

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
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1 medium of information including newspapers, television, or
2 radio, and you may not form or express an opinion on any
3 subject connected with this case until it is finally submitted
4 to you.

5 We'll be in recess until 1:30 this afternoon.

6 (Jury recessed at 12:06 p.m.)

7 (Outside the presence of the jury.)

8 THE COURT: All right. I'd like you back a few
9 minutes before 1:30, please.

10 MR. ORAM: Yes, thank you, Judge.

11 MR. DIGIACOMO: Are we going to go 1:30? I thought
12 you said 1:15.

13 THE COURT: The jurors got until 1:30, but I want
14 everybody back, ready to go because that other jury is going
15 to use -- going to kick them out, and I don't want it delayed.

16 MR. DIGIACOMO: Sure. We'll be ready.

17 THE COURT: All right.

18 MR. DIGIACOMO: Judge, we have just two witnesses
19 left for the day, so whenever we're done with them we're done
20 for the day. Because we didn't know how long --

21 THE COURT: That's fine.

22 MR. DIGIACOMO: -- they were going to take --

23 THE COURT: That's fine.

24 MR. DIGIACOMO: -- on Ms. Martinez. I know, you
25 would never admit to be unhappy but --

1 THE COURT: I'm not unhappy. I --

2 MR. DIGIACOMO: -- no, I know you'll be happy to
3 [inaudible].

4 THE COURT: -- I know, a little early on Friday
5 afternoon, that's all right by me.

6 Are we still looking to finish next Thursday for --
7 next Friday?

8 MS. WECKERLY: Your Honor, I think we'll go into
9 Monday, but not longer than that, and maybe only a half a day
10 Monday.

11 THE COURT: Do they know that?

12 MS. WECKERLY: The Defense?

13 THE COURT: Yeah.

14 MS. WECKERLY: I've told them --

15 THE COURT: They know --

16 MS. WECKERLY: -- that.

17 THE COURT: -- to be ready to start --

18 MS. WECKERLY: Yes. And I'll remind them after the
19 break.

20 MR. DIGIACOMO: I let Mr. Langford know that too
21 because he wanted me to let the jury know that we're -- we're
22 still -- we're still on schedule, despite our breaks.

23 (Court recessed at 12:07 p.m. until 1:23 p.m.)

24 (Outside the presence of the jury.)

25 THE COURT: Okay. On the record. Mr. Oram, you

1 said you wanted to say something on the record.

2 MR. ORAM: Yes, Your Honor. I believe that when
3 they call Donovan Rowland that they may elicit something
4 similar to what they elicited in front of the grand jury,
5 which I think is completely inadmissible pursuant to Crawford.
6 And that is the State and the defense have been given some
7 latitude with respect to co-conspirator hearsay statements
8 from Job-Loc.

9 But at one point Donovan Rowland, his -- they're
10 very close, Donovan Rowland and Job-Loc are very close. They
11 elicited that -- from Donovan Rowland at the grand jury that
12 while talking to Job-Loc, Job-Loc said that the two defendants
13 must have gone inside and gone crazy and then the shooting
14 occurred. That, to me, is a -- that's not a co-conspirator
15 statement. That's this man, Job-Loc, directly implicating
16 these two defendants without our right to confront.

17 Now, I do understand the prior statements that have
18 been made as to they're going over there, I'm involved, but
19 this seems like somebody saying I didn't do it, they did it,
20 or they're responsible, they're the shooters. And without the
21 right to confront him, he becomes the main accuser under the
22 Sixth Amendment to The United States Constitution.

23 I brought Crawford, and so that is the one limited
24 area as I have read in this entire case where I thought that
25 is a direct allegation that these two are guilty, they're

1 responsible, and Donovan and Job-Loc are eliminating
2 themselves and I don't get to cross-examination Job-Loc over
3 it.

4 MR. DiGIACOMO: I'll be very brief about this,
5 Judge. So you know the fact pattern here, the morning of the
6 homicide, Donovan Rowland, as you've heard, goes over to Job's
7 apartment. Job gives him the gun, tells him to hold onto
8 this, and then he takes it.

9 And what his testimony -- well, at least what his
10 statement to the police is, his statement to the police is
11 that later on that morning or the next morning, and it's not
12 real clear, he gets a phone call from Job. Job tells him
13 watch the news and call me back. He watches the news. He
14 sees the homicide. He calls Job back.

15 Job says to him basically it was a dope rip gone
16 bad, the crack whore set it up, Monica was driving, either
17 D-Shot or G-Dogg, he's not sure which one, went crazy. I need
18 you to get rid of that gun for me. You can sell it, you can
19 bury it, you can keep the money you get from it, but you need
20 to get rid of that gun. Clearly that's a statement of
21 co-conspirator in the course or in furtherance of the
22 conspiracy because he's trying to get rid of the murder
23 weapon.

24 And so to the extent that there's no Crawford
25 problem because, one, Crawford requires there to be

1 testimonial, which means the person speaking expects it to be
2 utilized in a courtroom. He's telling -- and the reason it's
3 outside of Crawford and why the Supreme Court says it's
4 outside of Crawford is because he's making these statements not for
5 a testimonial purpose. He's making the statements for what?
6 To get rid of the weapon to conceal the murder and, therefore,
7 they're clearly outside of Crawford and they're also
8 co-conspirator statements and thus admissible.

9 MR. ORAM: Your Honor, that -- that's a very nice
10 rendition of it, but there is something huge that Mr.
11 DiGiacomo is not telling us, or he's saying, but it's a big
12 point that's being missed. And that is if he's trying to
13 bring up that Donovan is supposed to get rid of the gun, fine,
14 I have no problem with that. If they want to elicit that
15 information, fine. The problem I'm saying is that very
16 limited statement that these two defendants, one of them went
17 crazy.

18 THE COURT: That's why he wants to get rid of the
19 gun. No, I agree with the State on this. I'm going to
20 overrule the objection.

21 MR. ORAM: Yes, Your Honor.

22 THE COURT: All right. Off the record until the
23 jury comes in.

24 (Pause in the proceedings.)

25 THE COURT: All right. Now we're back on the

1 record.

2 MR. LANGFORD: Your Honor, I need to move for a
3 severance. I was just informed by counsel for Mr. Burns that
4 Donovan Rowland who is about to testify, and you've heard a
5 bit about what he's going to testify to about getting rid of
6 the gun, that that's what he was instructed.

7 He is now going to say because he told this to Mr.
8 Sgro's investigator two days ago that, in fact, that the
9 shooter was G-Dogg, my client, Mr. Mason, and not Mr. Burns,
10 and that he went crazy and he's actually the one who is now
11 the shooter. And that's going to be Mr. Sgro's position to
12 say that based on Donovan Rowland's testimony that his client
13 is not the shooter, my client is.

14 THE COURT: Well, how would this gentleman know
15 because he wasn't there?

16 MR. SGRO: Job-Loc. So --

17 THE COURT: How -- Job-Loc wasn't there.

18 MR. SGRO: Well, now, to be fair, Your Honor, I came
19 in at the tail end of the argument, so I'm trying to put
20 together what happened in my absence.

21 THE COURT: I can't let him testify to that.

22 MR. SGRO: Well, Your Honor, it's --

23 MR. DiGIACOMO: Well, he can testify to -- as long
24 as what he testifies to is the portion, which we've already
25 discussed where he's being told to get away from the gun,

1 there's a statement where he says I don't know if it's G-Dogg
2 or D-Shot. If he has other information as it relates to he's
3 had subsequent conversations and G-Dogg is the shooter, if
4 there's a foundation for that, this is a trial about the
5 truth.

6 If there's some evidence that G-Dogg is the shooter
7 and D-Shot is the shooter, it doesn't matter. But he won't be
8 testifying at least on our direct as it relates to that, so
9 I'm not really sure what the foundational predicate would be
10 for --

11 THE COURT: Well --

12 MR. DiGIACOMO: -- what he's going to now testify.

13 THE COURT: -- it's got to be something within his
14 personal knowledge. Percipient --

15 MR. ORAM: Judge, my understanding as what he's just
16 telling us out here is the State's going to elicit what the --
17 what we've just argued about, what did Job-Loc tell you, and
18 he's going to say Job-Loc told me it's G-Dogg and not D-Shot.
19 So what was just found to be admissible --

20 THE COURT: It's inconsistent with what the State
21 tells me that he's going to say.

22 MR. SGRO: That's right. That's right.

23 MR. DiGIACOMO: Well, it's inconsistent with his
24 statement where he says I don't know if it's G-Dogg or D-Shot,
25 heck, it could even be Monica.

1 THE COURT: He wouldn't know. He wasn't there.

2 MS. WECKERLY: Right.

3 MR. DiGIACOMO: Correct.

4 MR. SGRO: But the -- but the ruling has got to be
5 whether or not it's admissible what Job-Loc told him. If
6 they're --

7 THE COURT: I don't want to get in what he thinks
8 happened because --

9 MR. SGRO: No. No --

10 MR. DiGIACOMO: No, just merely the statements that
11 Job-Loc made to him when he told him to get rid of the gun.

12 MR. SGRO: Here's --

13 MR. DiGIACOMO: That comes in. If they want to
14 cross him on you're changing your story now and you're saying
15 Job-Loc said to you to get rid of the gun, hey, G-Dogg fired
16 the gun, get rid of it, that would be admissible as far as I'm
17 concerned. If they're going to ask him that, that's
18 cross-examination that they're entitled to do. The statement
19 he gave --

20 THE COURT: We'll worry about it when we get there,
21 but I -- you be careful about this because I don't want --
22 that would be inadmissible because it has nothing to do with
23 the conspiracy.

24 MR. SGRO: It -- Your Honor, if this -- if the
25 ruling is what did Job-Loc tell you and the preface is we're

1 letting in what Job-Loc said or did because of the fact that
2 he's a co-conspirator, if the ruling -- I didn't --

3 THE COURT: Job-Loc's the co-conspirator.

4 MR. SGRO: Right. So in its simplest form --

5 THE COURT: And so was what's his name in this?

6 MR. SGRO: Donovan Rowland.

7 THE COURT: Mr. Rowland?

8 MR. SGRO: Yes, sir.

9 THE COURT: Is a -- is a co-conspirator if he was
10 getting rid of the gun for them.

11 MR. SGRO: Of course. Of course.

12 THE COURT: So, I mean, and he's -- apparently
13 Job-Loc, Mr. Thomas, is telling Mr. Rowland to get rid of the
14 gun.

15 MR. SGRO: Right.

16 THE COURT: So that statement is going to come in.

17 MR. SGRO: Right. Now, if we're going to -- so
18 here's what -- here's, I guess, what -- and maybe we're just
19 talking past each other. What we need guidance on is this.
20 Is the ruling -- is the ruling that whatever Job-Loc told him
21 in conjunction with get rid of the gun, whether it's I don't
22 know if it was one shooter or another, or what he told us,
23 which is G-Dogg did it, okay.

24 If any of those statements are coming in, we had to
25 alert Mr. Langford that based on our interview he's going to

1 say G-Dogg did it and -- and David Burns had nothing to do
2 with it at all. So, again, because I came in late, my under
3 -- what I heard was the State's going to get into -- and
4 correct me if I'm wrong, the State is going to get into what
5 Job-Loc said to Donovan Rowland. If that's the case --

6 THE COURT: He's getting it in because it was part
7 of a sentence that says get rid of the gun. Now, maybe if we
8 can exclude the part about who did what, which may not be as
9 important as just --

10 MR. SGRO: Exactly.

11 THE COURT: -- get rid of the gun.

12 MR. DiGIACOMO: Well, but he says they did it, and
13 he says I don't know if it's G-Dogg, but he says the crack
14 whore set it up, Monica drove these two individuals, and
15 someone went crazy, I don't remember if it's G-Dogg or it's
16 D-Shot or Monica, somebody went crazy, you need to get rid of
17 the gun. The -- the -- that --

18 THE COURT: Well, why they --

19 MR. DiGIACOMO: -- statement --

20 THE COURT: -- why they needed to get rid of the gun
21 is important.

22 MR. DiGIACOMO: -- is important to me.

23 MR. SGRO: Right. So here is the difficulty, Your
24 Honor. Your Honor is -- is making rulings based on what we're
25 telling you is going to come from the witness stand and I --

1 and the difficulty, Your Honor, is that these witnesses that
2 we have gone through, one a couple days and now the next one,
3 have changed their stories several times. And so there is no
4 uniformity for us to be able to tell you what they're going to
5 say.

6 The only proviso is this. If the State elicits
7 Job-Loc told me one of these two defendants here to my left
8 did it, right, we get up on cross and say we just interviewed
9 you and you just told us that D-Shot had nothing to do with it
10 and G-Dogg did it. And by the way, I walked Mr. Langford and
11 Mr. Oram outside and in the presence not only of them but of
12 the DA investigator who is outside he said, yeah, that's --
13 that's my recollection. So -- so that's the recollection.

14 Now, in the next ten minutes, Your Honor, having
15 dealt with these folks for awhile, in the next ten minutes he
16 might change his mind again.

17 THE COURT: I --

18 MR. SGRO: All I'm telling you is --

19 THE COURT: I can't help what he's --

20 MR. SGRO: Right.

21 THE COURT: -- going to testify to.

22 MR. SGRO: But that -- that's going to create --

23 THE COURT: You can cross him on that.

24 MR. SGRO: That's -- once I cross him, which we
25 would be entitled to do, the State concedes --

1 THE COURT: You're entitled to do that.

2 MR. SGRO: -- the State concedes we're entitled to
3 do that. Then we kind of punt over to Mr. Langford who's got
4 a severance problem because --

5 MR. DiGIACOMO: Why does he have a severance
6 problem?

7 MR. SGRO: Well, I don't want to speak for a very
8 competent and capable attorney, but I would say he wouldn't
9 elicit that on cross and he's fine with the shooter was one or
10 the other. In other words, I'm the one that's going to sort
11 of sharpen the focus. And without me here, without me here,
12 the State doesn't know about that statement and it never comes
13 into evidence. And I would think it's pretty prejudicial to
14 Mr. Mason. So --

15 MR. DiGIACOMO: But it comes in at both trials.

16 THE COURT: You're doing --

17 MR. DiGIACOMO: Even in a separate trial --

18 THE COURT: You're doing an awful lot of argument on
19 a motion that has nothing to do with you.

20 MR. ORAM: Judge, let -- Judge, can I say something?
21 I think the Court has ruled, as I understood it, that there's
22 going to be testimony, Donovan is going to say I had this
23 conversation with Job-Loc about get rid of the gun. The State
24 is saying we want to know why. Are my -- okay. And now we're
25 going to hear what this guy has to say. I think the Court's

1 ruling, let's hear what he has to say.

2 THE COURT: Well, I've got to hear what he has to
3 say.

4 MR. SGRO: Okay.

5 THE COURT: We'll worry --

6 MR. ORAM: Submit it.

7 THE COURT: -- about it then.

8 MR. SGRO: Thank you, sir.

9 MR. DiGIACOMO: Thank you.

10 THE COURT: At least at this point, the motion to
11 sever is denied.

12 MR. DiGIACOMO: Thank you, Judge.

13 THE COURT: Are we ready to bring the jury in?

14 MR. DiGIACOMO: We are.

15 (In the presence of the jury.)

16 THE COURT: All right. State versus Burns and
17 Mason. The record will reflect the presence of the
18 defendants, their counsel, the District Attorneys, and all
19 members of the jury.

20 All right. You can call your next witness.

21 MR. DiGIACOMO: Donovan Rowland.

22 DONOVON ROWLAND, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state your
24 name and spell your first and last name for the record.

25 THE WITNESS: Donovan Rowland; D-O-N-O-V-O-N

1 R-O-W-L-A-N-D.

2 MR. DiGIACOMO: May I inquire, Judge?

3 THE COURT: Yes.

4 DIRECT EXAMINATION

5 BY MR. DiGIACOMO:

6 Q Mr. Rowland, you don't have to tell us what
7 state, but do you currently live in the state of Nevada?

8 A No.

9 Q When did you move?

10 A A couple months ago.

11 Q And as you sit here today, in the last ten
12 years have you, and I apologize I have to ask this, have you
13 picked up a felony conviction?

14 A No.

15 Q You're not --

16 A Yes. Actually, yes. Yes.

17 Q Aren't you convicted of carrying a concealed
18 weapon in --

19 A Yes.

20 Q -- 2011?

21 A Yes.

22 Q And you're currently on probation for that?

23 A No.

24 Q You're off probation now?

25 A Yes.

1 Q Okay. I want to direct your attention back to
2 -- well, let me ask you this. How old are you?

3 A 23.

4 Q 23. So I want to direct your attention back
5 to when you were about 18, 19 years old. Sometime in the
6 spring or summer of 2010, did you meet an individual that
7 identified themselves to you as Slick?

8 A Yes.

9 Q How did you meet Slick?

10 A From a friend. From a friend.

11 Q From a friend?

12 A Yeah.

13 Q And where did you meet Slick?

14 A Like Jones area.

15 Q Jones area?

16 A Uh-huh.

17 Q And eventually did you form a friendship with
18 Slick?

19 A Yes.

20 Q Okay. Have you ever heard Slick go by the
21 name Job?

22 A No.

23 Q At some point in time did the police show you
24 a photograph of Slick when you were interviewed in 2010?

25 A Yes.

1 Q And do you identify that person as the person
2 you know as Slick?

3 A Yes.

4 Q At the time -- at some point in time in 2010
5 does Slick wind up getting an injury?

6 A Yes.

7 Q What happened?

8 A We were at Walmart --

9 Q And --

10 A -- and --

11 Q -- how did he hurt himself?

12 A I think jumping a wall.

13 Q Okay. And what happened? What part of his
14 body was injured?

15 A His leg.

16 Q And did he have to have some medical attention
17 as it relates to that?

18 A Yes.

19 Q The ambulance come that day?

20 A Yes.

21 Q Okay. And he was taken by ambulance?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes. Correct.

25 Q I'm sorry. She's going to type down

1 everything we say, so uh-huhs and huh-uhs are a problem for
2 her, okay?

3 A All right.

4 Q So if I -- were you present when Job hurt his
5 leg?

6 A Yes.

7 Q Okay.

8 A Well, no, not actually. I was already
9 stopped, so I wasn't in the actual spot where he did.

10 Q Were you part of the situation that --

11 A Yes.

12 Q -- caused Slick to run and ultimately --

13 A Yes.

14 Q -- hurt himself?

15 A Yes.

16 Q All right. Let me -- well, after he hurt
17 himself, where would -- what would Job -- I'm sorry, Slick
18 normally do?

19 A I have no idea, to be honest.

20 Q How often would you see Slick after he hurt
21 himself?

22 A A couple of times, probably a week or so
23 later.

24 Q And then does there come a point in time when
25 you start seeing him pretty much on a daily basis?

1 A Yes.

2 Q And where would you see him at?

3 A The apartment off of Torrey Pines.

4 Q Do you remember the name of the apartment
5 complex?

6 A No.

7 Q If you've previously said the Brittany Pines
8 Apartments, does that sound right to you?

9 A Yeah, that's about right.

10 Q Okay. Did he have an upstairs or a downstairs
11 apartment?

12 A Up.

13 Q And what kind of -- did he have any sort of
14 medical device that he needed for his leg?

15 A I don't recall.

16 Q Well, how did he get around?

17 A Crutches.

18 Q Crutches? Okay. When you would see him on
19 the day to day basis, what was the purpose of you and him
20 having contact back then?

21 A He was just cool. I met him. He was all
22 right. We smoked something.

23 Q What did you smoke?

24 A Embalming fluid.

25 Q You smoked embalming fluid?

1 A Yeah.

2 Q How about marijuana?

3 A Yeah, that too.

4 Q That too?

5 A Yeah.

6 Q What does smoking embalming fluid do for you?

7 A A whole lot.

8 Q Okay.

9 MR. SGRO: What did he say? I missed it.

10 MR. DiGIACOMO: Not a whole lot.

11 THE COURT: I've tried a lot of cases in my life.

12 I've never had an embalming fluid case.

13 BY MR. DiGIACOMO:

14 Q Okay. Did Job have a girlfriend?

15 A Yes. Yes.

16 Q You sure?

17 A Yeah.

18 Q Okay.

19 A If you would --

20 Q What was --

21 A -- consider it that.

22 Q Do you know what her name was?

23 A No.

24 Q Do you remember -- well, had you ever been to
25 her house before?

1 A Yes.

2 Q Did you meet her children?

3 A Yes.

4 Q Did you -- did you text with some of her kids
5 at some point in time?

6 A Yeah.

7 Q Which one?

8 A Tyler.

9 Q The daughter?

10 A Yeah.

11 Q Okay. Can you describe his girlfriend for me
12 if you don't remember her name?

13 A Mexican lady, probably like 5'6, 5'7.

14 Q You've previously described her as Monica.
15 Does that sound right to you?

16 A Yeah, that's about right.

17 Q At some point in time do you meet some of
18 Job's friends over at Monica's house?

19 A Yes.

20 Q Okay. Who do you meet?

21 A G-Dogg and someone else. I can't remember the
22 name.

23 Q Okay. So you meet G-Dogg. How many times do
24 you think you've seen G-Dogg in your life?

25 A Probably about like ten.

1 Q Ten times?

2 A Yeah.

3 Q Okay. And in relation -- do you know what
4 you're here to testify about, the incident you're here to
5 testify about?

6 A Yes.

7 Q Okay. How long prior to the incident you're
8 here to testify about did you first meet G-Dogg?

9 A Probably like a week or two.

10 Q A week or two?

11 A Yeah.

12 Q And where did you -- where did you first meet
13 him at?

14 A I don't recall. I don't recall where I first
15 met him.

16 Q Did there come a point in time when you were
17 over at Monica's house and G-Dogg was there with Job?

18 A Yes.

19 Q Or, sorry, Slick.

20 A Yes.

21 Q Do you now know that Slick is also Job-Loc now
22 that we're four and a half years later?

23 A Yes.

24 Q Okay. So do you know that his true name is
25 Jerome Thomas now?

1 A Yes.

2 Q Okay. So if I use the term Jerome Thomas with
3 you or Job-Loc, you know who I'm talking about?

4 A Yes.

5 Q Okay. You said that there was somebody else
6 over at the -- at the house when you meet G-Dogg. Did you
7 actually see him at that time you saw him in the -- that you
8 were over at the house?

9 A Yes.

10 Q Okay. And do you remember anything about him,
11 his nickname, anything else like that?

12 A No.

13 Q Does there come a point in time when you go
14 over to Job's house early in the morning, or Job's apartment
15 early in the morning, and you get a weapon from him?

16 A Yes.

17 Q Okay. So I want to talk about that morning.
18 Where were you the night before, do you recall?

19 A No, I don't recall.

20 Q How about do you recall what time it is that
21 you wound up going over to Job's place?

22 A Probably about 3:00 in the morning, 4:00 in
23 the morning.

24 Q Was it light or dark outside?

25 A Dark.

1 Q And when you get over to Job's apartment, how
2 do you get in the apartment?

3 A Knock on the door.

4 Q Was there something unusual about the way the
5 door was set up on that occasion?

6 A I don't remember.

7 Q Who opened the door?

8 A Monica.

9 Q All right. And when Monica opened the door,
10 who else was present inside the apartment?

11 A Job and G-Dogg and someone else. I really
12 couldn't tell.

13 Q The one person that you really couldn't tell
14 who that was, where was he in the apartment when you were
15 there?

16 A The kitchen.

17 Q Okay. And do you remember whether or not he
18 had a shirt on or not?

19 A I don't remember.

20 Q When you first come inside the apartment, what
21 are you -- well, what happens?

22 A I talk for a little bit, and then I get the
23 firearm and then I leave.

24 Q Who do you talk to?

25 A Job.

1 Q When you -- when you first come in you said
2 that -- well, you get the firearm and then you leave. When
3 you first come in, is Job doing anything with that firearm?

4 A No.

5 Q How is it that you wound up getting the
6 firearm?

7 A I don't remember, actually, to be honest.

8 Q Okay. But you wind up leaving that apartment
9 with that firearm?

10 A Yes.

11 Q Do you remember anything about the firearm?

12 A No.

13 Q Do you remember if it was a semi-automatic or
14 a revolver?

15 A Revolver, yes.

16 Q Okay. Do you remember the caliber?

17 A No.

18 Q Was the gun loaded or unloaded when you
19 received it?

20 A Unloaded?

21 Q You ask me like that's a question. Do you
22 remember or not remember?

23 A Unloaded, if I recall. Unloaded.

24 Q And what do you do with the gun?

25 A I take it with me, and that was it.

1 Q Does there come a point in time when Job calls
2 you about that weapon?

3 A Yes.

4 Q Okay. And does he ask you to do something
5 with the weapon?

6 A Yes, but never got a chance to.

7 Q What is it that he asked you to do?

8 A To something -- something. I can't remember
9 what he said to do with it, but he told me to do something
10 with it.

11 Q Okay. Well, what do you mean like do
12 something with it?

13 A I don't recall.

14 Q Okay. Do you recall what it is that he told
15 you was the reason you had to do something with it?

16 A Because it was used to shoot some mother and
17 her daughter.

18 Q Okay. Do you remember anything else that he
19 told you about that situation when he was asking you to do
20 something with the gun?

21 A No.

22 Q Now, eventually the police find you in -- I
23 think it's August 19th of 2010. Do you remember coming into
24 contact with the police?

25 A Yes.

1 Q And you were -- well, were you present with
2 your father when you get contacted?

3 A Yes.

4 Q And eventually do you, after having a
5 conversation with the police, do you agree to go down to the
6 police station and give a tape recorded interview?

7 A Yes.

8 Q Since August 19th of 2010, have you seen that
9 interview?

10 A Yes.

11 Q When did you see it?

12 A About a month ago.

13 Q About a month ago?

14 A Yeah.

15 Q Who showed it to you?

16 A No one. It was e-mailed to me.

17 Q From who?

18 A From the District Attorney's office.

19 MR. DiGIACOMO: May I approach, Judge?

20 THE COURT: Yes. What is that?

21 MR. DiGIACOMO: It's a copy of his statement.

22 THE COURT: Okay.

23 BY MR. DiGIACOMO:

24 Q Sir, I want you to look at that and tell me if
25 that appears to be a copy of the statement that you read.

1 A Yes.

2 Q Now, let me ask a couple questions about that.

3 Were -- at the time that the police contact you, you would
4 agree with me that's much closer in time than it is today?

5 A Yes.

6 Q And were you trying to be as truthful as
7 possible to the police when you gave that statement?

8 A Yes.

9 Q Okay. I've asked you a bunch of questions
10 where you said you don't remember. If you do remember in that
11 statement, can we take that as being truthful?

12 A Yes.

13 Q Okay. So if it's in the statement, it's
14 likely to be true, is that fair?

15 A Yes.

16 Q Okay. Let me ask you -- I'm going to ask you
17 to turn to a couple pages. Well, let me ask you this, first
18 of all. Did you ever play with the gun after Job gave it to
19 you?

20 A I don't recall.

21 Q Okay. Turn to page 8 and 9 in that statement.
22 Turn to page 8. And just read it to yourself.

23 A Yes, I recall off of this. Yes.

24 Q Okay. After reading that, does that refresh
25 your recollection?

1 A Yes.

2 Q Okay. So did you play with that gun after you
3 received it?

4 A Yes.

5 Q And does it also refresh your recollection
6 that the gun was empty when you received it?

7 A Yes.

8 MR. ORAM: Judge, he testified it was empty. It's
9 not inconsistent.

10 THE COURT: He said it was -- he said it was empty.

11 MR. ORAM: Right. Well, it's not inconsistent. In
12 other words, you refresh with --

13 THE COURT: Well, he said he didn't remember if he
14 had played with it. Okay. I see what you're saying.

15 MR. DiGIACOMO: May I proceed?

16 THE COURT: Technically it didn't refresh his
17 recollection as to whether the gun was empty.

18 MR. DiGIACOMO: Okay.

19 THE COURT: Let's go on.

20 MR. DiGIACOMO: Thank you.

21 BY MR. DiGIACOMO:

22 Q Do you remember what Job's phone number was
23 back on that time period?

24 A No.

25 Q I can't imagine you do. Why don't you turn to

1 page 18.

