdraw the plea, right?

23 A I don't know.

24 Q Did you -- did you read it before you signed it?

25 A Yeah, but I -- I don't understand what you're

1 asking me, though.

2 Q You made this deal with the State, an agreement
3 to testify, right?

4 A Yes.

5 Q If I showed it, would that maybe refresh your
6 memory?

7 A Yes, please.

8 Q Okay.

9 A Thank you.

10 MR. ORAM: Permission to approach?

11 THE COURT: Yes.

12 BY MR. ORAM:

13 Q Do you recognize that document?

14 A Yes.

15 Q Do you see that "obligation to be truthful"?

16 A Yes.

17 Q And the one the State has filed does not appear
18 to have your name signed on it, but do you recall signing it?

19 A Yes.

20 Q And there appears to be a signature from Ms.
21 Weckerly?

22 A Yes.

23 Q And the obligation to tell the truth is it says
24 -- it starts with, Overriding all else, it is understood that
25 this agreement requires from you an obligation to do nothing

1 other than to tell the truth, right?

2 A Yes.

3 Q Now, you know somebody is going to make that --
4 strike that.

5 MR. ORAM: Move for its admission?

6 MR. DIGIACOMO: No objection.

7 THE COURT: It will be received.

8 THE CLERK: For the record, that was --

9 MR. DIGIACOMO: 286.

10 THE CLERK: -- 286, States.

11 (State's Exhibit 2286 admitted.)

12 BY MR. ORAM:

13 Q Do you know who makes a determination whether
14 you've told the truth or not?

15 A No.

16 Q But you don't think it's me, do you?

17 A No.

18 Q Oh, it's not. Right.

19 A I don't know if it's you or not.

20 Q It's going to be those two individuals, right?

21 MR. DIGIACOMO: I object, Judge.

22 THE COURT: Sustained.

23 MR. DIGIACOMO: Thank you.

24 THE COURT: It isn't going to be those two.

25 BY MR. ORAM:

1 Q At some point in the future, the Court is going
2 to make a determination with the State's recommendation; is
3 that right? What's your understanding of your obligation to
4 tell the truth?

5 A That I have to come up here and tell the truth.

6 Q When you were at the Texas Station that night,
7 was that before or after you went to Job-Loc's?

8 A After the incident? It was before.

9 Q Do you remember when you were talking to the
10 detectives you talked about going to your cousins?

11 A Yes.

12 Q After -- after the incident?

13 A Yes.

14 Q And that was the point -- did you go to your
15 cousins?

16 A I did.

17 Q Did you walk to your cousins?

18 A I did.

19 Q When we saw you picking at your -- both of your
20 feet on the video, did you really have blisters?

21 A I did.

22 Q Where did you leave your car?

23 A Across the apartment from Brittnae Pines
24 Apartments.

25 Q Okay. Where's the first place you go after the

1 murder?

2 A To drop Stephanie off.

3 Q And then where?

4 A To the Rebel by Job-Loc's apartment.

5 Q And then where?

6 A To the Texas.

7 Q And then where?

8 A Back to Job's.

9 Q And then where?

10 A Later that afternoon I walked to my cousins.

11 Q Well, you told the police, didn't you, that

12 you'd gone with the Defendant to your cousins?

13 A Yes.

14 Q Is that true or is that a lie?

15 A It was a lie.

16 Q You told the police about going to a park. Do

17 you remember that?

18 A Yes.

19 Q Did you go to a park?

20 A No.

21 Q So that was a lie?

22 A Yes.

23 Q At the Texas Station, who were you there with?

24 A By myself.

25 Q Was Job-Loc with you?

1 A No, I was by myself.

2 Q I'd like to play a portion of a video from the
3 Texas Station. And I specifically am going to ask you to look
4 at an individual going out of a doorway, okay?

5 A Okay.

6 Q I'm going to ask you if you recognize that
7 person.

8 MR. ORAM: Can we do this?

9 MR. DIGIACOMO: You got to split it over on her --

10 MR. ORAM: Switching it over. Okay.

11 BY MR. ORAM:

12 Q Now, Monica, I'm going to point -- look where
13 I'm pointing at in -- on the jury's link. I'm looking at a
14 door up here in the left-hand corner. And I'm going to --

15 A And I -- I can't see what you're pointing at.

16 Q Okay. This is different. I --

17 MR. DIGIACOMO: Just do smaller.

18 BY MR. ORAM:

19 Q I'm going to ask you to look right up here,
20 okay? And I'll let you know when, Monica.

21 MR. ORAM: Is it playing?

22 BY MR. ORAM:

23 Q It may take a minute or two.

24 Now, what I'm looking for, Monica, is an individual
25 going out that door. Now, you're going to be seen in this,

1 and so I want you to identify yourself, if you can?

2

3 A Okay.

4 Q Can you see the timer on your screen, Monica?

5 A Up -- in the upper left?

6 Q Yes.

7 A Yes.

8 Q Okay. It's going to be a few minutes, I --
9 specifically, when we get to 4:43 and 38 seconds, and I'll
10 remind you when we're about 20 seconds away, okay?

11 A I'll be looking at the door or for myself?

12 Q First, we're going to look at that door where I
13 pointed --

14 A Okay.

15 Q -- okay? But while we're waiting, did you call
16 Job-Loc while you were at the Texas Station?

17 A I don't remember.

18 Q Talk to security there?

19 A I did.

20 Q And you were concerned about the woman throwing
21 up in there?

22 A Yes.

23 Q Was that a true statement? Were you
24 legitimately concerned about her?

25 A Yes.

1 Q At the time were you concerned about the people
2 laying in the department -- shop --

3 A Yes.

4 MR. DIGIACOMO: Objection. Argumentative.

5 THE COURT: No, it's not.

6 MR. ORAM: Your Honor, it's just going to be a couple
7 more minutes while the video is playing, I just don't think we
8 can speed it up any quicker.

9 BY MR. ORAM:

10 Q We have about three more minutes, and I think --
11 Monica, you see we're at 4:40 and 36 seconds and we've got to
12 wait until 4:43. We have two more minutes. I'm going to ask
13 you a question in between.

14 While you're talking to the detectives, you told
15 them at the end of your statement, page 274, 10 minutes -- 10
16 pages before they were done talking to you, Am I still --
17 excuse my language -- fucking up?

18 Do you remember asking the detectives that?

19 A Yes.

20 Q What did you mean?

21 A Because they wanted me to keep flowing, so I
22 didn't know if I was messing up my statement.

23 Q You weren't sure if the detectives were
24 satisfied with what you had to say?

25 A Correct.

1 Q You were looking to give them a story that would
2 satisfy them?

3 A Yes.

4 Q And in doing so you recognized that you were
5 failing to tell the whole truth?

6 A Yes.

7 (Pause in the proceedings.)

8 BY MR. ORAM:

9 Q Okay. Monica, we're now -- you see we're at
10 4:43, and I'm specifically now going to ask you to look into
11 this upper where it appears to be a doorway, right at --

12 A Right here?

13 Q -- yes.

14 A Okay.

15 Q 38 seconds. I want you to look to see if you
16 recognize that individual? Do you see what appears to be a
17 man on crutches?

18 A It looks like an arm brace.

19 Q But did it look like a man on crutches?

20 A It didn't look like crutches, no.

21 Q No. And now if you could wait until 4:45 and 38
22 seconds -- or 33 seconds and see if you see yourself on that
23 video?

24 And we have a minute and a half, so I'll ask you one
25 of my last questions.

1 That agreement to testify, do you feel you have
2 violated that agreement to tell the truth by admitting to the
3 ladies and gentlemen of the jury that you have withheld
4 evidence from the District Attorney's Office and the police
5 department? Do you feel you violated that agreement?

6 A No.

7 Q You felt you had a right as part of that
8 agreement to withhold evidence?

9 A It was something that was said later. I didn't
10 withhold it if I told them.

11 Q It's coming in about 30 seconds, Monica.

12 And, Monica, I'm going to be asking you to look
13 towards the middle of the screen area, okay? And see if you
14 recognize a female walking through?

15 A Over in here?

16 Q A little farther down, right at the middle,
17 you'll -- you'll see it. It's coming in about 13 seconds.

18 Is that you, Monica?

19 A Yes.

20 MR. ORAM: Your Honor, at that time -- at this time,
21 that concludes cross-examination.

22 THE COURT: All right. Do you want to turn off that
23 video? Are you controlling the video?

24 MS. WECKERLY: Unfortunately, yes.

25 THE COURT: That's okay. You did fine. I didn't

1 know that you knew how to do that, since I don't.