2 A It's on here, but I don't remember. I really
3 don't remember.

4 Q Why don't you just read to the ladies and
5 gentlemen of the jury what that number is.

6 A 510 -- well, 512-629-0041.

7 Q Let me ask you this question. Does it --
8 well, before I go to the next portion of the statement, do you
9 recall whether or not Job could physically do anything like
10 walk or run or do anything else like that?

11 A No.

12 Q You don't recall or --

13 A He couldn't.

14 Q -- or he couldn't?

15 A He couldn't.

16 Q He couldn't. Let me -- did you like Monica,
17 Job's girlfriend?

18 A As far as I could remember, yes.

19 Q Let me put it the other way. Did you have an
20 impression as to whether or not she liked you?

21 A I don't remember. I -- I doubt it.

22 Q You doubt it?

23 A I doubt it.

24 Q Did -- did Job have a car?

25 A No.

1 Q All right. Who would drive Job when he had to
2 go somewhere?

3 A Monica.

4 Q You indicated that you saw G-Dogg at the
5 apartment and that -- or, sorry, at Monica's and that there's
6 a second individual you don't know that you saw at the
7 apartment that morning. Do you remember --

8 A Yes.

9 Q -- saying that? Okay. Do you recall at all
10 what that guy's name or nickname was?

11 A No.

12 Q Okay. Turn to page 28.

13 MR. ORAM: What was the question, Counsel?

14 MR. DiGIACOMO: Does he recall the nickname of the
15 other individual who he didn't -- who he doesn't remember what
16 his name is.

17 MR. ORAM: That he -- the individual that he did not
18 see there?

19 THE COURT: No.

20 MR. ORAM: Is that what you're asking

21 MR. DiGIACOMO: No, he said he --

22 THE COURT: There was another individual --

23 MR. DiGIACOMO: -- saw him at the apartment.

24 THE COURT: -- that he said he saw there, but he
25 didn't remember his name.

1 MR. ORAM: Well, if he's referring to page 28, he
2 says he didn't see this individual.

3 MR. DiGIACOMO: He didn't see him at the house. He
4 saw him at the apartment, Counsel.

5 MR. ORAM: Judge.

6 THE WITNESS: Yeah, I don't remember this. I don't
7 remember.

8 BY MR. DiGIACOMO:

9 Q Do you remember at least telling the police
10 the nickname for the individual who --

11 A Yes.

12 Q -- who was with G-Dogg?

13 A Yes.

14 Q And what nickname did you give?

15 A D-Shot or D-Shock.

16 Q Okay. Do you remember telling the police what
17 your phone number was back then?

18 A Oh, no.

19 Q Do you remember what it was back then?

20 A No.

21 Q Okay. Turn to page 35.

22 A I don't remember that number.

23 Q Okay. Is that number -- do you reference your
24 phone number back then?

25 A Possibility. I've had a lot of numbers, so

1 it's possible, yes.

2 Q Did you have more than one number back then?

3 A No.

4 Q Okay. What number do you tell the police is
5 your number back then?

6 A 788-4584.

7 Q And I'm assuming since you were in Las Vegas
8 that's a 702 number?

9 A Yes.

10 Q Okay. Do you remember the number 788-4513?

11 A No.

12 Q Okay. You indicated that you don't remember
13 there being anything unusual about the door when you arrive
14 that morning at the apartment. Do you remember --

15 A Yes.

16 Q -- testifying to that? Okay. Why don't you
17 turn to page 37 and read that to yourself.

18 A I don't remember, but --

19 Q Does that refresh your recollection at all, or
20 is that --

21 A A little, but it's --

22 Q -- you don't have a memory?

23 A Yeah, a little, but it's been a long time.

24 Q But you already said that you -- you tried to
25 tell the police the truth, so if it's in here that that --

1 A Yes.

2 Q -- would be an accurate statement?

3 A Yes.

4 Q Okay. Why don't you go ahead and read -- I'll
5 read the questions, you read the answers. Well, it starts
6 with an okay, so read your answer.

7 MR. DiGIACOMO: Middle of the page, counsel.

8 BY MR. DiGIACOMO:

9 Q At answer.

10 A And then so I get out the car, walk through
11 front gate, go past the pool, go up the stairs, knock on the
12 door. G-Dogg answers. And it's a chair and like a box
13 blocking the door like it was barricaded. And then I come in,
14 there he Slick was cleaning the gun, and then we sit there. I
15 sat there for a minute, we smoking, and he's telling me what's
16 going on.

17 Q And the detective says, okay, hold on a
18 second. And you say?

19 A What, what happened?

20 Q And then they confirm with you, so G-Dogg
21 opens the door and there's some box and a chair. And you
22 answer yeah.

23 A Yes.

24 Q And then you answer?

25 A And it -- like it was barricaded, actually.

1 Q And they ask you, so you had to move it to
2 open the door all the way, and your answer is?

3 A Yes.

4 Q You even describe the box four -- four answers
5 down. What did you describe the box as?

6 A It's like a red, white, and black box.

7 Q Okay. And then they said, the question, a big
8 long one? And your was?

9 A It looked like speakers.

10 Q If you turn -- I think I just turned to page
11 38; right? Are you on page 38 right now?

12 A Yes.

13 Q Okay. I want you to read the rest of 38 to
14 yourself briefly, and then I'm going to turn to page 39.

15 MR. ORAM: Judge, is that a -- that's not refreshing
16 his memory. If there's a question --

17 THE COURT: It doesn't sound like he's got something
18 that he has forgotten about that he's about to have his memory
19 refreshed on.

20 MR. DiGIACOMO: Well, he already said that he
21 doesn't remember Slick cleaning the gun, and so I was going to
22 have him finish this for context, and then I was going to ask
23 him a question so I can turn him to page 39, Judge.

24 THE COURT: It is true that he didn't remember Slick
25 cleaning the gun.

1 MR. DiGIACOMO: Correct.

2 THE COURT: Is this --

3 MR. DiGIACOMO: That's where I'm --

4 THE COURT: -- about that?

5 MR. DiGIACOMO: Yes, it is.

6 THE COURT: Okay. Then I'll let him read it.

7 BY MR. DiGIACOMO:

8 Q Have you finished page 38?

9 A Yes.

10 Q Okay. Now, I want you to turn to page 39. Do
11 you remember testifying that you didn't remember Slick
12 cleaning the gun?

13 A Yes.

14 Q Okay. Do you remember what Monica was doing
15 when you arrived at the apartment?

16 MR. ORAM: I thought he was --

17 THE WITNESS: No.

18 MR. ORAM: -- refreshing his memory for cleaning of
19 the gun and that that's what he's reading. But that's not
20 what's on page 39 that I --

21 THE COURT: I understand.

22 BY MR. DiGIACOMO:

23 Q Do you remember Monica sleeping when you
24 arrived?

25 A No.

1 Q Okay. Do you remember where D-Shot was in the
2 house, or in the apartment?

3 A The kitchen.

4 Q Read page 39 to yourself for a second.

5 A Yeah.

6 Q Are you finished?

7 A Yes.

8 Q Okay. Now, does that refresh your
9 recollection that Monica was laying on the floor?

10 A No.

11 Q Okay. But that's what it says, is that fair?

12 A Yes.

13 Q Okay. So you told the police, anyway, that
14 Monica is laying on the floor and that D-Shot or D-Shock or
15 whatever his name is is in the kitchen?

16 A Yes.

17 MR. ORAM: Judge, he's leaving out the next part
18 where he says I can't see it. So I don't know how he leaves
19 that out and says that implies that he's --

20 THE COURT: He's entitled to have parts that are
21 consistent.

22 MR. DiGIACOMO: I can -- it says is in the kitchen
23 doing something. Question, what's he doing in the kitchen?
24 Answer, I don't know. I can't see and it's a little thing and
25 it wasn't really paying attention to him.

1 MR. ORAM: Correct.

2 THE COURT: Okay.

3 MR. DiGIACOMO: So he sees him. He just doesn't
4 know what he's doing.

5 THE COURT: Okay.

6 BY MR. DiGIACOMO:

7 Q Now, the bottom of page 39 they ask you -- you
8 mentioned a gun. And now I want you to read to yourself, see
9 if that refreshes your recollection as it relates to the gun.

10 A No, I don't recall.

11 Q Would you agree with me that you tell the
12 police that when you come through the door, Slick is cleaning
13 the gun with some short of sheet?

14 A Yes.

15 Q Okay. Do you remember the detailed
16 description you gave of the interior of the apartment?

17 A No.

18 Q Okay. So I want you to read from the
19 answer --

20 MR. DiGIACOMO: In the middle of page 41, counsel.

21 BY MR. DiGIACOMO:

22 Q -- to -- well, just read until you finish the
23 description, which I think is about a page and a half. So
24 start there and just read to yourself.

25 A [Witness complied].

1 Q Did you finish your -- the description of the
2 apartment?

3 A Yes.

4 Q Now, did that refresh your recollection of
5 exactly what the apartment looked like inside?

6 A No.

7 Q No, okay. That's what I thought. So here's
8 what I'm going to do. It starts off Marty Wildemann --

9 MR. DiGIACOMO: Counsel, third Marty Wildemann.
10 BY MR. DiGIACOMO:

11 Q I'll read you the questions. Right in the
12 living room? Answer --

13 MR. ORAM: Judge --

14 THE WITNESS: Right in the living room.

15 MR. ORAM: -- I just want the record to reflect I
16 don't mind that he does it because it sounds like it's
17 foundational, but this is improper normally and I want the
18 record to reflect that I recognize that. I'll let him do it.

19 THE COURT: Well, if you're objecting, I'll sustain
20 it.

21 MR. DiGIACOMO: Well, it's past recollection
22 recorded. He can read the statement. He says it's true. He
23 doesn't remember it. It's a past recollection recorded.

24 MR. ORAM: He -- he --

25 MR. DiGIACOMO: And he can read in the statement --

1 THE COURT: I don't know --

2 MR. DiGIACOMO: -- to the record.

3 THE COURT: -- that qualifies as past recollection
4 recorded.

5 MR. DiGIACOMO: It does. That's the -- as long as
6 he says what he told the police was true, it was closer in
7 time to when the time occurred and he has no memory of it now,
8 then it's past recollection recorded.

9 MR. ORAM: No, I -- I disagree. I think he's asked
10 him to refresh his memory, he can't be refreshed, and so I
11 leave it to the Court's discretion.

12 THE COURT: Well, this -- this part I don't care
13 about. Go ahead and do it.

14 MR. DiGIACOMO: Okay.

15 BY MR. DiGIACOMO:

16 Q I think you -- your answer was right in the
17 living room. So the next question. Was there -- was there --
18 sorry. Sleeping bag in there, too? Did you see? And what's
19 your answer?

20 A All right. The setup from the last time I was
21 there when I come in it's the boxes, the chair. When you look
22 to the right it's like a long chair that you can lay on, lay
23 like one of those outside chairs that you could lay back.

24 Q And then the detective says, the gravity
25 chairs; right? And then your answer?

1 A Yes, one of those. And then Monica is on the
2 floor, and then it's like another chair that Slick is sitting
3 on. It's like a metal -- it's like a metal -- the -- it's
4 just like that you can lean back like this and just sit there
5 regular.

6 Q The detective says, right. And then you go on
7 to say?

8 A And then there was like a bag or something
9 like a sleeping bag right here.

10 Q The detective says, okay. And you say?

11 A Towards where you turn on the air and right
12 here is the kitchen. And it was like the sheets and there was
13 a pair of pants or something on that -- on that gravity chair.
14 And then it was a pair of shorts, clothes by the -- clothes by
15 the window and the door, the patio door.

16 Q The detective says, you've got a good memory,
17 Donovan. Good job. And then the question being you remember
18 seeing any cigarettes or -- and then your answer?

19 A Yeah, cigarettes.

20 Q And then condoms or anything like that? And
21 the detective jumps in, who -- who smokes? Answer?

22 A Everybody.

23 Q Detective, everybody? And your answer?

24 A I smoke cigarettes, too.

25 Q And then he says, okay. And then what's your

1 answer as the description?

2 A It was a pack -- it was a pack of two
3 cigarettes right by the door by where -- the door.

4 Q It was a pack of -- it's two packs of
5 cigarettes --

6 A Yeah.

7 Q -- right by the door?

8 A Yes.

9 Q And then they say which door, the rear door or
10 the patio door? And you say --

11 A The patio door.

12 Q -- the patio door.

13 A Yeah, right there by the shorts, if I
14 remember. And then it was an ashtray by the gravity chair.

15 Q The detective says which is the gravity chair
16 is over here to the rear of the door? Answer, yeah, coming in
17 the apartment. Your answer?

18 A Then you turn right.

19 Q And then just read to yourself there. Do you
20 remember telling the detectives that you were sitting smoking
21 next to that ashtray that's by the gravity chair?

22 A No, I don't remember that.

23 Q Okay. Does your statement say you smoking --

24 A Yes.

25 Q -- by that ashtray by the gravity chair?

1 A Yes.

2 Q Do you remember Job and Monica having any sort
3 of argument while you were in the apartment?

4 A No.

5 Q Turn to page 44. Did you read that and does
6 that refresh your recollection?

7 A A little, but not really.

8 Q Okay. Would you agree with me that you told
9 the police everybody is really quiet, though. Monica then
10 when I first came in they were arguing. He was like, bitch,
11 shut up, I don't want to talk to you. And they asked you who
12 said that and you said Slick. Do you remember? Does that --
13 did I read that accurately?

14 A Yes.

15 Q Okay. Now, you indicated previously that Job
16 gave you the gun. Do you remember specifically what Slick or
17 Job said to you when he gave you the gun?

18 A No.

19 Q Okay. Did you just read that on page 44 as to
20 what you said at the time he said specifically to you?

21 MR. DiGIACOMO: Right at the second answer, counsel.

22 THE WITNESS: No, I don't. Sort of, but not too
23 much.

24 BY MR. DiGIACOMO:

25 Q Is that generally what you remember him

1 saying?

2 A Yes.

3 Q Okay. Does your statement reflect he said
4 something happened and I got to leave, so pretty soon I'm
5 going to be gone, I want you to hold this for me?

6 A Yes.

7 Q Okay. That's what your statement says?

8 A Yes.

9 Q And then you leave the apartment; correct?

10 A Yes.

11 Q With the gun?

12 A Yes.

13 Q And you have the gun with you?

14 A Yes.

15 Q You indicated that at some point Job called
16 you and asked you to do something with the gun, do you
17 remember that?

18 A Yes.

19 Q Okay. I want you to read the second answer on
20 page 50 to yourself first.

21 A [Witness complied].

22 Q Okay. After reading that do you remember Job
23 calling you and telling you to watch the news and asking to
24 call him back?

25 A Yes.

1 Q And do you watch the news?

2 A No.

3 Q Okay. Do you call him back?

4 A Yes.

5 Q Okay. When you call him back, is that when he
6 asks you to do something with the gun?

7 A Yes.

8 Q Okay. And do you remember exactly what he
9 told you to do with the gun?

10 A No.

11 Q Did you -- do you remember exactly why it is
12 -- well, what he told you the reason why you had to do
13 something with the gun?

14 A Yes.

15 Q Okay. Why is it that you needed to something
16 with the gun?

17 A That it was used in a murder.

18 Q Okay. Do you remember any of the -- anything
19 else that he told you during that conversation?

20 A That G-Dogg had shot someone and that was
21 pretty much it.

22 Q Okay. I want you to look at page 55, middle
23 answer. Do you recall telling the police the specific thing
24 he said was that Monica, G-Dogg, and I -- and I guess D-Shock
25 or whatever his name is went to go do a drug deal, I guess, or

1 whatever to -- at the apartment or whatever on Lake Mead and
2 Nellis, whatever it is, and that when I guess Monica met up
3 with the lady, something like didn't seem right --

4 MR. ORAM: Judge. Judge.

5 BY MR. DiGIACOMO:

6 Q -- and everything turned out --

7 MR. ORAM: Judge, what's causing me concern here is
8 there is a witness on the stand. The way this works is he
9 asks --

10 THE COURT: I think you've got to have him read it.

11 MR. DiGIACOMO: Good.

12 MR. ORAM: Yeah, he --

13 BY MR. DiGIACOMO:

14 Q Read your whole answer.

15 THE COURT: I think he ought to read his own
16 statement.

17 BY MR. DiGIACOMO:

18 Q All right. Read the answer that you gave to
19 the police.

20 A The specific thing he said was that Monica,
21 G-Dogg, and I guess D-Shock or whatever his name is went to go
22 to do a drug deal, I guess, or whatever to -- at the apartment
23 or whatever on Lake Mead and Nellis, whatever it is, and that
24 when I guess Monica met up with the lady something like didn't
25 seem right and everything turned out -- and one of either

1 G-Dogg, or he didn't tell me specifically, but he said either
2 G-Dogg or D-Shot shot or one of them flipped out and
3 everything went bad from there. And he never said that he was
4 there, none of that.

5 Q They ask you a couple of questions.

6 MR. DiGIACOMO: And then, counsel, page 56.

7 BY MR. DiGIACOMO:

8 Q Just read to yourself first the middle answer.

9 A That crack head lady set the whole meeting up
10 for Monica and them meeting the drug dealer.

11 Q I want to ask you some questions about your
12 perceptions of the relationship between Monica and Job or
13 Slick. Do you -- do you remember, first of all, how you
14 characterized that relationship to the police?

15 A No.

16 Q As you sit here today, how would you describe
17 the relationship between Monica and Job?

18 A Four years ago, I really couldn't tell you.
19 Four -- four years later now I couldn't.

20 Q Turn to page 91. Read that to yourself.

21 A Okay. I'm done reading it.

22 Q After reading it does that refresh your
23 recollection as to the nature of their relationship?

24 A No.

25 Q Okay. We're going to do this, I guess, by

1 question and answer here. Let me go back. They're asking you
2 about whether or not Slick -- what about hoeing girls. We
3 talked about that earlier. What's your answer?

4 A Yeah, I don't really know. He never had a
5 hoe. Monica was just like a girl that would give him money
6 and shit that I know of, just give him.

7 Q Question, so he's just basically using her?
8 Answer.

9 A Yes, pretty much.

10 Q Question, I mean -- answer.

11 A And she thought he loved her, but no.

12 Q Question, all right. So he's just playing her
13 because she's a source of income for him basically?

14 A Yes.

15 Q And you say, actually, uh-huh, yeah.

16 A Uh-huh. Yes.

17 Q Okay.

18 MR. DiGIACOMO: May I approach [inaudible] for just
19 a moment.

20 THE COURT: Yes.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 CROSS-EXAMINATION

24 BY MR. ORAM:

25 Q Good afternoon.

1 A Good afternoon.

2 Q Mr. Rowland, you were out in the hallway and
3 there was a DA investigator with you. Do you remember that?

4 A Yes.

5 Q And the prosecutor just asked you a question
6 about what Job-Loc had said when getting rid of the gun.

7 A Yes.

8 Q Do you remember that? Do you remember Mr.
9 Sgro and myself and Mr. Langford came out and asked you a
10 similar question?

11 A Yes.

12 Q Did Job-Loc say that D-Shock was not involved
13 in the crime?

14 A Correct.

15 Q And the DA investigator was sitting right
16 there when you said it?

17 A Yes.

18 Q And you're aware that these prosecutors had
19 heard that?

20 A Yes.

21 Q That that man is innocent?

22 A Yes.

23 Q I need to go through quite a few questions
24 with you, Mr. Rowland. At the time it's fair to say that you
25 were hustling to make a living?

1 A Correct.

2 Q Fair to say when the police asked you about a
3 cell phone you had indicated that a few days before the police
4 conversation with you you dropped it in a hot tub and it had
5 been destroyed?

6 A I don't recall.

7 Q You don't recall. If I showed you a copy of
8 your statement, would that refresh your memory?

9 A Possibly.

10 MR. ORAM: Page 12, counsel.

11 Permission to approach.

12 BY MR. ORAM:

13 Q The police asked you on page 12 how come your
14 cell phone got turned off, did you turn it off? And you said,
15 no, I dropped it in the water in the hot tub. Is that what
16 you say?

17 A That's -- that's what I said on there, yes.

18 Q And then what do you say underneath?

19 A Then it messed up. The phone was just too
20 damaged. Yeah, I just got a phone like two days ago.

21 Q Okay. And you see this is a Metropolitan
22 Police Department statement. And it appears to say that the
23 date of it is August 19, 2010?

24 A Yes.

25 Q You're real close with Job-Loc?

1 A Correct.

2 Q He was a real good friend of yours?

3 A Yes.

4 Q You almost loved him, would you agree with
5 that?

6 A Yes.

7 Q You were meeting with him on a daily basis?

8 A Correct.

9 Q You'd go over to his girlfriend's house every
10 other day?

11 A Correct.

12 Q And you'd see her there quite often, Monica?

13 A Yes.

14 Q Anywhere you guys went -- excuse me, anywhere
15 Job went, often Monica was the driver?

16 A Correct.

17 Q Do you remember being asked to look at a
18 lineup to see if you could identify D-Shock?

19 A Yes.

20 Q And you couldn't?

21 A No.

22 Q I think you told -- the prosecutor had you
23 read something about D-Shock being in the kitchen. And when
24 he read it, there was a portion where you say he's in the
25 kitchen, but I couldn't see him. Do you remember reading

1 that?

2 A Yes.

3 Q Is that true?

4 A Yes.

5 Q Did you take the gun to a person named

6 Anthony's house?

7 A Yes.

8 Q Has he got a nickname Cricket?

9 A I have no idea.

10 Q Okay. Fair enough. Is his last name

11 Lassiter?

12 A Yes.

13 Q How long did you hold that gun before you took

14 it to Anthony's?

15 A I don't recall.

16 Q Had you touched that gun before?

17 A Yes.

18 Q Had you shot that gun before?

19 A No.

20 Q Never shot that gun?

21 A No.

22 Q When the police asked you about the person in

23 the kitchen, do you remember calling -- saying he was stocky,

24 he had meat on him?

25 A I don't recall.

1 Q Page 74.

2 MR. ORAM: Permission to approach.

3 THE COURT: Okay.

4 BY MR. ORAM:

5 Q 74, second answer. You said about kind of
6 stocky a little bit, had a little bit of meat on him.

7 A Yes.

8 Q Okay.

9 MR. DiGIACOMO: Well, is that in relationship to the
10 guy in the kitchen, Mr. Oram?

11 MR. ORAM: If you -- you have to read that in
12 conjunction --

13 MR. DiGIACOMO: Oh, 73. You're right. I apologize,
14 Counsel.

15 MR. ORAM: No, it's okay. You had to read it in
16 conjunction with the two pages.

17 BY MR. ORAM:

18 Q You had been to California with Monica, the
19 girlfriend?

20 A Yes.

21 Q Okay. Do you remember the police asked you on
22 August 6th, slash, August 7th that you had talked to Job-Loc
23 about 17 times?

24 A I don't recall.

25 MR. ORAM: Court's indulgence.

1 Now I'm looking at grand jury, counsel, page 98.

2 BY MR. ORAM:

3 Q If I showed you a copy of your -- not only did
4 you give a statement to the police, do you remember you
5 actually came into a, what kind of looks like a courtroom and
6 there were probably people like this sitting there?

7 A Yes.

8 Q So you remember that, you took an oath?

9 A Yes.

10 Q Okay.

11 MR. ORAM: Permission to approach.

12 THE COURT: Yes.

13 BY MR. ORAM:

14 Q Do you remember --

15 THE COURT: What is this? This is not his
16 statement?

17 MR. ORAM: It's his grand jury statement.

18 THE COURT: Oh, okay.

19 MR. ORAM: Yeah.

20 BY MR. ORAM:

21 Q Do you recall Mr. DiGiacomo asking you if I
22 told you on the day you talked to him 17 times, would that
23 seem unusual to you? And you said, no, sir.

24 A I don't recall.

25 Q If I showed it to you, would that refresh your

1 memory?

2 A Possibly.

3 Q Did Job-Loc tell you to bury the gun or sell
4 it?

5 A Yes.

6 Q Do you remember at the grand jury Mr.
7 DiGiacomo asking you if you had made threats to anyone in this
8 case?

9 A No, I don't recall.

10 Q If I showed you, would that refresh your
11 memory of being asked the question?

12 A Possibly. I couldn't tell you, to be honest.

13 MR. ORAM: Page 121.

14 Permission to approach, Your Honor.

15 MR. DiGIACOMO: Page 1 what?

16 MR. ORAM: 121, lines -- you actually have to start
17 on 120, line 25, to 121, lines 1 through 4.

18 May I approach?

19 THE COURT: All right.

20 BY MR. ORAM:

21 Q Sir, I'm going to ask you if you -- I'm going
22 to read the question, you give us the answer, okay? Mr.
23 DiGiacomo asked you, and you're telling the ladies and
24 gentlemen of the grand jury you never made any threats to
25 anyone? And you say?

1 A No, I never made no threats to nobody.

2 Q And then the prosecutor asks you, you never
3 said to anybody, hey, Monica, she might be talking, I'll do
4 something to the kids?

5 A No.

6 Q But that's what it says and that's your
7 answer, no, sir; right?

8 A Yeah.

9 Q When Job-Loc was in jail, you would write to
10 him, do you recall that?

11 A No, I don't recall.

12 MR. ORAM: Do you know which letter it is?

13 MR. DiGIACOMO: Can I see it?

14 (Pause in the proceedings.)

15 MR. SGRO: Your Honor, is that a question or
16 stretch?

17 THE COURT: Have you got a question?

18 JUROR: No, I just need another book.

19 THE COURT: You need another book?

20 JUROR: Yes, sir.

21 MR. ORAM: May I approach the witness, Your Honor?

22 THE COURT: Yes. I've forgotten what we were doing.

23 MR. ORAM: We are looking at a letter. We are
24 looking at a letter, Judge.

25 THE COURT: All right. We're looking at a letter.

1 BY MR. ORAM:

2 Q Does that look like your handwriting, sir?

3 A Yeah.

4 Q Do you see at the top it's Wyatt Earth? Does
5 it say that?

6 A Yeah, that's what it says.

7 Q Is Wyatt Earth Job-Loc?

8 A Huh?

9 Q Is that Job-Loc, Wyatt Earth?

10 THE COURT: I think he knows him as --

11 MR. ORAM: Slick.

12 THE COURT: -- Slick.

13 BY MR. ORAM:

14 Q But this says -- who is Wyatt Earth?

15 A I have no idea.

16 MR. ORAM: It doesn't sound real relevant, does it?

17 THE WITNESS: No.

18 MR. ORAM: But the letter is.

19 THE COURT: The letter.

20 BY MR. ORAM:

21 Q Do you -- is that your signature?

22 A Yes.

23 Q Do you sign it Baby Job-Loc?

24 A No, I don't -- I don't remember putting
25 nothing like that.

1 Q Is that your handwriting?

2 A It looks like it.

3 MR. SGRO: Your Honor, I'm sorry. If we could ask
4 Mr. Rowland to keep his voice up a little bit.

5 THE COURT: Yeah, you need to speak up --

6 THE WITNESS: Yeah.

7 THE COURT: -- sir.

8 THE WITNESS: Yeah, it looks like it, but I don't
9 remember.

10 BY MR. ORAM:

11 Q Here's what I want you to do. I want you to
12 read that letter to yourself, okay. And then I'm going to ask
13 you if you're -- if you're writing that letter to Job-Loc.
14 Okay. You read it to yourself.

15 A [Witness complied].

16 Q Have you had a chance to read that?

17 A Yes.

18 Q Is that a letter you wrote to Job-Loc?

19 A I don't recall at all.

20 Q Let me ask you this way. Does the substance
21 of it sound like you're talking to Job-Loc?

22 A Sort of, but not really.

23 Q Was -- do you see the part where you talk
24 about becoming a correctional officer to break someone out?

25 A Yeah, I seen that.

1 Q Who do you know in jail that you could have
2 been talking to?

3 A To be honest, I'm not sure. I've got a couple
4 of friends, but I don't recall saying nothing like that.

5 Q Do you see the envelope on there? See it's
6 addressed to Jerome Thomas?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yeah.

10 Q When you took that firearm -- before I go
11 there, when was the last time you were in Monica's car?

12 A I don't know. I can't -- I don't recall at
13 all.

14 Q Do you know a Loyanda -- Yolanda Cooper?

15 A No.

16 Q Did you -- when you were going to -- you were
17 trying to sell the gun, do you recall that?

18 A Yeah. Yeah.

19 Q Did you tell anyone that you were present at
20 the time of the homicide?

21 A No.

22 Q Did you tell anyone that you received \$1,000
23 as a result of this homicide?

24 A No.

25 Q Did you tell anyone that the woman was shot

1 because she was going for some type of weapon?

2 A I don't recall.

3 Q Okay.

4 MR. ORAM: Court's indulgence.

5 Your Honor, that concludes cross-examination.

6 THE COURT: Mr. Langford.

7 CROSS-EXAMINATION

8 BY MR. LANGFORD:

9 Q Mr. Rowland, we talked briefly outside the
10 courtroom; is that right?

11 A Yes.

12 Q And that's the first time you ever told myself
13 at least that -- that D-Shot, David Burns, was not the
14 shooter.

15 A Correct.

16 Q And you had not told the DA that ever; right?

17 A Correct.

18 Q And, in fact, when you first talked to the
19 police, isn't it true that you told the police you didn't know
20 who the shooter was?

21 A I don't recall.

22 Q Do you recall testifying in front of a grand
23 jury?

24 A Yes.

25 Q Mr. Oram asked you about that earlier;

1 correct?

2 A Yes.

3 MR. LANGFORD: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. LANGFORD:

6 Q Do you remember testifying -- let me ask you
7 this. Do you remember testifying that in fact that when
8 talking with Job-Loc he didn't tell you who the shooter was?

9 A I don't recall.

10 Q Okay. Mr. DiGiacomo is asking you questions;
11 right? See his name there?

12 A Yes.

13 Q Okay. And you had read -- you had seen
14 something on the news about this case; is that right?

15 A Yes.

16 Q Okay. And what's -- what did you do after you
17 saw something on the news?

18 A I don't recall.

19 Q All right.

20 A I called him back.

21 Q That -- does that refresh your recollection?

22 A No.

23 Q Okay. So what did you tell the grand jury?

24 A I called him back.

25 Q Under oath that's what you told the grand

1 jury; right?

2 A Yes.

3 Q Who are you talking about, called him back?

4 A Slick.

5 Q Slick, Job-Loc?

6 A Yes.

7 Q Okay. Why did you call him back?

8 A I don't recall.

9 Q Okay. Mr. DiGiacomo asked you another

10 question; right? Do you remember what the question was?

11 A No.

12 Q Okay. You want to read that question? Does

13 that refresh your recollection?

14 A And describe the --

15 Q No, read it to yourself.

16 A Okay.

17 Q Does that refresh your recollection?

18 A No.

19 Q Okay. So what's the question?

20 A Read it out loud?

21 Q Now you can.

22 A And describe the conversation that you had

23 with Slick at this point.

24 Q Do you remember what you answered?

25 A No.

1 Q Well, why don't you read that out loud.

2 A That G-Dogg, Monica, and I guess D-Shot or
3 whatever his name had did something, that it was them or
4 whatever.

5 Q Okay. Question, it was them that did what?
6 What did you say?

7 A The shooting, I guess. I don't know who did
8 it. Like it was never said who did it, but they were all
9 there, I guess.

10 Q Okay. So Job-Loc, then, didn't tell you that
11 conversation. He didn't tell you who the shooter was, did he?

12 A I don't recall.

13 Q Well, that's what you testified under oath;
14 correct?

15 A Correct, that's what's --

16 Q In 2010 --

17 A -- on there. Yes.

18 Q -- correct?

19 A Yes.

20 Q Okay. So now you're coming in and saying that
21 you think the shooter now is not D-Shot; is that right?

22 A Yes.

23 Q Okay. It's not David Burns.

24 A No.

25 Q And now you think it's Willie Mason; is that

1 right?

2 A Yes.

3 Q Well, why is that?

4 A Because that's what was said.

5 Q When was that said?

6 A I don't recall. To be honest, it's been so
7 long. Like this is damn near like five years later, so --

8 Q Okay. So in spite of the fact that you
9 testified under oath to the grand jury --

10 A Uh-huh.

11 Q -- that you were never told who the shooter
12 was or how the shooting happened, now all of the sudden you
13 think something different; is that right? Is that right?

14 A Yes.

15 Q But you don't know why you think that
16 something different; is that correct?

17 A No.

18 Q That's not correct? You do know why you think
19 something different?

20 A Well, I don't -- I don't recall, to be honest,
21 so I really can't -- I don't know.

22 Q So you sat out there and just out of thin air,
23 the thought comes into your head, oh, you know what, David
24 Burns had nothing to do with it. It was Willie Mason. Is
25 that what you're saying?

1 A No.

2 Q Okay. But under oath in 2010 you said you --
3 you were never told who the shooter was; is that right?

4 A Yes, that's what the grand jury thing says --

5 Q And you --

6 A -- right there. Yes.

7 Q And today you can't tell us why it is you
8 think something different?

9 A No.

10 MR. LANGFORD: No further questions, Judge.

11 THE COURT: Any redirect?

12 MR. DiGIACOMO: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. DiGIACOMO:

15 Q Mr. Langford sort of summed it up for me, but
16 let me just get this straight. Outside today you told the
17 lawyers for the defense that your memory today is that Job
18 said that G-Dogg was the shooter?

19 A Correct.

20 Q Okay. I think we talked about this. You said
21 that you told the truth to the police when you talked to them
22 in -- in 2010; correct?

23 A Yes.

24 Q And so would you rely upon what you told the
25 police in 2010 or your memory outside in the hall today?

1 A Today.

2 Q Okay.

3 MR. DiGIACOMO: Judge, I offer 287 which is the
4 videotape recording of Donovan Rowland's statement.

5 MR. ORAM: Objection.

6 MR. DiGIACOMO: It's a prior inconsistent statement
7 admissible under statute.

8 MR. ORAM: If he wants to -- if he wants to impeach
9 him with a portion of it, that's fine. But that's not the way
10 it --

11 THE COURT: The portion that would --

12 MR. ORAM: Yes.

13 THE COURT: -- be inconsistent would be
14 inappropriate, and I'm sure you can do that on your -- you're
15 so technically advanced, I'm sure you can do that.

16 MR. DiGIACOMO: I believe that there is a number of
17 different times, so I'll get with counsel, but I want to make
18 sure that the video is admitted for --

19 THE COURT: I'll admit it for purposes of
20 inconsistent statements. All right.

21 (State's Exhibit 287 admitted.)

22 BY MR. DiGIACOMO:

23 Q Now, you also testified in front of a grand
24 jury; correct?

25 A Yes.

1 Q You didn't want to be there, would you agree
2 with me?

3 A Correct.

4 Q Back in 2010?

5 A Yes.

6 Q You didn't want to be here today, either, did
7 you?

8 A No.

9 Q Okay. And it was much -- the procedure we
10 went through in the grand jury was similar to this one except
11 for I played you the little video portions of your statements,
12 do you remember that?

13 A I don't recall.

14 Q You would agree with me you weren't real happy
15 to be there when you were answering questions; correct?

16 MR. ORAM: Judge, objection to the leading nature.
17 Correct, correct.

18 MR. DiGIACOMO: Judge, he's obviously --

19 THE COURT: He can lead.

20 MR. DiGIACOMO: -- adverse at this point. Thank
21 you.

22 THE WITNESS: Correct.

23 BY MR. DiGIACOMO:

24 Q All right. You took an oath when you went
25 into that room; correct?

1 A Correct.

2 Q You took an oath to tell the truth, the whole
3 truth, and nothing but the truth; right?

4 A Correct.

5 Q And did you do that at that time?

6 A I don't remember to be honest, so if anything,
7 yes.

8 MR. DiGIACOMO: Judge, I have marked 289, the grand
9 jury transcript of Donovan Rowland. Under the Statute 51.035
10 it's prior testimony at a proceeding. In this case it's
11 admissible. I'd offer it.

12 THE COURT: Any objection?

13 MR. ORAM: Yes, Your Honor.

14 THE COURT: What?

15 MR. ORAM: He's on the witness stand. I'd ask
16 before it be --

17 THE COURT: If it's in -- to the extent that it's
18 inconsistent it's --

19 MR. ORAM: And just the portion.

20 MR. DiGIACOMO: Judge, the entire transcript is
21 admissible under 51.035 as prior testimony of a witness in the
22 proceeding.

23 MR. ORAM: Your Honor, we were unable to
24 cross-examination the defendant or this particular witness at
25 that time. And I don't think under Funches that's correct.

1 You know, and, Your Honor, I don't really have much
2 disagreement with it. However, what I'd like to do is at
3 least do what you're doing right now and research it because I
4 just haven't seen a prosecutor do that.

5 MR. DiGIACOMO: I've done it with a number of
6 witnesses, but I believe it's (2)(b), 51.035(2)(b).

7 THE COURT: (2)(b). I think it's admissible.
8 Objection is overruled. It'll be received.

9 (State's Exhibit 289 admitted.)

10 BY MR. DiGIACOMO:

11 Q Now, Mr. Oram also showed you a copy --

12 MR. DiGIACOMO: And I apologize, Linda. I forgot to
13 have this marked.

14 BY MR. DiGIACOMO:

15 Q This is another copy of the letter Mr. Oram
16 showed you. It's State's Proposed Exhibit No. 290. Did you
17 have a chance to read the whole letter before?

18 A When he just brung it up, yes.

19 Q Okay. How would you describe the nature of
20 this letter between you and Job-Loc?

21 MR. ORAM: Judge, objection. He said that he didn't
22 know.

23 THE COURT: How would you describe the nature of it?
24 I don't understand what that means.

25 MR. DiGIACOMO: I'll rephrase.

1 THE COURT: Okay.

2 MR. ORAM: And, Judge, he -- at least when I asked
3 him questions, I thought he was saying he didn't know if it
4 was to Job-Loc. So just for that purpose I would object
5 because I think he said he didn't know if it was to him.

6 MR. DiGIACOMO: I don't think he said that.

7 BY MR. DiGIACOMO:

8 Q You know Job-Loc to be Jerome Thomas to be
9 Slick; right?

10 A Yeah, now after everything, yes.

11 Q All right. You've maintained some contact
12 with Job-Loc at least for some period of time after --

13 A I don't recall.

14 Q -- 2010?

15 A I don't recall.

16 Q You haven't had any contact with --

17 THE COURT: You don't recall that you've maintained
18 contact?

19 THE WITNESS: Yeah, I don't remember if I maintained
20 contact or not.

21 BY MR. DiGIACOMO:

22 Q You -- did he write -- you don't remember
23 getting letters back from him from jail or prison in
24 California?

25 A No.

1 Q Let me ask you this. Did you take a .44
2 caliber magnum and execute a woman in her living room at 5662
3 Meikle --

4 A No.

5 Q -- on August 7th of 2010?

6 A No.

7 Q Okay. Did you then chase her daughter down
8 the hall and shoot her in the stomach?

9 A No.

10 Q Were you there that night at the murder?

11 A No.

12 Q Okay. Do you recall telling the police that
13 Job couldn't be there because he couldn't walk or run or do
14 anything else?

15 A Yes.

16 Q Okay. And that was true; right?

17 A Yes.

18 Q So as far as you know Job wasn't at this
19 murder scene; correct?

20 A Correct.

21 Q Now, I saw Mr. Oram point over to his client
22 and say this man is innocent. Do you know this man?

23 A No, sir.

24 Q Had you seen him before?

25 A No, sir.

1 Q Okay.

2 MR. ORAM: No, he did because, Judge, apparently the
3 prosecutor said that he had seen him at the -- at the kitchen,
4 I think; right? And you said that he was there at the
5 kitchen.

6 MR. DiGIACOMO: Well, that's my question.

7 MR. ORAM: Now it seems -- it seems like you're
8 inconsistent, Counsel.

9 MR. DiGIACOMO: That's -- that's my question. I
10 didn't ask him to identify him because he says he couldn't
11 identify him. Now he's saying this man is innocent and he
12 doesn't even know who this man is. That's the whole purpose
13 of the question. He's never been able to identify D-Shot
14 before, now apparently everybody is agreeing this is D-Shot.
15 I just want to make sure that's clear that he doesn't know who
16 this guy is.

17 THE COURT: I'm not sure he knows which one is
18 which.

19 MR. DiGIACOMO: That's a great question. It was
20 going to be my next one.

21 THE COURT: Okay.

22 BY MR. DiGIACOMO:

23 Q Do you know the other guy over here?

24 A Yes.

25 Q Okay. Who is that?

1 A G-Dogg.

2 Q So you know G-Dogg?

3 A Correct.

4 Q Okay. So we can get this straight, at least a
5 couple weeks ago you would agree with me that you had a
6 conversation with --

7 MR. ORAM: Objection as to leading, Judge.

8 MR. DiGIACOMO: No, I'm allowed to --

9 MR. ORAM: You would agree with me.

10 THE COURT: He can lead --

11 MR. DiGIACOMO: -- cross-examination him --

12 THE COURT: -- a witness --

13 MR. DiGIACOMO: -- at this point.

14 THE COURT: -- like this. He's obviously identified
15 with the defendants, not with the plaintiff. Strange
16 identification, I must admit, but --

17 MR. DiGIACOMO: Thank you.

18 BY MR. DiGIACOMO:

19 Q You had a conversation with Ms. Weckerly a
20 couple weeks ago; correct?

21 A Correct.

22 Q Okay. And basically what you told her is I
23 don't really remember anything and I don't want to come back
24 to Las Vegas --

25 A Yes.

1 Q -- right? Eventually you agreed to show up;
2 correct?

3 A Yes.

4 Q And now in the last four and a half years the
5 first time you ever said I know for sure D-Shot had nothing to
6 do with this is when you were sitting outside this --

7 MR. ORAM: Objection.

8 BY MR. DiGIACOMO:

9 Q -- courtroom; correct?

10 MR. SGRO: Counsel was here --

11 THE WITNESS: Correct.

12 MR. SGRO: -- when we made the record, Your Honor.

13 MR. ORAM: Judge, he knows that's not accurate. But
14 I guess I'll get up after him, but that's an inaccurate
15 statement and he knows it.

16 MR. DiGIACOMO: How do I know that? Didn't Mr. Oram
17 walk in this courtroom and say right before we started --

18 THE COURT: I thought it was right --

19 MR. DiGIACOMO: -- Donovan Rowland just told us?

20 THE COURT: I thought it was right out there.

21 MR. SGRO: No, it was --

22 MR. ORAM: Judge -- Judge, I'll tell you what. I'll
23 get up on cross.

24 THE COURT: Okay. That's what I understood.

25 MR. ORAM: Go ahead.

1 MR. DiGIACOMO: Yeah.

2 BY MR. DiGIACOMO:

3 Q Did you tell anybody prior to that?

4 A Someone from their office, yes, before I got
5 here.

6 Q When did you tell --

7 A A couple days ago.

8 Q A couple days ago?

9 A Yeah.

10 Q Okay. So whether it was 20 minutes ago or two
11 hours -- or two days ago, other than that have you ever told
12 anybody that before?

13 A No.

14 Q Okay. Well, so, you're not present at the
15 crime scene; correct?

16 A Correct.

17 Q What you know is based upon what Job has told
18 you; correct?

19 A Correct.

20 Q Or what you saw when you got the murder weapon
21 and took it from Job; correct?

22 A Correct.

23 Q So I guess my question is if you don't know
24 this man, how were you able to answer the question for Mr.
25 Oram this is an innocent guy sitting here?

1 A I can't.

2 Q All right. You don't know that question, do
3 you?

4 A Correct.

5 Q You just know what people have told you or
6 what you've seen; correct?

7 A Correct, but I have never seen him.

8 Q Okay. And you, so we're clear, you describe
9 the individual that you saw in the kitchen as 5'11; correct?

10 A Correct.

11 Q A little bit lighter skin than you are?

12 A Correct.

13 Q Curly hair?

14 MR. ORAM: Page counsel. A little lighter.

15 THE WITNESS: Correct.

16 MR. DiGIACOMO: 73.

17 MR. ORAM: Of grand jury or his statement?

18 MR. DiGIACOMO: No, it's his -- his statement right
19 before you get to 74 where you ask the stocky question.

20 MR. ORAM: 73?

21 MR. DiGIACOMO: Yeah, the rest of the description.

22 BY MR. DiGIACOMO:

23 Q A little bit lighter than you with curly hair.

24 A Correct.

25 Q You remember that?

1 A Yeah.

2 MR. DiGIACOMO: I have nothing further. Thank you,
3 Judge.

4 THE COURT: Mr. Oram.

5 RECROSS-EXAMINATION

6 BY MR. ORAM:

7 Q Mr. Rowland, you've never met me before, have
8 you?

9 A No.

10 Q You've never seen my face?

11 A No.

12 Q You've never talked to me?

13 A No.

14 Q Apparently you had a conversation with an
15 investigator, okay?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q One appointed by the Court to help and assist
20 Mr. Burns. You don't know him; right? You don't know Mr.
21 Burns sitting over there; right?

22 A No.

23 Q And in -- when does this conversation with
24 this court appointed investigator take place?

25 A A couple days ago.

1 Q Can you be more accurate just so we can --

2 A I can't tell you exactly.

3 Q And in that conversation did you reveal what
4 Job-Loc had told you?

5 A Yes.

6 Q And do you think today as you're testifying
7 that your memory of what Job-Loc told you is accurate?

8 A Yes.

9 Q And did he say that the other guy, D-Shock or
10 D-Shot, was not guilty?

11 A Correct.

12 Q Innocent. And outside, when we were outside
13 and came out there, that's the first time you had seen me,
14 isn't it?

15 A Correct.

16 Q And who was with you, sitting right next to
17 you?

18 A The DA investigator.

19 Q And has he been -- did he pick you up from the
20 airport?

21 A Yes.

22 Q So you had been with him; right?

23 A Yes.

24 Q And Mr. Sgro, that man right there, okay, he
25 came out and asked you these questions, didn't he, in front of

1 the DA investigator?

2 A Yes.

3 Q And he asked you what Job-Loc had said, didn't
4 he?

5 A Yes.

6 Q Or words to that effect?

7 A Yes.

8 Q And since you don't know that man Mr. Burns,
9 you have no reason to help him, do you?

10 A Correct.

11 MR. ORAM: Nothing further.

12 RECROSS-EXAMINATION

13 BY MR. LANGFORD:

14 Q The fact is you don't remember anything, do
15 you?

16 A Bits and pieces. Trying to.

17 Q Bits and pieces. But you don't remember when
18 it was that somebody told you that D-Shot wasn't the shooter,
19 do you?

20 A Correct.

21 Q You don't really remember if somebody told you
22 that, do you?

23 A I do.

24 Q You do remember? Okay. Where did the
25 conversation take place?

1 A That I don't remember.

2 Q Who was the conversation with?

3 A Slick.

4 Q Slick. Was it on the phone?

5 A More than anything, most likely, yes.

6 Q Most likely yes. When was it that this

7 conversation took place?

8 A I don't recall.

9 Q You don't recall.

10 A No.

11 Q So the only think you vaguely remember is him

12 saying that D-Shot, David Burns, was not the shooter?

13 A Correct.

14 Q And Willie Mason was the shooter?

15 A Correct.

16 Q Did Job-Loc go around telling you things about

17 people who committed crimes?

18 A No.

19 Q Is he one of those kind of people that does

20 that a lot?

21 A I'm not sure.

22 Q Well, he hasn't ever told you anything like

23 that before, has he?

24 A No.

25 Q In fact, you testified to the grand jury that

1 he did not tell you that when you called him back after you
2 had seen something on the news; isn't that right?

3 A I don't recall.

4 Q Well, I just showed you your testimony. You
5 don't recall that now? That was like five minutes ago.

6 A You didn't say that. You just said do I
7 recall, and I told you no, so --

8 Q But that's what you testified to, or do I need
9 to show you that again?

10 A I seen it on there, yes, but you didn't --

11 Q Okay.

12 A That's not what you said.

13 Q Is that what you testified to?

14 A Yes, that's what I testified to.

15 Q That he didn't tell you anything about who the
16 shooter was; right?

17 A Yes, that's what the testimony said, yeah.

18 Q And he didn't tell you why they were there to
19 do the shooting or what -- how the shooting happened; right?

20 A Correct.

21 Q But now you come in today four years later,
22 and it's Willie Mason that's the shooter, but you don't
23 remember why; correct?

24 A Correct.

25 Q You just kind of remember Job-Loc told you?

1 A Correct.

2 Q Job-Loc, your good friend; correct?

3 A Correct.

4 Q Job-Loc, the person you're going to become a
5 corrections officer so you can bust him out of jail; right?

6 A I don't recall that I said that, so --

7 Q Still think you can become a corrections
8 officer?

9 A I don't never remember saying nothing like
10 that, so, no.

11 MR. LANGFORD: No further questions.

12 THE COURT: Ladies and gentlemen, we're going to
13 take a brief recess. During the recess it's again your duty
14 not to converse amongst yourselves or with anyone else on any
15 subject connected with this trial, or to read, watch, or
16 listen to any report of or commentary on the trial by any
17 medium of information, including newspapers, television, and
18 radio. You may not form or express an opinion on any subject
19 connected with this case until it is finally submitted to you.
20 We'll be in recess for about ten minutes.

21 (Jury recessed at 3:00 p.m.)

22 MR. SGRO: We have something very quick.

23 THE COURT: The record will reflect that the jury
24 has left the courtroom.

25 MR. SGRO: Your Honor, just very briefly, under NRS

1 51.325, the prior testimony, one of the prerequisites under
2 that statute is the unavailability of the declarant. And --

3 MR. DiGIACOMO: I'm sorry. But is Mr. Rowland free
4 to go, Judge? I apologize.

5 MR. ORAM: Yes.

6 MR. DiGIACOMO: He's still sitting there.

7 MR. ORAM: Yeah.

8 MR. DiGIACOMO: We're done with --

9 THE COURT: 035?

10 MR. DiGIACOMO: Judge, I apologize, but Mr. Rowland
11 I don't think --

12 THE COURT: You want Mr. Rowland in here no longer?

13 MR. ORAM: We don't.

14 MR. DiGIACOMO: No, he's free to go. We --

15 MR. SGRO: Right.

16 MR. DiGIACOMO: We've finished; right?

17 THE COURT: All right.

18 (Donovon Rowland exits the courtroom at 3:01 p.m.)

19 THE COURT: I must tell you that the testimony from
20 that witness is probably -- lacks more credibility than I've
21 ever had a witness in 40 years.

22 MS. WECKERLY: He'd be a good one to give a gun to.

23 THE COURT: You know, I just -- I don't think he was
24 telling the truth from the moment he started. I don't think
25 he -- I think he remembers a lot and has decided he doesn't

1 want to remember anything.

2 MR. DiGIACOMO: Correct. That's why there's a case
3 and that's why I wanted to discuss the -- his statement to the
4 police. The case is called Crowley --

5 THE COURT: I'm curious of whether he has been
6 threatened or instructed by somebody to testify a certain way.

7 MR. DiGIACOMO: I'm curious by that too. But
8 there's a case that says Crowley, C-R-O-W-L-E-Y, when a person
9 denies knowledge of a particular fact that's the same as -- as
10 denying it for inconsistent statement purposes. He had no
11 memory of anything whatsoever and thus there is everything in
12 his statement is inconsistent.

13 THE COURT: He obviously denied a recollection of a
14 lot of things that I am sure he recalled. I mean, it would be
15 almost impossible not to recall it.

16 MR. DiGIACOMO: Correct. So what I'm saying to the
17 Court is that I don't know what needs to be redacted from the
18 statement since everything that he says I don't remember is
19 something that is admissible as a prior inconsistent
20 statement. And, thus, I would offer the entire entirety of
21 289 to the extent -- unless there is a specific thing that
22 defense --

23 THE COURT: Well, let's do --

24 MR. DiGIACOMO: -- wants to redact.

25 THE COURT: -- let's do the points that were related

1 to the --

2 MR. SGRO: So here's -- here's the difficulty. If
3 you start with 51.035, which is what the State suggested was
4 the appropriate statute, and they said under -- under letter
5 (d). Letter (d) is --

6 MR. DiGIACOMO: (b), (2)(b).

7 MR. SGRO: (b), the --

8 THE COURT: Consistent --

9 MR. DiGIACOMO: No, (2).

10 THE COURT: (2)(b), as in boy. The declarant
11 testifies at the trial --

12 MR. SGRO: Right. And is --

13 THE COURT: -- subject to --

14 MR. SGRO: -- subject to --

15 THE COURT: -- cross-examination --

16 MR. SGRO: -- cross-examination and the --

17 THE COURT: -- and the statement --

18 MR. SGRO: -- statement is --

19 THE COURT: -- is consistent with his testimony --

20 MR. DiGIACOMO: No, that's not the right one. It's
21 the one that says prior testimony in the proceeding. Mr. Sgro
22 has it up on his.

23 MR. SGRO: That's (d).

24 MR. DiGIACOMO: Oh, sorry.

25 THE COURT: Transcript of a testimony given under

1 oath at a trial before a grand jury.

2 MR. DiGIACOMO: Correct, so that's (2)(d). I
3 apologize. That was not (b), (d).

4 THE COURT: Well, he testified at the trial, he was
5 subject to cross-examination, and it is a transcript of
6 testimony given under oath before a grand jury.

7 MR. SGRO: Yeah, the -- the difficulty is, Your
8 Honor, if you look at 51.235, which also governs former
9 testimony, and I can't imagine the --

10 THE COURT: That's under the witness and
11 unavailability section of the statute.

12 MR. SGRO: If I could just make a record we'll go a
13 lot quicker. The -- the former testimony of a witness --

14 THE COURT: I'm sorry. 51.235 is statements of
15 ancient documents.

16 MR. SGRO: I'm sorry, Your Honor, if I misspoke.
17 51.325.

18 THE COURT: Former testimony.

19 MR. SGRO: Yes, sir. Testimony given as a witness
20 at another hearing of the same or different proceedings or in
21 a deposition taken in compliance with the law is not
22 inadmissible under the hearsay rule if (1) the declarant is
23 unavailable.

24 Now, there are two -- clearly there are two statutes
25 which govern prior recorded testimony. Clearly in a criminal

1 proceeding Mr. Rowland or any grand jury witness would not
2 have been subject to cross-examination. I'm not certain --
3 and perhaps the Court can tell me and I'm happy to sit down,
4 but I'm not certain how you can read one statute to the
5 exclusion of the other when they both govern former testimony.