2 MR. ORAM: Well, you have a minute.

3 THE COURT: All right.

4 Mr. Langford?

5 CROSS-EXAMINATION

6 BY MR. LANGFORD:

7 Q Good morning, Ms. Martinez.

8 A Good morning.

9 Q How long have you lived in Las Vegas?

10 A Off and on since I was 2.

11 Q A long time. What part of town did you grow up
12 in?

13 A Pretty much all over. It wasn't just one area.

14 Q How many kids do you have?

15 A Three.

16 Q What are their names?

17 A Tyler, Willie, and D'Angelo.

18 Q How old are they?

19 A 23, 19, and 16.

20 Q Are they all from the same father?

21 A No.

22 Q Okay. How many fathers?

23 A Two.

24 Q Do they reside locally?

25 A One does.

1 Q Is your family here?

2 A Yes.

3 Q How many?

4 A I have cousins, aunt, uncle, sister.

5 Q What do your kids do?

6 A My youngest one is still in school. My oldest
7 son is in the military. And my daughter is in between jobs.

8 Q How many times do you recall asking to go home
9 when you were giving a statement to the police officers?

10 A I don't remember.

11 Q More than once?

12 A Yes.

13 Q More than five times?

14 A I -- I can't say. I don't know.

15 Q Definitely more than once?

16 A Yes.

17 Q You were pleading with them weren't you?

18 A I just kept saying, I want to go home, yeah.

19 Q You wanted to go home to be with your children?

20 A Yes.

21 Q And you told lies to try to convince them to let
22 you go; is that right?

23 A Yes.

24 Q To get out as quickly as possible, get out of
25 that situation as quickly as you could to be with your

1 children, you told lies, didn't you?

2 A I had to tell lies.

3 Q A lot of lies?

4 A Yes.

5 Q Five and a half hours worth of lies, right?

6 A I was in -- I was in there longer.

7 Q Yeah, okay. 12 hours. Whatever total time you
8 were there. But actually talking five and a half hours?

9 A Okay.

10 Q Of lies? With the sole desire to get home to
11 your kids; is that right?

12 A Yes, I wanted to go home.

13 MR. LANGFORD: Nothing further, Judge.

14 THE COURT: Redirect, Mr. DiGiacomo?

15 MR. DIGIACOMO: Just very briefly.

16 REDIRECT EXAMINATION

17 BY MR. DIGIACOMO:

18 Q Ma'am, there was a discussion from Mr. Oram on
19 cross-examination and I think you said -- on cross-examination
20 there was something that you didn't tell in the first time you
21 ever met me and -- Ms. Weckerly and I; do you remember that?

22 A Yes.

23 Q Okay. And I think you said that you don't
24 recall if you told Ms. Weckerly and I in the second time we've
25 met, correct?

1 A Correct.

2 Q Has anybody asked you yet what it is that you
3 haven't -- that you don't know if you've told us?

4 A No.

5 Q Okay. Nobody's asked you that in this
6 courtroom?

7 A No.

8 Q Okay. You recognize that your obligation is to
9 answer questions asked of you in this courtroom truthfully; is
10 that correct?

11 A Yes.

12 Q And if you do that, do you think that you've
13 conformed to your agreement?

14 A Yes.

15 Q Let me ask you -- other than meeting Ms.
16 Weckerly and I, are there a number of occasions that the
17 detectives came and saw you between the time period of your
18 arrest and ultimately the time period that you -- you
19 identified Mr. Burns in the photo lineups?

20 A Yeah, there was a number of times they came.

21 Q And on a number of those occasions they were
22 asking you various questions; would that be fair?

23 A Yes.

24 Q And I imagine you've had a number of
25 conversations with your attorneys and I don't want to talk

1 about that, but you've had a number of conversations with the
2 attorneys --

3 A Yes.

4 Q -- correct? You've been asked thousands of
5 questions over the last four and a half years?

6 A Yes.

7 Q Can you remember whether or not you answered --
8 or what your answer were to every one of those questions?

9 A No.

10 Q So since you don't know if you've ever told me
11 since the time Mr. Oram has crossed you has anybody asked you
12 what it is that you don't know if you've ever disclosed
13 before?

14 A No.

15 Q Okay. So neither myself, Ms. Weckerly, your
16 attorneys, Mr. Oram, Mr. Sgro, Mr. Langford, anybody's asked
17 this question?

18 A No.

19 Q Let me ask it then. What is it that you think
20 that you may not have told us before?

21 A That David had left the hat in the back of my
22 seat and I got rid of it.

23 Q And you don't recall whether or not you told us
24 that, correct?

25 A Right.

1 Q Okay. And I certainly didn't ask you about it,
2 correct?

3 A No, you didn't.

4 MR. ORAM: Objection. Leading. Correct?

5 THE COURT: That's true. Sustained.

6 BY MR. DIGIACOMO:

7 Q I don't want to give you the answer, so tell the
8 ladies and gentlemen of the jury where the hat that was in the
9 back of your car, where did you get rid of it?

10 A At the Texas.

11 Q Now, how did that hat wind up in the back of
12 your car?

13 A He left it there.

14 Q Who left it there?

15 A David.

16 Q So it was the hat that Mr. Burns was wearing
17 during the time period of this evening?

18 A Yes.

19 Q Okay. And you left that at -- or you threw that
20 out at the Texas Station?

21 A Yes.

22 Q There's some mention in your statements about,
23 Yes, he was wearing a hat, no, he wasn't wearing a hat, it
24 goes back and forth. At any point in time does anybody tell
25 Mr. Burns to take the hat off?

1 A I don't remember.

2 Q Do you know how the hat wound up in the back of
3 your car?

4 A Well, he left it in there.

5 Q Do you know if he took it off or it fell off?
6 That's what I'm asking you. Or do you just not know?

7 A I don't know. I didn't see.

8 Q How is it that you learned that the hat's in the
9 car?

10 A When I got to the Texas, I -- I checked the car
11 -- or I was looking in the back seat, you know, I didn't know
12 because he had mentioned that there was blood on him, and so I
13 was checking my car and I saw the hat there and I grabbed it
14 and threw it in one of the trash bins.

15 Q And as you sit here today, you don't recall if
16 you've ever told anybody from law enforcement, either myself
17 or the detectives, that particular fact?

18 A I remember telling you recently.

19 Q Let me ask just a couple other questions. There
20 were some questions about there not being blood in the car.
21 Do you remember Mr. Oram asking you those questions?

22 A Yes.

23 Q For a second assume Mr. Burns, Mr. Mason --
24 assume I'm not talking about them at all -- you're
25 acknowledging to this jury you drove your car to the scene of

1 this homicide; is that fair?

2 A Yes.

3 Q And whoever did the shooting got back into your
4 car, correct?

5 A Yes.

6 Q So whether or not it's Mr. Burns or not, whoever
7 that shooter is, if he had blood on him, if he would have
8 gotten in your car it would have been the victim's blood in
9 your car; would that be fair?

10 A Yes.

11 Q There's one other area that Mr. Oram kind of
12 asked you questions about. Did you say in your statement --
13 at the end of your statement that you actually picked Mr.
14 Mason and Mr. Burns up at Job-Loc's apartment. Do you
15 remember those questions?

16 A Yes, before the incident?

17 Q Yes.

18 A Yes.

19 Q Okay. And do you remember there being a
20 discussion back and forth between you and Mr. Oram as to
21 whether or not you told the police, eventually, that you
22 picked them up at Job's apartment?

23 A Yeah, I remember this.

24 Q As you sit here today, what's your recollection?
25 Did you tell the police that?

1 A I don't know.

2 Q Well, you sat through the interview yesterday,
3 do you remember what it said in the interview?

4 A I mean, we were here for so long, it's hard to
5 remember everything the last two days. There's just so much
6 information.

7 Q Would it refresh your recollection to look at
8 page 236 through 238 of your statement?

9 A Yes.

10 Q I want you to start -- just reading to yourself,
11 just start at Marty Wildemann, tell us how the conversation
12 went?

13 A Okay.

14 Q Okay? Just read to yourself and then read all
15 the way page 237, and then all the way through the answer that
16 I'm pointing to on line 238, it's about halfway down.

17 A Okay.

18 Q And just read that all to yourself.

19 A (Witness complied.) Okay.

20 Q After reading that, does that refresh your
21 recollection as to whether or not you told the police, towards
22 the end of your statement, after you finally disclosed that
23 you know who Job is, you told the police that you picked him
24 up from Job's apartment?

25 A Yes.

1 Q And did you?

2 A Yes, I did.

3 Q Mr. Oram asked you some questions about Defense
4 Exhibit M, which is -- let me just show you -- the letter
5 between -- from Mr. Thomas to you, correct?

6 A Yes.

7 Q Okay. And just so that we're clear, Mr. Thomas
8 is -- has a return address on this letter M and it's WVC --
9 WVDC 6404 9500 Etiwanda Ave. Rancho Cucamonga, California,
10 91739, and there -- it looks like there's an Inmate No.
11 associated with that?