6 It strikes me that two things need to occur if you
7 look at them both at the same time. One is either subject to
8 cross-examination at the time the prior recorded statement
9 needs to be -- was given, which we do not have, or choice (b)
10 unavailability of the declarant, which clearly we don't have.
11 So I think for purposes of the record, Your Honor, we would
12 object to it because it strikes me that the two statutes need
13 to be read in conjunction with one another, not to the
14 exclusion of each other.

15 In other words, neither one of the has an annotation
16 that this Statute No. 51 et seq. only applies in these
17 situations. Chapter 50 only applies in these situations. I
18 think the Court knows where I'm going. There seems to be an
19 inherent conflict, and so the only thing we can do, then, is
20 read them in conjunction. And that's the basis for the
21 objection, Your Honor, and I'll submit it to the Court.

22 MR. DiGIACOMO: Judge, it's very simple. 51.035 is
23 the definition of hearsay, and those items which are listed in
24 there are not hearsay. It's much like the co-conspirator
25 statements are not hearsay. All the statutes after that are

1 exceptions to the hearsay rule, some of which require -- the
2 exception requires, and it's under the unavailability of a
3 witness.

4 If you have an unavailable witness and you have
5 prior testimony in the same proceeding, it's an exception to
6 the hearsay rule. You don't need an exception to the hearsay
7 rule if the witness is on the stand and their testimony is
8 from the same proceeding, it's just not hearsay. It is
9 admissible under 51.035.

10 THE COURT: I agree it's not hearsay.

11 MR. DiGIACOMO: It's not hearsay, so there doesn't
12 need to be an exception. There is an exception for an
13 unavailable declarant, which would make it hearsay.

14 THE COURT: I agree with that. I'm -- no, I think
15 it's admissible. Let's take a five minute recess.

16 MR. DiGIACOMO: Thank you.

17 MR. SGRO: Thank you, Your Honor.

18 THE COURT: Do we have one more witness?

19 MS. WECKERLY: Yeah.

20 MR. DiGIACOMO: Yeah, one --

21 MS. WECKERLY: She's like --

22 MR. DiGIACOMO: -- five-minute witness.

23 MS. WECKERLY: -- five minutes.

24 THE COURT: Five. Good.

25 MR. DiGIACOMO: So we get one short witness and

1 we're done.

2 THE COURT: Very good. I'm sure the jury will
3 appreciate that.

4 (Court recessed at 3:07 p.m., until 3:15 p.m.)

5 (In the presence of the jury.)

6 THE COURT: All right. State versus Burns and
7 Mason. The record will reflect the presence of the
8 defendants, their counsel, that District Attorneys and all
9 members of the jury.

10 You can call your next witness.

11 MS. WECKERLY: Thank you, Your Honor. Samantha
12 Knight. Do you want me to get her? Oh, are you going to get
13 her?

14 SAMANTHA KNIGHT, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated. Please state your
16 name, and spell your first and last name for the record.

17 THE WITNESS: Samantha Knight; S-A-M-A-N-T-H-A
18 K-N-I-G-H-T.

19 DIRECT EXAMINATION

20 BY MS. WECKERLY:

21 Q Ms. Knight, do you know someone by the name of
22 Monica Martinez?

23 A Yes, ma'am.

24 Q How did you meet her?

25 A She worked with me.

1 Q And where was it that you two worked?

2 A At Novum Pharmaceutical Research.

3 Q Was that back in 2010?

4 A Yes, ma'am.

5 Q And what -- were you coworkers or what was
6 your position in the --

7 A I was actually her supervisor, but like we
8 became best friends.

9 Q Okay. And as best friends, would you
10 socialize outside of work together?

11 A Yes, ma'am.

12 Q Pretty often, not too often?

13 A I was very close with her, but I spent a
14 majority of the time with her children. Like they would come
15 to my house and play with my children, and like every once in
16 awhile I'd go with her, but --

17 Q Okay. Do you remember any -- any of the
18 people she was dating towards the end of the summer of 2010?

19 A Yes, ma'am.

20 Q And do you know what that person's name was?

21 A I only knew him by Job.

22 Q As Job?

23 A Job.

24 Q Did you ever see him?

25 A I saw him one time.

1 Q And approximately when was that?

2 A I can't remember the exact time, but it was
3 not too long before whatever happened. He actually showed up
4 at work with her daughter, she was driving, her daughter was
5 driving. He was in the car in the passenger side.

6 Q And do you remember anything about him sitting
7 in the car with her daughter?

8 A I remember that he had a broken leg.

9 Q Okay. And you know there was a day where
10 detectives came and came to work and Monica left with them;
11 correct?

12 A Yes, ma'am.

13 Q Using that as your -- as your marker, if you
14 could, how much before that do you think you saw him in the
15 car with her daughter?

16 A That was the only time I had ever seen him.
17 I've heard of him a lot, but I had never seen him before.

18 Q Okay. But like still, how much before did you
19 see him in the car?

20 A I was walking to go clock out so maybe like
21 five or ten minutes because I stopped --

22 Q Oh, the same --

23 A -- to say high to her daughter.

24 Q Oh, okay. And it was the same day the
25 detectives came there?

1 A Oh, no, no, no. I'm sorry. Like maybe two or
2 three weeks before --

3 Q Okay.

4 A -- the incident. I'm sorry.

5 Q Okay. I'm sorry. We miscommunicated. So you
6 see him with her daughter, her daughter is driving the car.

7 A Yes, ma'am.

8 Q And you see that he's got a broken leg or
9 something?

10 A Yes, ma'am.

11 Q Did he actually get out of the car?

12 A No.

13 Q And then two weeks or so after that is when
14 the detectives show up?

15 A Yes, ma'am.

16 Q Okay. And do you know what her daughter's
17 name is?

18 A Tyler.

19 Q Tyler. Okay. Tyler was driving?

20 A Yes, ma'am.

21 Q Now, on the day the detectives come to see
22 Monica, do you remember if she was at work the previous day or
23 if that was her day off or --

24 A She was off on Mondays.

25 Q She was off on Mondays. So the detectives

1 came on a Tuesday?

2 A Yes, ma'am.

3 Q Do you know how it was that Monica got to work
4 that day?

5 A She actually called me the night before and
6 told me that she needed a ride to work.

7 Q And when you -- did you drive her to work that
8 Tuesday?

9 A I had actually just gotten out of a really bad
10 relationship, so my brother was taking me. So my brother took
11 both of us to work.

12 Q And where did you pick Monica up from?

13 A At her grandmother's house.

14 Q So not at her regular house?

15 A No, ma'am.

16 Q And you picked her up -- or your brother was
17 actually the driver, I assume.

18 A Yes, ma'am.

19 Q And he drives both of you to work?

20 A Yes.

21 Q And it's sometime after that that the
22 detectives show up?

23 A Yes, ma'am.

24 Q Now, prior -- well, actually, when Monica was
25 in the car on the way to work, did you have an opportunity to

1 observe her demeanor or observe her behavior at all?

2 A She was really distracted. Like we're
3 normally really happy people, you know. We talk to a lot of
4 people, we know a lot of people. She knew Vegas a lot better
5 than I. I'm very unfamiliar with that side of town other than
6 getting from Henderson to my house -- or to my work. And when
7 she gave me instructions how to get there, she was very vague.
8 My brother was kind of just driving around in circles. And
9 I'm like if I'm at a school am I too far, if I'm here where am
10 I supposed to be? And she's like I don't know. And I'm like,
11 well, this is your grandmother's house. Like I'm going to be
12 late to work. You have to tell me how to get there or else,
13 you know, I can't take you. And eventually she told me how to
14 get there, we pulled up, picked her up, and we just drove to
15 work.

16 Q When she was in the car did -- did -- was she
17 talkative or --

18 A No, I just kind of busted her about like not
19 telling me how to get there sooner because I was really
20 literally just going in circles.

21 Q Okay. And then you get to work. Do you work
22 next to each other?

23 A My desk as a supervisor was here. Her desk
24 was literally right next to mine.

25 Q Did she -- did she give you anything that day?

1 A Yes.

2 Q What did she give you?

3 A A phone number.

4 Q And describe how that happened.

5 A She was at the front desk working that day
6 because we had screening. And she said that there were
7 detectives next door and she had to go. And she handed me a
8 phone number and told me if anything happened to call the
9 number. And I said who do I ask for or what am I supposed to
10 do. And she's like if anything happens, you call the number.

11 Q Okay.

12 A And that's pretty much it.

13 Q The detectives ultimately talk to you;
14 correct?

15 A Yes.

16 Q And did you give them that piece of paper that
17 she had given you with the phone number on it?

18 A I actually called my boss that night that it
19 happened because I'm pretty sure her husband used to work in
20 the Metropolitan Police Department and I didn't want to really
21 get involved. So I asked her how to handle it, and he kind of
22 helped me out with it to get it to the right people.

23 Q Okay.

24 MS. WECKERLY: Counsel, I'm going to show her.

25 MR. SGRO: Oh, yeah. Yeah.

1 BY MS. WECKERLY:

2 Q Ms. Knight, I'm going to show you what's been
3 marked as State's 281. Do recognize that?

4 A [Nods head yes].

5 Q What is that?

6 A That's the number she gave me.

7 Q That's the number she gave you?

8 A Monica, yes.

9 Q Okay.

10 MS. WECKERLY: State moves to admit 281.

11 MR. SGRO: No objection.

12 THE COURT: It'll be received.

13 (State's Exhibit 281 admitted.)

14 BY MS. WECKERLY:

15 Q And did you actually call this number?

16 A No.

17 Q Okay. Since --

18 THE COURT: That's a no?

19 THE WITNESS: No, ma'am. Or, no, sir. Sorry.

20 THE COURT: Okay.

21 BY MS. WECKERLY:

22 Q Since that time with the police, have you seen
23 or spoken to Monica?

24 A I've received letter from her. I haven't
25 actually gone to see her. I've talked to her children a few

1 times, and I actually -- I'm close friends with her
2 ex-husband, but that's pretty much all I have with her.

3 Q She's written you some letters and then you've
4 talked to her ex-husband?

5 A Uh-huh.

6 Q Is that yes?

7 A Yes, ma'am. Sorry.

8 Q That's okay. Which -- what's his name?

9 A He would be -- I think it's Willie. That's
10 how I know him.

11 Q Okay. And so you've talked to him a couple
12 times, and then maybe you've seen the kids?

13 A I've only seen the kids one time after, but
14 that -- then I talk to them through Facebook and whatnot, but
15 I haven't actually been able to see them see them.

16 Q Okay. Thank you.

17 MS. WECKERLY: Your Honor, I'll pass the witness.

18 CROSS-EXAMINATION

19 BY MR. SGRO:

20 Q Good afternoon.

21 A Good afternoon.

22 Q So I want to start out -- first of all, you
23 gave a statement to the police; right?

24 A Yes, sir.

25 Q And you know it's recorded?

1 A Yes, sir.

2 Q Okay. Relative to the names that the
3 boyfriend had, did she ever say that sometimes he went by
4 Anthony?

5 A I only heard it the day of. She said that I
6 had to screen her calls.

7 Q Okay.

8 A And tell my staff that if anyone called in
9 that she was on vacation and then to give the calls to me. I
10 asked her who I was looking for. She said it was either Job,
11 Mohammed, or Anthony, or Jamar was the names that I heard.

12 Q Okay. And -- and was Anthony Anthony
13 Lassiter, or was Anthony just going to be a pseudonym for some
14 who was calling?

15 A It was just an Anthony. There was no last
16 name.

17 Q And there -- and you said Jamar. That was a
18 conversation that revolved around a tattoo she told you she
19 wanted to --

20 A Yes, sir.

21 Q -- to get; right? And at the time she says I
22 want to get a tattoo of my boyfriend; right?

23 A Yes, sir.

24 Q And you said Job?

25 A Yes, sir.

1 Q And she said, no, well, Jamar.

2 A Yes, sir.

3 Q Okay. So this is sort of a context of all of
4 the names that this individual Job would use; right?

5 A Yes, sir.

6 Q Do you know his real name?

7 A No.

8 Q Now, I think I just heard you describe for the
9 jury you were very close with Monica; right?

10 A Yes, sir.

11 Q You were best friends?

12 A Yes, sir.

13 Q And you even told the police the same kind of
14 thing; right?

15 A Yes, sir.

16 Q She told you everything?

17 A Pretty much, yes, sir.

18 Q Okay. And you knew her for how long?

19 A Probably two and a half years --

20 Q So for --

21 A -- at or about.

22 Q -- two and a half years -- and I didn't mean
23 to interrupt you. But over two and a half years you developed
24 a relationship where you believed you were close.

25 A Yes, sir.

1 Q Let me ask you this. Did you help her ever
2 commit crime?

3 A No, sir.

4 Q Were you aware that when she worked at your
5 pharmaceutical company that she was committing identity theft?

6 A No, sir.

7 Q Were you aware that she was writing down
8 people's names and dates of birth and social security numbers
9 and taking that information home?

10 A No, sir.

11 Q And that wouldn't be something you would have
12 condoned; right?

13 A No, sir.

14 Q Were you aware that she was loaning her car to
15 individuals to commit crimes while she was at work?

16 A No, sir.

17 Q So you would agree that even as -- if what I'm
18 saying is true, and I know you don't know, right, but if what
19 I'm saying is true, you would agree that even knowing someone
20 for as long as you did, as close as you thought that you guys
21 were, she can look at you straight in the eye and keep a lot
22 of things away from you; right?

23 A I understand where you're coming from. As
24 best friends you reveal a lot to your friend about you, but
25 there's certain aspects of your life you don't tell a person

1 about you, you know. I mean, I just had cheated on my
2 boyfriend and broken up and gotten into a terrible domestic
3 abuse where my ex-boyfriend almost killed me. So, I mean, she
4 only knew certain aspects of it, but she didn't know the whole
5 picture. So I understand where you're saying I didn't know
6 everything about her, but I knew enough about her to love her
7 and to know that she was a really good friend of mine.

8 Q I didn't say -- I didn't say you knew
9 everything. You said you knew everything.

10 A Okay. I'm sorry. I didn't know everything,
11 but I knew a lot about her.

12 Q Ma'am, I understand she was your friend. I
13 understand your desire to want to defend her, okay. My
14 question is very simple. Despite the closeness that you have
15 just described for these folks to my right, you agree there is
16 a lot of things, if what I'm saying is true, there is a lot
17 you really don't know about her; right?

18 A Yes, sir.

19 Q And if what I'm saying is true, she was
20 capable of being two-faced, fair?

21 A Yes, sir.

22 MR. SGRO: That's all.

23 MR. LANGFORD: I don't have anything, Judge.

24 THE COURT: Redirect?

25 MS. WECKERLY: No, Your Honor. Thank you.

1 THE COURT: Ms. Knight, you'll be excused. Thank
2 you for being a witness. You can leave.

3 Ladies and gentlemen, I have good news. They --
4 they told me that that would be the last witness today, so
5 that means you get to go home early. I hope you have a very
6 pleasant Super Bowl weekend whatever your choice is. And we
7 will see you next Thursday, that's the 5th of February, here
8 at 9:30 in the morning. Have a good weekend.

9 During the weekend, again, it's your duty not to
10 converse among yourselves or with anyone else on any subject
11 connected with this trial or to read, watch, or listen to any
12 report of or commentary on the trial from any medium of
13 information, including newspapers, television, and radio. And
14 you may not form or express an opinion on any subject
15 connected with this case until it is finally submitted to you.
16 We'll see you next Thursday. Have a good weekend.

17 (Court recessed at 3:29 p.m.)

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CERTIFICATION

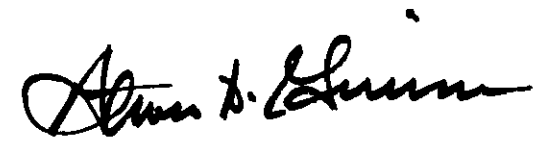
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIE DARNELL MASON, AKA
WILLIE DARNELL MASON, JR.,
AKA G-DOGG,
DAVID JAMES BURNS, AKA
D-SHOT,

Defendants.

CASE NO. C-10-267882-1
C-10-267882-2
DEPT NO. XX

**TRANSCRIPT OF
PROCEEDING**

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 10

THURSDAY, FEBRUARY 5, 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.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 5, 2015, 9:44 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: All right. State of Nevada versus Burns
5 and Mason. The record will reflect that we're back on the
6 record with the defendants and all counsel in the absence of
7 the jury.

8 Mr. Sgro.

9 MR. SGRO: Your Honor, two -- two quick matters.
10 One is that today we expect two kids of two of the defendants
11 to testify, Tyler Mitchell and Christine Tamika Pierce. And I
12 did speak with the State.

13 THE COURT: Two of the defendants' kids?

14 MR. SGRO: Monica Martinez has a daughter. Her name
15 is Tyler Mitchell.

16 THE COURT: Yeah, I know it's Monica Martinez's
17 kids. Not the defendants' kids.

18 MR. SGRO: Well, and Stephanie Cousins that you've
19 obviously heard a lot about, she has a kid and -- and her name
20 is Tamika Pierce.

21 THE COURT: But they're not defendants.

22 MR. SGRO: No, it's daughters of defendants. It's
23 the daughters of --

24 MS. WECKERLY: The co-defendants of these two.
25 There's four people charged in this case, so it's Stephanie's

1 daughter and Monica's daughter.

2 THE COURT: Oh, well, right now only Burns and Mason
3 are charged as far as we're concerned.

4 MS. WECKERLY: Well, I mean, the other two are
5 charged. They're just not --

6 THE COURT: They're not charged in -- okay. Anyway,
7 I know what you're talking about now.

8 MR. SGRO: Okay. The bottom line, Your Honor, is
9 our concern was relative to the eliciting of any hearsay
10 statements because we are joined at this trial. And one of
11 the -- one of the individuals, specifically Ms. Cousins'
12 daughter is going to talk about some conversations that she
13 had with Mr. Mason.

14 Now, I am assured, I am assured, that there is no
15 responses that are going to be gleaned from the witness stand
16 where the answer would be Mason told me we did this and we did
17 that, which would be violative of the confrontation clause,
18 violative of the Ducksworth decision, etcetera. So I'm told
19 that there is -- none of that is going to occur, so I want to
20 put that on the record.

21 And relative to Ms. Mitchell, Monica Martinez's
22 daughter, that's Mr. DiGiacomo's witness, he also assures me
23 he is not intending on eliciting any hearsay information.
24 Now, Ms. Mitchell did testify before the grand jury. She did
25 go through a photo lineup and she did some affirmative things

1 which we don't quarrel with.

2 It's -- I want to caution the Court that if anything
3 starts to look like hearsay, we're immediately going to ask
4 for a break to make sure we don't have a problem, a
5 confrontation clause problem. So that's number one is that I
6 want to make those representations that we had those
7 conversations.

8 THE COURT: Statements by the defendants would be
9 admissible.

10 MR. SGRO: Not to the extent Mr. Mason -- a
11 statement by Mr. Mason that inculpates Mr. Burns would not be
12 admissible at a joint trial delivered through another witness.

13 THE COURT: That would pose a problem.

14 MR. SGRO: Yes, sir. And I'm assured that that's
15 not going to happen.

16 THE COURT: Okay. But statements by a defendant as
17 to what they did --

18 MR. SGRO: Of course.

19 THE COURT: -- is admissible.

20 MR. SGRO: Of course. And we're not -- again, our
21 only problem on behalf of Burns was just the hearsay if Mr.
22 Mason --

23 THE COURT: I understand.

24 MR. SGRO: Okay. Secondly, the State has endorsed
25 and has told me they're calling today an individual named

1 James Krylo, K-R-Y-L-O. He is a tool mark examiner that's
2 been at Metro for a long time. And so just -- just to give
3 some context, there has been an attack that has been lodged on
4 forensic science relative to tool mark and firearm
5 examination. And -- and some on an extreme level have equated
6 it to a junk science like bite marks.

7 And I'll tell you why, Your Honor. The attack stems
8 from the subjectivity employed by the individual tool mark
9 examiner as he or she views evidence. In other words, they're
10 use -- they're using their vision and their training and
11 experience. They don't have databases. They don't have
12 quantifying data. It's not like a fingerprint where you need
13 so many points of comparison before you say, yes, I have a
14 match. It's completely subjective as to whether you have a
15 match or not.

16 So here's what happens. In 2005 there begins some
17 litigation and it starts in Boston where attorneys begin to
18 challenge the science of the forensics. A few judges -- a few
19 judges exclude and limit the testimony of forensic scientists.
20 Congress in 2009 commissions a study, and it's by the National
21 Academy of Science.

22 Now, the National Academy of Science is someone
23 that's often relied on by our government to validate certain
24 scientific genres, DNA, fingerprints, etcetera. And
25 essentially it's touching base in, hey, where are we at today

1 in DNA? Because in 1980 it was a lot different than 1990,
2 which is a lot different than 2000.

3 So the Academy of Science goes out and they do a
4 450-page report going through and breaking down the sciences
5 that they were tasked to investigate objectively. Are they --
6 are they good or bad? And obviously they're a lot more artful
7 than how I'm delivering it to you. So in 2009 they came back
8 with this 450-page report. A chapter of this report was
9 dedicated to the pitfalls and unreliability of tool mark
10 examination.

11 Now, this just happened in 2009. The challenge --
12 the challenge becomes now how are different states dealing
13 with these proposed admission of quote, unquote, expert
14 testimony in a science that has so much subjectivity attached
15 to it, okay. So some states have Daubert, some states have
16 Frei, some have a combination. In Nevada -- and admittedly in
17 Nevada we don't adopt the Daubert federal standard.

18 THE COURT: Sort of a modified Daubert.

19 MR. SGRO: Yes, sir. And there is an expert statute
20 and it is left to -- it is left to the discretion of the
21 Court. There are some things, though, that the Court does
22 have to find. Will it aid the jury in its assistance of
23 actual predicate, is it something that's generally relied
24 upon, etcetera.

25 And I guess what I'm suggesting to the Court is the

1 temperature relative to tool mark examination is changing
2 because it has nationally become under attack. So now how
3 does Nevada handle it? And as the Court points out, we have a
4 modified Daubert test. So I only could find -- I only could
5 find one case and it was filed in 2014. And the --

6 MR. DiGIACOMO: Would that be an unpublished order
7 you're talking about?

8 MR. SGRO: Yeah, it's an unpublished order.

9 MR. DiGIACOMO: Okay.

10 MR. SGRO: And this is -- this is the only thing I
11 can find. So if we're going to agree it has no precedence
12 because it's unpublished, that's great, because the Supreme
13 Court came down in favor of the State. So I'll -- I'll
14 stipulate that this has no authority. What I'm telling the
15 Court, though, as an officer of the Court, I wanted you to be
16 fully aware of what's going on in this science because it's
17 evolving every day.

18 So in Nevada, Dan Albregts, a trial lawyer here in
19 our district, has a case. He challenges -- he challenges the
20 science that was admitted relative to tool mark examinations
21 just based on some of the Daubert and the Frei things and he
22 calls it junk science in his brief, etcetera, etcetera. He
23 does not cite -- for whatever reason, he does not cite the
24 report that was established and published in 2009.

25 The Nevada Supreme Court apparently in a

1 non-authoritative opinion issues an order saying we're not
2 going to accept your version of this being junk science. He
3 then does a petition for rehearing, and he now has located the
4 study which I have been telling the Court about.

5 And in May of 2014, the Nevada Supreme Court denies
6 it based on -- based on NRAP 40(c) which says that matters in
7 the briefs and oral argument may not be reargued in the
8 petition for a rehearing. And this is the part they denied it
9 on, no point may be raised for the first time on rehearing.
10 So what he did is he got it denied on procedural grounds.

11 So I give you that long-winded predicate. And I
12 apologize. However, I would ask that Mr. Krylo be precluded
13 from testifying as an expert witness relative to comparisons
14 he made based on the non-scientific nature of the testing --
15 testing mechanisms he employs insofar as they are not
16 scientifically accepted standards.

17 And I'm happy to -- and I would actually like to
18 make it a part of the record, Your Honor. The chapter that I
19 referenced in the study is Chapter 3 of the National Academy
20 of Science. And I don't see your clerk here, but if I may
21 approach the clerk. I just want to give you the Thompson
22 unpublished decision, the thing -- the order that says we
23 can't consider the study because it wasn't raised initially,
24 and then the chapter which is controlling relative to this
25 issue.

1 Now, I do understand we have a little bit of
2 evidence we're going to -- we're going to go through before we
3 get to Mr. Krylo. I just wanted the opportunity to make the
4 record. May I approach?

5 THE COURT: You may approach and give it to me.

6 MR. SGRO: Thank you, sir.

7 THE COURT: Thank you.

8 MR. SGRO: Sure.

9 MR. DiGIACOMO: Would you like to hear from me?

10 THE COURT: Do you want to respond?

11 MR. DiGIACOMO: Just briefly, which is actually Mr.
12 Sgro is wrong. It's the exact same argument that was made
13 about fingerprints. And we've actually had those hearings
14 here in Clark County at least as it relates, I know I've done
15 one, as it relates to fingerprints.

16 And, ultimately, the question under our statute is
17 whether or not the testimony will assist the trier of fact, he
18 has a specialized knowledge skill or other thing that will
19 assist the trier of fact in making a determination as to the
20 -- as a fact in issue.

21 What the argument from everybody is, and it's been
22 going around for ten years now, is that ultimately at the end
23 of the day there is an opinion by the expert as to whether or
24 not there is a conclusive identification. And based upon some
25 of these studies, the experts actually changed their -- their

1 opinion.

2 They used to say this was fired from this gun and no
3 other gun on earth, and now they say, you know, my opinion is
4 it was fired from this gun, I wouldn't expect to find another
5 gun that would leave the same rifling characteristics as -- as
6 this one. And that was in conformance to this study not only
7 on fingerprints, but as well as on all the other ballistic
8 ones.

9 I'm certain that had this been a timely raised
10 motion, the Court would have held very lengthy evidentiary
11 hearings. There's experts from all over the country that fly
12 out and they testify to them. It's being raised the morning
13 we're calling the witness in trial after they've already
14 opened with some of the conclusions that Mr. Krylo is going to
15 testify.

16 And for the record, I would suggest that, you know,
17 if there is some concern after we lay the foundation with Mr.
18 Krylo that he's not qualified to give the opinions that he's
19 not qualified to, the Court won't allow him to issue his
20 opinions. But to suggest that the underlying science is not
21 valid, they're wrong in the fact that there is empirical data
22 that can be checked, which is they fire guns and then they
23 give blind tests to the experts and they have to qualify and
24 go through the certification process. And I'm sure Mr. Krylo
25 is going to testify to all of that.

1 And so ultimately, unless the Court wants to take
2 five, six days and call in experts from all over the country
3 to hear the testimony, most courts that I am aware of,
4 certainly every court in Nevada, has determined this is
5 admissible evidence in trials here in Nevada.

6 THE COURT: Well, I will wait to hear the expert's
7 qualifications, background, and what he did and why he did
8 what he did before I make the decision.

9 All right. The only other thing -- well, we've got
10 two other things on the -- that we have to discuss. I have a
11 motion that was on calendar this morning at 8:30. It was the
12 -- Mr. Burns's motion to prohibit the presentation of a
13 summary regarding the course of the investigation.

14 MR. ORAM: Yes, Your Honor. I raised this several
15 times on appeal, but I've never done it pretrial. I was a
16 little concerned when I saw the grand jury in this case and
17 the prosecution asked the detective, you know, sort of
18 summarize what happened. I think they can ask -- on the
19 witness stand should be able to ask questions, obviously, but
20 to sort of stand back and say why don't you just sort of
21 summarize everything I think is problematic.