12 A Yes.

13 Q Okay. And to your knowledge, when Mr. Thomas
14 wrote this letter to you was he incarcerated in the State of
15 California?

16 A Yes.

17 Q Okay. And there was a number of letters that
18 you wrote back and forth to Mr. Thomas?

19 A Yes.

20 Q Mr. Oram asked you to read the highlighted
21 portion of -- for this jury, I want you just to read from the
22 beginning of the letter and I want you to finish with -- "Pick
23 up a thang [sic]," you see where that "Thang" is kind of
24 written in there?

25 A Yes.

1 Q Read that whole -- up to, "Pick up a thang."

2 A To myself?

3 Q No. No, read it out loud to the jury.

4 A Oh. First of all, Ma, let me tell you I love
5 you and on my son, the bitch ain't pregnant. I stopped
6 fucking with her on the streets. You don't have to believe me
7 if you don't want to, but I'm giving you my word on my
8 grandfather. And for the record, I write you these letters
9 because I love you. You or the smoker bitch can't say nothing
10 about me. Ma, I'm going to always love you, even if the
11 smoker bitch told them I was there, she can't pick me out of
12 no lineup and even if she did, it's document saying my leg is
13 broke. I couldn't even walk or run.

14 From what you told me, Ma, it took -- I'm sorry --
15 From what you told me, Ma, it looked like the police played
16 you for information. You never been through this before, so
17 you don't know the games they play. As far as Wess go, he can
18 run off at the mouth and say what he want to say. He already
19 told me he gon [sic] tell the truth and that's that. G-Dogg
20 called him to come pick up a thang.

21 Q So let me just ask you a couple questions.

22 Mr. Thomas is telling you, You or the smoker kit --
23 bitch can't say nothing about me, right?

24 A Yes.

25 Q He tells you that his leg is broke and he

1 couldn't even walk or run?

2 A Yes.

3 Q Let me start with that. Was his leg broke?

4 A Yes, it was.

5 Q Could he walk or run?

6 A No.

7 Q And then he indicates something about, As -- as
8 for Wess, he can go run off at the mouth and say what he want
9 to say, right?

10 A Yes.

11 Q And Wess is -- is -- W-E-S-S is the way you knew
12 him as -- as the individual that -- is the person who showed
13 up at the apartment and took the gun from -- from Job-Loc?

14 A Yes.

15 Q And then he makes a statement in there about
16 what Wess is going to actually testify to, correct?

17 A Yes.

18 Q Now, that's the beginning of the letter. Let me
19 show you page 2, now. Read the highlighted portion that Mr.
20 Oram asked you to read previously to this jury.

21 A Again, out loud?

22 Q Yeah, out loud to the jury.

23 A Since you got your discovery -- since you got
24 your discovery, write me something brief on everybody that
25 said something.

1 Q So I -- I'm -- let me see if I got this
2 correctly. He's asking you for your discovery? Is that
3 the -- what you took this as?

4 A Yes.

5 Q Okay. Had you sent him any discovery or
6 information yet?

7 A No.

8 Q So the statements that he makes in the beginning
9 of this letter had to come from a different source than you?

10 A Yes.

11 Q All right. Lastly, Mr. Oram showed you a number
12 of pictures from --

13 MR. LANGFORD: Your Honor, can I see that picture?

14 THE COURT: Sure.

15 MR. LANGFORD: May we approach?

16 THE COURT: Certainly.

17 (Bench conference.)

18 MR. LANGFORD: Why is it relevant?

19 MR. DIGIACOMO: It's going to be very relevant.

20 THE COURT: I guess we'll find out.

21 MR. LANGFORD: [Inaudible.]

22 MS. WECKERLY: Well, what's the objection?

23 THE COURT: What's the objection?

24 MR. LANGFORD: What the objection is, is that it's
25 [inaudible] offer --

1 THE COURT: Was it in part of the discovery?

2 MR. LANGFORD: It's part of the discovery, yes. And
3 it's beyond the scope of [inaudible] --

4 THE COURT: No. No.

5 MR. DIGIACOMO: I didn't show her anything.

6 THE COURT: That's okay. That's okay.

7 MR. ORAM: I don't normally object for co-Defendant
8 and I haven't showed these photos to her, and from what I saw,
9 Mr. Langford asked her two questions. This has nothing to do
10 with my --

11 THE COURT: Well, I didn't read but we're going to do
12 it. Come on.

13 (End of bench conference.)