22 And here is why, and then I'll just submit it to the
23 Court's discretion. If we were to call our investigator and
24 say tell us, you know, what happened in this case, what have
25 you done, and they just sort of summarize the case up with the

1 conclusion that Mr. Burns and Mr. Mason must be innocent based
2 upon his or her determinations and investigations, I don't
3 think that would be permitted. And it --

4 THE COURT: I don't know what they're doing, but I
5 -- I have heard occasions where the prosecution with their
6 investigator on the stand has said, well, what did you do
7 next? And he explains what next happened, and then after
8 that, what did you do next? Now, if that's what you're
9 talking about, I don't find that offensive.

10 MR. ORAM: No, I think -- I don't -- I don't think
11 that's the problem. I think it's sort of when they just sort
12 of give a -- it's almost like a closing argument. I think if
13 the Court heard it it would recognize it.

14 THE COURT: Well, if it's -- if it's wandering, we
15 won't let them do that. On the other hand, if they try to
16 elicit anything that isn't admissible, you object and I'll
17 sustain the objection.

18 MR. ORAM: Yes, Your Honor.

19 MR. LANGFORD: Here's --

20 THE COURT: Okay.

21 MR. LANGFORD: Here's my problem. I joined in this
22 motion, Your Honor. Here's my problem with this. And that is
23 that what did you do next? Well, we called and talked to --
24 objection, hearsay. The Court is about to sustain it. And
25 they'll say, well, it's not offered for the truth of the

1 matter asserted. So there's no substantive evidence to it at
2 that point. And we run all the way through it, and every time
3 the person says what they did, it's because they're doing that
4 because of hearsay, or, you know, we ordered the finger -- we
5 -- whatever. And then at the --

6 THE COURT: That's okay.

7 MR. LANGFORD: At the very end what they say, and
8 I'd at least ask the Court to preclude them from the
9 following, at the very end they say what did you do next? We
10 arrested them for first degree murder.

11 THE COURT: If that's what he did next, that's okay.

12 MR. LANGFORD: I think it is prejudicial. It's not
13 probative of anything. That's for the jury to decide whether
14 they committed first degree murder.

15 THE COURT: Well, it shows the time and date of
16 arrest.

17 MR. LANGFORD: It's irrelevant --

18 THE COURT: I'm going to overrule the objection and
19 deny the motion.

20 Now, there's one additional thing we need to put on
21 the record. Over the weekend we -- my office received a call
22 from Juror Kelly Rowan, who was Badge No. 93 sitting in Seat
23 No. 1. You'll recall when we did voir dire she explained that
24 her husband was going to have surgery for bladder cancer. And
25 I understand that that surgery did occur, things have not gone

1 well, and the bottom line is she was hysterical on the phone
2 when she talked to staff. And I told staff that she was to be
3 excused and so I am substituting Alternate No. 1 who is Mr.
4 Nunez in place of Juror Kelly Rowan.

5 Anything further on the record before we bring the
6 jurors in?

7 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

8 MR. SGRO: No, sir.

9 MR. DiGIACOMO: No, Your Honor.

10 (In the presence of the jury.)

11 THE COURT: All right. State of Nevada versus Burns
12 and Mason. The record will reflect the presence of the
13 defendants, their counsel, the District Attorneys, and all
14 members of the jury except Juror Ms. Rowan.

15 Good morning, ladies and gentlemen.

16 JURY PANEL: Good morning.

17 THE COURT: First of all, let me apologize for being
18 a little late today. We had some other matters we had to take
19 care of out of your presence. One of the matters had to do
20 with Juror Ms. Rowan. You'll -- I don't know those of you who
21 were here when she was voir dired, she explained that her
22 husband was going in for a surgery. Apparently, that has
23 happened but has not gone real well. And the short story is I
24 have excused her. And so alternate No. 1, Mr. Nunez, has been
25 assigned to replace her. That's why we have the alternates.

1 So, Mr. Nunez, you're now one of the regular jurors
2 and before you continue we have to ask you to stand, raise
3 your right hand, and the clerk will administer the oath for
4 the regular jurors.

5 (Juror Nunez sworn.)

6 THE COURT: Please be seated.

7 All right. We're still in the State's case in chief
8 and the State can call their next witness.

9 MR. DiGIACOMO: It's the custodian of records for
10 Metro PCS.

11 KENNETH LECESNE, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated.

13 THE WITNESS: Thank you, ma'am.

14 THE CLERK: Please state your name and spell your
15 first and last name for the record.

16 THE WITNESS: Kenneth LeCesne; K-E-N-N-E-T-H L-E
17 Capital C-E-S-N-E.

18 MR. DiGIACOMO: May I inquire, Judge?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. DiGIACOMO:

22 Q Sir, how are you employed?

23 A I'm a custodian of records for Metro PCS
24 cellular telephone company in Richardson, Texas.

25 Q In addition to being the custodian of records,

1 do you have an understanding essentially how Metro PCS cell
2 phones work and how the records are generated?

3 A Yes, sir.

4 Q And can you explain to the ladies and
5 gentlemen of the jury -- well, first, how does a cell phone
6 work with Metro PCS?

7 A Well, a cell phone works with -- basically any
8 cell phone works when an individual makes a call, a signal
9 goes out from the phone. It usually goes to the nearest tower
10 with the strongest signal. That information is actually
11 picked up and it's in the call logs, the actual call detail
12 records. When an individual answers a call, you hit the send
13 button, the signal will go out from that phone and it'll go to
14 the nearest tower with the strongest signal.

15 Q And are the information about a particular
16 phone connecting to a particular tower, are those records
17 maintained by Metro PCS in the ordinary course of their
18 business?

19 A Yes, ma'am. Yes, sir. I'm sorry.

20 Q Let me ask you this, at Metro PCS is there a
21 general distance that the phone needs to be in relationship to
22 a tower to connect to a particular tower?

23 A With regards to Metro PCS towers and the Metro
24 PCS phones, the range is not a finite range. It's an
25 estimated range. The phone can be up to a half mile on in to

1 the tower up to a mile and a half on in to the tower.

2 Q So the phone is generally -- can be right at
3 the tower, I guess. You could physically be standing at the
4 tower, but it could be anywhere from a half mile to a mile and
5 a half away from the tower when it connects?

6 A That's correct.

7 Q Were you asked to come and testify and
8 authenticate certain records from Metro PCS in this case?

9 A Yes, sir.

10 Q And this morning did you have a chance to
11 review those records to confirm they are, in fact, Metro PCS
12 records?

13 A Yes, sir.

14 MR. DiGIACOMO: May I approach, Judge?

15 THE COURT: Yes.

16 BY MR. DiGIACOMO:

17 Q Sir, I'm going to start with State's Proposed
18 Exhibit No. 295. Can you explain to the ladies and gentlemen
19 of the jury basically what is 295.

20 A Exhibit 295 is actually subscriber records
21 that were created at the time the individual customer when
22 into a Metro PCS store or went online and actually purchased a
23 cell phone and/or the service.

24 Q And are those records kept in the ordinary
25 course of business of Metro PCS?

1 A Yes, sir.

2 Q And does that appear to be a true, fair, and
3 accurate copy of the records?

4 A Yes, sir.

5 MR. DiGIACOMO: Move to admit 295.

6 MR. SGRO: No objection, Your Honor.

7 MR. LANGFORD: No objection, Judge.

8 THE COURT: It'll be received.

9 (State's Exhibit 295 admitted.)

10 BY MR. DiGIACOMO:

11 Q I want to start with -- is there two different
12 subscriber information on this record?

13 A Yes, sir, there is.

14 Q Okay. And let's start with the top
15 subscriber. What's the phone number for this subscriber?

16 A The phone number is 702-542-4661.

17 Q And the subscriber?

18 A The subscriber name given is a Stephanie
19 Cousins.

20 Q That phone, can you tell from those records
21 whether or not that phone is, the term I would use, prepaid
22 versus somebody who is paying their monthly bill to Metro PCS?

23 A Metro PCS is an advance pay company. When a
24 customer comes in, they pay \$40 for 30 days of service. On
25 the 29th day of that service they will get a text message to

1 their phone telling them pay your bill tomorrow. If they
2 don't pay that bill, they can't use their phone. The do give
3 another 30 days before they cancel your account to pay that
4 bill. If you don't do it then, the account is cancelled,
5 you've got to back in and start all over again or go online
6 and start all over again with your account.

7 Q Based on the fact that it's an advance pay, is
8 there any investigation or a credit check or anything that
9 happens with somebody who comes into a store and wants to
10 utilize Metro PCS cell phone service?

11 A There's no credit check done, so there's no
12 verification of the identity of the person that comes in and
13 purchases a phone and/or service.

14 Q So I could walk in, get a phone in the name of
15 Mickey Mouse, and ultimately there wouldn't be -- there is no
16 check to make sure my license says my legal name is Mickey
17 Mouse?

18 A There is no check of your -- your
19 identification or your social security number.

20 Q What is the second phone subscriber
21 information on this record?

22 A The second phone number is a 909-233-0860.

23 Q And who is the -- what is the name associated
24 with that account?

25 A The name is -- I'll spell the first name,

1 R-I-C-C, and the last name is James.

2 Q So Ricc James. And is that also the same way
3 that the previous phone was, there had been no verification or
4 there would be no verification of the name that was provided
5 for that cell phone?

6 A That's correct.

7 Q Is there an address associated with both of
8 those cell phones? Let's start with the phone in Stephanie
9 Cousins' name. Is there an address?

10 A Yes, they search number ending in 4661, the
11 subscriber address given is a 4640 Vegas Valley Drive,
12 Apartment 1031, Las Vegas, Nevada, and the zip code.

13 Q How about for Ricc James, is there an address
14 that was provided?

15 A For that particular phone number ending 0860,
16 the subscriber address given is 1258 North Riverside Avenue,
17 Rial -- R-I-A-L -- Rialto, California, and the zip code.

18 Q Now I want to move on to the individual
19 records themselves, so let me start with -- actually, I'm
20 going to start with State's Proposed Exhibit No. 298.

21 A Yes, sir.

22 Q Do you recognize what that document is?

23 A Yes, sir.

24 Q And what is it?

25 A These are called detail records or phone logs

1 for the search number 702-542 -- I'm sorry, 702-542-4661. And
2 the specific dates to be searched are -- is 8/1/2010 through
3 8/23/2010.

4 Q And then those records, it's a 52-page record
5 of --

6 A Yes, they're called detail records. They're
7 phone logs for that specific phone number.

8 Q And much like the last record, is this a
9 business record kept in the ordinary course of business of
10 Metro PCS?

11 A Yes, sir, it is.

12 Q And does this appear to be a true, fair, and
13 accurate copy of those records?

14 A Yes, sir, it does.

15 Q Now I'm going to show you State's Proposed
16 Exhibit 297.

17 A Yes, sir. State's Exhibit 297 is 23 pages of
18 call detail records for the phone number 909-233-0860. And
19 the search dates are from 8/1/2010 through 8/23/2010.

20 Q And those -- once again, those appear to be
21 business records kept in the ordinary course of business and a
22 true, fair, and accurate copy of those records?

23 A Yes, sir.

24 MR. DiGIACOMO: Move to admit 297 and 298.

25 MR. SGRO: No objection.

1 MR. LANGFORD: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 297 and 298 admitted.)

4 BY MR. DiGIACOMO:

5 Q Now, lastly I'm going to show you 296 and ask
6 you do you recognize what's depicted in 296.

7 A Yes, sir. This is eight pages of Metro PCS
8 cell sites, specifically Metro PCS cell sites in the greater
9 Las Vegas area.

10 Q And is that record, once again, a record kept
11 in the ordinary course of business of the Las Vegas Metro --
12 sorry, of the Metro PCS company?

13 A Yes, sir.

14 Q And does it appear to be a true, fair, and
15 accurate copy of that record?

16 A Yes, sir, a partial. It's not all of the cell
17 sites because there are a lot more cell sites.

18 Q Right. There's thousands and thousands --

19 A Yeah.

20 Q -- of cell sites --

21 A Yeah.

22 Q -- across the country.

23 A It actually -- it actually says all Metro PCS
24 cell sites, but it's specifically in the Las Vegas area.

25 MR. DiGIACOMO: Move to admit 296.

1 MR. SGRO: I'm sorry. Just to make sure I
2 understand, is the witness saying that the cell site record is
3 complete relative to Las Vegas? Was that the testimony?

4 BY MR. DiGIACOMO:

5 Q Do you have any way of knowing whether or not
6 it's complete as to Las Vegas or are those towers that are in
7 Las Vegas?

8 A These are towers that are in Las Vegas. I'm
9 not sure that it's all of the towers that are in Las Vegas.
10 It's eight pages of -- of towers and it's --

11 MR. SGRO: I mean, I'll submit it, I guess.

12 THE COURT: For what it's -- for what it's worth.

13 MR. SGRO: For what it's worth. Okay. Fair enough.

14 THE COURT: It'll be received.

15 (State's Exhibit 296 admitted.)

16 MR. DiGIACOMO: Thank you.

17 BY MR. DiGIACOMO:

18 Q So let me start with --

19 MR. DiGIACOMO: Actually, Madam Reporter, can we put
20 this on the overhead for just a second?

21 BY MR. DiGIACOMO:

22 Q And I'm going to go to 296. I'm just going to
23 zoom in on one -- each portion of it. I'm going to start off
24 with what information do you receive -- or what information is
25 on 296?

1 A The information on 296, actually over here,
2 the first column it's Broadcast SID. I'm not seeing that
3 particular column on this document. The next is NID. I'm not
4 seeing that on this. What usually comes up is the switch.
5 The switch is the computer that created the call detail
6 records for those specific phone numbers. The next column is
7 the cell. That is the cell tower number of the tower that
8 actually received the signal with the actual phone call when
9 each individual phone call was made.

10 The next column is the sector. The sector is the
11 side of the tower the antenna is on that picked up the signal.
12 And then the next column is the antenna orientation, or it's
13 also commonly referred to as the ASMIT (phonetic). It's in
14 degrees. That sector is 120 degrees. That's going to be the
15 midpoint of that particular sector on that particular tower.

16 The next column is the physical address of Tower
17 701. The next column is the city that Tower 701 on the switch
18 49 is actually located. The next column is the county, the
19 next column is the state, and then the next column is the zip
20 code of that particular address. At the very end you see an
21 abbreviation LAT and LONG. That is the latitude and longitude
22 in decimal form of the exact location of where that tower is
23 located.

24 Q So there is a mailing address back here, but
25 ultimately the exact location is measured in latitude and

1 longitude and put on a record so if, for example, I were to go
2 to a Google map I could stick in the latitude and longitude
3 for Tower 701 and see on the map exactly where in the world
4 this tower is?

5 A It would give you the exact location. Yes,
6 sir.

7 MR. DiGIACOMO: Madam Reporter, can we go back to
8 me?

9 BY MR. DiGIACOMO:

10 Q I just want to ask you a couple of questions
11 about the call detail records, as well, and I'll start with
12 297. This is the first page of 297; is that correct?

13 A That's correct.

14 Q Okay. And so I'm going to zoom in onto each
15 kind of side of this so that the jury can kind of see. And I
16 will do the first half of it here. If you could tell us --

17 A Okay.

18 Q -- what information is on 297.

19 A Again, at the very top you're going to have
20 the search number. In this case it's the search number ending
21 in 0860, and there were specific dates for that number to be
22 searched, 8/1/2010 through 8/23/2010. The first column on the
23 left is the date. That is the date a specific call is made.
24 The second column is the time a specific call is made. The
25 time is listed in the 24-hour clock commonly referred to as

1 military time.

2 The next column is the duration in minutes and
3 seconds, the duration of each individual phone call. The next
4 column is DIR. That is an abbreviation for direction. A
5 phone call with either be outgoing from the target number to
6 another phone, or incoming to the target number or search
7 number from the other phone.

8 The next number is dialed number. The dialed number
9 is the number dialed by the caller. In an instance of an
10 incoming call, if there's a special feature involved, in other
11 words if the phone call was handled by the voicemail platform
12 of the search number, there will be three additional numbers
13 in front of the phone number that's actually dialed. That is
14 dialed by the computer, by the switch, not the caller.

15 The next column is destination number. The
16 destination number is the number reached by the specific
17 caller. The next column is status. The status of a phone
18 call will either be answered or not answered. An answered
19 phone call can be answered by a person, or in an instance
20 where the voicemail platform picked up the phone call from the
21 search number, it could be answered by the voicemail. If you
22 go over a little bit more --

23 Q Now I'm going to jump to the other --

24 A Yeah.

25 Q -- side of the columns.

1 A Okay.

2 Q And I'll just grab it from where we started
3 from and pull over to the other side.

4 A The next column is special features. The
5 special features will show if the call was actually handled by
6 a -- by the voicemail platform on an incoming call to the
7 target number. The next column is called an ID. If there is
8 an incoming call to the target number, the number that called
9 the target number or search number will be listed in the
10 caller ID on the incoming phone call.

11 At the very end you have two larger columns, the
12 beginning cell and ending cell. The switch is the computer
13 that handled a specific phone call that created the call
14 detail records. You will have the tower number of that
15 particular tower that's associated with that particular
16 switch, and you will also have the sector of the side of the
17 tower the antenna was on from that particular tower that
18 handled the beginning of that phone call.

19 At the very end you see ending cell. It will also
20 show the same switch will handle the call at the beginning and
21 at the end. In other words, the same computer will create the
22 call detail records at the beginning and the end of the call.
23 It then will show which tower where the call ended and the
24 sector of that specific tower where each individual call
25 ended.

1 Q So in this case the switch was located in
2 Anaheim, California, and it's Tower 254 with SW1, Anaheim 1
3 switch?

4 A Yes, the -- the Anaheim 1 SW1 is just an
5 abbreviation for that particular switch.

6 Q Okay. And then I'm just going to put up for
7 the ladies and gentlemen of the jury 298. And this is the 702
8 number, and I'm going to just zoom into a portion of this. I
9 don't know how much bigger it's going to get for the screen
10 there. But it's the same similar information that was on 297,
11 as well, they're in the same sort of format?

12 A Same information. The columns are exactly the
13 same on that as they were in the other, the headings of the
14 columns.

15 Q It says on August 1st this phone was hitting
16 off a switch in Las Vegas. I'm going to ask you about Tower
17 811 on August 1st. Could you then take this list of Tower
18 locations and find --

19 A Whenever you get the records with the cell
20 tower information, you will get a list of all of the towers
21 that Metro PCS owns or controls for Metro PCS customers as
22 close to the time as the search time for the number that
23 you're searching. What I'm doing here is I'm going to the
24 specific cell tower 811 on the Las Vegas switch, and there's a
25 physical address of that particular tower. It is at 2425

1 South Nellis in Las Vegas, Clark County, Nevada, and the zip
2 code, and there is also a latitude and longitude in decimal
3 form.

4 Q So if somebody wanted to track either one of
5 these phones' general location in the country, I guess, you
6 could go through each individual call, find the location of
7 that tower, and then plot where that tower is in town in
8 relationship to the call and the phone should be generally
9 within a half mile to a mile and a half of that tower?

10 A That's correct. Nobody can tell you the exact
11 location of the phone. It just tells you which tower handled
12 each individual phone call from the start of the phone call
13 until the end of the phone call, what happened in the middle,
14 the records don't indicate that.

15 Q And if you wanted to get really technical, you
16 could even go to the sector and on the 360 degrees, based upon
17 the sector lists that are on those records, you could even
18 find in which direction from a cell tower a particular phone
19 generally is?

20 A That's correct.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 Do you want this down or up?

24 MR. SGRO: What's that?

25 MR. DiGIACOMO: Do you want this down or up?

1 MR. SGRO: You can leave it up.

2 MR. DiGIACOMO: Okay.

3 MR. SGRO: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SGRO:

6 Q Good morning, sir.

7 A Good morning, sir. How are you?

8 Q Excellent. Thank you. LeCesne, is that how
9 you --

10 A LeCesne.

11 Q LeCesne.

12 A Yes, sir.

13 Q Okay. Mr. LeCesne, you came from Texas to
14 talk about some specific Metro PCS records; correct?

15 A That's correct.

16 Q All right. So I want to ask you a couple
17 questions just on how cell phone records work, okay, relative
18 to accuracy. So first of all, would you expect if you have
19 one Metro PCS record -- and let me give you a hypothetical.
20 You and I have Metro PCS phones. I call you -- I called you
21 this morning at 8:00 a.m. You would expect to see on my bill
22 me calling you at 8:00 a.m., would that be right?

23 A There's no billing with Metro PCS.

24 Q On my record.

25 A On your particular phone records --

1 Q Yes.

2 A -- if your number was searched, it would show
3 where your phone was.

4 Q Right.

5 A Okay.

6 Q And then you'd want to have -- or you would
7 expect to have a corresponding entry on your phone receiving
8 the call at 8:00 a.m.

9 A If the records were actually requested by a
10 search warrant or court order, yes, sir.

11 Q Correct. And what I think I hear you saying
12 is you would expect the records to match. If the records are
13 requested, the records should match; right? My call to you
14 should be on my search and on your search; right?

15 A If both records were searched --

16 Q Right.

17 A -- depending on where you were. If you're in
18 the same location, they may match. If you're in a different
19 location, it'll show where the phone was on one record, where
20 that phone was and the call that was made to on the other
21 person's record. The records only indicate the number that is
22 searched, not the number that is called.

23 Q Right. I understand. I'm looking for clarity
24 whether or not if both of our numbers were searched in my
25 hypothetical, you would expect to see both my -- my outgoing

1 call to you and your incoming call from me; right?

2 A That's correct.

3 Q Okay. The towers certainly could be different
4 if I'm calling you and we're not together; right? The tower
5 information could be different; right?

6 A They could be.

7 Q Okay. And that tower information could be the
8 same; right?

9 A That's correct.

10 Q Okay. So do you -- strike that. Did you
11 examine these records to do any comparisons? And by that I
12 mean did you go through the records to see if an outgoing call
13 from one search record matched the incoming call on the other
14 or vice versa?

15 A No, sir, I did not.

16 Q All right. Do you know what a pen register
17 is?

18 A Of course I do.

19 Q Okay. What's -- can you -- can you tell the
20 ladies and gentlemen what a pen register is?

21 A A pen register is when -- that's the first
22 step when you're doing a Title III or a wiretap on a phone.
23 And what you do is you would get all of the phone calls that
24 are made and you compare those phone calls. And that's
25 basically to get an idea on the locations that the phone is on

1 the pen register that you're looking at.

2 Q Okay. Are you aware of any pen registers
3 being done in this case?

4 A No, sir, I'm not.

5 Q All right. Have you been asked to compare
6 phone bills to pen registers in this case?

7 A No, sir. There is no billing with Metro PCS,
8 and that's not my job to do that.

9 Q I apologize.

10 A Yes, that's -- that's law enforcement's job to
11 do that.

12 Q Were you asked to compare search records that
13 you -- can we call these search records?

14 A Call detail records.

15 Q Call detail records. Were you asked to
16 compare call detail records to a pen register?

17 A No, sir, I wasn't.

18 Q All right. Now, let's talk about this tower
19 for a minute, okay. Cell phone towers, I heard Mr. DiGiacomo
20 just state some of them have a 360 degree ability; is that
21 right?

22 A All of them have a 360 degree.

23 Q All of them do.

24 A All Metro PCS.

25 Q Okay. Metro PCS has 360 degree capability?

1 A On a conventional tower.

2 Q What's a -- what's a conventional tower?

3 A 360 degree coverage.

4 Q Okay. Are there towers that are not
5 conventional towers?

6 A There is something called directional antenna
7 system, which is an individual antenna. Those individual
8 antennas pick up a call. And the difference between the
9 individual antennas on DAS system, the directional antenna
10 systems, is that the phone is actually a quarter mile to a
11 half mile from that antenna.

12 Q So the differences would be reflected
13 differently?

14 A If it's a DAS as opposed to a conventional
15 tower.

16 Q Okay. And relative to the tower you gave a
17 range of one to one and a half miles per tower; is that right?

18 A Half mile to one a half miles, and that is the
19 range that was given to me during training by the engineers
20 who actually set up the towers and work on those towers.

21 Q And you're aware, sir, sometimes towers can
22 have a greater range than that?

23 A Yes, but according to the Metro PCS engineers
24 that set up the Metro PCS towers, the range for the Metro PCS
25 towers are between half mile to a mile and a half.

1 Q Right. I understand what you just said about
2 the training. I'm talking about going from the training to
3 real life. In real life you know that those towers can reach
4 more than a mile and a half; right?

5 A In real life, my training from the Metro PCS
6 engineers who set up the Metro PCS towers, this is what I was
7 trained and told by those individuals during my training
8 process. I don't -- I don't deal in real life. I don't get
9 up and climb on towers. I don't do that.

10 Q Okay. So --

11 A I only do what these records show, what they
12 indicate, and the training that I was given by Metro PCS.

13 Q Okay. Did you just say you don't deal in real
14 life when it comes to this stuff?

15 A I don't follow --

16 Q Is that what you just said, sir?

17 A -- cell phones. Yes, in real life.

18 Q Okay.

19 A Using your term.

20 Q Okay. Now, let me ask you this question. You
21 brought with you a sheet of paper that lists a number of
22 towers in Clark County that Metro PCS had; right?

23 A That's correct.

24 Q All right. How many of those power -- or
25 towers were functioning that day.

1 A I don't have that information. I can only
2 tell you what the records indicated on the specific dates and
3 the specific times of each individual phone call. The records
4 only show what happened. The records do not show something
5 that didn't happen.

6 Q Okay. Sir, just try and bear with me and
7 stick with my questions, okay. The point of the extended
8 range beyond a mile and a half comes into play if you have a
9 series of towers going down a street and one of them doesn't
10 work, one of them is being repaired, whatever the reason is,
11 the towers on both ends of it might extend their range or pick
12 it up sooner than expected, fair?

13 A That could -- that could happen, but that does
14 not indicate -- the records do not indicate that. They only
15 indicate which tower handled which call.

16 Q Okay. Trust me. Everyone gets what the
17 records say, okay.

18 A Well, that's all I'm here to talk about are
19 the records, the business records, the --

20 Q You were asked --

21 A -- Metro PCS business records.

22 Q You were asked a bunch of questions, though,
23 about what the columns mean. You defined some things. I'm
24 not -- you and I aren't fighting right now. You understand
25 that?

1 A Oh, no, sir.

2 THE COURT: Just ask questions, though.

3 BY MR. SGRO:

4 Q Can you tell the jury if when a cell tower is
5 being repaired or down for maintenance if that expands the
6 range of other surrounding towers. Do you know that?

7 A I don't know that.

8 Q All right. Can you -- can you -- do you have
9 Exhibit 296 in front of you still?

10 A Yes, sir.

11 MR. SGRO: May I approach the witness, please, Your
12 Honor.

13 THE COURT: Yes.

14 BY MR. SGRO:

15 Q Exhibit 296 is the one that you said names the
16 towers that were in Las Vegas.

17 A Some of the towers in Las Vegas.

18 Q Okay. So how is it that on Exhibit 296 a
19 document can be generated that lists some, but not all of the
20 towers? How does that happen?

21 A I'm not sure if -- if the prosecution got the
22 full list of towers, or law enforcement did. Usually they get
23 the full list. It can be sometimes 500 pages, 1,000 pages.
24 That's why I don't print them. You'd have to ask the law
25 enforcement person why there's only a portion. Whoever

1 received the document from the search warrant that was issued,
2 why there's only eight pages over here. Probably because it's
3 only the pertinent towers that they were looking for in this
4 records. I don't know. You've got to ask them that.

5 Q So someone before you filtered the information
6 that's in 296; correct?

7 A This is eight pages of the cell towers in Las
8 Vegas. I know there's more than eight pages of cell towers in
9 Las Vegas. That's all I can tell you. What they did with it,
10 they probably got the pertinent towers from there. I don't
11 know. You'll have to ask them that.

12 Q All right. Now, the exhibits 296, when was
13 that document created?

14 A 10/23 of 2009.

15 Q 10/23 or 2009?

16 A That's correct.

17 Q So in our case, we're dealing with some events
18 that happened in August of 2010.

19 A That's correct.

20 Q So just to give you some context, so the cell
21 tower information that you brought with you predates the
22 events we're talking about here by about a year?

23 A 10/23 of 2009.

24 Q So 10 months.

25 A 10/23/2009. You have to do the math.

1 Q Okay. How many towers had been added from
2 October of 2009 until August of 2010?

3 A I can't answer that. I don't know.

4 Q And you were asked some questions about
5 tracking a phone. Do you remember that, those questions just
6 a minute ago?

7 A Not -- refresh my memory, please, about
8 tracking a phone.

9 Q Okay. You were asked if you wanted to track a
10 phone. Do you remember that?

11 A If -- if the investigators wanted to find out
12 where a specific phone call was during a specific phone --
13 during a specific call in a specific date and time, there is a
14 way by looking at the tower information that's on the call
15 detail records and comparing that tower information to the
16 tower listings to figure out where the phone was. Nobody can
17 tell you exactly where the phone was.

18 Q Okay. And that -- and that, I guess, is my
19 point. All the towers in these records can do is -- is give
20 us an educated guess. We can approximate; right?

21 A It tells you which tower handled the call.

22 Q Okay.

23 A I can tell you this. The call detail records
24 will show that this phone on the specific -- some of these
25 specific phone calls was in Las Vegas. It wasn't in New York.

1 It wasn't in Dallas. It was in the Las Vegas area. And on
2 the other phone, some of those phone calls were in the Los
3 Angeles area. It wasn't in New York, it wasn't in Dallas.
4 The records only indicate what happened, not something that
5 didn't happen.

6 Q Okay.

7 MR. SGRO: Nothing else.

8 MR. LANGFORD: Nothing, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q I just to clarify something.

12 A Yes, sir.

13 Q Mr. Sgro kind of gave you a hypothetical if
14 his PCS phone calls your Metro PCS phone, you would expect to
15 see record on both his call detail records and your call
16 detail records; correct?

17 A That -- that's correct.

18 Q Okay.

19 A If I had a Metro PCS phone and he had a Metro
20 PCS phone and both records were actually requested by search
21 warrant or a court order, yes.

22 Q There are some things that Mr. Sgro was
23 assuming from that, like if I call your phone that your phone
24 is on; correct?

25 A Well, you've got to ask Mr. Sgro what he was

1 assuming. I don't know what he was assuming.

2 Q But if your phone is off, it can't connect to
3 a tower, would that be fair?

4 A It shows which phone is being searched. In
5 other words, the records for the phone ending in 0860 shows
6 that happened on a specific phone call for that phone. The
7 records 4661 only show what happened on a specific date and
8 time with the phone records for that phone. By looking at the
9 other records, you can't tell what happened with the other
10 phone. You have to have both.

11 Q You have to have both in order to know --

12 A Yeah.

13 Q -- what happened with both phones?

14 A With both phones. Right.

15 Q Okay. There was some questions asked to you
16 about, I think you called it DAS towers.

17 A DAS system, yes, sir.

18 Q The DAS system. The DAS system -- first of
19 all, are any of these records related to DAS system towers?

20 A On your document on 296 I only see one DAS
21 system, and that was for Tower 830, and I don't know if that's
22 one of your pertinent towers or not that you were asking
23 about.

24 Q Okay. Well, that's my next question.

25 A Right.

1 Q If 830 is the DAS system tower that's in those
2 records, if you don't see 830 on those phone records, and I'm
3 not going to make you go through all 75 pages there, there
4 isn't a DAS system tower associated with this particular
5 event?

6 A These particular --

7 Q Or those particular records.

8 A These particular phone records, that's
9 correct.

10 Q There were some questions asked about -- there
11 were some timing questions asked. Let me ask you this. The
12 date and time of the call on these records, are they tied to
13 any -- well, I mean, is that Pacific Standard time? How do we
14 know what time that is, where in the world it is?

15 A It's Pacific Standard time because Las Vegas
16 is in Pacific Standard time and Los Angeles is in Pacific
17 Standard time.

18 Q Okay. So the location of the switch defines
19 what the time on those records are for?

20 A The location of the tower and the switch
21 defines the time zone.

22 Q Okay. Lastly, Mr. Sgro asked you some
23 questions about the list being from October of 2009. Does
24 Metro PCS periodically update their list as required by
25 federal law to provide lists of towers that are in the

1 country?

2 A That's correct. And -- and when this document
3 is sent out, this huge document is sent out in electronic
4 form, they're going to give you the -- the -- the latest
5 update as close to the time of the call detail records, the
6 search times, as possible.

7 Q Okay. So that is called -- or a list of
8 towers that predates August of 2010; correct?

9 A That's correct.

10 Q There may be other lists that are generated,
11 you know, October of 2010, but that's after the event of those
12 records.

13 A That's correct.

14 Q I have nothing further. Thank you, sir.

15 THE COURT: Anything further, Mr. Sgro?

16 MR. SGRO: No.

17 THE COURT: Mr. Langford?

18 MR. LANGFORD: No, Your Honor.

19 THE COURT: All right. Thank you, Mr. LeCesne, for
20 being here.

21 THE WITNESS: Thank you, sir.

22 THE COURT: You'll be excused, sir.

23 THE WITNESS: Thank you, sir. I'll be back next
24 week.

25 MR. DiGIACOMO: Sergeant Maines. I guess retired

1 sergeant.

2 MR. SGRO: Sergeant who?

3 MR. DiGIACOMO: Maines.

4 MICHAEL MAINES, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. Please state your
6 name and spell your first and last name for the record.

7 THE WITNESS: Michael Maines, Michael,
8 M-I-C-H-A-E-L, Maines, M-A-I-N-E-S.

9 DIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Sir, I want to direct your attention back to
12 2010. How were you employed?

13 A As a detective sergeant with the Las Vegas
14 Metropolitan Police Department.

15 Q What was your assignment back then?

16 A As a major crime sergeant.

17 Q How long were you with the Las Vegas
18 Metropolitan Police Department?

19 A 23.8 years.

20 Q And are you now retired?

21 A Yes.

22 Q In the early morning hours of August 7th of
23 2010, did you respond to a location generally near Nellis and
24 Vegas Valley here in Clark County, Las Vegas, Nevada?

25 A Yes, I did.

1 Q And when you got there, did you come into
2 contact with a woman named Stephanie Cousins, as well as her
3 daughter Christine Pierce?

4 A Yes. Prior to that I responded to a scene of
5 a shooting and then I was alerted to the presence of Ms.
6 Cousins at an address over on, I believe it was Aloha.

7 Q Let me back up. Did you initially respond to
8 the homicide that occurred at 5662 Meikle Lane?

9 A Correct.

10 Q During the time period you were at the
11 homicide, do you receive information that there may be some
12 relevant witnesses or information down in the area of Nellis
13 and Vegas Valley?

14 A That's correct.

15 Q And was that based upon a 911 call made by
16 Christine Pierce?

17 A To the best of my knowledge, yes.

18 Q When you got to the area of Vegas Valley and
19 Nellis, did you come into contact with a woman identified to
20 you as Stephanie Cousins?

21 A Yes, I did.

22 Q And without telling us what she said, did you
23 ultimately look into her phone to identify the phone number
24 associated with a person known as Willie and/or G-Dogg?

25 A That's correct.

1 Q And did you gather the information as to what
2 that cell phone number was and then report it to the homicide
3 detective?

4 A Yes, I did.

5 Q Have you had an opportunity to review the
6 report of Detectives Bunting and Wildemann to familiarize
7 yourself with the phone number for Willie and/or G-Dogg?

8 A Yes, I did.

9 Q Okay. Do you remember it off the top of your
10 head right now?

11 A It was a 909 area code. That's about all I
12 can --

13 Q Would it help you to refresh your recollection
14 to look at page 15 of that officer's report?

15 A Yes.

16 Q Do you have that up there with you?

17 A Yes, I do.

18 Q Okay.

19 MR. DiGIACOMO: Second paragraph, counsel.

20 THE WITNESS: 909-233-0860.

21 BY MR. DiGIACOMO:

22 Q And thank you, sir.

23 MR. DiGIACOMO: I pass the witness.

24 MR. SGRO: Court's indulgence, Your Honor. No
25 questions.

1 MR. LANGFORD: No questions, Your Honor.

2 THE COURT: Thank you for being a witness,
3 Detective. You'll be excused.

4 THE WITNESS: Thank you.

5 MS. WECKERLY: Erin Taylor.

6 ERIN TAYLOR, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated. Please state your
8 name, and spell your first and last name for the record.

9 THE WITNESS: It's Erin Taylor; E-R-I-N T-A-Y-L-O-R.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q How are you employed?

13 A I am a senior crime scene analyst with Las
14 Vegas Metropolitan Police Department.

15 Q And how long have you worked as a crime scene
16 analyst?

17 A I have been employed in that capacity a little
18 over eight years.

19 Q And you said you're a senior crime scene
20 analyst?

21 A Yes, I am.

22 Q And how do you get that qualification?

23 A So when you hire on at Metro as a crime scene
24 analyst, you -- you enter as a crime scene analyst I. And
25 then when you've been there for two years, you become a II.

1 And then at the four year mark you can test to become a
2 senior. So that involves a written portion, a practical
3 examination, and then an oral board. And if you pass that,
4 you promote to become a senior.

5 Q Okay. And you obviously went through that
6 process?

7 A I did.

8 Q You -- when you were first brought on as a
9 crime scene analyst for Metro, what kind of training do you
10 undergo?

11 A Well, I hired one, I had a bachelor of science
12 in forensic science from Baylor University with a minor in
13 criminal justice. And then when I hired on with Metro, we go
14 through a crime scene analyst academy. And then after that
15 we're in a field training program where we train with a senior
16 crime scene analyst and ride along with them for 12 weeks and
17 perform job duties with them. And then from there we get
18 various training after that in different aspects of crime
19 scene processing.

20 Q Now, we're all TV watchers, so what does a
21 crime scene analyst do?

22 A Generally, I respond to crime scenes and then
23 I document those scenes through reports, photographs, latent
24 print processing if necessary, evidence collection, and
25 diagrams.

1 Q And you were obviously working as a crime
2 scene analyst back in 2010.

3 A Yes, I was.

4 Q And you were involved in the homicide
5 investigation with the victim by the name of Derecia Newman?

6 A Yes.

7 Q Now, did you respond to the original scene
8 right after it happened?

9 A No, I did not.

10 Q Okay. So your involvement was after that
11 first call out?

12 A Correct.

13 Q Can you describe for the members of the jury
14 what your first task was with regard to this investigation?

15 A Of course. So on August 10th I was requested
16 to the ISD building, which is like the Investigative Services
17 Division building, where I photographed a female by the name
18 of Monica Martinez. And then -- do you want me to keep going?

19 Q Sure.

20 A Okay. And then after that I responded to a
21 residence to document a vehicle at that residence and the
22 residence itself.

23 Q And was there a search warrant served at that
24 residence?

25 A Thee was.

1 Q And so there were detectives there, along with
2 yourself and other crime scene analysts to document that --
3 that residence, as well as the vehicle that you mentioned?

4 A Correct.

5 Q Was the vehicle at the residence?

6 A It was. It was inside the attached garage.

7 MS. WECKERLY: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. WECKERLY:

10 Q Ms. Taylor, I'm showing you what's been marked
11 as State's 183 to 190.

12 A Okay.

13 Q Could you look through those. And I should
14 have said this in a different order. And then I'm also going
15 to show you 170 to 182.

16 A Okay.

17 MS. WECKERLY: Your Honor, the State moves to admit
18 170 to 190.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection, Your Honor.

21 THE COURT: They'll be received.

22 (State's Exhibit 170 through 190 admitted.)

23 MS. WECKERLY: Thank you.

24 BY MS. WECKERLY:

25 Q If it's okay with you, Ms. Taylor, I'm going

1 to start with the residence, okay?

2 A Okay.

3 Q And I'll put these on the --

4 MS. WECKERLY: Ready?

5 MR. DiGIACOMO: Yeah.

6 BY MS. WECKERLY:

7 Q -- on the overhead. Let's start with what's
8 been admitted as State's 183. What are -- obviously, what are
9 we looking at in that photograph?

10 A This is the residence I responded to.

11 Q And that's where the search warrant was
12 served?

13 A Correct.

14 Q Let me put on the overhead -- this would be
15 State's 190. And what are we looking at in that?

16 A That's a gas bill that was inside the master
17 bedroom of the residence with the -- the name of the people
18 that lived there, and then the address which was the 5824
19 Cinnabar Avenue.

20 Q And, I mean, what's the purpose of impounding
21 or taking the gas bill?

22 A It's to document who is recorded as living
23 there. That's one way they do it is that homicide detectives
24 will find bills with the name of a person and the address to
25 show the residency.

1 Q So who is there and who turned on the power,
2 at least.

3 A Yes, correct.

4 Q And now I'm going to show you 185. And what
5 are we looking at there?

6 A That's inside the -- the open garage door, and
7 that was the vehicle that I photographed and then it was
8 sealed and -- and towed.

9 Q In terms of the residence itself, were there
10 any weapons that you saw or weapons that were impounded?

11 A No.

12 Q What items were impounded or taken, if you
13 recall?

14 A The gas bill that we just saw, a spiral
15 Spiderman notebook with writing in it, there were two condom
16 wrappers and two condoms, and I believe that was everything.

17 Q Okay. But no -- no gun was found?

18 A No, no weapons.

19 Q Now, this vehicle, what happened to that?

20 A That vehicle, after I photographed it in
21 place, I affixed orange seals on it and then it was towed back
22 to the CSI office and it was followed by Detective Sanborn to
23 the office.

24 Q And now I'm going to show you State's 170. Is
25 that the vehicle back at the CSI offices?

1 A Correct.

2 Q And what's done -- what's done to the vehicle
3 either by yourself or other analysts with you at this
4 location?

5 A The next day I -- I photographed the vehicle
6 again to show that the seals on the vehicle were still
7 affixed. And then after all the photographs were taken, I
8 processed it for latent fingerprints and did a search with the
9 homicide detectives for items of evidence, and then did an
10 additional search for the presence of blood using Leuco
11 Crystal Violet.

12 Q Okay. Now, in terms of the fingerprints --

13 A Yes.

14 Q -- when you collect the fingerprints, how do
15 you preserve them?

16 A I preserve them -- so basically apply a
17 powder. And once a print is developed, a piece of clear tape
18 is affixed over it. And then we take a photo of it to show
19 where that tape was on an item. And then we lift the tape and
20 then put it on a white -- almost like a photo paper, a piece
21 of photo paper, a plain white card. Then all of the latent
22 prints are labeled and put into an envelope that's then
23 submitted to the latent print section.

24 Q Now, are you the person that does the
25 comparison of the latent print that is developed from the

1 vehicle to known prints?

2 A No, I am not.

3 Q That's done by a fingerprint expert?

4 A Yes. Correct.

5 Q Okay. Now, you also mentioned that you
6 processed the vehicle with Leuco Crystal Violet?

7 A Yes.

8 Q Describe for the members of the jury what that
9 is and how that's done.

10 A So Leuco Crystal Violet, or LCV, it's a
11 colorless chemical that we mix together and then put basically
12 in a spray bottle. And then you spray it on surfaces and in
13 the presence of blood it'll change from a clear color to
14 purple.

15 Q And what were the results or what did you see
16 when that was applied to the vehicle?

17 A Negative results, so there was no blood using
18 LCV recovered from the vehicle.

19 Q Were there swabs taken for DNA purposes in the
20 vehicle?

21 A Yes, there were.

22 Q Okay. And where -- what types of locations
23 would you typically be kind of looking for to swab for DNA?

24 A For -- for DNA, I took samples from the door
25 handles, the steering wheel, the gear shift, the rearview

1 mirror, surfaces that would have been touched and that are
2 more rough in texture that would be more suitable for DNA as
3 opposed to fingerprint processing.

4 Q And that would be the texture like some skin
5 cells may come off onto an objection?

6 A Exactly. Yes.

7 Q And, again, are you the person that later does
8 the DNA analysis or --

9 A No, I'm not.

10 Q Okay. And you submit all of those for later
11 testing?

12 A Correct.

13 Q And is that -- that -- the Leuco Crystal
14 Violet, the prints, and the DNA. Did you do a footwear in the
15 car?

16 A There was an envelope in the back floorboard
17 on one of the rear floorboards that had a partial footwear on
18 it, and I did photograph that and impound it, and then that
19 was -- that can be submitted to a footwear examiner. That
20 would be who would look at that.

21 Q For later testing?

22 A Correct.

23 Q Okay. Now, after you did that work, did you
24 ever respond to the original crime scene on Meikle Lane?

25 A I did a little over a month later.

1 Q And what was the purpose of going back to that
2 location?

3 A Homicide detectives requested us back to
4 document bullet holes that were in a hallway wall.

5 Q And I'm going to show you now State's 135 to
6 147 and ask you to look through those photographs, please.

7 MR. SGRO: The numbers, Counsel? I'm sorry.

8 MS. WECKERLY: 135 to 147.

9 BY MS. WECKERLY:

10 Q Do you recognize those photographs?

11 A I do. I took those photographs.

12 Q Okay. And do they reflect accurately the
13 later processing you did, as well as the collection of a
14 bullet fragment?

15 A Yes.

16 MR. SGRO: Objection. Leading.

17 MS. WECKERLY: Well, it's foundational.

18 THE COURT: Okay. What do they reflect.

19 BY MS. WECKERLY:

20 Q What do they reflect?

21 A Those photographs show the apartment that I
22 responded to and the bullet holes inside. And then it also
23 shows another apartment that I responded to with a big screen
24 TV that I recovered a bullet fragment from.

25 Q Let's look at, first, State's 136.

1 THE CLERK: Are they admitted?

2 MS. WECKERLY: Mark can do it, thank you.

3 Or can you?

4 MR. DiGIACOMO: Did you offer them?

5 MS. WECKERLY: Oh, well, State moves -- thank you.

6 Now I know what you said. State moves to admit 135 to 147.

7 MR. SGRO: No problem.

8 MR. LANGFORD: No objection.

9 THE COURT: They'll be received.

10 (State's Exhibit 135 through 147 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. So looking at 136, can you explain to
13 the members of the jury what we're looking at in that
14 photograph?

15 A This is the interior of the apartment, and
16 this is a hallway, north/south hallway, and this is the north
17 wall of that hallway.

18 Q And this is in -- in September at this point;
19 correct?

20 A Yes.

21 Q So it's a couple months after the homicide?

22 A Yes. I believe five or six weeks later.

23 Q Okay. And so things have been cleared out
24 that were there, obviously, earlier?

25 A Yes. When I went there the apartment was

1 unfurnished.

2 Q Okay. Now, looking back at the wall in the
3 back of 136 there appears to be like defects in the wall. Can
4 you explain what that is?

5 A Yes. The -- these right here are the -- the
6 bullet holes that I documented that were in the wall.

7 Q And I'm going to ask --

8 MS. WECKERLY: Can you put on 138, please.

9 BY MS. WECKERLY:

10 Q And if you touch the bottom corner of your --
11 yeah.

12 A Oh, sorry.

13 Q That's okay. So is that a closer view of
14 those bullet holes?

15 A It is. They're turned on their side, but
16 that's -- yes, that's them.

17 Q So now it's oriented correctly?

18 A Correct.

19 Q And those -- when we saw the prior cutouts,
20 that was done by other crime scene analysts?

21 A Yes, those were there when I arrived, and I
22 don't know what they were there from.

23 Q Okay. But these bullet holes, which if we go
24 back to 136, I'm going to just have you circle where those
25 were.

1 A They were right down here.

2 Q Okay. And close up is 137 and you were
3 documenting those?

4 A Correct.

5 Q Now, did you make any effort to -- to like
6 recover a projectile or anything like that in the apartment?

7 A I did. I did a search and I did not recovery
8 any bullet fragments or bullets from the apartment.

9 Q Okay. Associated with what you saw there?

10 A Correct. Yes.

11 Q Later that day did you do something else in
12 terms of the investigation?

13 A Yes, I -- after we were done here, we went to
14 an apartment on Owens Avenue. I can't remember the exact
15 address off the top of my head. But that is where reportedly
16 the big screen TV that was in the bedroom was moved to. And I
17 recovered -- I documented a hole in the TV and recovered a
18 bullet fragment from inside.

19 Q Now I'm putting on State's 142. please. And
20 what are we -- is that the second location that you just spoke
21 of?

22 A That is. This is the Owens address and this
23 is the TV that was reportedly in -- in the bedroom of that
24 original apartment.

25 Q Okay. And 144, what are we looking at in that

1 one?

2 MS. WECKERLY: Well, can we just turn it, please?

3 MR. DiGIACOMO: Oh, sure.

4 THE WITNESS: This here is the side of the
5 television, and right here is where the apparent bullet hole
6 is in it.

7 MS. WECKERLY: Can we put on 145, please.

8 BY MS. WECKERLY:

9 Q What are -- is that a closer view?

10 A It is. Right here is the bullet hole that I
11 was documenting.

12 Q Okay. And now lastly, 147. What is that?

13 A That right there is the bullet fragment that I
14 recovered from inside the television. We opened it up and
15 there was a bullet fragment inside.

16 Q And what did you do with that fragment?

17 A That was impounded. After I -- I photographed
18 it, I put it in a vial and impounded it. And that could be
19 sent to a firearm's examiner for later testing.

20 Q And so you're obviously not the person who
21 does that later testing?

22 A No, I do not.

23 Q Okay. Thank you.

24 MS. WECKERLY: I'll pass the witness, Your Honor.

25 MR. SGRO: May I approach the clerk briefly, Your

1 Honor.

2 THE COURT: Certainly.

3 MR. SGRO: And could I have the Elmo, please.

4 May I proceed, Your Honor?

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MR. SGRO:

8 Q Good morning. How are you doing?

9 A Good morning. I'm well, thank you.

10 Q I want to ask you -- I'm going to go in the
11 same order.

12 A Okay.

13 Q So first of all let's talk about your
14 qualifications, all right?

15 A Okay.

16 Q How long have you been in Metro?

17 A Over eight years.

18 Q And have you -- well, strike that. Were you
19 in 2010, in August, someone that other law enforcement
20 officials could rely upon in terms of the quality and accuracy
21 of your work?

22 A Yes.

23 Q Have you come to be known as someone who does
24 a good job, who is accurate?

25 A Yes.

1 Q Pardon me?

2 A Yes.

3 Q Okay. And you continued your training even
4 beyond August of 2010; right? You're still going to classes.
5 I see in your resume here you're still going to seminars; is
6 that right?

7 A Correct. Yes.

8 Q Now, one of the things that you do as part of
9 your job is you create reports; right?

10 A Yes.

11 Q And these reports -- and let's just take an
12 example. You were asked about -- you know, you recovered a
13 fire -- or a bullet or a fragment. That gets sent off; right?

14 A Correct. Yes.

15 Q Now, whoever that person is that it gets sent
16 off to is going to rely on what you tell them in your report;
17 right?

18 A Yes.

19 Q Where you got it, what time it was, the
20 circumstances, all those things; correct?

21 A Correct.

22 Q And you're trained in the discipline not only
23 of the science, but also how to draft a report that people can
24 rely on.

25 A Yes, that's correct.

1 Q And you told the jury that one of the --
2 another thing that you did was you lifted some prints and you
3 sent those off, as well.

4 A Yes.

5 Q And, again, same questions, same answers.
6 That person receiving those fingerprint cards needs to be able
7 to trust you, rely on you, and believe that you're accurate?

8 A Yes.

9 Q All right.

10 A Correct.

11 Q Now, when we get to the issue of the car,
12 first of all, do you remember the condition of the car as you
13 photographed it?

14 A The -- do you just -- the doors were closed,
15 the windows were up, the seals were affixed.

16 Q Okay. Did you look inside the car?

17 A Yes. After the photographs were taken from
18 outside, then we proceed inside the car.

19 Q Right. And you took picture of the inside of
20 the car, too?

21 A Yes.

22 Q And would you agree with me that the car was
23 dirty?

24 A It wasn't -- do you mean the outside or the
25 inside? I'm sorry.

1 Q The inside. I'm sorry.

2 A The inside --

3 Q The inside of the car has stuff all over it;

4 right?

5 A Not items. It wasn't cluttered with items,

6 but --

7 Q What does it have?

8 A -- it wasn't clean. There was a towel on the

9 rear floorboard, an envelope. But it wasn't cluttered with

10 items.

11 Q Do you recall any clothing in the back seat?

12 A In the back seat I believe there are a pair of

13 shoes, a pair of heels.

14 Q Okay. Now, let's start with the -- is the

15 acronym LCV?

16 A Yes.

17 Q Okay. Can you say that again, the word?

18 A Leuco Crystal Violet.

19 Q All right. That is a chemical agent that is

20 going to react to blood; right?

21 A Correct.

22 Q And it also reacts to cleaning agents, doesn't

23 it?

24 A Yes, it can.

25 Q Was there a reaction from the LCV to a

1 cleaning agent in the backseat?

2 A No, there was no reaction of LCV at all.

3 Q Okay. So just to put it to bed, do you know
4 the name of the individual, the names, of the defendants in
5 this case?

6 A I do now that I have the -- the subpoena and
7 -- yes.

8 Q Okay. So let's go from the generic to the
9 specific.

10 A All right.

11 Q David Burns's DNA was not in the left side of
12 the back seat; right?

13 A Well, I don't know if his DNA was or not. I
14 took DNA swabs, but I don't know the results.

15 Q Blood.

16 A Okay, blood. No. No blood.

17 Q All right. You spoke to the jurors about some
18 footwear impressions that you got from the backseat of the
19 car; right?

20 A Correct.

21 Q What side of the backseat?

22 A It was the -- the left side.

23 Q The driver side?

24 A Yes

25 Q Are you aware that those footwear impressions

1 that you obtained were compared to someone named Job-Loc?

2 A No.

3 Q So I guess let me ask a more broader question.
4 When you tell -- when you come in and you testify and you say,
5 hey, we sent these things out, do you ever circle back and
6 determine what the results are or what the findings were?

7 A No, not usually, only if I find out about
8 them. So I submit them as items of evidence. And if a
9 request is put in for them to be examined, then they are.

10 Q So let me ask it this way. Relative to the
11 footwear impression that you obtained from the driver side
12 backseat of the car, does the name Job-Loc ring a bell to you
13 at all?

14 A No.

15 Q Jerome Thomas?

16 A No.

17 Q Okay. I asked you a number of questions about
18 your qualifications. Would one of your qualifications be to
19 be able to do something like take apart a big screen TV and
20 locate a fragment?

21 A Yes.

22 Q And are you trained how to look for things
23 like that?

24 A Yes.

25 Q And do you do the best that you can so you

1 don't miss anything?

2 A Yes, of course.

3 Q And you understand how important, especially
4 in a homicide case, bullets and bullet fragments can be;
5 correct?

6 A Yes.

7 Q In this case did you take pains to go through
8 and dismantle that TV?

9 A Yes, we -- so it was one of those big TVs with
10 the back on it, so we took the back off and the bullet
11 fragment was recovered. And then we even looked in the base
12 under the TV portion, and that was searched with -- with
13 negative results. There were no other bullets or bullet
14 fragments found in it.

15 Q Were you comfortable when you left that you
16 had adequately searched that television and that you recovered
17 the one and only fragment that was in there?

18 A Yes.

19 Q And that's the same kind of comfort you have
20 in terms of allowing people beyond you to rely on you on what
21 you found; right? Things that you submit to other people.

22 A Yes.

23 Q Okay. Now, I have here some photos I want to
24 flip through.

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

1 THE COURT: Certainly.

2 BY MR. SGRO:

3 Q And I'm showing you -- they're all grouped
4 together. Defense Exhibit S, like Sam. Right? You see that
5 there?

6 A Yes.

7 MR. SGRO: And I believe the State has no objection.

8 MS. WECKERLY: That's correct.

9 THE COURT: All right. They'll be received.

10 (Defendant's Exhibit S admitted.)

11 MR. SGRO: Thank you, Your Honor.

12 BY MR. SGRO:

13 Q Have you had a chance to flip through them?

14 A Yes.

15 Q And do they appear to reflect the -- the two
16 bullet holes that you testified on direct examination?

17 A Yes.

18 Q Now, I want to show -- I want to go through a
19 couple of them. Let's see here. Just so we have some
20 context. To the left it's black. Is that the end of the
21 wall, is that an open door? Can you orientate the jury to
22 what this hole is?

23 A Yes, this is not going to be in the hallway
24 anymore. This is inside the master bedroom. And so this is
25 small wall. It's like a cutout along the West side of the

1 bedroom. So on the other side of this wall is the hallway
2 wall.

3 Q So we've had some testimony earlier in this
4 case about how crime scene analysts mark travel paths of
5 bullets. You're familiar with that; right?

6 A Yes.

7 Q And it's very common to take a travel path and
8 -- and -- of one bullet and call it A, and do the next one B,
9 C, etcetera; right?

10 A Yes, that's correct.

11 Q Okay. And that's what you did here; right?
12 You have an A and a B?

13 A Yes. These ones are actually A-2 and B-2
14 because these are the -- the other side.

15 Q Right. Right. This is the -- from the master
16 bedroom perspective.

17 A Correct. Yes.

18 Q All right. Can you orientate us as to this
19 one?

20 A Yes, this right here, now we're back in the
21 hallway and this is the ones that we saw before. And then so
22 this doorway to the right is opening into that master bedroom.

23 Q All right. Now, this is A-1 and B-1; right?

24 A Yes.

25 Q This is the entry of each bullet?

1 A Yes.

2 Q And you also have, I don't know what the term
3 of art is, but tools or instruments that allow you to
4 calculate flight paths of projectiles, would that be fair?

5 A Yes, that's correct.

6 Q And would this photo within the packet of
7 Defense Exhibit S, would this be an example of some of the
8 things you can use to have ideas of flight paths?

9 A Yes, they are. Those are trajectory cards --
10 sorry, trajectory rods with centering cones.

11 Q All right. And then this photo here is simply
12 a close up, would that be fair?

13 A Yes, that's -- that's right.

14 Q The same wall looking in the hallway?

15 A Yes, this is the hall wall again.

16 Q All right. So you go -- you go to this
17 residence. You, amongst other things, memorialize these holes
18 in the wall and you -- and you create a report about it;
19 right?

20 A That's correct.

21 Q And in your report you describe two bullets
22 creating the holes in that wall; right?

23 A Yes.

24 Q Do you have your report?

25 A I do. It's right here.

1 Q Okay. Do you need to refresh your
2 recollection or no?

3 A Not at this point.

4 Q Okay.

5 A Possibly after.

6 Q If you need to refresh your recollection, let
7 me know.

8 A Okay.

9 Q Did you recall in your report also -- well,
10 strike that. Let me ask you first, do you recall the
11 direction of the trajectory of Bullet A?

12 A Do you mean the -- just the flight path that
13 they were in a down -- mostly downward angle?

14 Q Do you remember which direction, north, south,
15 east, west?

16 A Oh, north.

17 Q Okay.

18 A Generally north directions.

19 Q Generally northwest, does that sound right?

20 A Generally northwest.

21 Q Would it refresh your recollection?

22 A Yes, it would.

23 MR. SGRO: Your Honor, may I approach? I have it
24 highlighted here.

25 BY MR. SGRO:

1 Q Do you see here it says the flight path of the
2 bullet that created the west hole in the north hallway wall
3 labeled A traveled in a generally northwest direction.

4 A Okay. Yes.

5 Q Is that right?

6 A Yes.

7 Q And then as to the second bullet, the flight
8 path of the bullet that created the east hole labeled B
9 traveled in generally north.

10 A Yes.

11 Q So one of those bullets when northwest
12 generally; right?

13 A Yes.

14 Q And one of them went north.

15 A Yes.

16 Q Were you ever shown the media console or the
17 niche? I'm not a big --

18 A Oh.

19 Q -- furniture person, but you know the shelving
20 unit that was in front of that wall?

21 A No, I never saw any other furniture besides
22 the TV.

23 Q So I guess what I'm asking is this. You were
24 sent to a different location to examine the big screen
25 television.

1 A Correct.

2 Q All right. Did anyone ever send you to a
3 location to look at that piece of furniture that was in front
4 of the two bullet paths that you --

5 A No. I wouldn't have known what -- I didn't
6 even know what type of furniture was in that hallway.

7 Q Now, you were asked if you looked for any
8 other evidence related to bullets or fragments. Do you
9 remember that?

10 A Yes.

11 Q And did you do that?

12 A Yes, I did.

13 Q What did you do relative to efforts to seek
14 those materials out?

15 A A -- excuse me. A visual search, and I also
16 cut a hole in that hallway wall.

17 Q When you say a visual search, you just looked
18 around the residence to see if you could see anything?

19 A Yes, in that bedroom area.

20 Q And this search that you did, the visual
21 search, would have been about seven weeks after the tenants
22 had relocated?

23 A I don't know when they relocated, but seven
24 weeks since the original incident, yes.

25 Q Seven weeks. Okay. Let's stick with that.

1 Seven weeks since the incident, that's when they -- that's
2 when you found yourself seeing if there was additional
3 evidence?

4 A Correct.

5 Q In the same residence that's the scene of the
6 homicide?

7 A Yes.

8 MR. SGRO: Court's indulgence, Your Honor. Pass the
9 witness.

10 MR. LANGFORD: Nothing, Your Honor.

11 THE COURT: Redirect.

12 MS. WECKERLY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q When you say you did a visual search in the --

16 A Yes.

17 Q -- residence, is it -- can you describe what
18 you do?

19 A Yes, like I -- I look in all the areas. So as
20 I saw where the bullet holes went through that master bedroom
21 wall, I looked on the carpeting area just to -- made sure
22 there was no other bullet holes in another wall. There
23 wasn't. There was some items in there, not -- not very many.
24 I just -- I just checked all of those.

25 Q Now, when you say in your report bullet holes,

1 what do you mean by that?

2 A The bullet holes -- I'm sorry. I don't
3 understand.

4 Q Well, do you know -- I mean, I guess you've
5 seen bullet holes before; correct?

6 A Yes.

7 Q In your work. And do you in your report
8 writing, do you distinguish between something that could be
9 caused by an intact bullet or a fragment of the bullet?

10 A No, I don't, so I just call them bullet -- so
11 when I refer to bullet and those bullet holes, it could be the
12 bullet broke apart first and those are fragments making both
13 these holes, or they're two separate -- separate bullets. I
14 don't distinguish that. I just say the flight path of
15 basically whatever part of the bullet that went through the
16 wall created that hole and traveled at those directions.

17 Q And would there be any way to tell to your
18 knowledge and your experience and training and work, when you
19 looked at those two holes that -- that were marked A and B to
20 ever tell if it was a bullet or a fragment?

21 A I couldn't tell on those.

22 Q And when you said you looked at -- in the
23 secondary part of that day when you go and look at the TV --

24 A Yes.

25 Q -- and there's sort of the defects in the

1 bottom.

2 A Yes.

3 Q What -- what did you physically take apart of
4 the TV

5 A We took the -- the back plastic backing, I
6 guess you'd call it. of the TV off. And then we also -- it
7 was on one of those big wooden bases, and lifted it off of
8 there just to check underneath.

9 Q Okay. And that -- and you didn't see anything
10 in either of those places?

11 A No.

12 Q Okay. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. SGRO:

15 Q Ma'am, did I hear you just tell the jury that
16 you didn't distinguish between bullets and bullet fragments in
17 the report?

18 A I don't know. I don't.

19 Q Then why did you just tell the jury that you
20 didn't?

21 A I -- I don't distinguish between them.

22 Q You don't?

23 A And that's what you just --

24 Q Can you go to --

25 A I'm sorry. I'm confused.

1 Q Can you go -- well, let's clear it up.

2 A Okay.

3 Q Do you have your report?

4 A I do.

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

6 THE COURT: Yes.

7 BY MR. SGRO:

8 Q Does it say here in your report relative to
9 the television the back of the television was removed and a
10 bullet fragment --

11 A Yes.

12 Q -- was located -- let me finish.

13 A Okay.

14 Q Was located inside the television. Does it
15 say that?

16 A Yes.

17 Q Do you in your report distinguish between
18 bullets and bullet fragments?

19 A On items of evidence, yes.

20 Q Did you qualify that when the prosecutor asked
21 you the question?

22 A No, I'm sorry. She was discussing the holes,
23 so I was talking about the holes at that time.

24 Q Ma'am, are you aware that there is an issue in
25 this case relative to the amount of shots that were fired in

1 the residence?

2 A No.

3 Q Okay. Are you answering in conformity with
4 what you believe the prosecutor wants to hear?

5 A No.

6 Q You were asked a very general question. Do
7 you in your report, in your report, distinguish between bullet
8 and bullet fragment, do you remember that question?

9 A I do.

10 Q All right. And you told the jury, no, I
11 don't; right?

12 A I did.

13 Q You did. So your prior answer was a mistake;
14 right?

15 A In relation to that, yes.

16 Q And when it comes to in relation to the wall,
17 clearly at the time of the report that you drafted you knew
18 the difference between what a bullet was and what a fragment
19 was; correct?

20 A To look at them as items of evidence, yes.

21 Q Okay. Do you at any point in your report that
22 you drafted at the time you're at the scene characterize the
23 two holes that I showed you, the A and the B, as anything
24 other than bullet holes?

25 A No.

1 Q Do you ever in your report suggest anything
2 along the line of this could have been caused by a fragment?

3 A In relating to holes, no.

4 Q Okay. That's all.

5 MR. LANGFORD: Nothing.

6 THE COURT: Thank you for being a witness, Ms.
7 Taylor. You'll be excused.

8 THE WITNESS: Thanks.

9 THE COURT: Do any of the jurors want a recess
10 before we continue on this morning? I'm seeing -- oh, we've
11 got one back here. All right. Let's take a ten minute
12 recess, ladies and gentlemen.

13 During the recess you're again admonished it's your
14 duty not to converse among yourselves or with anyone else on
15 any subject connected with this trial. You may not read,
16 watch, or listen to any report of or commentary on the trial
17 from any medium of information, including newspapers,
18 television, and radio, and you may not form or express an
19 opinion on any subject connected with this case until it is
20 finally submitted to you. We'll be in recess for about ten
21 minutes.

22 The Court will be at ease while the jury --

23 (Jury recessed at 11:22 a.m.)

24 THE COURT: Ten minutes.

25 MR. ORAM: Thank you, sir.

1 MR. DiGIACOMO: Just -- just for the record, or
2 maybe off the record, the first witness, Erica Newman, we
3 offered 262 and you said if you make the disc of the actual
4 audio itself, which is now marked as 262A, I just want to make
5 sure the record is clear that the Court admitted that based
6 upon the request of the defense that the audio be admitted.

7 THE COURT: That was my understanding.

8 MR. ORAM: Yes, sir.

9 THE COURT: It will be received.

10 (State's Exhibit 262A admitted.)

11 (Court recessed at 11:23 a.m., until 11:36 a.m.)

12 (In the presence of the jury)

13 THE COURT: All right. We're back on the record.
14 All right. State versus Burns and Mason. The record will
15 reflect the presence of the defendants, their counsel, and the
16 District Attorneys, and all members of the jury.

17 You can call your next witness.

18 MR. DiGIACOMO: Tyler Mitchell.

19 TYLER MITCHELL, STATE'S WITNESS, SWORN

20 THE CLERK: Please be seated. Please state your
21 name and spell your first and last name for the record.

22 THE WITNESS: Tyler Mitchell; T-Y-L-E-R
23 M-I-T-C-H-E-L-L.

24 MR. DiGIACOMO: May I inquire, Judge?

25 THE COURT: Yes.

1 DIRECT EXAMINATION

2 BY MR. DiGIACOMO:

3 Q Good morning, ma'am.

4 A Good morning.

5 Q Do you know --

6 THE COURT: You're going to have to speak up so that
7 we can hear you. There's a --

8 THE WITNESS: Oh.

9 THE COURT: There's a microphone right there and
10 we'll probably need you to kind of speak loudly so it'll pick
11 you up, okay?

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 THE WITNESS: Thank you.

15 BY MR. DiGIACOMO:

16 Q That's our very high tech mechanism to get the
17 microphone.

18 A Yeah.

19 Q Ma'am, do you know Monica Martinez?

20 A Yes, I do.

21 Q How do you know her?

22 A She's my mother.

23 Q Okay. And how old are you today?

24 A 23.

25 Q 23. So back in 2010 you were about 19?

1 A Yeah, 18, 19.

2 Q 18, 19, somewhere in that range. Were you
3 living with your mother when you were 18 or 19 in 2010?

4 A Yes.

5 Q And I want to direct you generally to the time
6 period around where your mother got arrested. Do you remember
7 that?

8 A Yes.

9 Q Okay. Prior to your mom being arrested, did
10 she have a boyfriend?

11 A Yes.

12 Q And what was his name?

13 A Job.

14 Q Job?

15 A Yes.

16 Q And did there come a -- well, let me ask you
17 this. Did Job live at your house?

18 A He was around a lot, but he didn't really live
19 there.

20 Q How often did you meet Job?

21 A I probably met him quite a few times.

22 Q Quite a few times?

23 A Yeah.

24 Q Have you seen him since your mother was
25 arrested?

1 A No.

2 Q So prior to your mom getting arrested, did Job
3 have an injury of some sort?

4 A Yes.

5 Q And where was that injury?

6 A He broke his leg. I think it was his left
7 leg.

8 Q Did he have some sort of -- was he able to get
9 around?

10 A No, he had crutches.

11 Q And even up into sort of the time period your
12 mom got arrested, was he still on those crutches?

13 A Yes.

14 Q Does there come a point in time when you meet
15 some friends of Job's?

16 A Yes.

17 Q Okay. And who do you meet?

18 A D-Shot and G -- D-Shot and G --

19 Q Something G?

20 A Yeah.

21 Q Okay. Let me ask you this. Do you meet G
22 first or D-Shot first, do you remember?

23 A I believe D-Shot.

24 Q Okay. And how do you meet him?

25 A Through Job. He was at the house.

1 Q At what house?

2 A The house that me and my mother lived on
3 Cinnabar.

4 Q So at the Cinnabar house you met D-Shot?

5 A Uh-huh.

6 Q Is that a yes?

7 A Yes.

8 Q How was he introduced to you?

9 A He was just sitting on the couch and they just
10 said he was a friend of Job's.

11 Q Okay.

12 MR. LANGFORD: I'm sorry, Your Honor. I can't hear
13 what she's saying.

14 THE WITNESS: I'm sorry. I met him through Job.
15 They introduced me as his friend.

16 BY MR. DiGIACOMO:

17 Q So they introduced you to D-Shot --

18 A Uh-huh.

19 Q -- as a friend of his?

20 A Yes.

21 Q Okay. You said you also met G. Where did you
22 meet G?

23 A At the house, as well.

24 Q The Cinnabar house?

25 A Yes.

1 Q Okay. And about how long do you think this
2 was prior to the time your mom got arrested?

3 A It was weeks before.

4 Q Weeks before?

5 A Yeah.

6 Q Okay. And how was it that you meet G?

7 A Through Job, as well. They were both at the
8 house. I just happened to walk in and they were there.

9 Q Do you ever exchange phone numbers with either
10 -- well, first of all, did you have Job's phone number?

11 A Yes.

12 Q Okay. Did you have G-Dogg or G's number?

13 A Yes.

14 Q Okay. What about D-Shot, did you have a phone
15 number for D-Shot?

16 A No.

17 Q Okay. Did you even now if D-Shot had a phone?

18 A No.

19 Q How many times do you think you met G?

20 A I met them once.

21 Q Both of them one time?

22 A Yes.

23 Q Had you ever communicated with them on text
24 messages that you remember as you sit here today?

25 A Yes.

1 Q Okay. Who did you text with?

2 A Really D-Shot.

3 Q D-Shot?

4 A Yes.

5 Q Okay. And do you know whose phone he was
6 using as he was texting with you?

7 A Job's.

8 Q Job's phone?

9 A Yes.

10 Q Does there come a point in time -- well, let
11 me ask you this. I know it's been several years now. Do you
12 think you would recognize G again if you were to see him
13 again?

14 A Yes.

15 Q Do you see him here in court today?

16 A Yes.

17 Q Can you point him out and describe something
18 he's wearing?

19 A He's wearing a collared shirt and ponytail.

20 Q Okay. So that's the individual you know as G?

21 A Yes.

22 Q Okay.

23 MR. DiGIACOMO: And may the record reflect the
24 identification of Burns.

25 THE COURT: The record will so reflect.

1 BY MR. DiGIACOMO:

2 Q And then the person you know as D-Shot, do you
3 see him over at the table?

4 A Yes.

5 Q Or do you see him in the courtroom? Okay.
6 And where is he sitting?

7 A The last one in the row, or that's to the
8 right.

9 Q The gentleman all the way at the end?

10 A Yes.

11 MR. DiGIACOMO: May the record reflect the
12 identification of Mason?

13 THE COURT: The record will so reflect.

14 BY MR. DiGIACOMO:

15 Q So let me take you back to 2010. Do you
16 remember the police coming to you and showing you a photo
17 lineup of an individual?

18 A Yes.

19 Q And were you able to identify the person that
20 you knew as D-Shot in that photo lineup?

21 A Yes.

22 MR. DiGIACOMO: May I approach, Judge?

23 THE COURT: Yes.

24 BY MR. DiGIACOMO:

25 Q Ma'am, I'm going to show you what's been

1 marked as State's Proposed Exhibit No. 279 and ask you if you
2 recognize the front of that exhibit.

3 A Yes.

4 Q Okay. Do you recognize your name on there?

5 A Yes.

6 Q Do you recognize your writing?

7 A Yes.

8 Q Were these instructions provided to you prior
9 to them showing you the photo lineup?

10 A What do you mean?

11 Q Well, did they show you this form at the time
12 they showed you the photo lineup?

13 A Yes.

14 Q And did either you read it or they have a
15 chance to read it to you and is that your signature at the end
16 of the instructions?

17 A Yes.

18 Q And then I'm assuming they showed you some
19 photographs.

20 A Yes.

21 Q And then they asked you to write out a
22 statement as to what it is you know and how you know it?

23 A Yes.

24 Q So now I'm going to show you page 2 here. Do
25 you recognize what's been circled there as TM?

1 A Yes.

2 Q Okay. Is that your circle and indication of
3 identification?

4 A Yes.

5 MR. DiGIACOMO: Move to admit 279.

6 MR. ORAM: No objection.

7 MR. LANGFORD: No objection.

8 THE COURT: It will be received.

9 BY MR. DiGIACOMO:

10 Q Ma'am, I'm going to put up on the overhead in
11 front of you or that screen in front of you. Or I won't be.
12 I guess we'll go to the overhead.

13 MR. DiGIACOMO: Can we go to the overhead?

14 BY MR. DiGIACOMO:

15 Q Okay, Tyler. I'm going to ask you to read
16 what you wrote.

17 A The photograph that I have circled is known as
18 D-Shot. In the beginning of August 2010, D-Shot, G-Dogg, and
19 Job were at my house, alone with my mother's house -- along
20 with my mother's house for a day and that is how I know D-Shot
21 both and G-Dogg. And Job introduced me to D-Shot, but D-Shot
22 introduced himself as Curly.

23 Q As you sit here today, do you remember D-Shot,
24 that individual, identifying himself to you as Curly?

25 A Yes.

1 Q Okay. But the other individuals identified
2 him to you as D-Shot?

3 A Yes.

4 Q I'm going to turn to page 2. When you were
5 shown the photo lineup, were you able to identify the
6 individual in that photograph as D-Shot?

7 A Yes.

8 Q Okay. Now, in addition to those individuals,
9 did you meet someone that you knew as Wes?

10 A Yes.

11 Q Is it Wes or West?

12 A West.

13 Q With a t?

14 A Yes.

15 Q Okay. How did you meet West?

16 A I've known him through a mutual friend before.

17 Q Did you know that he was also friends with
18 Job, as well?

19 A Yes.

20 Q Okay. And does there come a point in time
21 where after your mom was arrested West has contact with you?

22 A Yes.

23 Q And ultimately did the police make a request
24 of you to get your phone and download your text messages from
25 your phone?

1 A Yes.

2 Q In addition to that -- well, did you give them
3 -- you and your mother both give them consent to download your
4 phone?

5 A Yes.

6 Q Okay.

7 MR. DiGIACOMO: Judge, I believe there's an
8 agreement between the parties as to State's Proposed Exhibit
9 No. 308 which is the list of contacts from the phone, 310
10 which is the entirety of all the text messages on Ms.
11 Mitchell's phone, and then 309 which is just portions of
12 relevant text messages on this phone, and I would offer them
13 at this point.

14 MR. ORAM: May we approach, Judge?

15 THE COURT: Sure.

16 (Bench conference.)

17 MR. ORAM: Judge, my understanding is we have no
18 objection to the -- like the phone numbers, but I understand
19 -- what my understanding is the State wants to put in all the
20 actual text of the information and we'd have to look that over
21 before we agree to that. I didn't agree to that.

22 MR. SGRO: Your Honor, I thought we were trying to
23 save time with Larry Smith who is my expert because he did the
24 cell phone dump which I agreed to and I, you know --

25 THE COURT: Well, if they're texts that she made or

1 received that are otherwise relevant, they're admissible,
2 aren't they?

3 MR. SGRO: They'd be hearsay statements.

4 THE COURT: They could be. You've not seen them
5 before?

6 MR. ORAM: I have seen them. I just don't know
7 which ones they're putting in.

8 THE COURT: Well, look at them.

9 MR. DiGIACOMO: Those are the relevant ones. I
10 mean, she's got a whole bunch of them to different people,
11 but --

12 MR. ORAM: How about we do this while -- are you
13 going to show them right now?

14 MR. DiGIACOMO: Oh, absolutely.

15 MR. ORAM: [Inaudible].

16 MR. DiGIACOMO: Some of them do and some of them
17 [inaudible] on Job's phone.

18 MR. ORAM: [Inaudible].

19 THE COURT: I don't know what you're talking about.
20 I can't hear you.

21 MR. ORAM: I said we had no idea of this. We have
22 to look at it before they --

23 MR. DiGIACOMO: They were in discovery.

24 MR. ORAM: No, I realize that but you're saying that
25 we stipulate to admissions when --

1 THE COURT: No, you don't have to stipulate. I
2 mean, she can testify as to foundation.

3 MR. DiGIACOMO: I don't think they have a foundation
4 problem. Their problem is that they want to have a
5 substantive objection to the records. We agreed to this
6 because they happened to hire Larry Smith as their expert.

7 THE COURT: I understand. I remember that business.

8 MR. DiGIACOMO: So --

9 MR. SGRO: What Mr. DiGiacomo just said is right. I
10 agreed with him --

11 MR. DiGIACOMO: Right.

12 MR. SGRO: -- because we wanted to avoid the whole
13 Larry Smith situation because we endorsed him as our expert
14 witness.

15 THE COURT: Okay. The only issue is whether there's
16 something that's inadmissible in there; right?

17 MR. ORAM: Right.

18 THE COURT: Well, look through it and see if there's
19 anything inadmissible.

20 MR. ORAM: Oh, there's a lot of them, Judge.
21 There's a lot of them.

22 THE COURT: There's four five -- it looked like five
23 or six pages.

24 MR. DiGIACOMO: There's only eight pages of
25 relevant.

1 MR. ORAM: [Inaudible].

2 THE COURT: Well, look at the eight pages, see if
3 there's anything objectionable.

4 MR. ORAM: Sure. Okay. Okay. Want me to do it
5 right now?

6 THE COURT: Yeah.

7 MR. ORAM: Okay.

8 (End of bench conference.)

9 (Pause in the proceedings.)

10 MR. DiGIACOMO: Judge, I think I can continue with
11 some questions on 308 because I believe there is going to be
12 no objection to that one.

13 THE COURT: All right. Any objection to the
14 admission?

15 MR. SGRO: No, those are the contacts and that's
16 fine.

17 THE COURT: All right. They'll be received.

18 (State's Exhibit 308 admitted.)

19 BY MR. DiGIACOMO:

20 Q So let's go to 308 which is the phone
21 contacts. And there's a lot of people that you have by phone
22 numbers in here and you have kind of nicknames for them, okay?

23 A Uh-huh.

24 Q So -- is that a yes?

25 A Yes.

1 Q All right. So I just want to go through some
2 of the contacts that you have. Not all of them.

3 A Okay.

4 Q All right. So first I'm going to zoom into
5 702-927-8742. It kind of looks like a sort of smiley face
6 with a star, Mami my heart.

7 A Yes.

8 Q Who are you referring to?

9 A My mom.

10 Q Monica?

11 A Yes.

12 Q It says Q-Dogg, but there's a number that says
13 909-233-0860.

14 A Yes, G-Dogg. I use my Qs as Gs.

15 Q Okay. So you -- so you use your Qs and Gs.
16 So that's, if you were to read it, G-Dogg. And his number is
17 909-233-0860?

18 A Yes.

19 Q And then, ma'am, I apologize in advance for
20 asking you this, but do you remember how you had Job-Loc in
21 your phone?

22 A I remember a few words, but, yes, I do.

23 Q What was it?

24 A I think it was faggot ass bitch or something.

25 THE COURT: I'm sorry. Repeat that?

1 THE WITNESS: Faggot ass bitch. Or Faggot ass.

2 BY MR. DiGIACOMO:

3 Q And that's 512-629-0041?

4 A Yes.

5 Q Why is it that you used that term for Job?

6 A I did not like him.

7 Q Did you ever like him?

8 A No.

9 (Pause in the proceedings.)

10 MR. DiGIACOMO: I guess I could ask a couple more
11 questions while Mr. Langford finishes looking at that.

12 THE COURT: And we have some jurors are going to ask
13 questions, too.

14 BY MR. DiGIACOMO:

15 Q Did you ever travel to California with your
16 mother?

17 A No.

18 Q Had you met either one of these two
19 individuals as best as you can remember prior to that couple
20 of weeks prior to your mom got arrested?

21 A Can you repeat that?

22 Q Had you met either G-Dogg or D-Shot as far as
23 you could remember prior to the one time you saw him at the
24 house together?

25 A No.

1 Q Okay.

2 MR. DiGIACOMO: I believe they are done looking at
3 the records, 309.

4 THE COURT: Okay. I have a juror's question that
5 isn't a problem. It's just she wants the phone numbers again.

6 MR. DiGIACOMO: Well, I'll get to that again.

7 THE COURT: You'll get to that. Okay.

8 MR. DiGIACOMO: Okay.

9 THE CLERK: So is --

10 MR. DiGIACOMO: 309 admitted?

11 THE COURT: Yeah, 309 is received.

12 (State's Exhibit 309 admitted.)

13 MR. DiGIACOMO: Thank you.

14 BY MR. DiGIACOMO:

15 Q Now, I'm going to turn to page 3 of -- of 309.
16 And I'm going to just back up to this very first one. You see
17 it says G-Dogg there, it's kind of highlighted in purple

18 A Yes.

19 Q Okay. And for the juror, the number
20 associated in your phone with G-Dogg is 909-233-0860?

21 A Yes.

22 Q And then as it relates to Job as in your
23 phone, the number that's associated with Job's phone is
24 512-629-0041?

25 A Yes.

1 Q And I walked off with my other exhibit. For
2 your mom's phone, State's Exhibit No. 308, which is Mami my
3 heart, it's 702-927-8742.

4 A Yes.

5 Q So I really only want to focus right now for
6 your testimony on this one page that references text messages
7 from Job's phone. And you can see it starts off with sent,
8 which would have been sent from your phone in your inbox,
9 phone number, and then date and time that they're sent. And
10 so for the ladies and gentlemen of the jury, what I want you
11 to start with is I'll tell you the bottom says sent at
12 8/5/2010 at 9:41:37 a.m. You send a text to Job's phone that
13 says what?

14 A She's home. Thanks for, I believe, asking.

15 Q And then at 8/5/2010 at 9:44 a.m. you receive
16 a text. And can you read that as to what your understanding
17 what that says?

18 A Ay, this D-Shot. What that shit do?

19 Q And then your response at 9:44:13, so 13
20 second later, what does that say?

21 A Nothing. Bye.

22 Q Okay. And then the response back from Job's
23 phone at 9:45:50, what is it?

24 A Job sleep. He just wanted to check on your
25 mom.

1 Q And your response back being?

2 A Okay. I sent him a text letting him know
3 she's good. So when he wakes, he will see.

4 MR. DiGIACOMO: Thank you, Judge. I pass the
5 witness. THE COURT: Cross-examination.

6 MR. ORAM: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MR. ORAM:

9 Q Good morning.

10 A Good morning.

11 Q If I understood you right when Mr. DiGiacomo,
12 the gentleman who was just asking you questions, he asked you
13 if you had ever traveled with your mother to California and I
14 understood you to say, no, that you hadn't don't that.

15 A Yes.

16 Q Okay. And that's true, isn't it?

17 A Yes.

18 Q That would be something you would remember if
19 you traveled with your mother, wouldn't it, to California?

20 A Yes.

21 Q Did she ever talk to you about whether you
22 guys traveled to California?

23 A No.

24 Q All right. Now, you also told the ladies and
25 gentlemen of the jury you knew a man named West. North,

1 south, east, west.

2 A Yes.

3 Q With a ton the end.

4 A Yes.

5 Q Was this somebody who would come by the house
6 on a reasonably regular basis?

7 A Yes.

8 Q Somebody who was pretty close with Job?

9 A Yes.

10 Q Very close. I mean, did -- do you know West
11 also as, I think he signed his name Baby Job-Loc on a letter.
12 Do you know that name?

13 A I've never heard him refer to himself as that.

14 Q Fair enough. But you -- you know that West is
15 Donovan Rowland?

16 A Yes.

17 Q Can you at that time describe what Donovan
18 Rowland sort of looked like, his physical appearance?

19 A I'd say he's about like 5'6, slip, short hair.

20 Q Okay. So short curly hair?

21 A No curly hair. Just -- he had like a fade.

22 Q Okay. And you said that he was slim?

23 A Yes.

24 Q A slight build?

25 A Yes.

1 Q Now, the prosecutor asked you, Mr. DiGiacomo
2 asked you if you could identify D-Shock and -- D-Shot and
3 G-Dogg in the courtroom. Do you remember that?

4 A Yes.

5 Q And you told the ladies and gentlemen of the
6 jury that the man with the ponytail was G-Dogg.

7 A D-Shot. I don't -- they're -- they're names
8 are similar so -- they sound the same to me.

9 Q Okay. And -- and I can understand that. And
10 so really what I want to do is I -- you did say that the man
11 with the ponytail, originally you told the jury that was
12 G-Dogg.

13 A Their -- their names are the same. I get the
14 names confused with the person. But I know who he is.

15 Q Okay. And I'm not trying to confuse you. I
16 just want to go through this, okay. At first when you were
17 asked --

18 A Yes.

19 Q -- I understand --

20 A At first, yes.

21 Q -- you said that you could identify the man
22 with the ponytail as G-Dogg and the other man with the white
23 shirt with the glasses on his shirt, you thought that was
24 D-Shot. That's what you said at first?

25 A Yes.

1 Q Okay. But then the prosecutors showed you --

2 A A picture.

3 Q -- some evidence of where you looked at a six
4 pack lineup.

5 A Yes.

6 Q And you realize that you have identified --
7 it's a mistake.

8 A Yes.

9 Q Okay. And so now you can tell the ladies and
10 gentlemen of the jury you're confident that the man you know
11 as D-Shot is the man with the ponytail?

12 A Yes.

13 Q And the man you know as G-Dogg is the man with
14 the white shirt?

15 A Yes.

16 Q Now, my understanding is you said that you met
17 D-Shot one time at -- at the house; is that right?

18 A Yes.

19 Q And he was at the house on -- what was the
20 name of the street? Do you recall?

21 A Cinnabar.

22 Q Cinnabar. Okay. And you said he was sort of
23 lounging on the sofa relaxing of something along those lines?

24 A Yes.

25 Q Okay. And at some point you believed he

1 thought you were pretty?

2 A Yes.

3 Q And so it's your testimony that at some point
4 you think he's using somebody else's phone just with that text
5 we saw?

6 A Yes.

7 Q Okay. You really don't know who is sending a
8 text, but you assume, based upon what you know that it was
9 from D-Shot?

10 A Yes.

11 Q Okay.

12 MR. ORAM: Court's indulgence. Nothing further.

13 MR. LANGFORD: Nothing, Your Honor.

14 THE COURT: Anything further?

15 MR. DiGIACOMO: Nope.

16 THE COURT: All right. Ms. Mitchell, thank you very
17 much for being a witness. You'll be excused.

18 THE WITNESS: Thank you.

19 THE COURT: Can she be permanently excused?

20 MR. DiGIACOMO: She can.

21 THE COURT: Okay.

22 MR. DiGIACOMO: As far as we're concerned.

23 MR. SGRO: Yes, sir.

24 THE COURT: Now, as I understand it, this is the
25 last witness you had this morning?

1 MR. DiGIACOMO: Yeah. I let the next witness go to
2 lunch and I told him to be back at 1:00, so --

3 THE COURT: All right. We'll recess until 1:00.

4 Ladies and gentlemen, again, it's your duty not
5 converse among yourselves or with anyone else on any subject
6 connected with this trial or to read, watch, or listen to any
7 report of or commentary on the trial from any medium of
8 information, including newspapers, television, and radio. You
9 may not form or express an opinion on any subject connected
10 with this case until it is finally submitted to you. We'll be
11 in recess until 1:00.

12 (Jury recessed at 12:03 p.m.)

13 THE COURT: The record will reflect that the jury
14 has exited the courtroom.

15 MR. DiGIACOMO: Judge, the only question I have is
16 on 310 which is the original which I really put in for solely
17 foundational purposes. I don't know that there was ever a
18 ruling by the Court as to whether or not they want all of this
19 to put some of those text messages in context.

20 THE COURT: You guys want it?

21 MR. SGRO: We don't. We don't.

22 THE COURT: Mr. Langford?

23 MR. LANGFORD: No, Your Honor.

24 MR. DiGIACOMO: Then 310 is not in, but 309 is in?

25 THE COURT: Yes.

1 MR. ORAM: Thank you, sir.

2 MR. SGRO: Thank you.

3 THE COURT: Recess until 1:00.

4 (Court recessed at 12:04 p.m. until 1:06 p.m.)

5 (In the presence of the jury.)

6 THE COURT: State vs. Burns and Mason, the record
7 reflect the presence of the defendants, their counsel, the
8 district attorneys and all members of the jury. We're still
9 on the State's case in chief and you can call your next
10 witness.

11 MR. DiGIACOMO: Jim Krylo.

12 JAMES KRYLO, STATE'S WITNESS, SWORN

13 THE CLERK: Please be seated. Please state your name
14 and spell your first and last name for the record.

15 THE WITNESS: James Krylo, J-A-M-E-S K-R-Y-L-O.

16 MR. DiGIACOMO: May I inquire, Judge?

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 BY MR. DiGIACOMO:

20 Q Sir, how are you employed?

21 A I'm the lab manager of the firearms tool mark
22 detail for the Las Vegas Metropolitan Police Department's
23 Forensic Laboratory.

24 Q What does that mean you do for a living?

25 A Well, basically, I manage the firearms and tool

1 mark detail. I run the detail, assign cases, review reports,
2 anything having to do with the running of that detail.

3 MR. SGRO: I'm sorry -- I'm sorry to interrupt. Your
4 Honor, do you mean, can I just -- this thing has lined itself
5 up perfect for Mr. Krylo.

6 THE COURT: That was designed that way.

7 MR. SGRO: Can I take it down? I'll take it down
8 until I need it. How's that?

9 THE WITNESS: I'm not going to take that personal at
10 all.

11 BY MR. DiGIACOMO:

12 Q How long have you been the manager of that unit?

13 A Since last March.

14 Q Prior to becoming the manager of that unit, what
15 did you do for Metro?

16 A I was a firearms and tool mark examiner in that
17 same detail.

18 Q And how long have you been a firearms and tool
19 mark examiner?

20 A With Metro, let's see, almost 16 years.

21 Q Prior to Metro did you also do firearms and tool
22 mark?

23 A Yes.

24 Q And where is it that you did that at?

25 A I started with the sheriff's department in

1 Orange County, California. Took a break for a while and did
2 crime scenes and latent print processing, then went back into
3 firearms with the Washington State Patrol in Tacoma,
4 Washington.

5 Q Grand total, how many years have you been doing
6 firearms and tool mark examinations?

7 A Over 20.

8 Q In order to be a firearms and tool mark
9 examiner, do you have to have a certain education, training,
10 experience, and background?

11 A Yes.

12 Q And could you explain that to the ladies and
13 gentlemen of the jury?

14 A Well, the firearms and tool mark detail's within
15 the forensic laboratory. So pretty much all the -- the
16 scientist jobs in the laboratory retire -- require some sort
17 of science degree. I have a Bachelor of Science Degree in
18 criminalistics, which is kind of half science, half criminal
19 justice type course work. Once you have your degree and then
20 you're in the door, then the majority of the training is
21 on-the-job training. So I received my on-the-job training
22 with the sheriff's department in Orange County, California.

23 And then beyond that, then we just go to continuing
24 education. And that's seminars presented by law enforcement
25 agencies, forensic associations, and even classes offered by

1 the manufacturers themselves. So that continued education,
2 I've got over 600 hours of that now.

3 And then if we go on, there's an association, an
4 international association that's actually here in the United
5 States. It's the Association of Firearm and Tool Mark
6 Examiners. I'm a distinguished member and past president of
7 that association. I'm also certified by that association to
8 form these type of examinations.

9 Q Now, you talked about certifications. I guess I
10 should start off with what exactly does a firearms and tool
11 mark examiner do?

12 A Basically, we examine firearms and tool mark
13 type evidence. What that means is we examine firearms
14 themselves, we examine ammunition and fired components of
15 ammunition, the main aspect there being trying to identify
16 ammunition as having fired from a certain gun. We do those
17 same type exams with tool marks. If you have a tool mark,
18 that leaves a -- like a screwdriver leaves a pry mark on
19 something, we actually do the comparison of the tool to the
20 mark that it left.

21 Q And is there under -- some underlying forensic
22 science basis in order to do some sort of comparison of either
23 a firearm or a tool mark to a mark being left on a particular
24 piece of evidence?

25 A The basis is that no two tools will leave marks

1 that are so similar that it would confuse you and think that
2 two marks that were made by two different tools could have
3 been made by the same tools. So in other words, at a
4 microscopic level you can look at these marks and look at
5 tool-to-mark, or bullet-to-gun, cartridge-case-to-gun, and you
6 can tell one gun apart from another, one screwdriver apart
7 from another.

8 Q You indicated that you've been certified by an
9 association, the International Association of Firearms and
10 Tool Marks, is that what you said it was?

11 A It's the -- the Association of Firearm and Tool
12 Mark Examiners.

13 Q Okay. You -- in order to be certified by them,
14 what do you have to do to gain a certification?

15 A Well, minimum, you have to have five years
16 experience before they let you take the test. And then it's a
17 written test, followed by a practical test.

18 Q And what kind of -- what do you mean by a
19 practical test? What does that mean you do?

20 A The practical test is they actually give you
21 fired bullets, fired cartridge cases, and have you examine
22 them, and, you know, then you submit your answers on that
23 exam.

24 Q So they know the answers to the questions, and
25 then they submit to you as if it's questioning evidence, and

1 then you have to answer the questions as to whether or not you
2 think a particular bullet was fired from a particular gun,
3 those type of things?

4 A Correct.

5 Q Does the Las Vegas Metropolitan Police
6 Department, their forensic lab also conduct certifications of
7 their examiners?

8 A Not so much certifications. There's a -- you
9 have to, based on your qualifications, you are basically given
10 a memo that says, Yes, you can perform case work. But beyond
11 that, within the scope of our accreditation, we take what are
12 called proficiency tests. And these are tests similar to the
13 practical test from -- from AFTE, the Association of Firearm
14 and Tool Mark Examiners, where an outside entity submits the
15 test, we take the test, it's a practical test, they actually
16 send bullets or cartridge cases or pieces of metal with tool
17 marks on them. We take that test, submit our answers back to
18 that agency, and find out if we passed or not.

19 Q Let me ask this question. Have you testified in
20 the area of firearms and tool marks analysis here in the state
21 of Nevada?

22 A Yes, I have.

23 Q Have you done so in front of a jury in jury
24 trials?

25 A Yes.

1 Q And can you guesstimate how many times you've
2 testified as a -- testified and given opinions in the area of
3 firearms and tool marks analysis in the state of Nevada?

4 A Well, if you -- if you combine them all, I've
5 got state of California I've testified, state of Washington,
6 and now in Nevada, all total it's almost 300 times.

7 Q Were you requested to be the firearms examiner
8 on a homicide case that was identified to you under Metro
9 Event No. 100807-0732?

10 A Yes.

11 Q Okay. And what is it that you were asked to do
12 under that event number?

13 A Basically, I was asked to examine a firearm,
14 some bullets and some bullet fragments, and compare those
15 bullets and bullet fragments back to the firearm.

16 Q Okay. Let me start with what's been marked as
17 State's Proposed Exhibit 320, and then 320A and B.

18 MR. DiGIACOMO: Judge, and I believe there's a
19 stipulation between the parties that this will be admitted,
20 there'll be subsequent foundation to -- for purposes of Mr.
21 Krylo's testimony that it'll be admitted.

22 MR. SGRO: And in fact, to save some time, Your
23 Honor, I don't have a problem with the admissibility of any of
24 the things that Mr. DiGiacomo and I -- and I reviewed at the
25 break. However, I would like to submit for the Court's

1 consideration the -- the expert admission here at this time.

2 THE COURT: The qualifications?

3 MR. SGRO: Yes, sir.

4 THE COURT: Well, he has a Bachelor of Science in
5 criminalistics. He has over 20 years of experience in
6 firearms and -- and tool mark analysis. He's been certified
7 and this is a recognized field that, albeit with some
8 controversy, has been recognized in virtually every state in
9 this country. I -- I think that it will be of assistance to
10 the jury to have the testimony. You can cross-examine on any
11 issues that you think are appropriate. I'll -- I'm willing to
12 permit him to testify.

13 MR. SGRO: Thank you, Your Honor.

14 MR. DiGIACOMO: And for the clerk, that means we're
15 admitting 311 and 311A, 312 and 312A, and 315 and 315A are
16 admitted now by stipulation.

17 THE COURT: Is that correct, gentlemen?

18 MR. SGRO: Subject to the Court's ruling just now --

19 MR. ORAM: Yes, Your Honor.

20 MR. SGRO: -- yes, sir.

21 THE COURT: Okay. They'll be received.

22 (State's Exhibit 311, 311A, 312, 312A, 315, and 315A
23 admitted.)

24 MR. DiGIACOMO: And 320 and 320A and B, I already
25 told you; is that correct?

1 BY MR. DiGIACOMO:

2 Q So let me start with 320, have you look at the
3 outside of this box, obviously. It's been cut prior to you
4 being entered into it. But did you receive that item when it
5 was still sealed either by your -- the crime scene analyst or
6 by a prior forensic examiner who sealed it with blue tape?

7 A Yes.

8 Q Okay. And if you were to open that you would
9 expect to find what?

10 A The revolver and the holster.

11 Q Okay. Go ahead and open 320. 320A, for the
12 record, is the holster that was submitted to you along with
13 the -- the firearm in -- in 320?

14 A Correct.

15 Q Okay. And then 320B, we've cut it out of the
16 box at this point, but it's still safe, meaning that it's not
17 operational, correct -- is that correct?

18 A Well, can I examine?

19 Q Sure.

20 A Basically correct. It's -- what's keeping it
21 from being functional is this orange strap right here. That
22 means the -- the cylinder can't close, so it can't be put
23 completely into a ready-to-fire position.

24 Q So I'm going to refer my questions to 320, but
25 basically can you explain to us what 320B is?

1 A This is a Ruger revolver. The caliber is .44
2 magnum. And it's -- basically, it's -- it's a revolver, will
3 fire both single or double action.

4 Q Well, why don't you explain to the ladies and
5 gentlemen of the jury first, what makes it a revolver versus
6 semiautomatic pistol?

7 A The main difference is in a semiautomatic
8 pistol. Each time you fire it, a cartridge case is ejected
9 from the gun and another round of ammunition is chambered,
10 making it ready to fire. With a revolver, you have this
11 revolving cylinder right here. When you want to get it ready
12 to fire, you load the ammunition into the cylinder, close the
13 cylinder up, now it's ready to fire. You can fire -- this
14 particular revolver will hold six shots.

15 After you've fired it, you have to manually unload
16 it. You have to open the cylinder back up and then you can
17 use the ejector rod here and you can dump the ammunition --
18 the fired cartridge cases of the revolver.

19 Q Okay. You also mentioned the term double action
20 versus single action. Explain what the difference between
21 those two are.

22 A It's two different ways to fire the gun. For
23 single-action firing, you manually -- this piece here is
24 called the hammer. You manually cock the hammer, and then
25 when you pull the trigger, it's a fairly short and light

1 trigger pull.

2 Double-action firing would be with the hammer down,
3 like it is here, and all you do is just pull the trigger. And
4 as you pull the trigger, the hammer comes back and releases
5 and fires.

6 Q And then if you were to pull the -- if it's
7 fully loaded with six live rounds, right, that holds six
8 shots?

9 A Correct.

10 Q Okay. If you had six live rounds in there, you
11 could pull the trigger six times and fire all six rounds as
12 the cylinder rotates?

13 A Correct.

14 Q Okay. Did you do testing on that weapon to
15 determine whether or not it was an operational firearm?

16 A Yes, I did.

17 Q And is it, in fact, an operational .44 caliber
18 firearm?

19 A Yes.

20 Q Did you make any determination as to the trigger
21 pull in either single action or double action?

22 A I measured both.

23 Q And could you tell us what the trigger pull on
24 single action is?

25 A Yeah. May I use my work --

1 THE COURT: Yes.

2 A -- notes? The single-action trigger pull was
3 4-1/4 to 4-3/4 pounds.

4 BY MR. DiGIACOMO:

5 Q And then is that within the manufacturer's
6 specification or a reasonable trigger pull?

7 A Yes.

8 Q And then on double action?

9 A Double action trigger pull was 8-3/4 to 9-1/4
10 pounds.

11 Q And is that a reasonable trigger pull for the
12 manufacturer's specifications?

13 A Yes.

14 Q Okay. So essentially it's a normal functioning
15 firearm?

16 A Correct.

17 Q And it takes about twice the amount of pressure
18 to -- to pull the trigger double action than it does in single
19 action?

20 A Yeah. Not only -- not only more pressure, but
21 more travel.

22 Q More travel. So it takes a longer time for it
23 -- or more pull on the trigger for it to --

24 A More movement and more -- and more pressure.

25 Q Did you also have a number of pieces of expended

1 firearms evidence in order for you to do an analysis of?

2 A Yes.

3 Q So I'm going to show you what's now been
4 admitted as State's Proposed Exhibits 263, 264, 311, 312, and
5 315, and ask you are those five of the packages of expended
6 firearms evidence that you looked at?

7 A Yes.

8 Q Now, was there a sixth package that isn't going
9 to be here till this afternoon that you also looked at?

10 A Yes.

11 Q Okay. So let's go through each one of the
12 packages and what's contained in each one of the packages. So
13 I'll let you go in -- do you want to go in the order of your
14 report or you want to go the order of the packages?

15 A Well, the order of my report works easier for
16 me.

17 Q Okay. So why don't -- do you have your report
18 with you?

19 A I do.

20 Q And would it help you refresh your recollection
21 to be able to refer to your report and go in the order of
22 packages that you have?

23 A Yes.

24 Q Okay. So why don't we start with what was the
25 first package that you looked at?

1 A It's State's Exhibit 263.

2 Q And what is contained in State's Exhibit 263?

3 A There are three items in here. A -- basically
4 all fragments of a bullet.

5 Q Okay. Let's pull those out for just a second
6 here. They're all going to be I believe contained in A, B,
7 and C. And those are all portions of a bullet. So let's
8 start with A.

9 Can you tell the ladies and gentlemen of the jury
10 what A is?

11 A A is what I called a bullet jacket fragment from
12 a .44 -- basically, a .44 caliber bullet.

13 Q Okay. Let's talk a little bit about how bullets
14 are made. You said something about a jacket. Can you explain
15 what -- what it is you're talking about?

16 A Yeah. One of the -- the common styles of bullet
17 here in the United States is a copper jacketed bullet with a
18 lead core. So you have a -- a piece of copper that they form
19 into basically a cup. Then into this cup goes a piece of
20 lead. So you have a piece of lead surrounded by this copper
21 jacket. So you have the copper jacket and the lead core.

22 And a common manufacturing process for this is just
23 -- they are press fit. They're not glued together. They're
24 not -- for a lot of manufacturers they're not fused together.
25 So you have a copper jacket with a lead core, and then you can

1 -- they can take and kind of shape those to -- into different
2 styles. If you have a style where the -- the copper kind of
3 covers the top and the sides and it's got a rounded nose,
4 typically a full metal jacket bullet. If you put the lead
5 exposed at the top and you can put a -- a cavity in there,
6 then you have a jacketed hollow point bullet.

7 So a lot of different styles. But it's a basic
8 construction of this outer copper jacket with a lead core.

9 Q And then before I go farther, once you have a
10 bullet that's a copper jacketed with a lead core, is it
11 attached to anything in order to make it fire out of a
12 firearm?

13 A Well, then that bullet is loaded into a
14 cartridge case. And those components, along with gunpowder
15 and a primer, that makes up one round of ammunition that I
16 call a cartridge.

17 Q And then as using 320B, the firearm, can you
18 explain to us essentially how it is that a bullet leaves a
19 gun?

20 A Sure. So if we go back to our Ruger revolver
21 here, remember we have this multi-chambered cylinder, we take
22 a cartridge and we load it into one of these holes. And those
23 holes are called chambers. So obviously I can load six rounds
24 of ammunition into this gun, close the cylinder up, lock it in
25 place. And then when I go to fire this gun, the firing pin,

1 which is right kind of up in this part of the gun here in
2 front of the hammer, between the hammer and where the cylinder
3 closes, the firing pin hits the primer of the cartridge case.
4 Primer has a really shock sensitive material in it. That
5 material ignites, which in turn ignites the gunpowder inside
6 the cartridge.

7 That gunpowder burns, starts to generate gas
8 pressure, and the gas pressure then forces the bullet, which
9 is in the -- the open end of the cartridge case, the mouth of
10 the cartridge case, which is in this chamber, and that gas
11 pressure then pushes the bullet down the barrel and out the
12 muzzle.

13 Q Okay. Is there anything left on the bullet that
14 is helpful to you in doing a firearms and tool marks analysis?

15 A Yes.

16 Q What is that?

17 A Well, if you were to look down the barrel of
18 this firearm, you'll see that there are spiraling grooves in
19 that barrel. It's called rifling. Looks kind of like a candy
20 cane. That rifling is there, so as the bullet goes down the
21 barrel, it picks up spin. And that spin then imparts
22 stability on that bullet so it'll just fly straighter. Kind
23 of like when a, you know, quarterback throws a football and
24 wants to throw a spiral, same thing with that bullet. You
25 want that bullet spinning so that it flies straight.

1 Well, as that bullet went down the -- the barrel,
2 that rifling is impressed on the sides of the bullet. And
3 it's that -- those rifling impressions that I can use to
4 compare a fired bullet back to a specific firearm.

5 Q And is there a difference between general class
6 characteristics as -- as opposed to unique identifying
7 characteristics that are placed on the expended bullet?

8 A Yes. The -- the class characteristics of the
9 rifling are the manufactured or -- or the intentional
10 characteristics of that rifling. So we know that that rifling
11 as these spiraling grooves. So different manufacturers can
12 use different numbers of grooves. They can have four, five,
13 six -- oh.

14 JUROR NO. 7: I'm sorry. I'm trying to get the
15 marshal's attention. I'm sorry, folks. I'm really not
16 feeling very well. I --

17 THE COURT: You okay?

18 JUROR NO. 7: I'm not sure. I may need to exit the
19 courtroom [indiscernible].

20 THE COURT: Let's take a recess for a few minutes,
21 ladies and gentlemen.

22 During the recess it's again your duty not to
23 converse among yourselves or with anyone else on any subject
24 connected with this trial, or to read, watch, or listen to any
25 report of or commentary on the trial from any medium of

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

4 Be in recess for a few minutes.

5 THE MARSHAL: Juror, please.

6 (Jury recessed at 1:27 p.m.)

7 THE COURT: Record reflect that the jury has exited
8 the courtroom. Off the record.

9 (Court recessed at 1:27 p.m., until 1:37 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: All right. We're on the record now.

12 Record should reflect that in the absence, the marshal advised
13 me that Juror No. 7, Ms. Paradis, was sick and -- sick enough
14 that I invited counsel into chambers and we all agreed, and I
15 wanted to put this on the record, that she be excused, and we
16 substitute an alternate.

17 MR. ORAM: That's correct.

18 MR. SGRO: Correct.

19 MS. WECKERLY: Yes.

20 MR. DiGIACOMO: Correct, Your Honor.

21 THE COURT: All right. Anything further on the
22 record before --

23 MR. ORAM: Yes, Judge.

24 THE COURT: Quickly. The jury's in the hall.

25 MR. ORAM: Yes, very quickly. The State has -- I

1 thank the State for bringing it to my attention, that
2 Cornelius Mayo --

3 THE MARSHAL: I'm not bringing them in.

4 MR. ORAM: Cornelius Mayo, he is the -- the man in
5 the house, the, you know, the significant other. And the
6 State has indicated that he seems very agitated. And the
7 State has shown some concern for if he testifies, that we want
8 to make sure that the Court is aware that he just controls
9 himself. I'll make sure that Mr. Burns --

10 THE COURT: I'll watch him.

11 MR. ORAM: -- doesn't stare at him or anything along
12 those lines, laugh --

13 THE COURT: I'll watch him.

14 MR. ORAM: Okay.

15 MS. WECKERLY: I don't think he's, like, agitated.
16 But he's obviously extremely emotional about this -- this
17 incident. Because --

18 THE COURT: I'll --

19 MS. WECKERLY: Okay.

20 THE COURT: -- if I need to, I'll tell him to calm
21 down.

22 MS. WECKERLY: Okay. Thank you.

23 THE COURT: All right. You can bring in the jurors.

24 MR. ORAM: Thank you, Judge.

25 THE MARSHAL: All rise for an entering jury, please.

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