14 THE COURT: All right.

15 MR. DIGIACOMO: Thank you.

16 BY MR. DIGIACOMO:

17 Q Ma'am, I'm going to show you what's been
18 admitted -- or sorry, what's been marked as State's Proposed
19 Exhibit No. 288. These are one of the photos that's in the
20 package of the MySpace photos for Cali, right?

21 A Yes.

22 Q Okay. Who is Cali?

23 A Shawn.

24 Q Shawn who?

25 A Clinkscale.

1 Q Okay. Shawn have any brothers?

2 A Yes.

3 Q Okay. How many?

4 A I only remember one.

5 Q Okay. Do you know where that brother is
6 currently?

7 A I had received a letter from him, he was
8 incarcerated.

9 Q Okay. In the state of?

10 A California.

11 Q Okay. And do you know what his first name is?

12 A I don't remember.

13 Q What did they call -- what did they call Shawn's
14 brother; do you know? Do you remember?

15 A No, I don't remember.

16 Q Okay. But Shawn Clinkscale is -- he's in this
17 photograph; is that fair?

18 A Yes.

19 Q And he also goes by S-Loc?

20 A Yes.

21 Q In fact, one of the photographs Mr. Oram showed
22 you is the one that you start writing down names on that
23 videotape we watched --

24 A Yes.

25 Q -- correct? They showed you this photograph as

1 well during your interview, do you remember that?

2 A They showed me a lot of photos.

3 Q Okay. Do you recognize the individual who's
4 next to S-Loc in this photograph?

5 A Yes.

6 Q And who is that?

7 A Willie Mason.

8 Q Okay.

9 A G-Dogg.

10 Q And the title of --

11 MR. DIGIACOMO: -- well, I move to admit 288?

12 MR. LANGFORD: May I see it again, Your Honor.

13 Objection. Relevance.

14 THE COURT: Overruled. It will be received.

15 (State's Exhibit 288 admitted.)

16 MR. DIGIACOMO: May I publish, Your Honor?

17 THE COURT: Yes.

18 MR. DIGIACOMO: Can you put it on the overhead,
19 please?

20 THE CLERK: Okay. [Inaudible.]

21 MR. DIGIACOMO: Thank you, Judge. I pass the
22 witness.

23 MR. ORAM: Very briefly.

24 Was this admitted? Mr. DiGiacomo, was this --

25 MR. DIGIACOMO: It's your -- it's your exhibit that

1 you admitted.

2 MR. ORAM: No, but it's this.

3 MR. DIGIACOMO: You offered it. It was admitted.

4 MR. ORAM: [Inaudible.]

5 MR. DIGIACOMO: Oh, okay.

6 RECROSS-EXAMINATION

7 BY MR. ORAM:

8 Q That story about the hat, remember that?

9 A Yes.

10 Q If I understood you correctly, you told the
11 jury, right now when Mr. DiGiacomo was asking questions, that
12 you had told him that story just a few weeks ago?

13 A I don't know if it was a few weeks ago. I said
14 recently.

15 Q So recently -- well, there were only two
16 meetings with the District Attorney's Office, I think you
17 said?

18 A Yes. Recently in the last month or so, yes.

19 Q So it was the second meeting?

20 A I don't remember which one it was.

21 Q And Mr. DiGiacomo got up here and asked you
22 questions on direct examination on Wednesday; do you recall
23 that?

24 A Yes.

25 Q And that was never asked of you by Mr.

1 DiGiacomo?

2 A No.

3 Q And it's your testimony you had told him that,
4 right?

5 A About the hat?

6 Q Yes.

7 A Yes.

8 Q And you had never told the police this?

9 A No.

10 Q And you told it to him sometime, but he never
11 asked you on direct examination?

12 A On Wednesday, no.

13 MR. ORAM: Nothing further.

14 THE COURT: Mr. Langford?

15 MR. LANGFORD: Nothing, Your Honor.

16 THE COURT: All right. That will conclude the
17 examination of this witness. We have the jury room until 1:30
18 as I understand it; is that right?

19 THE MARSHAL: Yes, sir.

20 THE COURT: All right. We'll take a recess until
21 1:30.

22 During the recess you're again admonished that it's
23 your duty not to converse among yourselves or with anyone else
24 on any subject connected with this trial, or to read, watch,
25 or listen to any report of or commentary on the trial from any

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 77424

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions