

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 Q Good afternoon, Detective.

2 A Good afternoon.

3 Q Just a couple preliminary things, first of
4 all, I know you may not understand why it's relevant, but how
5 tall are you, sir?

6 A 5'8 and a half.

7 Q 5'8 and a half. So if someone had described
8 you as 6'4, would that person be off?

9 A Slightly.

10 Q Yeah. Now, you were asked a number of
11 questions. And before we get into the specifics, you have
12 written reports in this case; correct?

13 A Correct.

14 Q You have testified in front of the grand jury
15 in this case twice?

16 A I recall testifying in front of the grand
17 jury. Yes, sir.

18 Q You remember two different days?

19 A Not off the top of my head, no.

20 Q May I approach, Your Honor?

21 A Sure.

22 Q You have a transcript on Tuesday, September
23 28, 2010. Does this look like that was you?

24 A Yes, sir.

25 Q And then we have a transcript on October 12,

1 2010.

2 A Yes, sir.

3 Q Okay. So you testified two times in front of
4 the grand jury; right?

5 A Yes, sir.

6 Q Now, we've had some description in this case
7 of the grand jury. You understand it's a proceeding something
8 like this where you testify, the DA asks you questions; right?

9 A Correct. Yes, sir.

10 Q There is no defense attorneys, though, that
11 are allowed to ask you questions; right?

12 A That is correct.

13 Q You also filled out a number of search
14 warrants in this case; is that right?

15 A I don't recall how many I -- I personally did
16 versus other detectives, no.

17 Q Each -- well, was it -- was it more than one
18 or two?

19 A Well, I know that the sergeant did the first
20 one. I don't know. I don't know how many of the four I did,
21 sir, off the top of my head.

22 Q The search warrant affidavits are all done
23 under oath; right?

24 A Correct.

25 Q Okay.

1 A If my name is on there, then I did them.

2 Q And you also did what you described as a very
3 lengthy officer report --

4 A Yes, sir.

5 Q -- right? Now, in addition to that you kept
6 what you call your case file or what's called a homicide
7 notebook?

8 A Yes, sir.

9 Q One of the questions I had for your is can you
10 point to me in all the paperwork that you've done or at any
11 time under oath prior to today ever discussing why you did not
12 do the gunshot residue, why you didn't pursue it relative to
13 Mr. Mayo. Can you show me anywhere?

14 A Probably not.

15 Q Now, you told the jury today that -- tell me
16 if I got this right. If you fired a weapon in this courtroom
17 you would expect all of us to have some gunshot residue on us?

18 A Well, maybe not a room this big but there's a
19 potential for that. But in a crime scene, in that particular
20 space, in that residence, absolutely. And throughout the
21 different areas that that gun was fired, it would not surprise
22 me that everybody in that residence would potentially have
23 residue.

24 Q What do you base that on?

25 A I'm sorry?

1 Q What -- what treatise, text, scientific
2 manual, what do you base that opinion on?

3 A Well, I base it on my own experience and what
4 I've been taught. But a specific text, I can't reference one.

5 Q Okay. What you've been taught. You get
6 taught things -- Metro receives FBI -- what they call the FBI
7 law enforcement bulletin; right?

8 A They might.

9 Q Metro police officers attend seminars relative
10 to gunshot residue testing from time to time, fair?

11 A Some might.

12 Q Have you?

13 A A gunshot residue in and of itself, no.

14 Q You've never gone to a seminar on it?

15 A I have been to many homicide seminars, yes,
16 sir.

17 Q That's not my question. My question is you
18 came in here and you -- you advance this opinion that gunshot
19 residue testing was not necessary because of the likelihood
20 that he probably has some on him due to the shots that were
21 fired in the residence.

22 A Not exactly. The likelihood that I already
23 knew that he was inside of the residence. So to test for
24 gunshot residue would prove that he was inside the residence
25 or around a firearm when it was being discharged.

1 Q It had nothing to do with the desire to test
2 whether or not he had fired a weapon. That's your testimony.

3 A That he was inside of the residence at the
4 time of the shooting was what I said.

5 Q Sir, would the administration of a gunshot
6 residue test have anything to do with law enforcement desire
7 to determine with some scientific resource whether or not a
8 specific individual fired a weapon?

9 A Yes, it helps. Yes.

10 Q It helps.

11 A Absolutely.

12 Q All right. And you elected to not pursue that
13 particular avenue of investigation; correct?

14 A That is correct.

15 Q Now, are you aware, sir, that once a gunshot
16 travels more than three feet from the site of the shooter,
17 that the effective gunshot residue evaporates, dissipates?
18 Have you ever heard that before?

19 A I'm not a gunshot residue expert, so --

20 Q Well, you know, that's funny because you
21 didn't say you weren't a gunshot residue expert when you told
22 the jury about, you know, powder that would explode in the
23 air; right? You didn't -- you didn't qualify your answer
24 then, did you?

25 A No.

1 Q No. Would you defer to someone else on why --
2 or strike that. Would you defer to someone that is an expert
3 as to the impact of gunshot residue, how the powder works,
4 where it goes, and the time it takes for it to evaporate,
5 etcetera? Would you defer to someone that's an expert?

6 A Sure.

7 Q You were asked --

8 MR. SGRO: Court's indulgence, Your Honor.

9 BY MR. SGRO:

10 Q -- some questions about bullet strikes.

11 A Yes, sir.

12 Q Now, you've already said you're not a gunshot
13 residue expert. Are you a ballistics expert?

14 A I wouldn't say that I'm an expert in anything.

15 Q Would you defer to crime scene analysts that
16 purport to have expertise in that field?

17 A Well, I work with crime scene analysts. I
18 would say that with them, along with the detectives that are
19 at the scene, whether they're primary or other detectives that
20 are there from homicide, collectively we would come to that
21 conclusion.

22 Q So you wouldn't defer to them. You'd work
23 with them to come to a conclusion?

24 A Yeah, I believe so.

25 Q Okay. So if they came in here and testified

1 as to certain things based on their own opinion and their own
2 expertise --

3 A Right.

4 Q -- you would take issue with that?

5 A Well, it would depend on what they said.

6 Q So if they agree with you, you don't take
7 issue with it. If they disagree with you, you take issue with
8 it?

9 A No, I wouldn't put it that way. I mean,
10 anytime that we go to a scene, when you have a group of crime
11 scene analysts along with detectives, you collectively work as
12 a team to come to the conclusion of what the evidence says at
13 the scene.

14 Q Okay.

15 A So no one individual at any homicide scene
16 that I've ever been to would ever be the definitive sole
17 answer as to what took place there.

18 Q Okay. So crime scene analysts come in.

19 A Correct.

20 Q They get proffered as experts. They testified
21 about bullet trajectories. Do you quarrel with what their
22 findings are?

23 A Well, I guess it would just depend on what the
24 situation was.

25 Q Let's start with this. There was a piece of

1 furniture in the hallway as you -- as you travel down the
2 hallway of the Meikle residence; correct?

3 A Which are you referring to? The one at the
4 north end of the hallway? The bookshelf?

5 Q The one that had a couple doors on the bottom
6 and it looked like an entertainment maybe, a wooden shelf.

7 A I believe I know which one you're referring
8 to. Yes, sir.

9 Q Okay. As you are traveling down the hallway
10 it's mounted against the wall, then on the other side of that
11 wall is the television.

12 A Correct.

13 Q All right. What -- what would you call that
14 piece of furniture so we can be on the same page?

15 A Well, I'd -- I'd have to see it. I believe
16 it's something similar to a bookshelf or something along those
17 lines.

18 Q All right. Let's call it a bookshelf. You
19 testified before the jury that the bookshelf at some point was
20 moved; correct?

21 A When he moved, yes. When Mr. Mayo moved.

22 Q At -- at some point law enforcement was
23 contacted to go reexamine that wall.

24 A Correct.

25 Q So while you were there performing your

1 evaluation of bullet paths, trajectories and that sort of
2 thing, you missed the bookshelf.

3 A The initial -- absolutely, yes.

4 Q Okay.

5 A We -- well, what do you mean we missed the
6 bookshelf?

7 Q Well, if the holes came at the time of the
8 homicide, that bookshelf should have had holes in it; right?

9 A Correct.

10 Q Bullets would have had to have gone through
11 the bookshelf to get to the wall; correct?

12 A That is correct.

13 Q All right. And so you missed two holes in the
14 bookshelf.

15 A That is correct.

16 Q Now, when you testified in front of the grand
17 jury --

18 MR. SGRO: May I approach the clerk briefly, Your
19 Honor.

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q Okay. Now, Defense Exhibit S, like Sam, is in
23 evidence and I want to get us orientated the same way.

24 MR. SGRO: Oh, can I have the Elmo, please?

25 THE MARSHAL: It's on.

1 MR. SGRO: Thank you.

2 BY MR. SGRO:

3 Q Now, this is what the crime scene analyst
4 testified to. See these holes marked A and B?

5 A Correct.

6 Q And you're familiar that trajectories of
7 different bullets each get allocated a different letter of the
8 alphabet; correct?

9 A Correct.

10 Q And on the first go around at the crime scene
11 there was an A1 through 6, B1 through 4, etcetera; right?

12 A Correct.

13 Q There was an A, B, and a C; right?

14 A I'll agree with that.

15 Q Well, do you know?

16 A I believe they were lettered that, yes.

17 Q Okay. And in addition to the A, B, and C,
18 there was a bullet that killed Derecia; right?

19 A Correct.

20 Q And there was a bullet that killed -- I'm
21 sorry, that was in the stomach of Devonina?

22 A Correct.

23 Q So that's five; right?

24 A Without -- you're talking about regardless of
25 these?

1 Q Regardless of these we have five; right?

2 A I believe so, yes.

3 Q At the time you left the scene -- well, strike
4 that. If a crime scene analyst would have testified under
5 oath that when -- when she had left the scene she had counted
6 for five shots, would you agree with that?

7 A If that's what she said, then, yeah,
8 absolutely.

9 Q And afterwards we have these two holes;
10 correct?

11 A Correct.

12 Q Now, did you go back and -- and take these
13 pictures?

14 A I believe I was there. I didn't take those
15 pictures, no.

16 Q Were you there?

17 A I believe so, yeah. During this, yes.

18 Q Okay. This is the second page of Exhibit S.
19 Did you put these poles in the wall?

20 A No.

21 Q Did you draft a report that said that -- well,
22 strike that. That attributed these travel paths to two
23 separate bullets?

24 A The crime scene analyst would have done that.

25 Q Okay. You didn't review that crime scene

1 analyst report and take issue with it; correct?

2 A Well, I don't recall what it says, so I didn't
3 take issue with it, I guess.

4 Q Well, let me ask you generally. Was there a
5 crime scene analyst report that you're aware of that
6 attributed two different bullets to A and B that you took
7 issue with?

8 A No.

9 Q And when you testified in front of the grand
10 jury about this particular section of this wall behind the
11 hallway, you told the grand jury under oath that there was
12 another bullet strike, another singular bullet strike;
13 correct?

14 A Well, I don't know if those were my exact
15 words, but I agree that that is a bullet strike. Yes, sir.

16 Q Well, let's start --

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

18 THE COURT: Yes.

19 MR. SGRO: This is page 41, counsel.

20 BY MR. SGRO:

21 Q Page 41, can you read line 12?

22 A Right. Period --

23 Q No, I'm sorry. Sorry. To yourself.

24 A Okay.

25 Q Have you done that?

1 A Yes.

2 Q You told the grand jury, did you not, that it
3 was, quote, another bullet strike.

4 A Correct.

5 Q You didn't explain to the grand jury that
6 there were two holes that you had attributed to one bullet;
7 right?

8 A That there were two holes that contributed to
9 one bullet?

10 Q Attributed to --

11 A Right. That did I say that?

12 Q You didn't say that, did you?

13 A Okay. No.

14 Q And did you show the grand jurors the photo of
15 this A and B with these two separate poles?

16 A Well, I wasn't in a position to show them
17 anything. That wouldn't have been me.

18 Q Now, at the time you testified before the
19 grand jury, testing was being done -- or strike that. The
20 time you testified before the grand jury in September of 2010
21 you had submitted requests for certain testing to be done on
22 the bullets that were recovered from the scene correct?

23 A Yes, sir.

24 Q And you had submitted comparison requests,
25 bullet to bullet, bullet to gun, remember those?

1 A Yes, sir.

2 Q And at the time you testified, you had not
3 received those results; correct?

4 A Probably not based on the dates that you gave
5 me, no.

6 Q Yet you told the grand jury --

7 A I'd have to see that, though. I don't know
8 whether -- I don't know what the dates were that I received
9 it, but I would assume not just based on the time that it
10 takes to get them.

11 Q You told the grand jurors in September of 2010
12 when asked by them, do you remember? Do you remember being
13 asked a question what was the caliber of the bullets that was
14 found and you answered, well, all of the testing on the
15 evidence that was found is still being conducted. Does that
16 ring a bell?

17 A If that's -- I agree. You don't have to show
18 me. If that's what I said, then that's what I said, sir.

19 Q Okay. And then the -- the grand juror -- a
20 juror says, well, were there six shots fired from the same
21 weapon; right?

22 A Right.

23 Q Have you determined that; right? And you say
24 due to the fact --

25 MR. SGRO: I'm sorry, counsel. 47.

1 BY MR. SGRO:

2 Q Due to the fact that there were no casings and
3 from witnesses and from witness statements, yes.

4 A That is my belief, absolutely.

5 Q The grand jury, though, they asked you about
6 testing that was done; right?

7 A Yes.

8 Q And you answered not relative to testing, but
9 based on witness statements, whatever you thinking of at that
10 time; right?

11 A And evidence at the scene.

12 Q Sir --

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

14 THE COURT: Yes.

15 BY MR. SGRO:

16 Q Showing you 47. I want to make sure.
17 Question, were you there six shots fired from the same weapon?
18 Have you determined that?

19 A Right.

20 Q This is in reference to testing; correct?

21 A Yes, sir.

22 Q That's the context. And what you answer --
23 let me ask it this way. You don't say, you know what, the
24 testing isn't finished yet. That's not what it says; right?

25 A I said exactly what I believe to be true.

1 Q Sir.

2 A Due to the fact that --

3 Q Sir, hold on.

4 A -- there were no casings --

5 Q The way this works, I ask the question, you
6 give me the answer, okay?

7 A Okay.

8 Q After the question relative to testing, were
9 there six shots fired from the same weapon, do you say the
10 testing isn't back yet?

11 A No.

12 Q Do you instead say due to the fact that there
13 were no casings and from witness statements, yes, sir.

14 A We believe --

15 Q Right.

16 A -- it was one single weapon that was used. I
17 absolutely said that.

18 Q Nobody in this case has ever told you that
19 whoever the assailant was walked into Meikle lane with all the
20 ammunition loaded in a single revolver, fair?

21 A That is fair.

22 Q At the time that you're at the scene, how long
23 had you been on homicide?

24 A I think it was -- well, it was 2010, August, a
25 little over -- around a year. Somewhere around a year.

1 Q It was actually a little bit less than a year,
2 wasn't it?

3 A It was around a year. I don't know if it was
4 a little less or a little more.

5 Q And now you're on search and rescue?

6 A That is correct.

7 Q When did you start search and rescue?

8 A In December.

9 Q Of?

10 A Last year.

11 Q Okay. You were in homicide for about four
12 years?

13 A Five years.

14 Q Five years. When you interact with people,
15 with witnesses, you turn on a tape recorder sometimes, all the
16 time, or most of the time? Which one of it would it be?

17 A Well, when you say interact, in what context
18 are you referring to?

19 Q When you're interviewing the witness, do you
20 turn the tape recorder on?

21 A Like a formal interview, yes.

22 Q Okay. If -- if it's not a formal interview,
23 if you're going to see Cornelius Mayo because he has a bullet
24 to give you --

25 A Right.

1 Q -- is that something that's where notes are
2 taken?

3 A Well, a CSA is going to do that, so probably
4 not. It just depends on the circumstance.

5 Q All right. Now, would you engage in tactical
6 decisions as to when you're going to take notes and when
7 you're not going to take notes?

8 A I don't understand your -- the phrase tactical
9 means something different to me, so --

10 Q In order to -- in order to ascertain a
11 conviction in a criminal case, would that ever be a driving
12 factor as to whether or not to take notes during an interview?

13 A It just depends on the circumstance.

14 Q So there's no yes or no to that?

15 A Well, there's no specific circumstances.
16 There's -- the context of the question which you're asking,
17 there's lots of variables in that. I don't always take notes,
18 lots of times I do take notes. It just depends on the
19 circumstance. In the case in which you're referring to, like
20 if somebody is providing like in the bullet situation, I may,
21 I may not. I mean, the CSA is going to do a crime scene
22 report, so there's not always a necessary need to do so.

23 Q What about in a case where you have
24 interviewed a woman for 10 or 15 hours, the time span is
25 varied in the case. So somewhere --

1 A It certainly seemed that long.

2 Q -- somewhere between 10 to 15 hours you
3 interview a woman; right?

4 A Yes.

5 Q You interviewed Monica Martinez in this case?

6 A Correct.

7 Q Monica Martinez sometime later would choose to
8 enter into a plea and cooperate with the State; right?

9 A Okay.

10 Q At that time that she chooses to cooperate and
11 -- and enter a plea she's debriefed; right?

12 A By who?

13 Q Well, I'm asking. Were you there?

14 A During the proffer?

15 Q Yes.

16 A Yes.

17 Q Did you take notes?

18 A I don't -- I don't know because I don't have
19 notes on it, so I'm assuming I did not.

20 Q You don't remember if you -- this only
21 happened in October of 2014. This is 90 days ago.

22 A Oh, wait. I'm sorry. Which one are you
23 talking about? I thought you were talking about years ago.
24 Which -- can you ask the question one more time?

25 Q Do you understand the word proffer to mean

1 when someone has agreed to work as a cooperating witness?

2 A Correct.

3 Q They come in, there's an interview; right?

4 A Correct.

5 Q Okay. At Monica Martinez's proffer, were you
6 present in October of 2014?

7 MS. WECKERLY: I'm going to object. There wasn't a
8 proffer then.

9 THE WITNESS: Yeah, I don't know what you're talking
10 about.

11 MS. WECKERLY: There was one in --

12 THE COURT: Well, there was some evidence --

13 MS. WECKERLY: October of '10.

14 THE COURT: -- that there was an interview with the
15 District Attorneys.

16 MR. SGRO: Yes, sir.

17 MS. WECKERLY: In December.

18 THE COURT: I don't remember the evidence that the
19 Metropolitan Police Department was present.

20 MR. SGRO: Well, that's why --

21 THE COURT: They may or may not have been.

22 MR. SGRO: That's why I'm asking, Your Honor.

23 MS. WECKERLY: That was --

24 THE COURT: Well, you need to ask him -- you need to
25 tell him that there was such an interview and ask him if he

1 was there.

2 MS. WECKERLY: And that was December, not October.

3 MR. SGRO: Okay.

4 THE COURT: It was December.

5 BY MR. SGRO:

6 Q So I apologize if I got the date wrong. In
7 December.

8 A This last December?

9 Q Yes, sir.

10 A No.

11 Q You weren't present?

12 A No, I was not.

13 Q Was Detective Wildemann present?

14 A Not that I'm aware of.

15 Q Were you asked to not attend, or is it just
16 you had a conflict?

17 A I don't -- I don't even know. I wasn't aware
18 that there -- I mean if they brought it up, it wasn't
19 important to me if I didn't need to be there, so --

20 Q Okay. So that was a meeting that occurred in
21 the absence of you knowing that it occurred?

22 A If they mentioned it, it was off the cuff that
23 they were doing it. I don't recall knowing that there was a
24 proffer. I don't -- I don't know. I don't know on that one.

25 Q You don't know?

1 A No.

2 MR. SGRO: Court's indulgence, Your Honor. I just
3 need to locate a photo.

4 MS. WECKERLY: I -- Mr. Sgro, I have a bunch of
5 photos here. I don't know if I --

6 MR. SGRO: Oh, okay.

7 MS. WECKERLY: Sorry.

8 THE COURT: She has some of the evidence over there?

9 THE CLERK: She has some of the pictures.

10 MR. SGRO: Yeah, she -- the State had them, Your
11 Honor.

12 BY MR. SGRO:

13 Q I want to show you a picture of inside of the
14 Meikle residence, okay?

15 A Okay.

16 Q This is Exhibit No. 87. And it's not the only
17 picture, but is this a picture of white rocks which would be
18 later determined to be crack cocaine that were located in the
19 residence?

20 A Yes, sir.

21 Q And are there photos of this same rock-like
22 crack cocaine substance in the residence?

23 A This -- say it one more time?

24 Q There's -- there's a number of photos from
25 different perspectives of the rock cocaine.

1 A Yes, sir.

2 Q And are you aware that when Mr. Mayo was given
3 his shoes there was some rock cocaine in his shoe?

4 A I am.

5 Q And was there any -- any suggestion or are you
6 aware of any police officer putting that cocaine in his
7 apartment prior to those photographs being taken?

8 A Of an officer putting cocaine in his
9 apartment?

10 Q Yes, sir. Was the cocaine planted, sir?

11 A No.

12 Q Okay. Did you have a conversation with Mr.
13 Mayo about him selling drugs from his residence?

14 A I didn't interview Mr. Mayo that day.

15 Q I didn't ask you if you interviewed him that
16 day.

17 A In just out of all of my interactions with
18 Mayo? Yes.

19 Q And he admitted to you that he did?

20 A Well, I don't know whether he admitted it. I
21 knew that he did. I believe that he did.

22 Q You were asked about some interactions you had
23 with Mr. Mayo and attended proceedings in family court;
24 correct?

25 A Yes, sir.

1 Q And you actually testified as a witness in
2 that case; correct?

3 A Yes, sir, I did.

4 Q And one of the issues that you testified about
5 was what you just told me, your belief that Mr. Mayo sold
6 drugs.

7 A Yes, for CPS for family court.

8 Q For CPS. Because all the way through those
9 CPS proceedings Mr. Mayo maintained that he did not sell
10 drugs.

11 A Okay.

12 Q Correct?

13 A I don't know what he did because I didn't
14 listen to his testimony.

15 Q Were you made privy to some bet that he had
16 met, a basketball bet, a large wager where he had won \$2,500?

17 A I don't recall that.

18 Q So do you recall the purpose of your testimony
19 in the family court proceeding to be to suggest that Mr.
20 Mayo's credibility was lacking?

21 A Well, I recall testifying in the court. And
22 obviously they wanted to know whether he sold drugs or not. I
23 don't know about his credibility. So are you referring as to
24 being a good parent or not because he's --

25 Q No, sir.

1 A -- selling drugs or --

2 Q No, sir. I'm saying Cornelius Mayo testified
3 and he said this story here.

4 A Right.

5 Q And you were called to testify and give a
6 story over here that contradicted what he had said. Do you
7 understand that to be the general nature of why you were
8 called as a witness?

9 A I know that they asked me to testify as to
10 what I located at the scene and the scenario of the case.
11 Yes, sir.

12 Q Did you participate in -- in the decision
13 making process to charge Mr. Mayo with the criminal charges he
14 faces as a result of that day's activities relative to drugs?

15 A Different agency. No.

16 Q Okay. So you didn't have anything to do with
17 charging him with putting kids in danger while drug
18 trafficking activity was going on?

19 A No, I think that was -- no, I don't believe
20 so.

21 Q How about the child abuse and neglect charges?

22 A I don't recall myself submitting those
23 charges, no.

24 Q As this case unfolds, do you do what are
25 called briefings about this case, like status checks amongst

1 law enforcement officers?

2 A You mean within our own unit?

3 Q Yes, sir.

4 A Sometimes, Yes, sir.

5 Q And do you know who Detective Shoemaker is?

6 A I do.

7 Q And who is he?

8 A At the time he was a sergeant in homicide.

9 Q And he would have been one of the persons in
10 those briefings that discussed the evolution of the case, how
11 things were going?

12 A He may have. He may not have been. It would
13 depend, but he would probably be informed of what was going on
14 in the case.

15 Q Do you recall him having a specific role in
16 the case relative to being a liaison between law enforcement
17 and what was going on in that case and CPS? Do you remember
18 him having that specific job role?

19 A I'm aware that he did, but I'm not aware of
20 his total involvement in that because it's a separate issue
21 from my investigation.

22 Q But at least relative to CPS, you do have that
23 recollection?

24 A I know that he spoke with CPS. Yes, sir.

25 Q Now, I asked you before -- well, before I get

1 there, he spoke to CPS over the course of time, not just on a
2 single day; right?

3 MS. WECKERLY: Objection. Foundation.

4 MR. SGRO: Well, I'm asking him --

5 THE COURT: If he knows.

6 MR. SGRO: -- if he knows. If he knows.

7 THE COURT: If he knows.

8 MR. SGRO: Yes.

9 THE WITNESS: I have no idea how many times he had
10 interaction with our agency.

11 BY MR. SGRO:

12 Q You wouldn't be surprised, though, that
13 because he did it once he continued to do it over the course
14 of the case that you were involved in as a witness in family
15 court?

16 A No, I think that's fair to say.

17 Q And as a person from that trial, from that
18 briefing group typically assigned a task like that, you're the
19 one that stays in touch with CPS, does that sound right to
20 you?

21 A Well, they would have contact with -- I mean,
22 obviously they had contact with me because they requested me
23 to testify. But my -- my -- the purpose of my investigation
24 was to -- was the murder. If CPS called and asked and had a
25 question, then I would be more than willing to give that

1 answer. But I -- I don't know that I would put it in the
2 context that you're saying it in.

3 Q You told the jury during direct examination
4 that you really wanted to charge Job-Loc with murder.

5 A Yeah, I believe -- I believe that he was
6 involved.

7 Q There was testimony adduced at the grand jury
8 that through the analysis --

9 MR. SGRO: And this is page 160, counsel.

10 BY MR. SGRO:

11 Q -- through the analysis of phone records that
12 it was learned that Job-Loc couldn't have been at the scene.

13 A Well, along with everything else --

14 Q Sir.

15 A -- with State's --

16 Q Sir, we're going to do a lot better if we just
17 stick with my questions, okay?

18 A Okay.

19 Q Was a question --

20 MR. SGRO: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. SGRO:

23 Q Just the question and the answer to yourself,
24 please.

25 A No. 2 and 5? 2, 3, and 4 and 5?

1 Q 2 through 5, yeah. To yourself, please.

2 A Okay.

3 Q Do you have it?

4 A I do.

5 Q So the question specifically was posed through
6 the analysis of phone records did you learn that Job-Loc
7 couldn't have been at the scene; right?

8 A Yes, that's what it says.

9 MR. SGRO: Exhibit 304, please, Miss Clerk. Thank
10 you very much.

11 BY MR. SGRO:

12 Q Do you agree that an analysis of phone records
13 reveals that Job-Loc couldn't have been at the scene. Do you
14 agree with that?

15 A Well, there was a gap in the time for the --
16 the records, for sure.

17 Q No one said that to the grand jury, did they?

18 A Well, once again, the context of everything
19 else that's involved, so --

20 Q Sir.

21 A Okay. No.

22 Q Thank you.

23 A Sure.

24 Q You're aware as you sit here today there's a
25 gap in those records; right?

1 A There's not a gap -- let me rephrase that.
2 There's not a gap in the records.

3 Q There is a time from about 2:00 a.m., and I
4 think it's like 2:03, 2:06, but roughly 2:00 a.m. until 4:25
5 or 4:35 a.m. that Job-Loc's phone is not being used; right?

6 A Correct.

7 Q Now, what was adduced before the grand jury
8 was that Job-Loc's phone was hitting off the same tower,
9 quote, unquote, all night long; right?

10 A That is true.

11 Q And in a vacuum you'd agree with me that
12 that's true?

13 A I believe that it's true.

14 Q Okay. But that doesn't mean, as was adduced
15 before the grand jury, that an analysis of phone records
16 reveals that Job-Loc couldn't have been at the scene; right?

17 A In the context of that, absolutely, you're
18 correct.

19 Q All right. Brittneae Pines to Meikle at 3:45
20 in the morning is what, a ten minute drive?

21 A Well, it's on the northwest side of town.

22 Q Have you driven it?

23 A Meikle is on the northeast side of town.

24 Q Have you driven it?

25 A Yeah.

1 Q What did it take you to drive it?

2 A You're asking if I've driven between those
3 distance, yes, I have.

4 Q No, no, no. I'm asking you if you got in your
5 car as part of this case, you got in your car --

6 A No. No, I did not.

7 Q Okay. So you can only give us a ballpark of
8 what you think it might take to drive it.

9 A Fair.

10 Q Right? Would you be surprised if you could do
11 it in 10, 15 minutes at 3:30 in the morning?

12 A I don't know what it would take.

13 Q Focusing on Job-Loc for a minute, the same one
14 you wanted to charge with murder, you were involved in a
15 search warrant that was executed at the residence attributed
16 to him; correct?

17 A Say that one more time?

18 Q Were you involved in the execution of a search
19 warrant that was attributed to where Jerome Thomas lived?

20 A Well, I did not serve that search warrant.

21 Q I didn't ask you if you served it. Were you
22 there?

23 A I showed up at the tail end of it, yes, sir.

24 Q All right. Showing you Defense Exhibit Z.
25 This photograph shows three cell phones by an orange cone;

1 right?

2 A Correct.

3 Q Those three cell phones, do you remember
4 seizing them?

5 A No.

6 Q Did you seize them?

7 A I don't believe so.

8 Q Can you tell us anything about the SIM cards
9 in these phones, if they're transferable or not?

10 A In those phones themselves, I don't know.

11 Q This was a cell phone case in the sense that
12 cell phone records were going to be important in the
13 prosecution of this case; correct?

14 A Yes, sir.

15 Q And these phones in Job-Loc's apartment
16 remained untouched; right?

17 A Yes, sir.

18 Q But you took that disposable camera to the
19 left of those phones; right?

20 A I believe the camera was taken, yes, sir.

21 Q You were asked some questions about the
22 interview that you had with Devonian Newman. Do you remember
23 -- and do you remember listening to the tape?

24 A Yes, sir.

25 Q You are taught interview techniques as a

1 police officer, are you not?

2 A That's correct.

3 Q We talked for example, you are allowed to lie
4 to someone you're interviewing; right?

5 A That is correct.

6 Q You are trained how to be deceptive.

7 A I wouldn't say that we're trained to be
8 deceptive.

9 Q Not generally all day every day, but you are
10 trained how to interview someone, how to advance to -- like I
11 found your fingerprint on the murder weapon. You could say
12 that.

13 A But I have never been trained to be deceptive
14 in any training class I have ever taken.

15 Q You could say to a suspect hypothetically, I
16 found your fingerprint on the gun and you full well know it's
17 not true; right?

18 A Yes, we can do that. That's correct.

19 Q All right. That's fair game; correct?

20 A Correct.

21 Q And the objective of that, you're trying to
22 communicate that it's true to someone you're sitting across
23 the table from; right?

24 A Yes.

25 Q And you have success with that ability;

1 correct?

2 A Sometimes.

3 Q So someone that you've never met before can
4 sit across the table from you and believe that what you are
5 making up is actually true; right?

6 A Correct.

7 Q Now, let's talk about an interview style
8 called a cognitive interview. Do you know what that is?

9 A I've heard the term before.

10 Q Is the cognitive interview the type of
11 interview that is preferred with children in that it's tell me
12 what happened, they tell you the whole story before you ask
13 any questions? Does that make -- does that ring a bell?

14 A That sounds familiar, but I'm -- yes.

15 Q There are precautions to be taken when
16 interviewing children because of how impressionable they can
17 be, especially when they see a police officer; right?

18 A Yes, sir.

19 Q They can have a higher level of suggestibility
20 than an adult; right?

21 A Yes, sir.

22 Q You're going to treat a 10 year old boy
23 different than a 30 year old man?

24 A Yes, sir.

25 Q In this particular case, do you know the types

1 of medication that Devonian Newman had been administered prior
2 to your interview?

3 A I don't know what they were at this time, no.

4 Q Do you think it would have been prudent to
5 understand the types of medication that she was administered
6 so that you could gauge the ability of her to interact with
7 you and respond lucidly to questions?

8 A Well, I know, obviously, that she's on
9 medication because she's been shot in the stomach. But
10 there's many cases which I've talked to individuals that are
11 in the hospital. And as you can tell from listening to her
12 statement and the corrections that she even made to me that
13 she was able to have that conversation.

14 Q Not my question. Would it have been prudent
15 for you to understand the kinds of medication she had been
16 administered?

17 A It can be helpful, sure. Absolutely.

18 Q Do you know what Fentanyl is?

19 A No.

20 Q Do you know what the side effects of Fentanyl
21 are?

22 A No, sir.

23 Q Do you know what Versed is?

24 A I've heard of it. No, I don't know.

25 Q Do you know what the side effects of Versed

1 are?

2 A No.

3 Q At the time you conducted the interview with
4 Devonia Newman, that occurred on August 8th. This would be
5 about 36 hours after the events; right? Roughly? A day and a
6 half?

7 A Sure.

8 Q There came a time when Devonia was released
9 from the hospital; right?

10 A Yes, sir.

11 Q There came a time when she was no longer being
12 administered a Fentanyl drip and a Versed drip; right?

13 A I'm sure that's true. Yes, sir.

14 Q Did you ever go back and approach her again
15 with the a tape recorder and say, hey, you were heavily
16 medicated at the time, can we confirm or reaffirm what you
17 told me previously? Did you ever do that in this case?

18 A No, I did not.

19 Q You also, in speaking to Devonia, I want to
20 talk to you about the information that you had. You had
21 already spoken to Stephanie Cousins, or someone from law
22 enforcement had already spoken to Stephanie Cousins; right?

23 A Correct.

24 Q The -- do you know who Officer Houghton is?

25 A I don't know him personally, no.

1 Q But do you know him to be an officer in law
2 enforcement who happened to be present at the scene watching
3 over Cornelius Mayo as -- as detectives --

4 A I believe that was the officer. Yes, sir.

5 Q Okay. Officer Houghton spent several hours
6 with Mr. Mayo until you guys got there.

7 A Correct.

8 Q And you are aware that Officer Houghton was
9 overhearing threats to Stephanie Cousins, getting descriptive
10 information back and forth. Are you aware of that?

11 A Yes, sir.

12 Q And that became part of your large officer's
13 report that you referred to earlier; right?

14 A Yes, sir.

15 Q The interaction between and the -- the
16 information gleaned; correct?

17 A Yes, sir.

18 Q Before you got there, were you aware that
19 Cornelius Mayo had gone to the hospital to speak with Devonian?

20 A Before that -- that morning that an officer
21 was there?

22 Q Let me rephrase it. You went on August 8th at
23 4:15 in the afternoon. Are you aware that from August 7th at
24 4:00 roughly when Devonian gets transported up until the time
25 that you arrive, that in that intervening window of time

1 Cornelius Mayo had spoken to Devonian?

2 A I am aware of that.

3 Q And you had learned information by speaking to
4 other witnesses about possible descriptors of an assailant
5 that you believed you were looking for; correct?

6 A Yes.

7 Q And when you get to the hospital, you don't
8 turn the tape recorder on right away before you begin speaking
9 to Devonian; is that correct?

10 A Well, I introduced myself first and what I'm
11 there for.

12 Q Well, and you also talk a little bit about
13 what happened; right?

14 A I don't know what you're referring to.

15 Q Well, do you talk a little bit about what
16 happened to justify why there is a police officer there before
17 you turn on the tape?

18 A I explain who I am and why I am there, that
19 I'm there to conduct an interview with her.

20 Q Did you speak at all about the happenings that
21 occurred at the Meikle residence?

22 A I don't understand the text of what you're --
23 what you're asking.

24 Q Well, do you remember -- I mean, we just heard
25 the -- the taped statement. Do you remember saying in the

1 statement we've talked a little bit about what happened?

2 A Okay.

3 Q Does that ring a bell?

4 A Like as far as that her mother was shot?

5 Q Well, sir you said it. I didn't say it.

6 A Right. Well, at the beginning I'm explaining
7 while I'm there.

8 Q Right.

9 A So this is why I'm here. If you're asking me
10 if I laid out what took place, no, absolutely not.

11 Q Here's what I'm asking. The conversation that
12 occurs before you turn the tape recorder on --

13 A Right.

14 Q -- exists nowhere other than in your memory;
15 right?

16 A That's correct.

17 Q Okay. In Monica Martinez's situation you
18 picked her up from work, you drove her to the station, and
19 there's a blurb about that conversation in your report;
20 correct?

21 A Correct.

22 Q And you did talk to Monica Martinez about the
23 facts of the case on the way to the interview; right?

24 A There were general things that we spoke of,
25 yeah.

1 Q About the facts of the case; right?

2 A Why we're there to talk to her.

3 Q Pardon me?

4 A Well, when you say the facts of the case, I
5 mean --

6 Q You were asking her who Albert Davis is;
7 right? She says Albert Davis is my boyfriend. She's talking
8 about things that happened. And I think in your officer's
9 report was by the time you got to the police station, I think
10 the quote is we realized that she might be more involved than
11 we originally thought; right?

12 A Well, I'd have to read it, but that sounds --
13 but, yeah, she was -- she was definitely -- we knew that she
14 was being somewhat deceptive and kind of --

15 Q That all happens before you turn on the tape
16 recorder.

17 A We drove her to the -- yes, sir.

18 Q Okay. Now, I want to talk to you --

19 A That's why I put it in the report.

20 Q Sir, there's no question. Right. You put it
21 in the report.

22 A Right.

23 Q Where's the report that talks about what you
24 spoke with Devonina about prior to turning the tape recorder
25 on?

1 A Well, I didn't talk to her about the incident,
2 so --

3 Q I understand that's what your position is.

4 A -- that's why it's not in there.

5 Q But there's no note, there's no report,
6 there's no recording. We have your memory; correct?

7 A Absolutely.

8 Q Now, you start -- if I understand correctly,
9 you told the jury, you know, I just told her why I was there.
10 You start with on the night that this happened you were with
11 your mom; right?

12 A I'm sorry. Which are we referring to?

13 Q I'm -- I'm -- Devonia's statement. I
14 apologize. Page 2. The night that this happened you were
15 with your mom. You call her Ree. Remember asking that?

16 A Right.

17 Q Okay. And then you say does she go by Ree?
18 Answer, yes. You and your mom were in the living room area.
19 Do you remember saying that?

20 A Yes.

21 Q Okay. So would it be fair to say that at
22 least in the beginning of the interview it looks like you had
23 talked about where she was located when things happened?

24 A Well, you're suggesting that I said that. But
25 oftentimes when we, and in this case, if she starts telling me

1 a story, I say hold on a minute, we're going to put this on
2 tape. So --

3 MR. SGRO: May I approach?

4 THE COURT: Sure.

5 BY MR. SGRO:

6 Q The interview starts, it says I'm going to be
7 speaking with Devonia; right? Date, time, location; correct?

8 A Correct.

9 Q Devonia informed me it's Devonia. You're
10 saying that she's already told you how to pronounce her name;
11 correct?

12 A Okay.

13 Q Right?

14 A Correct.

15 Q I -- we're going to -- we've talked a little
16 bit about what happened, okay. Did I read that right?

17 A Correct.

18 Q And you want to take a couple deep breathes.
19 We'll wait for a second. Right?

20 A Right.

21 Q There you go. Doing a great job. I'm going
22 to ask you a couple questions. So far you're with me; right?

23 A Yes, sir.

24 Q On the night that this happened, you were with
25 your mom; right?

1 A Correct.

2 Q Now, according to the tape, there is no
3 predicate there. That's how you start. You were with your
4 mom; right?

5 A Correct.

6 Q Then she says, yeah, but -- right, Derecia
7 Newman. Are you still with me?

8 A Uh-huh.

9 Q Yes.

10 A Yes.

11 Q Unintelligible, unintelligible. Right. Now,
12 you and your mom were in the living room area. That's what
13 you say; right?

14 A Correct.

15 Q Okay. And I guess my point is this. You
16 don't say to her, hey, what's your mom's name?

17 A Right.

18 Q You don't say to her, hey, where were you?

19 A Correct.

20 Q Which is all --

21 A In the beginning I do not. Correct.

22 Q Which is all indicia of some factual banter
23 back and forth before the tape turns on. It may have lasted a
24 few seconds or a few minutes; right?

25 A Well, banter is different than her just saying

1 those things and my saying, well, hold on, we'll -- we'll put
2 it on tape. So in the context --

3 Q Just stick with --

4 A -- of what you're --

5 Q -- my question.

6 A Well, but I disagree with your context in what
7 you're saying.

8 Q Okay. So you disagree. You disagree.

9 A Correct.

10 Q All right. Now --

11 A Well, I disagree with -- like I said, yes,
12 that is what I said. But the context of what you're asking me
13 I disagree with.

14 Q Are you aware of Devonian Newman's complaint
15 after this tape recorded statement was taken that police
16 officers, quote, put words in her mouth. Are you aware of
17 that complaint?

18 A No.

19 Q Are you aware that after she reviewed this
20 taped statement she complained to someone in law enforcement
21 that it didn't sound like her?

22 A To who in law enforcement?

23 Q Well, let's start with you. Did she complain
24 to you?

25 A No.

1 Q You said you had visited with her once or
2 twice after this tape recorded statement?

3 A Well, we did the photo lineup.

4 Q And then is that the only time.

5 A I believe that's the only time.

6 Q Now, even in the -- even in the photo lineup,
7 she initially wrote down 10 percent; right?

8 A Correct.

9 Q By the way, there's only six people in that
10 photo lineup; right?

11 A Correct.

12 MR. SGRO: Can I have the photo lineup?

13 MS. WECKERLY: Yes.

14 BY MR. SGRO:

15 Q Now, if I have six pictures on a dart board
16 and I just throw a dart, I got a one in six chance of hitting
17 somebody; right?

18 A If we're going off the page.

19 Q Let's assume I hit one out of 6. That's a 16
20 percent chance of being right, one in six.

21 A Okay.

22 Q Agree?

23 A Sure.

24 Q She initially told you she is 10 percent sure;
25 correct?

1 A Correct.

2 Q Now, then after you have a conversation with
3 her she changes the 10 to a 20; right?

4 A Correct.

5 Q And -- and the conversation was ostensibly you
6 perceiving she may not understand percentages; right?

7 A Correct.

8 Q Now, would you agree that her movement, when
9 you -- when you confront her with, hey, you may not understand
10 percentages, let me tell you what an F means. Remember that
11 conversation?

12 A Right.

13 Q Would you agree that Devonia's change from 10
14 to 20 after you ask her are you sure you understand
15 percentages, that could be an example of a child trying to
16 please and authority figure, fair?

17 A Sure. Absolutely.

18 Q And if we look at this lineup, when you --
19 this is called a six pack; right?

20 A Correct.

21 Q And it's just a law enforcement term so
22 everyone knows what we're talking about; right?

23 A Correct.

24 Q We try and put people that look similar to one
25 another in a six pack?

1 A Similar.

2 Q In other words --

3 A You can't have -- obviously you can't have,
4 you know, somebody that looks completely different on the six
5 pack. So yes, in that context, yes, I agree with you.

6 Q If you're trying to identify David Burns, you
7 wouldn't put his picture and then five women; right?

8 A Correct.

9 Q That would be an extreme example, but you get
10 the point.

11 A Yes, sir.

12 Q All right. Now, in this case you do things in
13 order to allow the viewer of this six pack to believe that he
14 or she is in control of their own choice; right?

15 A I don't understand the way --

16 Q Well, you read that blurb, you know, I'm not
17 telling you the person is here or not, but, you know, you're
18 free to select one of these if someone looks familiar?

19 A Yeah, we give them instructions in the photo
20 lineup process to understand the variations and -- and, I
21 mean, I can certainly read it. In the texture --

22 Q Right.

23 A -- face or hair changes, stuff like that.
24 Correct.

25 Q You have had classes on six packs, training on

1 six packs, how to assemble them?

2 A I guess that would depend on your definition
3 on training. I haven't been to a formal seminar on it. But,
4 yes, I -- I know how to put together a six pack. Yes, sir.

5 Q Are you aware of studies that show that when
6 people look at six packs their attention is drawn towards the
7 middle of the six pack?

8 MS. WECKERLY: Objection. Assumes facts not in
9 evidence.

10 MR. SGRO: I'm asking if he's aware.

11 THE COURT: If he's aware of it.

12 BY MR. SGRO:

13 Q Are you aware of that kind of study?

14 A Well, these computers put the picture where it
15 goes. That's why we don't make --

16 Q Sir, that's --

17 A -- the decision.

18 Q -- not my question.

19 A Okay.

20 Q Are you aware of studies that suggest --

21 A No. No, I'm not.

22 Q Okay. In this particular six pack you've got
23 four close headshots around the exterior all in blue; right?

24 A Correct.

25 Q And then you have two in the middle that have

1 kind of a, I don't know, black or charcoal gray background.

2 Would that be fair?

3 A Yes, sir.

4 Q And of the two that are in the gray, only one
5 we could characterize as big bushy hair, fair?

6 A I don't know that I agree with that.

7 Q You would call the gentleman in slot No. 2,
8 you would describe him as having --

9 A I think there's --

10 Q -- big bushy hair?

11 A -- a couple in there that have similar
12 hairstyles to --

13 Q That's not my question. Does No. 2 have big
14 bushy hair in your opinion?

15 A Maybe on the sides. Not so much on the top.

16 Q All right. You -- did you participate in
17 Donovan Rowland's witness interview

18 A I did.

19 Q You never asked Donovan Rowland in his taped
20 statement if Jerome Thomas had any injury to his leg, did you?

21 A I don't recall if I did. I know that I did,
22 but I don't know that I asked him that.

23 Q You know that he did. So you must have, then,
24 gone to the hospital where he had treatment.

25 A Well, we have photos in our Metro computer

1 system --

2 Q Sir, did you go --

3 A -- with him with an injured leg, so --

4 Q Did you go -- what hospital did Jerome Thomas
5 treat at?

6 A I don't know.

7 Q What was the treatment for?

8 A We have the documents that are in the photos,
9 but I don't -- there was a fractured leg, or a bone in the leg
10 that was fractured.

11 Q What you have are photographs of treatment for
12 a fracture. That's what you have; right?

13 A Correct.

14 Q You didn't speak to a doctor that gave him or
15 administered him treatment; correct?

16 A No, I did not.

17 Q You didn't bother to go to the hospital to get
18 the full set of records ever, did you?

19 A I believe that we do have records. I don't --

20 Q You think you have them?

21 A Well, I don't know if I have them, but I know
22 the record -- I believe records were obtained.

23 Q Who -- who would have gotten them?

24 A I'm not sure if the DA's office has them, but
25 I think they might.

1 Q So you think that --

2 A I don't -- I do not have them. To answer your
3 question, no, I do not.

4 Q Okay. You don't have them. What was his --
5 what was the date of his injury?

6 A It was -- I believe it was in July.

7 Q Of?

8 A The same year.

9 Q 2010; right?

10 A Correct.

11 Q What was his prognosis? How much time did the
12 doctor say that it would take for Jerome Thomas to recover
13 from his injury?

14 A I would have no way --

15 MS. WECKERLY: Objection. Calls for hearsay.

16 BY MR. SGRO:

17 Q Did you investigate --

18 A I already told you I did not speak to his
19 doctor.

20 Q Did you do anything to investigate the amount
21 of time it would take Jerome Thomas to recover from his
22 injury?

23 A No.

24 THE COURT: I'll tell you what. I've got one
25 question on behalf of a juror that I was going to ask you.

1 Since Devonia was a minor when you interviewed her in the
2 hospital, was -- is there some reason that someone else such
3 as a nurse or a CPS worker wasn't present, as well?

4 THE WITNESS: Well, the nursing staff or the medical
5 staff come in consistently. I did not specifically ask for
6 one of them to sit in on the interview. It did not happen,
7 no. And I've never done that, whether it was an adult or a
8 child. That's not something we typically do for a couple
9 reasons. One is that they're not investigators, and the
10 second is they are performing their own duties as nursing
11 staff or, you know, whatever their role is in the hospital.
12 So that's not something that we would typically do.

13 THE COURT: All right. Let's take a brief recess,
14 ladies and gentlemen. During the recess it's again your duty
15 not to converse among yourselves or with anyone else on any
16 subject connected with this trial or to read, watch, or listen
17 to any commentary on the trial, from any medium of
18 information, including newspapers, television, and radio. And
19 you may not form or express an opinion on any subject
20 connected with this case until it is finally submitted to you.

21 We'll be in recess for about ten minutes. The court
22 will be at ease while the jury leaves.

23 (Jury recessed at 3:22 p.m.)

24 THE COURT: The record will reflect that the jury
25 has left the courtroom. Before you leave, I have three

1 additional questions from jurors. Two of them are from Juror
2 No. 6 and one is from Juror No. 12. They all pertain to the
3 same subject. They all want to know because there was a
4 mention in the interview about Burns being mentally ill or
5 having a problem, they want to know what evaluation was done
6 and what the results were of Mr. Burns' mental evaluation.

7 Now, I know I can't answer the question. I don't
8 know how you want to treat it. Do you want to look at the
9 questions? You're welcome to look at them.

10 MR. ORAM: Judge, we have had Mr. Burns analyzed,
11 and that is confidential and I --

12 THE COURT: I understand it is, but I don't know how
13 to answer the questions.

14 MR. SGRO: If the question comes from -- of this
15 detective to anything, the answer is going to be no, but I
16 think that's the best we can do.

17 THE COURT: You want me to ask the question of the
18 detective if he did anything?

19 MR. SGRO: Yeah, and I think he's just going to say
20 no. And then at least we get their question answered and we
21 keep the confidentiality of what we did.

22 THE COURT: Well, it also says did the State conduct
23 a mental evaluation.

24 MR. SGRO: That one I don't think you can answer
25 because I'm not sure they -- the jury --

1 THE COURT: Did you conduct -- did you do a mental?

2 MS. WECKERLY: We can't.

3 MR. SGRO: They can't.

4 THE COURT: Was he --

5 MS. WECKERLY: We can't. We're not allowed to.

6 MR. DiGIACOMO: We're not allowed to.

7 THE COURT: I know. Did -- did he go to competency
8 court?

9 MR. DiGIACOMO: No. We never had anything related
10 to the district court entering an order. The only thing is
11 defense activity, so--

12 THE COURT: You want me to indicate that he was --
13 he didn't go to competency court?

14 MR. SGRO: No.

15 MR. DiGIACOMO: No, I think you should just ignore
16 the questions you can't ask him. And I wouldn't ask Detective
17 Bunting that question unless the defense wants him asked that
18 question.

19 MR. ORAM: No.

20 THE COURT: Do you want me to ask anything?

21 MR. SGRO: No.

22 MR. DiGIACOMO: Because, I mean, the response from
23 Detective Bunting is going to be I don't have that ability --

24 THE COURT: I mean, the jurors are going to --

25 MR. ORAM: Judge, what can we do? They've asked a

1 question that's --

2 THE COURT: You tell me what you want me to do.

3 MR. ORAM: It's inadmissible.

4 MR. LANGFORD: Generally other judges in my
5 experience, Your Honor, have said that that question would
6 lead to inadmissible evidence.

7 THE COURT: I agree.

8 MR. LANGFORD: And that we can't answer that
9 question and they are to disregard it.

10 THE COURT: Can I tell them that I can't ask the
11 question?

12 MS. WECKERLY: Yes.

13 MR. DiGIACOMO: Yes.

14 MR. SGRO: Yes.

15 THE COURT: All right.

16 MS. WECKERLY: You say just like question from juror
17 whatever, we can't ask it.

18 THE COURT: Those won't be asked. All right. Five
19 minutes.

20 (Court recessed at 3:25 p.m. until 3:35 p.m.)

21 (In the presence of the jury.)

22 THE COURT: All right. State vs. Burns and Mason.

23 The record reflect the presence of the Defendants, their
24 counsel, district attorneys, all members of the jury.

25 Before we get going, Detective -- you're still under

1 oath -- did you ask the -- any questions of the defendant
2 about his competency? Mr. -- when you were interviewing Mr.
3 Burns about a mental evaluation?

4 THE WITNESS: During the interview?

5 THE COURT: Yeah.

6 THE WITNESS: Well, Detective Wildemann did, sir. I
7 think he asked him a couple questions in regards to that.

8 THE COURT: Okay. Did you do any -- did you do any
9 further inquiry about that?

10 THE WITNESS: No. I'm in no position to do that.
11 That wouldn't be a role that I would -- that I would --

12 THE COURT: A couple of the jurors asked questions
13 concerning the competency of the Defendants and any
14 examination. That's not a subject that I'm permitted to ask
15 questions about.

16 All right. You can continue your exam of him.

17 MR. SGRO: Thank you.

18 BY MR. SGRO:

19 Q Detective, just before I go further, relative to
20 Monica Martinez, right before the break did you say that
21 Monica Martinez was -- was proffered or interviewed once or
22 twice? Were there one proffer -- was there one proffer or
23 two?

24 A I don't know how many proffers there were, sir.
25 I -- the one that you are referring to in December, I don't

1 recollect having any part of that.

2 Q Was there one that you did have a part of?

3 A I believe there was one previously, yes, that --

4 Q When was that?

5 A I don't recall. It was a while ago.

6 Q Do you remember the calendar year?

7 A No.

8 Q Do you have any notes about it?

9 A No.

10 Q So was there a tactical decision that was made
11 that you were not to take notes?

12 A No.

13 Q How long did you speak with Ms. Martinez?

14 A Well, I didn't really speak with her. I was
15 there during the proffer.

16 Q Well, who was interviewing her?

17 A I don't recall who all was there. I believe the
18 -- the DAs were there that were in here.

19 Q Did anyone take notes during that first proffer
20 -- or during the proffer that you attended?

21 A Anyone? I don't know.

22 Q You didn't see anyone, though?

23 A If they did, I don't -- I don't know whether
24 people -- other people took notes, sir.

25 Q Was there -- you have participated in an

1 interview where someone has agreed to provide information for
2 the State, right? This is Monica Martinez, correct?

3 A Correct.

4 Q And you like to take no notes?

5 A Well, I'm not there to --

6 Q Sir, this is yes or no.

7 A No. No, I did not take notes.

8 Q Okay. Was that done to achieve a tactical --

9 A No.

10 Q -- advantage?

11 A No.

12 Q Relative to Devonia's interview, is there a part
13 in her statement --

14 A You said Monica's?

15 Q Devonia --

16 A Devonia?

17 Q Devonia's, yes, sir.

18 MR. SGRO: Well, I -- I can probably speed it up, if
19 I approach, Your Honor.

20 BY MR. SGRO:

21 Q At page 4, do you see the transcript here? Now,
22 what was he wearing? Do you remember what color of shirt he
23 was wearing?

24 A Correct.

25 Q Okay. And then there's an unintelligible there,

1 right?

2 A Correct.

3 Q Okay. Now, this is -- the jury just saw this
4 transcript, so I'll put it on the ELMO.

5 Now, the question is, what was he wearing? What
6 color shirt, right?

7 A Correct.

8 Q Now, the answer is, A blank line, correct?

9 A Correct.

10 Q And are blank lines representative of portions
11 of the interview that whatever transcriber happened to get
12 this tape, they couldn't make it out on the first pass?

13 A Correct.

14 Q Now, you then are attributed -- it says, Q, but
15 you're actually repeating, ostensibly, what she just said,
16 right?

17 A Correct.

18 Q Now, you see where you say there, A white
19 T-shirt with blue, do you remember realizing at that moment
20 that she never told you that they were blue overalls, that her
21 answer in fact was, Overalls; do you remember that?

22 A Do I remember -- no.

23 Q We just heard the tape. In this particular
24 passage of the tape, do you remember Devonia's answer being,
25 Overalls, and then you said, A white T-shirt with blue -- and

1 then you caught yourself -- here's what it sounded like. You
2 caught yourself and then it's Question: With blue overalls?

3 A Well, I can clearly see that that's what it
4 says, yes.

5 Q Okay. Do you remember, though, the answer from
6 Devonia not mentioning what color the overalls were?

7 A No. I don't remember a lot of -- because I
8 can't --

9 Q You just --

10 A -- see it on there.

11 Q Did you pay attention when the tape was being
12 played?

13 A Yes.

14 Q Did you follow along with the transcript?

15 A Yes.

16 Q Did you hear words where the lines exist on the
17 page?

18 A Some words, some not word, yes --

19 Q Okay.

20 A -- both --

21 Q As you sit here today, having just heard the --
22 though you can't tell the jury if the answer was only overalls
23 and it was your injection of the word, Blue, fair? The tape
24 will speak for itself.

25 A Fair enough.

1 Q All right. And then you go down and you say,
2 They were rolled up at the pant.

3 You mean, like, down here, down near the shoes?
4 You're still speaking about the overalls, right? The overalls
5 were rolled up at the pant, correct? Right?

6 A Yes.

7 Q And then she answers: Yeah, and I think they
8 were white.

9 In other words, she's attributing the color white to
10 overalls, correct?

11 A Hold on one second. Can I read it?

12 Q Sure.

13 A And then I say, Yeah, and I think they were
14 white -- or she says, excuse me --

15 Q Correct.

16 A -- and I say, What, the shoes?

17 Q Here's the -- Detective, please just stick with
18 my question.

19 After you say, A white T-shirt with blue -- blue
20 overalls, rolled up at the pant, you mean down near the shoes,
21 you're still referencing the overalls, correct?

22 A Well, I -- well, I say, You mean, like, down
23 here, the shoe -- here, the shoes.

24 Q It says, Down here, but the tape says, Down near
25 the shoes.

1 A Okay.

2 Q And she answers, Yeah, I think they were white.

3 When she says, I think they were white, she's referring to the
4 prior question, What color were the overalls, right?

5 A Well, obviously I didn't think --

6 MS. WECKERLY: Objection. Misstates the transcript.
7 Read the next two lines.

8 THE COURT: I guess the jurors will have to decide.

9 MS. WECKERLY: The --

10 THE COURT: I'll sustain the objection. Let them
11 decide.

12 BY MR. SGRO:

13 Q And then, after she says, They were white,
14 that's when you say, What, the shoes? Right?

15 A Right. I'm clarifying --

16 Q Sir, do you then say, What, the shoes?

17 A Yes, I do.

18 Q Okay. So would you agree with me that if you
19 listen to the tape, the tape speaks for itself, and it's
20 better than your interpretation of what she's telling you.

21 A Okay. The -- the tape, if --

22 Q Do you agree with that?

23 A If it's clearable, yeah. Clear. Or you can
24 hear actually what she says.

25 Q How old was David Burns at the time he was

1 arrested?

2 A Well, he said it was his birthday, 19, I
3 believe. His --

4 Q Okay. So he just turned 19?

5 A Yeah, I believe on that day is what he said.

6 Q So at the time of the offense, he would have
7 been 18?

8 A Correct.

9 Q So he was not 27 to 30?

10 A No. No, he was not.

11 Q Did you see the videotapes of the Opera House?

12 A I have.

13 Q And the person attributed to be David Burns is
14 wearing black shoes, right?

15 A I don't recall off the top of my head what he
16 was wearing.

17 Q You don't remember?

18 A I remember some of what he was wearing. I don't
19 recall the -- I don't remember what he was -- his shoes were,
20 though, no.

21 Q You remember overalls, though, don't you?

22 A Yeah.

23 Q Okay.

24 A I do.

25 Q Do you remember whether David Burns had a white

1 T-shirt on?

2 A He did not.

3 Q He had a blue one, right?

4 A Correct.

5 Q Okay. So did he have an orange hat on with a D?

6 A I don't know what the hat said.

7 Q Was it orange?

8 A I don't believe so. It didn't appear orange to
9 me.

10 Q Okay. Now, at page 5, there's a section in the
11 tape, this is right after we talk about the color white,
12 whether they're shoes or they're overalls. We just got past
13 that. Now we're on the orange hat, right?

14 A Correct.

15 Q Now, do you see where you say, Orange hat with
16 white writing? Did you see what the writing was?

17 A Yes.

18 Q And the answer says, Yeah, but -- and then
19 there's a line.

20 A Correct.

21 Q Did you hear at that point in time, on page 5,
22 his hair was cut?

23 A I didn't repeat that, so I'm assuming not.

24 Q I know you didn't repeat it, but that's not my
25 question.

1 A Okay. Well, then the answer is no.

2 Q All right. You're the one who repeated, His
3 hair was curly and down to his ear, right?

4 A Correct.

5 Q That's what you said, correct?

6 A Correct.

7 Q Is there anything that's in writing above where
8 you say, Curly hair --

9 A Right.

10 Q -- that says, Curly hair from Devonian?

11 A No.

12 Q And do you have a recollection right now within
13 those two lines that you cannot see on page 5 that she says
14 his hair was cut?

15 A I'm sorry, say that one more time.

16 Q In the two lines that appear in front of the
17 jury at page 5 of her statement --

18 A In the two --

19 Q -- above --

20 A -- lines --

21 Q You can write --

22 MR. SGRO: Can I write on this thing or no?

23 BY MR. SGRO:

24 Q This right here is where you say, His hair was
25 curly, right?

1 A Correct.

2 Q Up above it in this area here, do you remember
3 on the tape her saying, Devonia saying, His hair was cut?

4 A No.

5 Q All right. And would you again agree that we
6 should defer to the tape as opposed to your interpretation of
7 what she said?

8 A Sure.

9 Q Devonia made several statements about wrestling
10 with the assailant, correct?

11 A That's what it said on there on the statement,
12 yes, sir.

13 Q And do you remember a statement she made about
14 the assailant rifling through her pockets?

15 A Yes.

16 Q Now, Cornelius Mayo had told you that he was at
17 Devonia's side within seconds of her being shot in the
18 stomach, remember that?

19 A I know that he was in the bathroom, yes.

20 Q Sir --

21 A You said, He told me --

22 Q -- did he tell --

23 A -- I didn't -- I didn't do the interview, sir,
24 with Mayo, so --

25 Q Did you -- are you aware that Cornelius Mayo

1 maintains that he was by Devonia's side within seconds of her
2 being shot?

3 A I don't know whether he said that. I know that
4 that would be true, just based on his location, yes.

5 Q Do you agree if there's wrestling, a shot, and
6 some rifling through pockets going on, it's going to take a
7 few seconds for that to occur?

8 A Yes.

9 Q And you found it odd, did you not, that
10 Cornelius -- that his story didn't match up with Devonia's
11 relative to how that particular sequence of events went down,
12 fair?

13 A Well, you're going to have to point out where
14 that conflict is.

15 Q Did Cornelius Mayo ever tell you that he went to
16 the drawer to grab money before going to the bathroom?

17 A I don't know if he stated that in his statement
18 to the other detectives. I don't recall if he did that. I
19 don't believe so.

20 Q Did he ever tell you that?

21 A No, I don't think so.

22 Q And Devonia in fact says, He grabbed like a
23 hundred dollars, right?

24 A Right.

25 Q Any idea how --

1 A On the way to the bathroom, I believe, is what
2 she -- yeah.

3 Q Any idea how a 12 year-old little girl, as she
4 was running down a hallway, looking down into the bedroom, how
5 she'd have any idea as to the dollar amount that was being
6 grabbed out of the drawer?

7 A Not at that time, no, I don't know -- I mean, I
8 don't know where she was at at the time that she saw it.

9 MR. SGRO: Pam, the overall again?

10 MR. DIGIACOMO: I put it back up there. I believe
11 Exhibit 273.

12 MR. SGRO: Thank you very much.

13 BY MR. SGRO:

14 Q I'm showing you 277. What is the date that this
15 drawing was made by Devonia?

16 A I'm not positive because I didn't write it on
17 the paper.

18 Q Why didn't you write the date of that drawing on
19 the paper?

20 A Well, apparently I forgot to do that.

21 Q Can you show me in your report where you date
22 the fact that Devonia drew overalls for you?

23 A No, it's not in there.

24 Q So we have nothing to verify that this drawing
25 was done, other than the existence of the drawing, right? In

1 other words, we don't have the --

2 A It's --

3 Q -- date, time, location?

4 A Well, I know the location for sure.

5 Q What was the --

6 A It's at --

7 Q -- location?

8 A It was at the hospital.

9 Q And do we have the date? What we do have --

10 A No.

11 Q Do you have the month?

12 A It was one of the two visits that I did with
13 her. I believe it was the first, but I can't recall; and
14 since I didn't date it, I'm not going to say it was one or the
15 other.

16 Q I thought you just told the jury on direct that
17 this drawing was done on the second visit when you did the
18 photo lineup? Did I misunderstand that?

19 A No, I don't believe I said that.

20 Q So it could -- this could have happened on the
21 first visit or the second?

22 A I believe it was the first, but I didn't date
23 it, so I'm not going to say for sure which one it was.

24 Q What instrument did you give Devonian to write
25 this with?

1 A Whatever one I had on my possession.

2 Q Is she left handed or right handed?

3 A I don't recall.

4 Q Did she move her arms at the time of the --

5 A Yeah, absolutely because she actually signed the

6 photo lineup, so I know that she is --

7 Q Well, the photo lineup --

8 A -- capable of doing --

9 Q -- was visit --

10 A -- it.

11 Q -- two. You just said you think it was visit

12 one. So let's talk about --

13 A Right.

14 Q -- visit one. Could she move her arms?

15 A Well, I said I believe that it's visit one, but

16 I'm not going to say which one it is because I do not know for

17 sure because I did not date it.

18 Q Okay. So let's break it down. Could she move

19 her arms given her medical condition on visit one?

20 A I believe so.

21 Q Well --

22 A She was not shot in the arm, so I believe that

23 she had to -- I don't -- I don't know if she wrote it that

24 day, so I can't tell you.

25 Q I'm not asking --

1 A But there's nothing physically -- no injuries
2 that she sustained during the incident that would prevent her
3 from moving her arms.

4 Q She has IVs in her arms; she's on powerful
5 sedatives.

6 A Sir, I've been on IVs and I've given IVs --

7 Q I'm not asking you about you --

8 A -- and many people can write with their arms.

9 Q Officer, did you see IVs in her arms?

10 A I'm sure she had them in there based on her
11 condition.

12 Q Well, did she appear to be sedated?

13 A She was -- I'm sure she was medicated.

14 Q Did she appear to you to be able to ambulate, to
15 move around?

16 A Again -- when you say "ambulate," that means
17 "walk" to me. So was she able to walk? No.

18 Q Okay.

19 A Was she able to move, yes.

20 Q She was?

21 A I think so, yeah.

22 Q Well, why are you qualifying it?

23 A Well, I didn't -- we -- I didn't have her
24 manipulate and move around, so you're asking me something that
25 I'm -- just can't be for certain any more than I'm suggesting

1 the date.

2 Q In this case, by the time you got to the Grand
3 Jury proceedings on September 28, you had conducted a lot of
4 witness interviews, you had cell-phone records, you had the
5 statement from Devonia, correct?

6 A That sounds correct.

7 Q Did you have the videotapes already, too, from
8 the Opera House?

9 A I don't recall the date off the top of my head.
10 I'd have to look at the report on that.

11 Q Do you remember speaking with folks at the lab
12 -- the Metro DNA lab about some things that you wanted done
13 DNA-wise?

14 A In the request?

15 Q Did you -- did you make a request for DNA to be
16 done?

17 A Yes.

18 Q Did you have a conversation with someone at the
19 DNA lab about your concerns about putting the suspects in this
20 case at both residences, Newman and Thomas?

21 A You mean as to why I would want DNA?

22 Q No.

23 A I have to understand the context of the
24 question, so...

25 Q Did you speak to anyone at the DNA lab and

1 advise them that you wanted to put the suspects in the car and
2 in both residences?

3 A Right. Like getting DNA -- having DNA performed
4 so that we can get DNA at both of those locations?

5 Q Right.

6 A Yes.

7 Q You did that?

8 A Absolutely.

9 Q And this is BB, and I'm going to point --

10 A What's the document?

11 Q BD -- or BB, like boy.

12 A No, I'm -- sir -- I mean, the type of document
13 that we're looking at? Okay.

14 Q I want to point to a specific provision. Do you
15 see where it says here, I spoke? Where my pen is.

16 A Okay.

17 Q I spoke with Bunting at length about this case,
18 and they have to put the suspects in the car and in both
19 residences. Did I read that right?

20 A Yes, you did.

21 Q To corroborate the story. Did I read that
22 right?

23 A Yes.

24 Q And the date on this is September 30.

25 A Okay.

1 Q So despite all the evidence you had ascertained
2 prior to December 30, the Grand Jury testimony, the cell phone
3 records, Devonia's statement, videos that you had, you're
4 still calling the Metro Crime Lab saying, I have to put the
5 suspects in the car in both residences, right?

6 A Well, what context are we speaking of?

7 Q Sir, did I just read it to you?

8 A Yeah, you read it to me, but you're only reading
9 a sentence, so I don't know what the context -- if --

10 Q Sir --

11 A -- in regards to --

12 Q -- let me ask it --

13 A -- submitting --

14 Q -- this way.

15 A -- DNA?

16 Q Let me ask it --

17 A They're going to ask why you require to -- why
18 do you need all this DNA, so you would express to them why you
19 would give that, or why you need that DNA.

20 Q And your answer to that question was, Because I
21 have to put the suspects in the car in both residences to
22 corroborate the story, right?

23 A Because they want justification for all those
24 things to be processed.

25 Q Did I read your justification correctly?

1 MS. WECKERLY: I'm going to object. Those weren't
2 his statements. Those were written by --

3 THE COURT: Well, he can be --

4 MS. WECKERLY: -- someone else.

5 THE COURT: -- asked if those are his statements.

6 MR. SGRO: He just stated that they were.

7 BY MR. SGRO:

8 Q Are those your statements?

9 THE COURT: I don't think he said that they were.

10 THE WITNESS: No, I didn't. That's not what I said.
11 That's what's --

12 BY MR. SGRO:

13 Q Those aren't your statements?

14 A That's what it says is written. The context --

15 Q So was it written? Was it written?

16 A Well, hold on. Let me finish.

17 Q No, sir.

18 A You asked me a question --

19 Q Are those statements --

20 A -- I'm trying to answer you.

21 Q Hold on a second. Are those statements that I
22 read an accurate rendition of your conversation or --

23 A Not in the context of what you're speaking, no,
24 they are not.

25 Q Please -- please let me finish.

1 A I am letting you finish. They are not.

2 Q All right.

3 A That's somebody else's words, their version of
4 how -- what they're trying to portray.

5 Q Sir --

6 A That's not what I'm asking.

7 Q So that report, then, is inaccurate?

8 A No, I think it's accurate in the context of
9 which they are trying to express to their supervisor of why
10 they're justifying doing DNA on different items.

11 Q Accurate with an explanation, right?

12 A There usually needs to be one.

13 Q Okay. This is -- still trying to -- are we --
14 are you still wishing you could charge Jerome Thomas with
15 murder in September of 2011?

16 A I think that he's part of the conspiracy to do
17 that --

18 Q That's not my --

19 A -- robbery.

20 Q That's not my question. Do you still want to
21 charge Jerome Thomas with murder in September of 2011?

22 A Well, I submitted a warrant for his arrest.

23 Q Again, not an answer to my question.

24 A Yes, absolutely.

25 Q Okay.

1 A He is a part of --

2 Q See how much easier --

3 A -- of everyone.

4 Q -- it goes if you just say yes? Showing you AA.
5 The guy you want to charge with murder, you didn't collect
6 buccal swabs, did you?

7 A No.

8 Q Was Jerome Thomas's DNA ever tested against any
9 of the scenes?

10 A Not yet because he's out-of-state. So, no.

11 Q Oh, so they don't have DNA in California?

12 A No, they do, but even if you get a hit on DNA,
13 you're required or I'm required to get that DNA personally
14 through our agency and --

15 Q So it's too --

16 A -- then submit it.

17 Q -- much work? Too much work to go --

18 A No.

19 Q -- get a murder suspect if it's in California,
20 right?

21 A No, I did it twice.

22 Q Oh, so you --

23 A For the two --

24 Q -- could have done it?

25 MS. WECKERLY: Objection. Argumentative.

1 BY MR. SGRO:

2 Q Could you have got -- could you --

3 THE COURT: Overruled.

4 BY MR. SGRO:

5 Q Could you have gotten -- you just admitted to
6 the jury you got him twice. Could -- so you could have done
7 it three times, right?

8 A Right.

9 Q And the jury saw a tape with Monica Martinez
10 being interviewed, where from the time of the interview you
11 got a warrant and executed the warrant all while she's still
12 standing there -- sitting there?

13 A Correct. Absolutely.

14 Q Even if that -- that overall drawing, by the
15 way, would have occurred on the second visit, that second
16 visit where the photo lineup happened on September 29; do you
17 remember that? Does that seem about right?

18 A That sounds about right.

19 Q Do you remember interviewing Monica Martinez,
20 obviously, right?

21 A I do.

22 Q Monica Martinez was someone that was trying to
23 manipulate you; would you agree with that?

24 A I don't know that she was trying to manipulate
25 me. She was definitely deceptive and wasn't being honest

1 throughout her statement.

2 Q Do you remember a time in the interview where
3 she reached over and held your -- both of your hands?

4 A I do.

5 Q And do you remember when another detective
6 walked in she quickly let go and sort of sat back up in her
7 chair?

8 A I don't know if it was abrupt or not. I'd have
9 to watch it. I don't remember.

10 Q But you remember --

11 A Yes. I remember she removed her hands from
12 mine, yes.

13 Q Do you believe that that was an effort by her to
14 try to work you or manipulate you?

15 A Well, what I think it was --

16 Q This is just yes or no.

17 A Well, then the answer is no.

18 Q You were asked some questions about ballistics
19 in the -- or, I'm sorry, about how many shots could have been
20 fired in the residence at the Grand Jury, right?

21 A Yes, sir.

22 Q And you said, Well, it's consistent there were
23 six shots fired; do you remember saying that?

24 A Mm-hmm.

25 Q Yes?

1 A Yes.

2 Q Is it consistent with a different number of
3 shots being fired; in other words, could there have been fewer
4 shots fired than six?

5 A I believe that there were six shots fired, if
6 that's any --

7 Q That's not my question. You said in the Grand
8 Jury, It's consistent that there were six shots fire. Do you
9 remember saying that, or do you want me to show it to you?

10 A Yes.

11 Q Which one?

12 A Yes.

13 Q Do you want me to show it to you?

14 A No. Yes, I did say that.

15 Q All right. So if it's consistent with six, is
16 it also consistent based on what you saw that they were --
17 that there were fewer than six?

18 A I don't understand your question.

19 Q Could the scene as you observed it have been the
20 result of four shots being fired?

21 A Of four?

22 Q Yes, sir.

23 A I believe there were six, so, no.

24 Q Again, sir, could it have been four? I know
25 what you -- everyone in the room knows what you believe.

1 Could it have been four?

2 A I don't believe it was four.

3 Q Could it have been four?

4 A No.

5 Q Could it have been five?

6 A Once again, sir, my answer is the same.

7 Q I know what you believe, but will you concede
8 whether or not it's consistent that there were five shots that
9 were fired?

10 A No. It's consistent that there were six shots
11 that were fired.

12 Q So it couldn't have been five, right?

13 A I don't believe so.

14 Q It couldn't have been seven?

15 A I don't believe that it was.

16 Q Would it surprise you -- do you know who James
17 Crywell is?

18 A Yes.

19 Q Would it surprise you that he placed a minimum,
20 a maximum of 4 to 15 based on what he examined?

21 MS. WECKERLY: Objection. That's not the scene.
22 That's the actual fragment. It's a different analysis, so...
23 BY MR. SGRO:

24 Q Well, let me -- let me ask it a different way.
25 I'll --

1 THE COURT: Yeah, I mean -- I think you better
2 rephrase that.

3 MR. SGRO: I will. I will, Judge.

4 BY MR. SGRO:

5 Q I understand from you that it couldn't have been
6 four. Could it have been more than six? Could it have been
7 seven?

8 A You -- you're giving me hypotheticals. I --
9 there's no way for me to answer that because I believe that
10 there were six, so --

11 Q Sir, but what you said --

12 A -- I can't say that --

13 Q -- was --

14 A -- it could be seven if I believe it could be
15 six. I don't -- I don't know how you want me to answer that,
16 but I -- I don't believe that it was seven, so in my mind, no.

17 Q Okay. So impossible it could have been any
18 other number other than six, right?

19 A I believe that it was six shots.

20 Q And it's impossible that it could have been less
21 than six or more than six in your opinion?

22 THE COURT: I think we've covered it.

23 MR. SGRO: All right.

24 BY MR. SGRO:

25 Q Let me ask you about -- turning to Job-Loc here

1 just for a second about wanting to charge him. All right.

2 You knew that the murder weapon belonged to Job-Loc?

3 A I -- I knew that he had possession of it at one
4 time, yes. Or I believe that it was the same. Per Monica's
5 statement, she mentions that he has a large-frame revolver, so
6 I believe that it's possible that those were the same -- the
7 same, correct.

8 Q Did you trace the ownership of that revolver?

9 A Yes, there was a trace done.

10 Q Okay. Did you learn how long Jerome Thomas
11 owned that revolver?

12 A The -- the revolver that we have --

13 Q Yes, sir. The revolver --

14 A -- possession of?

15 Q -- that you have possession of now, how long did
16 Jerome Thomas own it?

17 A Oh, I have no idea. And --

18 Q Did you --

19 A -- how long he owned it, I have no idea.

20 Q It is an incriminating piece of evidence, is it
21 not, if someone possesses the murder weapon, fair?

22 A Sure.

23 Q It is an incriminating piece of evidence, is it
24 not, if someone is cleaning the murder weapon right after a
25 homicide takes place?

1 A That's why I charged him with it.

2 Q It is a -- it is an incriminating piece of
3 evidence, is it not, for someone to destroy the inside of the
4 barrel of a murder weapon?

5 A Yes.

6 Q It is incriminating if he -- if someone changes
7 their phone number right after a homicide occurs, right?

8 A I believe so. Depending on the circumstance,
9 absolutely.

10 Q It can be, right?

11 A Sure.

12 Q Was Job-Loc arrested in this case?

13 A Well, he's in custody. I submitted a warrant,
14 so technically we're just waiting for him to be extradited.

15 Q For accessory after the fact?

16 A Correct.

17 Q Not with murder?

18 A I had no choice in that one.

19 Q How was Job-Loc moving at the time of his
20 arrest? And by that I mean, was he walking on both legs? Did
21 he --

22 A I didn't arrest him.

23 Q -- have two -- hold on. Did he have two
24 crutches or did he have a crutch; do you know?

25 A I was not there. I can't answer that question.

1 Q Are you aware that at the time -- have you ever
2 been told that at the time of his arrest he was only using one
3 crutch?

4 MS. WECKERLY: Objection. Hearsay.

5 THE COURT: I'll allow it. Overruled.

6 BY MR. SGRO:

7 Q Are you aware of that, sir?

8 A I don't recall.

9 Q The search of his residence happened on August
10 13, six days after the homicide, right?

11 A The Brittnae Pines?

12 Q Yes, sir.

13 A Okay. Yes, sir.

14 Q At the search of Brittnae Pines you found a knee
15 brace, right?

16 A I believe there was one in there.

17 Q And you found pain meds, right?

18 A I believe there were, yes. I believe --

19 Q Were there --

20 A -- so.

21 Q Were there pills inside of those prescription
22 bottles?

23 A I wasn't -- I wasn't there during the whole
24 search warrant, so I don't recall.

25 Q But it -- did it -- did it appear to you as a

1 detective in the case that perhaps he was getting better
2 because he left a brace and his meds behind?

3 A Well, that doesn't mean he doesn't have another
4 brace or other meds.

5 Q That's not the answer to my question. Did it
6 appear to you -- strike that.

7 Did you consider it to be of any evidentiary value
8 that Job-Loc had left a knee brace at the residence?

9 A Yeah, the fact that he was there, absolutely.

10 Q Okay. How about relative to his ability to move
11 around, did it have any evidentiary value that his knee brace
12 was in his Las Vegas residence?

13 A No, because it could go either way on that. He
14 could --

15 Q How many -- how many of his legs were broken or
16 fractured or hurt?

17 A I believe one.

18 Q Just one?

19 A Correct.

20 Q So I -- if I heard you correctly, did you say he
21 has another leg -- you're not suggesting to the jury that he
22 injured both legs, are you?

23 A No.

24 Q All right. Did it have any evidentiary value
25 that he'd left his meds behind?

1 A That he was at the residence.

2 Q Other than that, none?

3 A That he left in a hurry.

4 Q Okay. And do you know that he was facing a life
5 sentence in California?

6 A I don't know what sentence he was facing. I
7 know -- I mean, I know that he was under investigation and he
8 had a case against him, but I don't --

9 Q So you're --

10 A -- know what his --

11 Q -- you're not familiar -- you're not familiar
12 with kidnapping, robbery, and --

13 A Yes, but you asked if I was familiar with a life
14 sentence. I don't know what that sentence is in California.

15 Q All right. When you recorded Mr. Burns, it
16 began with a sentence -- or a statement that said, This is
17 going to be a surreptitious recording, right?

18 A Yeah, I believe Wildemann did that, correct.

19 Q That means that the tape-recording device is
20 hidden so that the person doesn't know that he or she is being
21 recorded?

22 A Yes, sir.

23 Q Okay. So Mr. Burns didn't know he's being
24 recorded?

25 A We didn't put the recorder in front of him,

1 that's for sure.

2 Q Now, I want to talk to you about the interview
3 technique you used with Mr. Burns. During the course of the
4 interview, do you remember calling -- asking if he was
5 retarded?

6 A I did not ask that question.

7 Q Detective Wildemann did, right?

8 A Detective Wildemann did ask that question, yes.

9 Q Did Detective Wildemann call him a motherfucker?

10 A Yes, he did.

11 Q Did Detective Wildemann call him a bastard or
12 was that you?

13 A That one might have been me.

14 Q Who told -- who said, Cut the shit? Was that
15 you or Detective Wildemann?

16 A I think that was Detective Wildemann.

17 Q Was it you or Detective Wildemann that called
18 him a jackass?

19 A I believe that one was me.

20 Q And you started confronting him with sentences
21 that began with, We already know, right?

22 A Correct.

23 Q Right? So one of the interview techniques that
24 you used, aside from calling him a bunch of names, was telling
25 him that, We already know what happened, right?

1 A Yes, sir.

2 Q Okay. And when you say, We want to hear your
3 side, you're not really interested in hearing his side, such
4 that he can extricate himself out of harm's way? You'd
5 already decided what happened, right?

6 A Well, we asked him to give his side of the
7 story.

8 Q Sir, listen to my question.

9 A All right.

10 Q By the time you get to where David Burns is at,
11 you already decided what happened, right?

12 A I think we have a really -- yes. Yeah, I think
13 so.

14 Q And so when you say, We want to hear your side,
15 that's not because you want to hear that -- how he didn't have
16 anything to do with it, right? You're there already to effect
17 an arrest whether he speaks to you or not, fair?

18 A Yeah. We asked him, Why?

19 Q David Burns, despite being called all those
20 names by you, always refers to you as, Sir, right? Sir,
21 follows the end of his sentences, correct?

22 A I -- every sentence, I don't know one way.

23 Q Is it -- do you remember any time that David
24 Burns responds with, Sir?

25 A Yeah. I believe he did, yes, sir.

1 Q Are you aware of the jeopardy that attaches to
2 an individual in --

3 A I'm sorry, the what?

4 Q Jeopardy, harm --

5 A Okay.

6 Q -- that could potentially come to an individual
7 in California if they're seen speaking to a police officer?

8 A Just it gets -- potentially that's any inmate.

9 Q Have you heard this phrase, Snitches get
10 stitches? You ever heard of that?

11 A Sure.

12 Q Okay. And in California it's worse than it is
13 here even in Las Vegas; is that right?

14 A I have no idea what it's like in California.

15 Q Would you agree with me, sir, that the way that
16 Mr. Burns was confronted -- he was getting arrested no matter
17 what he told you?

18 A Yeah, he was definitely getting arrested.

19 MR. SGRO: Your Honor, do you want to -- this might
20 be a good time to take a break if the Court was inclined.

21 THE COURT: You want to take an evening recess now?

22 MR. SGRO: Yes, sir.

23 THE COURT: All right. I think that it's pretty
24 obvious we're going to go on tomorrow with this witness,
25 Ladies and gentlemen. So we'll take our evening recess now.

1 During the recess, it's again your duty not to
2 converse among yourselves or with anyone else on any subject
3 connected with this trial or to read, watch, or listen to any
4 report of, or commentary on the trial from any medium of
5 information, including newspapers, television, and radio, and
6 you're not to form or express an opinion on any subject
7 connected with this case until it's finally submitted to you.

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

9 (Jury recessed at 4:11 p.m.)

10 THE COURT: Let the record reflect that the jury's
11 left the courtroom. Anything further on the record?

12 MR. DIGIACOMO: Judge, it's my understanding that you
13 had to go because we still had to address a couple of
14 things --

15 THE COURT: Well, if you want --

16 MR. DIGIACOMO: -- before we broke at --

17 THE COURT: -- to address something --

18 MR. DIGIACOMO: -- 4:00?

19 THE COURT: -- I can do it.

20 MR. DIGIACOMO: Well, the only thing is this: Is if
21 we are going to argue a bunch of things and still have a
22 second cross of Detective Bunting and another --

23 THE COURT: I -- we've got -- he hasn't finished his
24 cross, and we -- we've got -- I'm sure Mr. Langford is going
25 to have some questions.

1 MR. DIGIACOMO: No. No, my only concern is this: Is
2 that we do not want to split the argument. So as -- as long
3 as we all have an agreement that we can just finish wherever
4 we finish and then argue Thursday the whole day so that we get
5 the whole thing in?

6 THE COURT: We can start arguments tomorrow if we can
7 finish.

8 MR. DIGIACOMO: I don't -- I don't think either side
9 necessarily wants to cut it in the middle, like, have them
10 here --

11 THE COURT: No, we're going to --

12 MR. DIGIACOMO: -- just to stay --

13 THE COURT: -- go as fast as we can. Let's -- so if
14 we do tomorrow -- if we finish tomorrow -- tomorrow morning
15 with evidence, we can start instructions and arguments in the
16 afternoon, maybe the State's opening and the defense can go on
17 Thursday.

18 MR. ORAM: That sounds fair.

19 THE COURT: And then you get your reply after theirs.
20 That's the way it goes.

21 MR. DIGIACOMO: Well, I want to -- I do not want --

22 THE COURT: I'm not --

23 MR. DIGIACOMO: -- to split them up is what I'm
24 saying. Because, like --

25 THE COURT: I'd like to get this to the jury as soon

1 as possible. I'd like to get a verdict this week. If we
2 don't this week, then we've got a problem of what are we going
3 to do next week. You guys have already told me that you want
4 to take Tuesday off.

5 MR. DIGIACOMO: Well, the jury's going to --

6 THE COURT: The jurors don't have --

7 MR. DIGIACOMO: -- deliberate.

8 THE COURT: -- to take Tuesday off.

9 MR. DIGIACOMO: Right. The jury can still
10 deliberate. And based on our agreement, only one lawyer needs
11 to be present for the verdict. So that's not an issue.

12 THE COURT: Well, that's true too. Somebody had to
13 be gone Tuesday. I can't remember which one --

14 MR. DIGIACOMO: Mr. Sgro.

15 THE COURT: -- of you though. Mr. Sgro? Okay.

16 MR. DIGIACOMO: But, I mean, to take a verdict --

17 THE COURT: To take a verdict --

18 MR. DIGIACOMO: -- but ultimately --

19 THE COURT: -- Mr. Oram could be present.

20 MR. DIGIACOMO: But the issue is --

21 THE COURT: I -- are you going to be available by
22 telephone, at least, if there's questions?

23 MR. SGRO: I'm flying on Tuesday, Your Honor.

24 MR. ORAM: I'll be okay.

25 MR. SGRO: But Mr. Oram will be available and --

1 MR. ORAM: We don't need Mr. Sgro.
2 MR. LANGFORD: I can help him out, Judge.
3 THE COURT: Thank you.
4 MR. ORAM: Thank you, Judge.
5 THE COURT: We'll see you tomorrow morning at 9:30.
6 MR. ORAM: Thank you.
7 MR. DIGIACOMO: Thank you, Your Honor.
8 (Court recessed for the evening at 4:14 p.m.)
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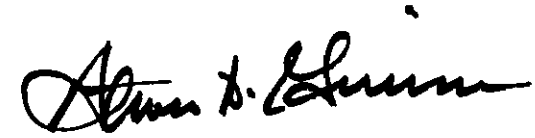
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 14

WEDNESDAY, FEBRUARY 11, 2015

APPEARANCES:

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

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WITNESSES FOR THE STATE:

CHRISTOPHER BUNTING

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1 **LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 11, 2015, 9:32 A.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. State vs. Mason and Burns.
5 The record will reflect the presence of the defendants, their
6 counsel, and the district attorneys, in the absence of the
7 jury. We're going to make a record on the Shoemaker issue?

8 MR. SGRO: Yes, sir. So there -- there's --
9 actually, Mr. Oram reminded me of a second one, but we can
10 resolve that as we speak as well.

11 So Detective Shoemaker is a former homicide
12 detective who is now retired. I interviewed him. I don't
13 remember how long ago. But in the course of the interview, I
14 learned the following information: That he was a part of the
15 team that was involved in the prosecution of David Burns, and
16 as being part of the team, they would regularly have these
17 debriefing meetings, which Mr. Shoemaker attended.

18 He was to be apprized of the case because I think he
19 had a supervisory role in the case, and he admittedly did
20 not personally interview any of the witnesses in this case;
21 however, he was to compile information and then he had a
22 specific role of delivering that compiled information to CPS.

23 The Court has heard mention in this case through
24 various witnesses the parallel investigation that was
25 occurring with CPS insofar as Cornelius Mayo and his children

1 were involved. Devonian Newman also a victim in this case was
2 also involved with CPS. And I have had all of those witnesses
3 and I've asked each of those witnesses their different
4 interactions with CPS.

5 Detective Shoemaker was going to be offered to
6 testify to the fact that he advised CPS that Derecia Newman --
7 sorry, Devonian Newman was, quote/unquote, "a mule". And by
8 that I mean she would go to the front door to collect money
9 from Mom and deliver it to the back room to Dad to pick up
10 drugs to return to the front door. And that is consistent
11 with the evidence in this case, in that she was at the front
12 door at the time that Ms. Cousins knocked on the door.

13 So I asked Mr. Mayo, Did you use Devonian as a mule?
14 Did you ever say that to CPS? I asked Erica Newman if she was
15 aware of Devonian's involvement. I did not ask Devonian. It
16 was clear, and I think the Court probably would agree with me,
17 that she had little if any recollection of the events today.
18 The -- in fact, the State offered her prior recorded statement
19 into evidence based on her inability to recall.

20 So my plan was to then call Shoemaker, who would
21 testify that he was personally involved in these debriefings,
22 number one. Number two, no notes were ever taken at the
23 debriefing, so no report was ever generated. Number three, he
24 cannot tell me which police officer gave him the information;
25 however, he did specifically recall the information, and that

1 would be offered to do a couple of things.

2 Number one, to show the course of the CPS
3 investigation to the extent that that -- it would be offered
4 for that purpose; it would not be hearsay. It would simply be
5 to advise the jurors what -- what was going on at CPS at given
6 times, given the testimony that's come in thus far. The
7 second thing is, Your Honor, I would be offering it, if the
8 Court did find it to be hearsay, as a prior inconsistent
9 statement relative to the -- my ability to impeach Cornelius
10 Mayo and Erica Newman.

11 And number three, I would offer it as an inherently
12 -- it's -- it's in a state -- it's a statement that has
13 inherent indicia of reliability because it's being made from a
14 summary law enforcement investigation to another arm of -- and
15 it's not criminal, but it's pseudo -- it's pseudo criminal in
16 nature, the proceedings done at CPS, and so I would offer the
17 statement as inherently -- inherently reliable.

18 And the statement is number one, Derecia Newman was
19 a mule for the parents --

20 THE COURT: Devonian.

21 MR. DIGIACOMO: Devonian.

22 MR. SGRO: Devonian, I don't know why I keep doing
23 that. Devonian was the mule.

24 THE COURT: Apparently, at one point Detective
25 Shoemaker testified at a CPS hearing that Devonian had gone to

1 the front door and then taken money down -- is that what he
2 said?

3 MR. DIGIACOMO: No. On August 10, I believe of 2010,
4 so three days after our homicide, there's a conversation
5 between Detective Shoemaker and CPS to generally give them an
6 overview of what happened at the scene so CPS could make some
7 of the -- the decisions about what's happening. There's a
8 report from CPS saying, Detective Shoemaker reported that --
9 and I'm -- let's read it directly --

10 MR. SGRO: Yeah, I'll --

11 MR. DIGIACOMO: -- into the record.

12 MR. SGRO: It says here, His investigation -- this is
13 Shoemaker -- His investigation has revealed that Devonia was
14 accustomed to collecting money from Derecia at the front door
15 of the apartment and taking it to the back bedroom where
16 Cornelius would give her drugs to bring back to Derecia.
17 Detective Shoemaker stated, This is why Devonia was at the
18 front door during the robbery.

19 Now, the other thing was that Cornelius Mayo,
20 according to Detective Shoemaker, was going to call 9-1-1,
21 then he decided to hang up and call some friends, presumably
22 to pick up his product. Now, those two statements are things
23 that we have made much hay about in this case through a number
24 of different witnesses. So to -- to exclude it simply on
25 hearsay denies us the opportunity to use it for impeachment,

1 as well as the fact, Your Honor, that we're not -- I'm -- I'm
2 not even sure it is hearsay because it simply explains what
3 CPS did after receiving the information.

4 Because what -- what's going to happen is they're
5 going to now move towards making the kids wards of the state.
6 They're going to limit the contact with Devonian and the rest
7 of the outside world. They -- they become significantly --
8 significantly involved. Detective Bunting, that I -- and I
9 had asked him about this yesterday -- will ultimately testify
10 at a hearing and also suggest to a judge that Cornelius Mayo
11 is not an honest person.

12 And so it just -- it helps to articulate to the jury
13 what was going on in the -- in the days, weeks, and months
14 prior to those hearings.

15 THE COURT: As I understand it, Detective Shoemaker
16 never interviewed any of the witnesses; is that correct?

17 MR. DIGIACOMO: That is correct.

18 MR. SGRO: That's my understanding as well.

19 THE COURT: So what he told CPS was based upon what
20 he thought he knew from briefings with the officers in
21 homicide?

22 MR. SGRO: Right. And here's --

23 THE COURT: Is that right?

24 MR. SGRO: Yes, sir. And if I might address that
25 just for a moment. Relative to -- to this particular case --

1 and I want to make sure the Court understands we're just
2 focusing here and not making some global pontification here --
3 it is unfair that the Defense -- it can be restricted from
4 introduction of this evidence with a hearsay objection because
5 the notes, whether or not they're taken, we have no control
6 over that. And what I mean by that is, if notes were taken at
7 this debriefing when this important information came out, I
8 would then be able to figure out who said what and I would be
9 able to do my own investigation and go track it down.

10 The difficult --

11 THE COURT: If it's hearsay, it's hearsay.

12 MR. SGRO: No, but -- right. But what -- what --
13 what might start as hearsay -- if Shoemaker would have taken a
14 note down and said, I got this from Bunting, or I got this
15 from Wildemann, or Wildemann wrote a note that made its way to
16 the homicide file, today here's what we discussed, I would
17 have been able to ultimately get to who Mr. Mayo said this to
18 and put that person on.

19 And so --

20 MR. DIGIACOMO: That assumes the fact that Mr. Mayo
21 ever said it, and I believe that there is absolutely no
22 witness on earth who is ever going to say that Mr. Mayo ever
23 made those statements.

24 THE COURT: Well --

25 MR. SGRO: Well, it came from somewhere, Judge.

1 THE COURT: We -- well, he --

2 MR. SGRO: I'm not making it up. It's in the report.

3 THE COURT: I don't know where it came from, but we
4 certainly don't have percipient knowledge by a witness to
5 testify to that.

6 MR. SGRO: If that's -- if that's the case, Your
7 Honor, isn't it -- then doesn't it then become a reward for
8 the State to engage in a tactical decision to not record notes
9 because what happens is, if you don't take notes of this
10 debriefing, someone like me and the next 10, 20 attorneys
11 after me can never find out. And so if I'm a DA or if I'm in
12 charge of homicide, I instruct people, Listen, don't take
13 notes, let's tell person X to make a report and that way it
14 never comes in evidence if it hurts us.

15 Now, that -- maybe it's just coincidental, but
16 clearly that's a consequence of not taking notes, and perhaps
17 it's an unintended consequence, but it's certainly a decision
18 that Mr. Burns and his defense attorneys had nothing to do
19 with. So I guess what I'm suggesting to the Court is the
20 statements -- I'm not making the statements up. They come
21 from reports and they came from somewhere. So for Mr.
22 DiGiacomo to state he never said it to anyone in the planet,
23 well, that implies that Detective Shoemaker then made the
24 whole thing up. That's not --

25 MR. DIGIACOMO: No, that doesn't imply that.

1 Detective Shoemaker -- it was Sergeant Shoemaker, I think will
2 say, Hey, there was discussions in which were, like, we
3 theorized that maybe this happened, but I don't have any
4 evidence that anyone ever told me that they had evidence that
5 this fact happened. I was pontificating, for lack of a better
6 word. I was speculating that this is possible and that is not
7 admissible evidence.

8 THE COURT: It's a possibility because --

9 MR. SGRO: That's not what he told me, though, Judge.

10 THE COURT: -- the -- the argument is there's a claim
11 that the perpetrator went down and went through the pockets of
12 Devonia.

13 MR. DIGIACOMO: Correct.

14 THE COURT: And if -- and the argument could be made
15 if that occurred, then it occurred because Devonia had
16 something like drugs or money on her.

17 MR. SGRO: Exactly.

18 MR. DIGIACOMO: So that's an inference that can be
19 drawn from the evidence that they have. They can't put a
20 witness on to speculate that that's what happened.

21 THE COURT: That sounds to me like what Shoemaker was
22 guessing that Devonia had done that and said that. But that's
23 no more than you could guess or the jurors could guess.

24 MR. SGRO: Well --

25 THE COURT: I'm sorry. They -- it's -- it's hearsay,

1 and I have to sustain the objection on it.

2 MR. SGRO: Okay. What of the -- so does -- does his
3 testimony -- does that sustaining of that objection also go to
4 the fact that Cornelius Mayo didn't call 9-1-1 until after he
5 called some friends?

6 THE COURT: If he interviewed Cornelius --

7 MR. SGRO: He did not, sir.

8 THE COURT: -- well --

9 MR. SGRO: It's the same factual predicate as the one
10 we just outlined.

11 MR. DIGIACOMO: There's no basis to believe that that
12 fact is true.

13 THE COURT: I mean, he's got to have percipient
14 knowledge of something.

15 MR. SGRO: Your Honor, I don't mean to quarrel with
16 the Court, I understand the ruling. I just, for purposes of
17 the record, wanted to make sure --

18 THE COURT: I mean, the hearsay rule does apply to
19 the defense too.

20 MR. SGRO: Of course, sadly, that's true. I guess at
21 the end of the day, though, I was offering it under a couple
22 of exceptions, and I -- I'm asking the Court if the --

23 THE COURT: Because it's inherently reliable.

24 MR. SGRO: And because it comes in to impeach a
25 number of the State witnesses.

1 THE COURT: I'm not about to hold that the records or
2 reports from CPS are inherently reliable. I can't say that.

3 MR. SGRO: And the ruling relative to the prior
4 inconsistent statement, the denial of that is based on the
5 unavailability or the inability of us to produce someone that
6 Mr. Mayo spoke to; is that right, Your Honor?

7 THE COURT: That's true.

8 MR. SGRO: Okay. So -- and that applies, then, to
9 the 9-1-1 situation where in the CPS records it reflects that
10 Sergeant Shoemaker advised them that he called somebody before
11 he called 9-1-1. The same ruling, Your Honor?

12 THE COURT: Yes, that would be the same record.

13 MR. SGRO: Okay. Then -- then the -- then while
14 we're here, I would invite the Court to consider -- to save a
15 witness -- a business records exception ruling. There is a
16 security log from UMC. It's part of the medical records chart
17 that Dr. Goshi testified from. The Court will recall me
18 showing him some pages of a medical chart from which he opined
19 what Fentanyl was and what Versed was and the effects, et
20 cetera.

21 THE COURT: You can get those into evidence.

22 MR. SGRO: Sure. In the same medical records chart
23 there are entries by UMC security guards relative to the visit
24 between Mr. Mayo --

25 THE COURT: I would admit those.

1 MR. DIGIACOMO: Yeah.

2 THE COURT: Those are --

3 MR. DIGIACOMO: If he -- if he --

4 THE COURT: -- medical records --

5 MR. DIGIACOMO: I think I have that one.

6 THE COURT: Medical records are almost always
7 admissible --

8 MR. SGRO: Yeah.

9 THE COURT: -- if they're certified. And even if
10 they're not certified, you can get them certified. So I
11 wouldn't have any problem.

12 MR. SGRO: Right. So to save time, then, I just need
13 the piece of paper where the security guard logged the visit
14 and the statements perceived that --

15 THE COURT: If you have it and it's a medical record,
16 then --

17 MR. SGRO: I do.

18 THE COURT: -- it can come in.

19 MR. SGRO: Yeah.

20 THE COURT: It can come in.

21 MR. DIGIACOMO: Yeah, if we could just look
22 beforehand, we probably wouldn't even object to it because I
23 think it's the same one that I found in the -- in the records,
24 but there is about 15,000 pages of records.

25 MR. SGRO: Right. I'll -- I'll get that to them at

1 -- so I'm assuming we're going to break around 11, and I'll
2 have it here --

3 THE COURT: We can't break until you guys quit
4 talking and we get the jury in here.

5 MR. SGRO: Thank you, Judge.

6 MR. DIGIACOMO: Also, for the record, I had joined in
7 Mr. Sgro's request to have Detective Shoemaker testify, Your
8 Honor.

9 THE COURT: The record will so reflect.

10 Bring in the jury.

11 MR. SGRO: I'm just going to call to get that record
12 down here. I'll need to give him a minute.

13 MR. DIGIACOMO: Do you want me to put Detective
14 Bunting back on the stand?

15 THE MARSHAL: All rise for the entering jury, please?
16 Juror's please.

17 (Jury entering at 9:47 a.m.)

18 THE COURT: All right. State of Nevada vs. Burns and
19 Mason. The record will reflect the presence of the
20 Defendants, their counsel, the district attorneys, all members
21 of the jury. Good morning, Ladies and gentlemen.

22 We are still -- and you may be seated, Detective.
23 We're still on the cross-examination of Detective Bunting.

24 And, Mr. Sgro, you may proceed.

25 MR. SGRO: Thank you. May I approach the witness,

1 Your Honor?

2 THE COURT: Yes.

3 CHRISTOPHER BUNTING, STATE'S WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION - (Continued)

5 BY MR. SGRO:

6 Q I'm showing you what's been marked as Defense
7 Exhibit W. Is that a picture of Job-Loc or Jerome Thomas?

8 A Yes, sir.

9 MR. SGRO: I'd move for its objection.

10 MS. WECKERLY: No objection.

11 THE COURT: It will be received.

12 (Defendant's Exhibit W admitted.)

13 BY MR. SGRO:

14 Q We spoke a little bit about the Grand Jury
15 yesterday. Do you recall that conversation?

16 A Yes, sir.

17 Q And during the Grand Jury proceedings, do you
18 recall testimony that there was information that Job-Loc was
19 actually the shooter in this case, correct?

20 A I -- I recall that there were potential
21 witnesses -- or not witnesses, excuse me, possibilities of
22 other people being the shooter at that time at the beginning
23 of the case.

24 Q You don't recall Job-Loc was the shooter as
25 information that you'd received?

1 A That he was the shooter?

2 Q He --

3 A No.

4 Q You don't recall that?

5 We spoke a little bit about Devonian Newman's
6 statement yesterday. I want to show you -- I want to refer
7 you to one page, this is page 11. Now, on page 11, does it
8 start with, Okay. And then what?

9 A On the floor, okay. And then what? Yes, sir.

10 Q And then it says, That was it. Homey left.
11 Yeah. Okay. He was the -- and have I read it all accurately
12 so far?

13 A That's what it says.

14 Q Now, we had this conversation yesterday about
15 the lines being things that the transcriber, as he or she was
16 typing, didn't catch, right?

17 A Correct.

18 Q All right. Now, there is a few lines which --
19 the lines basically suggest that it's shorter or more lengthy,
20 right? The more lines we have, the more unintelligible
21 conversation, fair?

22 A Possibly.

23 Q In this particular section, do you remember
24 hearing Devonian tell you, He, speaking of Cornelius, said, I
25 shot my daughter. I shot my daughter?

1 A That Devonia said that he shot her?

2 Q Listen to my question because I don't want to
3 get -- I don't want to lose track of the speaker. I want to
4 focus on the words that were uttered. Did you hear in this
5 part of the interview, when you were with Devonia, when you
6 say, Okay. He was the -- do you hear Devonia say, He was
7 telling family where we stay and he said, I shot my daughter,
8 I shot my daughter.

9 A Doesn't say that on there, so I don't know.

10 Q You don't recall that from the interview?

11 A That she said that Mayo shot her? No.

12 Q Not Cornelius Mayo shot me, okay? I'm saying,
13 Telling family where we've stayed. Do you remember that?

14 A At the -- I don't understand your question.

15 Q I'm simply referencing you to a part of Devonia
16 Newman's statement --

17 A Okay.

18 Q This is page 11 of the transcript.

19 A Right.

20 Q Okay? And I am asking you if in this portion of
21 the transcript, if you recall Devonia uttering the phrase, He
22 was telling family where we stay. Does that ring a bell to
23 you?

24 A No, I don't remember. No.

25 Q Do you recall it from hearing it yesterday as we

1 were all listening to the tape?

2 A No, but I'll -- I'll listen to it again.

3 Q Do you recall in this same section the phrase, I
4 shot my daughter, I shot my daughter?

5 A No, I don't remember.

6 Q Now, you told the jury yesterday that you did a
7 lot of repeating information back to Devonia Newman to verify
8 what it was she was telling you. Is that the gist of what you
9 said?

10 A Correct.

11 Q On this one here at page 11, do you see where
12 I'm pointing, you say, Okay. Hold on, let me slow you down.

13 A Okay.

14 Q Right? Did I read that right?

15 A Yes, sir. That's what it says.

16 Q Then you -- instead of clarifying that
17 unintelligible language here, you ask another question. You
18 don't -- in other words, would this be an example on this page
19 of something different than you had done in the remainder of
20 the statement?

21 A Well, I'd have to see the remainder of the
22 statement to see how many times I had specifically not
23 repeated what she said to answer that.

24 Q Would this be an example -- this particular
25 page, would this be an example of not going back to clear up

1 whatever it was that she said that was unintelligible?

2 A Well, can I read what's after that to see what I
3 say? Thank you.

4 Q Can you see that on your screen?

5 A I can see all the way down to, At this point is
6 the last three words?

7 Q Yes, that's the last three words on the page.

8 A (Witness complied.) For that particular one,
9 yes, sir, I'd agree with that.

10 Q Okay.

11 MR. SGRO: May I approach the witness, Your Honor?

12 MS. WECKERLY: Your Honor, can we approach as well?

13 (Bench conference.)

14 MS. WECKERLY: You can ask him that, but that's from
15 Stephanie's statement, and she doesn't say Job-Loc's the
16 shooter. She says, My daughter told me Job-Loc associates
17 with Melanie Mason and a friend of his is the shooter. So
18 that's why --

19 MR. SGRO: Well, that's --

20 MS. WECKERLY: -- he's saying that. So what he's
21 basing it on is stuff that the State would -- what I'm happy
22 to go into, and [inaudible], you know, I'm going to ask him
23 about it.

24 MR. DIGIACOMO: We asked him, What does that mean?
25 He's going to tell you that.

1 MS. WECKERLY: Stephanie's [inaudible] --

2 MR. DIGIACOMO: If you want to go into that --

3 THE COURT: It is what it is.

4 MR. DIGIACOMO: -- that Stephanie talked to her --

5 MS. WECKERLY: Stephanie talked to her [inaudible]

6 you know, later on, and her daughter says, Willie Mason -- the

7 daughter -- yeah, Willie Mason associates with Job-Loc, and it

8 was a friend of his -- a friend of Job-Loc's that's the

9 shooter. That's what Stephanie's interview says.

10 MR. SGRO: That's not what this says, though.

11 MS. WECKERLY: Correct. That statement is a

12 [inaudible].

13 MR. SGRO: Okay.

14 MS. WECKERLY: Okay? But -- but --

15 THE COURT: I guess we'll find out?

16 MR. SGRO: Yeah, we'll find out --

17 MS. WECKERLY: We're going to ask why you said it.

18 (End of bench conference.)

19 THE COURT: All right.

20 MR. SGRO: Okay.

21 BY MR. SGRO:

22 Q You referred to your officer's report yesterday,
23 correct?

24 A Yes.

25 Q And you -- did -- and you sit there and --

1 A This is a copy of it, yes, sir.

2 Q All right. You had met with Cornelius Mayo on
3 October 1, 2010, to show you some text messages; is that
4 right?

5 A I believe that's the correct date. Yes, we met.

6 Q And did he tell you, as he showed you the text
7 messages, that he thought Job-Loc was involved in the murder?

8 A Yes, that was the context of the -- yes, the
9 text.

10 Q And did he tell you that based on some text
11 messages that had dropped from his phone that he believed
12 Job-Loc was the shooter?

13 A I don't know that he said that he believed he
14 was the shooter or not. I know that he knew that he was
15 involved based on the text messages.

16 Q So you can't tell the jury if Cornelius Mayo
17 told you -- well, let me back up.

18 Do you know that Cornelius Mayo's phone held a
19 certain finite number of text messages and as he reached that
20 limit they would drop off?

21 A Correct.

22 Q He met with you in October of 2010 and told you
23 that he was --

24 A Can I turn to the page that you're referring to?

25 Q Would that refresh your recollection?

1 A Well, I just want to read what -- what it says,
2 so yeah.

3 Q It's page --

4 A It's what --

5 Q -- page 28.

6 A 28? Thank you.

7 Q And it's the first full paragraph.

8 A Mayo was involved in the --

9 Q Sir, you've --

10 A -- shooting --

11 Q -- got to -- sir --

12 A -- or Job-Loc --

13 Q Sir? You have to read it to yourself.

14 A Okay. Well, that -- it doesn't say what you're
15 saying. It says that he was involved.

16 Q I'm going to ask -- sir --

17 A So --

18 Q -- have you read it?

19 A -- that's what I recall is that he was involved.

20 Q Have you read the information to yourself?

21 A Not all of it.

22 Q Do you need time to finish that paragraph?

23 A Please. Okay.

24 Q Have you read that paragraph?

25 A Yes, sir.

1 Q Does it say, Mayo stated he learned Job-Loc was
2 involved in shooting Derecia and Devonia Newman?

3 A Yes, it does.

4 Q And sent him two text messages that had been
5 erased. Does it say that? It's the same sentence, sir.

6 A It had been -- I was looking at the next one,
7 Was involved in the shooting. Let me see, Sent him two text
8 messages that had been erased. Yes, sir.

9 Q Did you ever go see Jerome Thomas about this
10 case? Did you ever try to visit him?

11 A No.

12 Q Did you ever try to effect an extradition
13 warrant?

14 A I don't know that they did an extradition on him
15 -- actually, that may have been done, but that's not done by
16 me.

17 Q Are you aware of one? Can you go to anywhere in
18 your file to show me one?

19 A Well, I can't go to anywhere on this report,
20 that's -- we'll say that -- no. It's somebody else would be
21 involved in that, not me.

22 Q Early on in the morning hours of this case you
23 had information that the assailant in this case had a white
24 T-shirt on, correct?

25 A I believe Ms. Cousins had said that, yes.

1 Q And that came hours after the investigation
2 began, correct?

3 A Sometime around the time of the investigation,
4 yes, sir.

5 Q And you know that Cornelius Mayo was -- and this
6 is my words, not your words, but he was shaking her down for
7 information. He was threatening her.

8 A Who?

9 Q Cornelius Mayo.

10 A Right.

11 Q Is, shaking down, Stephanie Cousins?

12 A Oh, yeah, he was pissed off.

13 Q And Cornelius Mayo also learned from Stephanie
14 Cousins that the assailant had a white T-shirt on, correct?

15 MS. WECKERLY: Objection. Calls for speculation as
16 to what Mr. Mayo heard from --

17 THE COURT: Oh --

18 BY MR. SGRO:

19 Q Did you --

20 THE COURT: -- you can't ask what his state of
21 mind -- you can't -- you can't ask him to relate what
22 Cornelius Mayo's state of mind was.

23 MR. SGRO: Fair enough. I'll rephrase.

24 BY MR. SGRO:

25 Q Did Cornelius tell you that he had learned --

1 A He did not tell me anything. I didn't speak to
2 him that morning.

3 Q Let me finish my question.

4 A Okay.

5 Q At any time, did Cornelius Mayo tell you that
6 the assailant in this case had on a white T-shirt?

7 A He didn't tell me that, no.

8 Q He told others that and you learned of it later?

9 A I don't know what his description -- well, he --
10 I know he didn't see the shooter, so I don't know what he told
11 the other detectives, but I'm sure it's in his statement. I
12 think he --

13 Q There's no -- there's no more question pending.

14 A Okay.

15 Q Did you have anything to do with charging Jerome
16 Thomas with obtaining and using personal identification of
17 another -- the whole Albert Davis situation? Were you
18 involved in that prosecution at all?

19 A No, sir.

20 Q You were asked some questions about letters. Do
21 you remember those questions? And I think you read some
22 yesterday.

23 A Yes.

24 Q Letters in the jail are not copied as a matter
25 of course; is that right?

1 A You mean, just everybody's?

2 Q Everybody's letters all day, every day, they're
3 not copied?

4 A No, we request those to be done.

5 Q And so you make an affirmative request on a
6 given day, right? So you can call and say, hey, I want you to
7 start copying letters from person X, correct?

8 A Correct.

9 Q And then you also have the ability to say, We
10 don't need you to copy any more, we're good?

11 A Correct.

12 Q Do you know what the dates are in this case of
13 when you started --

14 A No.

15 Q Let me finish my question.

16 A Okay.

17 Q Do you know the day that you first asked for
18 letters to be copied?

19 A No.

20 Q Is that memorialized in a report anywhere or in
21 a note?

22 A No, I don't believe so.

23 Q Do you recall the day that you asked for the
24 letters to not be copied anymore?

25 A No.

1 Q You know who Donovan Rowland is?

2 A I do.

3 Q And you know who Ulonda Cooper is?

4 A Speaking to her, I do.

5 Q You spoke to her, right?

6 A Right. Yes, sir.

7 Q Now, we talked yesterday about things that you
8 have to do -- draft under oath, right?

9 A I'm not following you on that one, I'm sorry.

10 Q You remember talking about search warrant
11 applications yesterday?

12 A Correct.

13 Q Those search warrant applications are drafted
14 sometimes by you, sometimes by others, but the --

15 A Correct.

16 Q -- the one common thing is they're all done
17 under oath?

18 A Correct.

19 Q Judges are supposed to be able to look at the
20 documents --

21 A Yes, sir.

22 Q -- police officers and -- and they know that the
23 police officers are sworn that what they put in there is true?

24 A Correct.

25 Q And you did an application and affidavit for a

1 search warrant for 3260 Fountain Falls; is that right?

2 A Correct.

3 Q And that was associated with?

4 A Donovan Rowland.

5 Q And in every application for a search warrant
6 you have to say why you need certain materials?

7 A Correct.

8 MR. SGRO: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. SGRO:

11 Q And just so you can orientate yourself, does
12 this look like a copy of the application and affidavit for a
13 search warrant?

14 A Yes.

15 Q For the Fountain Falls Way address?

16 A Correct.

17 Q And so this is what you're telling the Judge
18 under oath relative to why you need to search Donovan
19 Rowland's home?

20 A Yes, sir.

21 Q And do you recall stating under oath, Rowland
22 implied --

23 MS. WECKERLY: Objection. Hearsay.

24 THE COURT: No, it's not.

25 MS. WECKERLY: What Rowland said?

1 THE COURT: If it's his statement.

2 MS. WECKERLY: What Rowland --

3 MR. SGRO: His statement --

4 MS. WECKERLY: -- said?

5 MR. SGRO: Yeah, Your Honor, it's his statement to
6 the Court.

7 THE COURT: It's his statement to the Court. It
8 isn't offered for the truth. It was proffered why he said --
9 or what he said to the Court.

10 MS. WECKERLY: What he said to the Court that Rowland
11 said.

12 THE COURT: The objection is overruled.

13 BY MR. SGRO:

14 Q Rowland implied he was at the victim's apartment
15 at the time of the shooting; did I read that correct?

16 A Yes.

17 Q The mother grabbed a knife and that was why she
18 was shot?

19 A Correct.

20 Q The -- the fact that the mother grabbed a knife,
21 and that's why she was shot, is that also -- strike that.

22 Is that consistent with a statement that Cornelius
23 Mayo made to you?

24 A That the mother grabbed a knife?

25 Q Yes, sir. Do you remember that?

1 A No.

2 Q Okay. Rowland was not specific as to why the
3 daughter was shot nor did he give their names; did I read that
4 correctly?

5 A Specific why the daughter was shot nor did he
6 give their names. Correct.

7 Q Okay. Now, if we drop down, Rowland admitted
8 his involvement; did I read that right?

9 A Mm-hmm.

10 Q Yes?

11 A Yes.

12 Q And stated, They took \$4,000 weed and dope out
13 of the apartment?

14 A That's a yes, sir.

15 Q Rowland received \$1,000 for participating?

16 A Correct.

17 Q And that's what you told the Judge under oath in
18 order to get the search warrant for Donovan Rowland's
19 residence?

20 A For Ulonda Cooper, correct.

21 Q Well, getting a search warrant is serious
22 business, right?

23 A Yes, it is.

24 Q And you're not going to invade a private
25 citizen's rights and swear to things under oath unless you

1 believe in what you're doing, fair?

2 A That's fair, but the context of what you're
3 reading is inaccurate.

4 Q Did I read it correct?

5 A You read those sentences correct, yes, sir, you
6 did.

7 Q I didn't write those sentences, did I?

8 A No, sir, you did not.

9 MR. SGRO: May I have just a moment, Your Honor?

10 THE COURT: Sure.

11 While you're doing that, Officer, are you familiar
12 with the term "burner"?

13 THE WITNESS: I've heard the term used, yes, sir.

14 THE COURT: In what context?

15 THE WITNESS: It's used in different ways, depending
16 on what the subject is. Sometimes it's a firearm, sometimes
17 it's cell phones, sometimes -- it can be used in a different
18 variation of context.

19 THE COURT: Thank you.

20 THE WITNESS: Yes, sir.

21 MR. SGRO: May I have just a moment, Your Honor?

22 THE COURT: Yes, you may.

23 THE CLERK: What juror was this, please?

24 JUROR NO. 11: 11.

25 MR. DIGIACOMO: You done?

1 MR. SGRO: Oh, that's all I have, Your Honor.

2 MR. LANGFORD: Mr. Sgro has covered the areas I
3 intended to cover, Your Honor. So I have no questions.

4 THE COURT: Okay. Redirect?

5 MS. WECKERLY: Mr. Sgro, can I see the -- what you
6 just showed the detective?

7 MR. SGRO: Yes.

8 MS. WECKERLY: Thank you.

9 MR. SGRO: You're welcome.

10 REDIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Detective, Mr. Sgro just asked you about the
13 search warrant, and he was reading statements that he asked
14 you; Were these statements that were made by Donovan Rowland?

15 A Correct.

16 Q And this is the entire warrant? I'll let you
17 look at it. Can you flip to the page that he was reading, or
18 having you read?

19 A Okay. It's --

20 Q Okay.

21 A -- right there. And --

22 Q Let me just --

23 MS. WECKERLY: Can I have this put on the overhead,
24 please.

25 THE COURT: Sure.

1 MS. WECKERLY: Thank you.

2 BY MS. WECKERLY:

3 Q Now, we're on page 8. Will you read from the
4 top?

5 A On August 18, 2010, Wednesday, at approximately
6 ten-hundred hours, Detective C. Bunting was contacted by
7 Detective A. McClelland, I believe, from Southeast Burglary
8 Detail. Detective McClelland said she was contacted by Ulonda
9 Cooper who informed her she had information regarding a friend
10 of her son's named Donovan Rowland who was trying to sell a
11 handgun recently used in a murder.

12 Detective Bunting called Cooper and she told him the
13 following on August --

14 Q Well, let me [inaudible]. So what he read from,
15 and we'll get to that, is what Ms. Cooper told you after you
16 called her?

17 A Correct.

18 Q All right. So let's read that.

19 A On --

20 Q This is information from Ms. Cooper?

21 A Correct. On August 17, 2010, Cooper was at home
22 with her son Michael Johnson and her boyfriend Damian Kelley.
23 At approximately twenty-one hundred hours Donovan Rowland
24 arrived at her residence located at 2968 Juniper Hills,
25 Building 15 -- I can't -- sorry, it's a little blurry on here,

1 I think it's 16, Apartment 102, Las Vegas, Nevada, 89124.
2 Upon entering the residence, Rowland asked if anyone wanted to
3 buy a gun? Kelley asked, What kind and how much? Rowland
4 stated the firearm was a .44 Ruger revolver recently used in
5 the shooting of a mother and her daughter and was selling it
6 for \$250.

7 Rowland implied he was at the victim's apartment at
8 the time of the shooting and the mother grabbed a knife and
9 that was why she was shot. He was not specific as to why the
10 daughter was shot, nor did he give their names. He explained
11 an unnamed crackhead, quote/unquote, set the whole thing up
12 and there was four people involved total. Two fled to
13 Pasadena and one was wanted out of San Bernardino.

14 Rowland admitted his involvement and stated they
15 took \$4,000, weed, and dope out of the apartment. He received
16 \$1,000 for participating, but wasn't specific as to what he
17 did.

18 Q So none of that was anything that Mr. Rowland
19 told you. It was all what Ms. Cooper relayed on the phone,
20 sort of detailing what she believed Rowland said to her?

21 A Correct. Nor anybody else that was involved in
22 that case.

23 Q I know you didn't interview Mr. Mayo the first
24 morning, but you've reviewed his interview?

25 A Yes.

1 Q Did he ever say he saw the shooter and he was
2 wearing a white shirt or I know he was wearing overalls or
3 anything like that?

4 A No.

5 Q He never gave -- did he even give a description
6 of gender or -- or race?

7 A He had no information from a firsthand account
8 of what took place.

9 Q And this was after he spoke to Stephanie
10 Cousins?

11 A Correct.

12 Q Or threatened her in that way?

13 A Right.

14 Q Mr. Sgro asked you about Stephanie Cousins and
15 her interview with the police, and he asked you if she said
16 that in that first interview, The shooter was wearing a white
17 T-shirt. Do you recall being asked that on cross-examination?

18 A Yes, ma'am.

19 Q Now, ultimately, Stephanie Cousins made an
20 identification of the shooter, correct?

21 A She did.

22 Q It wasn't Job-Loc?

23 A No.

24 Q Then when you were speaking to Monica Martinez
25 in the videotaped interview?

1 A I'm sorry, say that one more time?

2 Q When you were speaking to Monica Martinez in the
3 -- in the --

4 A Oh, yeah.

5 Q -- videotaped interview --

6 A Yes, ma'am.

7 Q -- room, there was a suggestion on
8 cross-examination that she reached out her hands and that
9 there was some form of you -- you being played or some form of
10 manipulation; do you --

11 A Correct.

12 Q -- recall that?

13 Is that, like, a successful tactic typically when
14 you're doing suspect interviews?

15 A Successful from the suspect's point of view?

16 Q From your -- well --

17 A No.

18 Q -- does that --

19 A No.

20 Q -- work on you?

21 A No. No, I mean, every -- everybody that sits
22 across from me as a suspect in any -- any interview lies. And
23 if that ever happens that they don't, I'll fall out of my
24 chair. Everybody lies and in this case. She was no
25 different.

1 MR. SGRO: Objection, Your Honor. Everybody lies?
2 That's not responsive. The question was real simple --

3 THE COURT: Yeah, that's not responsive.

4 BY MS. WECKERLY:

5 Q Okay. Well, the fact that she put out her hands
6 and she touched you, does that make you more likely to believe
7 her?

8 A No, that's why the interview was so long.

9 Q And the interview lasted 12 hours because you
10 kept challenging her on her versions of events?

11 A Absolutely.

12 Q Now, Mr. Sgro asked you about -- this is Defense
13 Exhibit BB, which is the lab request. Can you see that or do
14 you want me to bring it up to you?

15 A It's -- it's still a little fuzzy on this
16 screen.

17 Q Okay. I'll -- I'll approach. It's -- this is
18 Defense Exhibit BB. I'd ask you to review that.

19 A Myself?

20 Q Yeah, just to yourself.

21 A (Witness complied.)

22 Q So this --

23 A The rest of it too, or --

24 Q No, that's okay.

25 A -- okay.

1 Q So this is a conversation that someone wrote
2 notes on -- about a conversation that occurred on September
3 the 30th of 2010?

4 A Correct.

5 Q Now, what is the process you have to go through
6 to request that items of evidence be analyzed for DNA?

7 A Well, we submit all the related items of
8 evidence through a request through the crime lab and then they
9 review that request. In this case because of the great number
10 of -- of things that we asked or requested that they test they
11 in turn had a conversation with me of, like, trying to ask me
12 why I needed all of these things tested, which isn't uncommon.

13 Q I mean, in -- in your experience, does the lab
14 try to limit --

15 A Yeah, they have --

16 Q -- for various reasons the number of actual
17 pieces of evidence that are analyzed for the presence of DNA?

18 A They have an extreme number of cases that they
19 have to work, not only from our own agency, but from other
20 agencies and limited resources to do so. So they request --
21 they try and get us to limit the amount of things that we
22 test.

23 Q And because of the nature of the case you were
24 investigating, did you want them to go and analyze everything,
25 rather than a portion of the collected evidence?

1 A Yes, as much stuff that we felt was pertinent
2 for that case, absolutely.

3 Q Okay. And so did you have a conversation where
4 you said, Look, I want every piece of evidence analyzed?

5 A Yeah, and I don't recall specifically exactly
6 what, but yes. I mean, ultimately we want everything that
7 we're requesting, we want it analyzed, so...

8 Q Okay. And the Defense has highlighted that you
9 said that you're trying to corroborate a story. Is that -- is
10 that why you wanted every piece of evidence analyzed?

11 A Well, as I said before, everybody -- we believe
12 that everybody is in this case that I spoke to and that other
13 detectives spoke to, we know that they're going to be
14 deceptive or minimize their involvement --

15 MR. SGRO: Objection to what -- Judge, that's just
16 not appropriate. We know everyone we talk to is going to be
17 deceptive. That's not to call the question.

18 MS. WECKERLY: Well, I asked why he made -- if he
19 made this request that they --

20 THE COURT: Objection's overruled.

21 MS. WECKERLY: -- validated --

22 BY MS. WECKERLY:

23 Q So why did you make the request that you did?

24 A Well, we want to basically confirm or, you know,
25 show that basically, that the story that each individual is

1 giving is consistent with the evidence at the scene and to
2 match those things up. That helps us determine what is truth
3 and what is deception.

4 Q And, I mean, in the real world the reality is
5 you don't -- although you swab something for DNA, you don't
6 always get results on it?

7 A Probably less than 50 percent is a guess, but
8 there are many times where we -- I mean, I know we request
9 prints and DNA, all sorts of things and -- many times and we
10 don't get half of that stuff. It just doesn't show up for
11 many -- a multitude of reasons.

12 Q Now, when you finally got the DNA results at the
13 Meikle Lane scene, was there any unidentified male DNA?

14 A Yes.

15 Q And that was on a cigarette butt and a kitchen
16 knob?

17 A That's correct. Excuse me.

18 Q Going to Job-Loc's apartment in Las Vegas, was
19 there unknown DNA in that apartment?

20 A Yes.

21 Q And was that -- some of that DNA labeled as
22 Unknnon Male No. 4?

23 A Yes.

24 Q Do you recall the types of items Unknnon Male No.
25 4 was on?

1 A I believe a -- some cigarette butts. There was
2 a number of items. I don't recall specifically each one,
3 though.

4 Q We've heard testimony that's -- there was
5 unknown male DNA mixed with Monica Martinez's DNA on a
6 cigarette butt and also with Mr. Burns and that there was also
7 a toothbrush of his -- of Unknon Male 4?

8 A Correct.

9 Q So at that point it probably wouldn't have been
10 surprising that Job-Loc's DNA would be in his own apartment?

11 A No. No, not --

12 Q And --

13 A -- at all.

14 Q -- if he's Unknon Male No. 4, and you know he's
15 not in your crime scene?

16 MR. SGRO: Objection. Calls for --

17 THE WITNESS: Correct.

18 MR. SGRO: -- speculation. How would he know who
19 Unknon Male No. 4 is?

20 MS. WECKERLY: Well, if -- Your Honor, we have
21 testimony that Unknon Male No. 4 is an Unknon Male No. 1,
22 which is the only thing I can --

23 THE COURT: Objection overruled.

24 BY MS. WECKERLY:

25 Q Detective, I'm showing you now what has been

1 marked as State's 282, and it's a collection of photographs?

2 A Correct.

3 Q Do you recognize those photographs?

4 A I do.

5 Q Where are they taken from? Look at --

6 A Well, this is Jerome Thomas or Job-Loc, that we
7 know as Job-Loc, and he's strapped down in a gurney, obviously
8 receiving medical care from medical attendants.

9 Q And are these Metro photos?

10 A They are.

11 Q And what incident are they associated with?

12 A This is from a petty larceny at Walmart on West
13 Charleston -- 6310 West Charleston Boulevard.

14 Q And this was in July of '10?

15 A Correct.

16 MS. WECKERLY: The State moves to admit 282.

17 MR. SGRO: May I just see them, first? Which number?

18 MS. WECKERLY: 282.

19 MR. SGRO: No problem. No objection.

20 MR. LANGFORD: No objection.

21 THE COURT: They'll be received.

22 (State's Exhibit 282 admitted.)

23 BY MS. WECKERLY:

24 Q So in July there was an incident he was involved
25 with at a Walmart where Job-Loc or Jerome Thomas got medical

1 attention, and I'm putting one of the photographs on the
2 scene, and this is one of the photographs that was taken
3 associated with his treatment or that incident?

4 A Correct.

5 Q And now, sir, I'm showing you a letter that was
6 admitted as State's 345. It's written by Willie Mason and
7 it's to who?

8 A Jerome Thomas.

9 Q And on page 1, can you read -- it's pretty
10 faint, but can you read that -- that second sentence?

11 A I hope this letter finds you in good health due
12 to your unfortunate situation with your leg and all.

13 Q Now, when you showed the photographic lineup to
14 Devonia, did you tell her that it is one of the six, or you
15 have to pick one of the six, or --

16 A No.

17 Q -- did you make her read the instructions, or
18 because she's a child would you have explained them?

19 A I read the instructions.

20 Q Okay. When you -- when you spoke to Devonia,
21 there's a transcript eventually made, correct?

22 A Correct.

23 Q And we see it -- we've seen the transcript and
24 there are -- there are lines, which as Mr. Sgro mentioned,
25 indicate that at least the transcriber found that portion

1 unintelligible?

2 A Yes.

3 Q And in those portions there is actual dialogue
4 or someone saying something at -- at some point; would that be
5 fair?

6 A Correct.

7 Q And when you're listening to her live, as that
8 interview is occurring, had she said something like, my dad,
9 Cornelius or some -- C-note, anybody like that, shot me, that
10 probably would have gotten your attention?

11 A No. In fact, she said that -- she mentioned
12 specifically --

13 MR. SGRO: Objection, Your Honor.

14 A -- somebody else shot her.

15 MR. SGRO: This is a narrative and it's not
16 responsive. That --

17 THE COURT: Rephrase the question.

18 BY MS. WECKERLY:

19 Q If she had said that Cornelius Mayo in some way
20 was responsible for the gunshot wound to her stomach, do you
21 think that you -- that would have alerted you in some way
22 during the interview?

23 A Yes.

24 Q And would you have followed up on that?

25 A Absolutely.

1 Q In this case, we have Job-Loc's phone records,
2 the cell phone data and the towers from the phone company,
3 correct?

4 A Yes.

5 Q Did you ever have his physical phone?

6 A No.

7 Q How about Willie Mason's physical phone?

8 A No, ma'am.

9 Q But we have the records?

10 A Yes, ma'am.

11 Q So you can get data on phones without having the
12 phone in your hand?

13 A Yes.

14 Q When you -- when you testified in family court
15 about the investigation -- do you recall that?

16 A I recall testifying, yes, ma'am.

17 Q You -- were you the only detective that
18 testified?

19 A I believe so.

20 Q And were you testifying as to a narrow aspect of
21 the investigation, or broadly what the investigation had
22 shown?

23 A I think just the general overall of what took
24 place, the circumstances.

25 Q When you met with Monica Martinez and her

1 attorneys and myself and Mr. DiGiacomo for that proffer, is
2 that -- was that pretty soon after her arrest or was that
3 something more recent?

4 A Definitely it wasn't recent. I don't recall the
5 date, but it definitely was not recent.

6 Q And just because these haven't -- I don't think
7 these have been admitted yet. Showing you State's Proposed 7.
8 Do you recognize who that is?

9 A I do.

10 Q Who is that?

11 A That is Stephanie Cousins.

12 Q And who is the -- 8?

13 A Monica Martinez.

14 Q And who is in -- sorry, 12?

15 A Donovan Rowland.

16 Q And are -- are those all fair and accurate
17 pictures of how those three individuals looked back in 2010?

18 A Yes, ma'am.

19 THE COURT: While we're on Stephanie Cousins, did you
20 personally interview Stephanie Cousins?

21 THE WITNESS: Yes.

22 THE COURT: When?

23 THE WITNESS: Well, I did more than once. I don't
24 know the specific dates, but I have them in my OR. I can get
25 them for you. I just don't know off the top of my head.

1 THE COURT: Where?

2 THE WITNESS: A couple different places. I believe
3 -- I know we did at our office for sure.

4 THE COURT: Was she in any way intoxicated or under
5 the influence when you interviewed her?

6 THE WITNESS: I don't think so. No.

7 MS. WECKERLY: State moves to admit 7, 8, and 12.

8 MR. SGRO: No objection, Your Honor.

9 THE COURT: Okay. They'll be received.

10 (State's Exhibit 7, 8, and 12 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. Let's start with --

13 MS. WECKERLY: Oh, could we please move that over to
14 marked. Thank you.

15 BY MS. WECKERLY:

16 Q -- 7.

17 MR. DIGIACOMO: Might want to wait for --

18 MS. WECKERLY: Oh.

19 MR. DIGIACOMO: -- it to come back over to you. Just
20 a second.

21 BY MS. WECKERLY:

22 Q Who is that?

23 A That's Ms. Cousins.

24 Q And 8, please?

25 A It's --

1 Q I know you know who it is.

2 THE COURT: You know, you can turn that?

3 THE WITNESS: Monica.

4 MR. DIGIACOMO: I know I can, Judge, but --

5 THE COURT: You're so fancy --

6 MR. DIGIACOMO: -- for some reason --

7 THE COURT: -- fancy with that thing.

8 MR. DIGIACOMO: -- oh, there it goes.

9 MS. WECKERLY: We'll see how fast he can turn it.

10 MR. DIGIACOMO: There you go.

11 BY MS. WECKERLY:

12 Q Who's that?

13 A It's Monica Martinez.

14 Q And 12?

15 A Yeah, that's Jerome.

16 Q How long is his hair?

17 A Well, I can't see it in this picture, but I
18 don't recall -- I recall it being pretty short.

19 Q Now, there's been a lot of discussions about
20 these two shots at the end of the hall, and then the number of
21 shots in the bullets and all that.

22 A Yes, ma'am.

23 Q I'm going to show you a picture -- this is
24 marked as State's Proposed 346. Do you recognize that photo?

25 A Yes, ma'am.

1 Q Is that of the crime scene after -- well,
2 probably on the first day, the 7th when you arrived?

3 A Yes, ma'am.

4 Q And is it a fair and accurate depiction of the
5 scene as it appeared that morning?

6 A Yes.

7 MS. WECKERLY: The State moves to admit 346.

8 MR. SGRO: No objection.

9 MR. LANGFORD: No objection.

10 MR. DIGIACOMO: Can we go back to me? It somehow
11 clicked off of me.

12 (State's Exhibit 346 admitted.)

13 BY MS. WECKERLY:

14 Q So looking -- one second.

15 Looking at 346, this is the piece of furniture
16 that -- that you and Mr. Sgro were discussing on
17 cross-examination?

18 A Correct.

19 Q You call it a shelf and I forget what he called
20 it, but this -- you guys were talking about the same piece of
21 furniture?

22 A Correct.

23 Q Now, when that was moved the next day, what was
24 behind it?

25 A There were two holes in the -- the north wall,

1 the hallway.

2 Q Okay. And those were the ones that we'd
3 separate, A and B?

4 A Correct. I believe A and B. I --

5 Q Okay. Were -- on the first day, were those
6 holes in the wall behind this piece of furniture noticed? I
7 mean, did you --

8 A No. No.

9 Q Those were missed on the first day?

10 A Correct.

11 Q Ultimately, that -- that furniture was moved and
12 you guys go back with the dowels and the --

13 A Correct.

14 Q -- to measure the -- I guess, the angles of the
15 bullets?

16 A Correct.

17 Q So if those shots behind there -- behind that
18 piece of furniture actually were from this incident, we'd
19 expect there to be some damage to that furniture?

20 A Yeah, that's -- absolutely.

21 MR. DIGIACOMO: Now you've gone too far.

22 MS. WECKERLY: No, I can see it.

23 MR. DIGIACOMO: Oh, there it is. Now I can see it.

24 BY MS. WECKERLY:

25 Q So looking at that closeup of 346, can you see

1 down into that piece of furniture?

2 A It appears that there's damaged areas, yes,
3 ma'am.

4 Q And when a bullet strikes a hard object like
5 furniture, is it unusual for it to fragment?

6 A No.

7 Q When -- when you showed Devonian the photographic
8 lineup --

9 A Yes, ma'am.

10 Q Oh, nevermind.

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

12 THE COURT: Anything further, Mr. Sgro?

13 MR. SGRO: Yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. SGRO:

16 Q You were asked some questions just now by Ms.
17 Weckerly about this application and affidavit for a search on
18 Donovan Rowland's place, right?

19 A Correct.

20 Q Now, she made a point to -- to suggest to you
21 that these were Ulonda Cooper's words that you recited in your
22 warrant, right?

23 A Correct.

24 Q Ulonda Cooper's words turned out to be true, at
25 least you found the gun, right?

1 A Some of them were, sure.

2 Q Well, you don't know. I mean, you're -- you're
3 -- now you're guessing. Let's talk about what we know. We
4 know, at least relative to Donovan Rowland trying to sell a
5 gun, we know that turned out to be true?

6 A That's correct.

7 Q We know, based on what you were able to learn as
8 a result of Ulonda Cooper, Donovan Rowland told you where it
9 was located too, right?

10 A Yes, he did.

11 Q So the only part that is not true is the part
12 you take issue with on Donovan Rowland being in the crime --
13 involved in the crime, right?

14 A Well, we were able to prove that, so, yeah.

15 Q Don't -- just -- with my question, the answer is
16 the only part you quarrel with is the part that conflicts with
17 David Burns's innocence, right?

18 A No, that's not the only part. There's another
19 part on there that I actually disagree with as well.

20 Q You were asked by the State if Stephanie Cousins
21 told you whether or not Job-Loc was the shooter?

22 A Say that one more time.

23 Q Were you asked just now whether or not Stephanie
24 Cousins told you that Job-Loc was the shooter?

25 A She never told me that he was the shooter.

1 Q Again, do you recall being asked that question
2 just a minute ago?

3 A I remember -- no, not the specific that she --
4 that he was -- she told me that, no.

5 Q Did you not -- you interviewed Stephanie Cousins
6 three times?

7 A Correct.

8 Q You, on the third time you talked to her, you
9 said you had a shooter in custody named D-Shot, right?

10 A Right -- well, I -- assuming so if it's on
11 there, sure.

12 Q Okay. I could --

13 A We did a photo lineup with her with who we
14 believed to be D-Shot, so, yes, I'm sure I told her that.

15 Q And then, do you remember her saying, Well, why
16 were they calling him Job-Loc in front of me? Do you remember
17 that?

18 A No.

19 MR. SGRO: May I approach?

20 THE COURT: Yes.

21 MR. SGRO: Page 5, Counsel.

22 MR. DIGIACOMO: I'm sorry, which interview is this?

23 MR. SGRO: I'm sorry, the third one.

24 MR. DIGIACOMO: What's the date?

25 MR. SGRO: Just a second. 9/30/2010, 11:15, page 5.

1 MR. DIGIACOMO: Thank you.

2 BY MR. SGRO:

3 Q Okay. So my predicate was, Did I tell you the
4 shoot -- D-Shot, the shooter is in custody, right?

5 A Okay.

6 Q Is that right?

7 A Correct.

8 Q And then she says, Well, you said you were going
9 to get him, right?

10 A You said that you -- yes.

11 Q And then you guys say, Well, we got him, he's in
12 jail, right?

13 A Correct.

14 Q She says, So that was his name? His nickname is
15 D-Shot? And then you guys say, Yes. Right?

16 A Okay.

17 Q And then does she say, Well, I don't know, why
18 were they calling him Job-Loc in front of me, right?

19 A Yeah, her daughter told her that name.

20 Q Sir, please just stick with my questions.

21 A Yes, that's what that says --

22 Q Does it say --

23 A -- absolutely.

24 Q -- that?

25 A Yes, it does.

1 Q All right. Then you guys say, Well, maybe
2 you're mixed up, right?

3 A Okay.

4 Q And then --

5 A And he just --

6 Q -- does she say, I -- I ain't miss nothing like
7 that, right?

8 A Correct.

9 Q Then you guys say, Well, they called him Job-Loc
10 a bunch of times? And she says, Exactly. I wasn't that
11 fucked up --

12 A Right.

13 Q -- right?

14 A Correct.

15 Q And then you say, Well, maybe that's their way
16 of concealing his identity, right?

17 A Okay.

18 Q And then in front of the Grand Jury --

19 MR. SGRO: Can I approach again, Your Honor?

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q -- the information was adduced and this is page
23 158. We got information --

24 A Who is this -- I don't -- who -- who is
25 speaking?

1 Q This is Detective Wildemann. Do you agree that
2 you got information that -- at that time -- when we got the
3 information, we believed that the possible shooter was a man
4 that went by the moniker of Job-Loc?

5 A Correct.

6 Q Job-Loc, we were able to identify through
7 California as Jerome Thomas?

8 A Yes, that is accurate.

9 Q You were shown --

10 MR. SGRO: May I have the ELMO, please?

11 BY MR. SGRO:

12 Q -- Exhibit 346. This is the one with the vacuum
13 cleaner?

14 A Yes, sir.

15 Q Are you aware that the CSAs, the crime scene
16 analysts in this case have traced what they believe a travel
17 path through this vacuum cleaner to a bullet that ends up
18 going through the vacuum, bouncing off a --

19 A Yes, I am.

20 Q -- or through the mattress, hitting --

21 A Yes, sir.

22 Q -- a curtain, landing on a curtain?

23 A Yes, sir.

24 Q Okay. And are you aware that crime scene
25 analyst in this case, and there have been several that have

1 testified --

2 A Right.

3 Q -- have never said that the bullet that traveled
4 through that vacuum did anything other than go into the master
5 bedroom. You --

6 A Well, I don't know what they said, but I'll
7 take --

8 Q Okay.

9 A -- your word for it.

10 Q Let me ask you this: In your case file can you
11 point me to a single report that disputes that the bullet that
12 went through the vacuum cleaner did anything other than end up
13 in the master bedroom?

14 A Well, the one that shows the two holes at the
15 north end of the hallway.

16 Q I understand what your testimony is about the
17 two holes in the hallway today.

18 A Right.

19 Q I'm asking you if any expert has written a
20 report that says, When we did the travel path and it went
21 through the vacuum, not only -- not only did it go into the
22 master bedroom --

23 A Right.

24 Q -- okay, but also, it went off and went through
25 the wall. Do you have such a --

1 A No.

2 Q -- report?

3 A No.

4 Q And you're sitting here today in court
5 suggesting that that's a possibility, right?

6 A Absolutely.

7 Q Okay. How does --

8 A I'd be happy to explain.

9 Q -- how much -- I'm sure you would be. How much
10 did the fragments weigh that went into the television?

11 A I have no idea.

12 Q How much does a bullet weigh that's used as
13 ammunition in a .44 Ruger?

14 A I don't know.

15 Q How much did the -- did the piece of the bullet
16 weigh that was in the master bedroom?

17 A I don't know. I didn't do the analysis on that.

18 Q Well, but you're sitting here testifying in
19 front of the jury about an analysis relative to fragments,
20 right? If you added -- if you added the weight, sir -- and
21 plus, Cornelius Mayo handed you a bullet, ostensibly, that
22 came from the television, right?

23 A Which matched the other bullets.

24 Q Is that a yes?

25 A Yes.

1 Q The bullet from Cornelius's hand --

2 A Correct.

3 Q -- the fragment from the television --

4 A Okay.

5 Q -- and the bullet that went into the master
6 bedroom, if you weighed all of them, wouldn't they exceed the
7 weight of one single round of Ruger ammunition?

8 A I don't do bullet analysis, sir, so I'm not in
9 any --

10 Q It sounded like --

11 A -- position to answer --

12 Q -- you did.

13 A -- that.

14 MR. SGRO: I have nothing else, Your Honor.

15 MR. LANGFORD: Nothing here.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Mr. Sgro showed you an interview --

19 THE COURT: Re-redirect?

20 MS. WECKERLY: Yes, please. Just one.

21 THE COURT: It's unusual. One question.

22 BY MS. WECKERLY:

23 Q Mr. Sgro showed you an interview from Stephanie
24 Cousins that was on September the 30th of 2010?

25 A Correct.

1 Q Where she's discussing the name of the shooter,
2 and -- Job-Loc?

3 A Yes.

4 Q Now, if you -- I'll have you just -- so this is
5 quicker, look on page 25 of your report.

6 A (Witness complied.) Okay.

7 Q On the date of September 12, two weeks earlier,
8 did you show Stephanie Cousins a photographic lineup?

9 A I did.

10 Q And did she identify David Burns as the shooter?

11 A She did.

12 Q So whatever name she's calling him, she
13 identified David Burns as the shooter, never Job-Loc?

14 A Correct.

15 Q Thank you.

16 THE COURT: All right. Thank you, Detective, for
17 being a witness. You'll be excused.

18 THE WITNESS: Yes, sir. Thank you.

19 MR. DIGIACOMO: Judge, understanding that all the
20 exhibits that have been offered have -- and the Court has
21 admitted, are admitted, and I've confirmed that with your
22 clerk, I believe, at this point --

23 THE COURT: Let's check on that.

24 THE CLERK: Yeah, just [inaudible].

25 THE COURT: Correct.

1 MR. DIGIACOMO: And anything that was offered today,
2 we checked yesterday. So there was only four exhibits, I
3 think offered today. They've all [inaudible] by the clerk.

4 We would rest.

5 THE COURT: All right. Ladies and gentlemen, that
6 concludes the State's case in chief. It is now the
7 opportunity of the Defendants to call witnesses if they wish
8 to. Keep in mind that it's always the burden of the State to
9 prove the Defendants' guilt. The Defendants do not have to
10 call witnesses if they don't wish to. And they never have a
11 burden of proof.

12 We've got to take a recess for a few minutes. We're
13 going to take a mid-morning recess, and then we're going to
14 come back and we'll have further proceedings.

15 During the recess it's again your opportunity --
16 your obligation not to converse among yourselves or with
17 anyone else on any subject connected with this trial, or to
18 read, watch, or listen to any report of or commentary on the
19 trial from any medium of information, including newspapers,
20 television, and radio, and you may not form or express an
21 opinion on any subject connected with this case until it is
22 finally submitted to you.

23 We'll be in recess for about -- about 15 minutes.

24 THE MARSHAL: Thank you. Jurors, please.

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

1 THE COURT: Let the record reflect that the jury has
2 left the courtroom. Mr. Burns and Mr. Mason, if you'd remain
3 standing, please. While I don't wish to give you advice, I
4 want you to be aware that in a trial the defendants are
5 entitled to testify in opposition to the State's case in
6 chief. That means that either one or both of you can offer
7 testimony if you wish to.

8 Did you know that, Mr. Burns?

9 DEFENDANT BURNS: Yes.

10 THE COURT: Mr. Mason?

11 DEFENDANT MASON: Yes, sir.

12 THE COURT: While you have a right to testify, you
13 also have a right not to testify.

14 Did you know that, Mr. Burns?

15 DEFENDANT BURNS: Yes, sir.

16 THE COURT: Mr. Mason?

17 DEFENDANT MASON: Yes, sir.

18 THE COURT: I can advise you this much, that if you
19 do testify, the district attorney would be entitled to
20 cross-examine you, and if you have any prior convictions for
21 offenses, they may be admissible to impeach you.

22 Did you know that, Mr. Burns?

23 DEFENDANT BURNS: Yes, sir.

24 THE COURT: Mr. Mason?

25 DEFENDANT MASON: Yes, sir.

1 THE COURT: If you decide not to testify, the State
2 is prohibited from commenting to the ladies and gentlemen of
3 the jury that you failed to testify or failed to call
4 witnesses.

5 Do you understand that, Mr. Burns?

6 DEFENDANT BURNS: Yes, sir.

7 THE COURT: And, Mr. Mason?

8 DEFENDANT MASON: Yeah.

9 THE COURT: Have you discussed with your counsel your
10 right to testify and not to testify?

11 Mr. Burns?

12 DEFENDANT BURNS: Yes, sir.

13 THE COURT: Have you made a decision as to testify or
14 not to testify?

15 DEFENDANT BURNS: [Inaudible.]

16 THE COURT: You haven't made a decision yet?

17 DEFENDANT BURNS: I made a decision.

18 THE COURT: You made a decision?

19 DEFENDANT BURNS: Yes.

20 THE COURT: All right.

21 Mr. Mason, do you have any questions about that?

22 DEFENDANT MASON: I'll talk with Mr. Langford.

23 THE COURT: You've already talked with Mr. Langford
24 about it?

25 DEFENDANT MASON: Yeah.

1 THE COURT: All right. Any questions about your
2 right to testify?

3 Mr. Burns?

4 DEFENDANT BURNS: No, sir.

5 THE COURT: Any questions, Mr. Mason?

6 DEFENDANT MASON: No, my attorney is -- has apprized
7 me of everything.

8 THE COURT: I understand.

9 Anything further on the canvass?

10 MR. SGRO: No, Your Honor.

11 THE COURT: Can we take a few minutes recess, and
12 then --

13 MR. SGRO: We need -- we probably need some time to
14 go over -- well, Your Honor, we need to make a decision who
15 we're going to call, if anybody, and I didn't have anyone
16 scheduled until 11, so --

17 THE COURT: Okay. 11:00, we'll start.

18 MR. SGRO: Well, yes. We'll do the best we can. And
19 we also have a stipulation relative to a Proposed Exhibit --
20 and --

21 MR. DIGIACOMO: Okay. But, I mean, the rest of this
22 doesn't even relate to Devonian --

23 MR. SGRO: That's what I'm saying.

24 MR. DIGIACOMO: I'd offer you to leave it on. It
25 doesn't matter.

1 THE COURT: We're on the record and you guys are
2 mumbling. You're not going to get a very good record if
3 you're mumbling like this.

4 MR. SGRO: Okay. So here's what we want to do, Your
5 Honor -- may I approach the clerk?

6 THE COURT: Certainly.

7 MR. SGRO: So we're going to mark an exhibit next in
8 order, and what it is is part of that medical chart we were
9 talking about earlier.

10 MR. DIGIACOMO: Are you giving her the whole thing,
11 or are you just going to take the one page?

12 MR. SGRO: Just the one page.

13 MR. DIGIACOMO: Yeah, just the one page is the only
14 thing that you can --

15 MR. SGRO: So all we want is the very first entry
16 that -- just to establish the timeline, Your Honor, of when
17 Cornelius Mayo went to UMC, it's got a notation there 5:30 in
18 the morning. The balance of the entries have nothing to do
19 with our case, and I need -- just need them to be whited out
20 or Sharpied out.

21 THE COURT: If they have nothing to do with the case,
22 we don't have to do that, do we?

23 MR. SGRO: I just don't want the jurors to be
24 confused, like, it reads as if it's a progressive chart and
25 it's not.

1 THE COURT: As opposed with the rest of this case,
2 they're not going to be confused.

3 MR. SGRO: We'll submit it to your -- whatever you
4 want to do, Your Honor.

5 THE COURT: What do you want to do? I -- if the
6 counsel stipulate to it, I'll do it, but --

7 MR. SGRO: We stipulate to the admission of that
8 first entry.

9 THE COURT: All right. You stipulate to the
10 admission of the document. And if you want us to just cross
11 out or something, we can do that, rather than -- I don't think
12 she wants to sit there and black out the rest of the page.

13 MR. SGRO: I was thinking just taking a white piece
14 of paper and running another copy so we only see the top part.

15 THE CLERK: Okay.

16 THE COURT: Can you do that?

17 THE CLERK: Mm-hmm.

18 THE COURT: She thinks she can do that. My clerk is
19 pretty good.

20 MR. SGRO: Yes, she is.

21 THE COURT: I can guarantee you that I could not do
22 that, so --

23 MR. ORAM: Thank you, Judge. We're going to go make
24 --

25 THE COURT: Hold on. Hold on. They're still

1 discussing it.

2 MR. DIGIACOMO: Yeah. I mean, because the --

3 THE COURT: Do we need the context in which the
4 statement is made?

5 MR. DIGIACOMO: Well, no. There's an entry at 10:25
6 in the morning that says, Cornelius has not -- snuck into the
7 room to see the patient, but it's noted on here that it's not
8 until 1610 that day that CPS put a hold and that they
9 restricted [inaudible], so if he wasn't restricted from seeing
10 her, I'd like the whole record.

11 THE COURT: All right. Leave the whole thing in.
12 We'll leave the whole thing in.

13 MR. SGRO: Sounds good.

14 THE COURT: To the extent that it has any value in
15 this case.

16 MR. SGRO: Thank you.

17 THE COURT: Anything further on the record, before we
18 take a break?

19 MR. DIGIACOMO: No.

20 MR. ORAM: No, sir.

21 THE COURT: There being no request, off the record.

22 (Court recessed at 10:46 a.m. until 10:59 a.m.)

23 (Outside the presence of the jury.)

24 THE COURT: Okay. Back on the record. Mr.
25 DiGiacomo?

1 MR. DiGIACOMO: Yes. Judge, we learned after October
2 9th of 2014 that the defense had interviewed Devonia Newman.
3 We also learned that -- from Ms. Newman, that she had drawn --
4 drawn a picture for the defense and had provided them a
5 statement. Shortly after learning that information -- and --
6 and so the Court's aware, there's been an entry of an order of
7 reciprocal discovery in this case for years at this point. We
8 made a specific request from those items from the defense.
9 And they said we don't have to turn them over to you. I'm
10 assuming because they thought they -- they didn't have to put
11 it in their case in chief.

12 They're now at the case in chief, and just a moment
13 ago handed me the two items we asked for six weeks ago or
14 actually more than that. It would have been some time in
15 October of 2014.

16 I'm asking the Court to exclude the items, because
17 there's an entry of an order. They've said they didn't have
18 to turn them over to us. Well, they have to live with that if
19 they didn't put it in in our case in chief. The rules of
20 discovery apply to their case in chief. It wasn't discovered;
21 it needs to be excluded.

22 MR. SGRO: Your Honor, Mr. DiGiacomo full well knows
23 they asked for it under reciprocal discovery in a discovery
24 statute. The Gray case holds that unless and until we know
25 we're going to put it in, we don't need to produce it this

1 week, have an obligation to produce things that we know are
2 going to occur in our case in chief. And until they rested,
3 we did not know who we're calling. We were making decisions
4 literally right now in the intervening minutes.

5 THE COURT: I understand. I'm -- I'm going to let
6 you use it. I have -- I've complete confidence that if I
7 excluded it, it would be affirmed. But just because I'm happy
8 to let you have things, even if you're not entitled to them,
9 I'm going to let you have them.

10 MR. SGRO: Thank you, Judge.

11 THE COURT: Bottom line is you're going to get it in.

12 MR. DiGIACOMO: Well, then let me ask you this --

13 THE COURT: Or if you lay foundation for it.

14 MR. DiGIACOMO: Let me ask you this question. When
15 we asked investigator Ifill --

16 THE COURT: The rules doesn't apply to you.

17 MR. DiGIACOMO: Well, no. But when we asked
18 Investigator Ifill -- because, yeah, the Rules of evidence
19 doesn't apply to Mr. Sgro, either. But --

20 THE COURT: The rule of just-give-them-what-they-want
21 applies to the defense, not to the State.

22 MS. WECKERLY: Oh, we know that.

23 MR. DiGIACOMO: We know that. But if we ask
24 Investigator Ifill has he written anything or documented
25 anything in any way, in any manner by his own hand, I'm

1 assuming that answer is no if they're about to put him on the
2 stand and have it handed to me.

3 THE COURT: We'll find out.

4 MR. SGRO: The report's on its way. I'm waiting for
5 it.

6 THE COURT: Okay.

7 MR. DiGIACOMO: The report from the witness they're
8 about to call is on its way?

9 MR. SGRO: Yes, sir.

10 MR. DiGIACOMO: When was it written?

11 MR. SGRO: Well, this -- sadly for the State, this
12 isn't my deposition and I'm not on the stand. All these
13 questions and more will be answered here in just a moment.

14 THE COURT: All right.

15 MR. ORAM: We're ready --

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

17 MR. SGRO: We're -- we're not.

18 THE COURT: The -- the Court's ready, the jurors are
19 -- are ready.

20 MR. SGRO: I don't -- I'm not ready. We don't have
21 our witness here yet. I'm told they're in the elevator. I
22 just got a text. So I need the Court's indulgence maybe a
23 couple more minutes.

24 MR. DiGIACOMO: I'd like to see the -- whatever it is
25 the witness allegedly is going to bring and put into evidence

1 in violation of all the discovery rules.

2 THE COURT: Let's -- let's just wait and let them put
3 it into evidence.

4 MR. DiGIACOMO: Who knows what it says?

5 THE COURT: We'll find out when we get it into
6 evidence.

7 (Pause in proceedings.)

8 THE COURT: So we save the tape, why don't we go off
9 the evidence -- off the record for a few minutes.

10 (Court recessed at 11:06 a.m., until 11:08 a.m.)

11 (Outside the presence of the jury.)

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

15 As I indicated, ladies and gentlemen, the State has
16 rested. That means they have completed their case in chief.
17 It is now the opportunity of the defendants to call witnesses.

18 Mr. Sgro, Mr. Burns may call his first witness.

19 MR. ORAM: Your Honor, we would call at this time
20 Tiffany Flowers Holmes.

21 MR. DiGIACOMO: Home?

22 MR. ORAM: Holmes. Tiffany Flowers Holmes.

23 TIFFANY FLOWERS HOLMES, DEFENDANT'S WITNESS, SWORN

24 MR. ORAM: May I proceed, Your Honor?

25 THE COURT: Yes.

1 THE CLERK: Please state your name and spell your
2 first and last name for the record.

3 THE WITNESS: Tiffany Flowers Holmes, F-L-O-W-E-R-S
4 H-O-L-M-E-S.

5 DIRECT EXAMINATION

6 BY MR. ORAM:

7 Q Good morning.

8 A Good morning.

9 Q How are you employed?

10 A I'm employed with the Clark County Department of
11 Family Services.

12 Q And how long have you been so employed?

13 A Six years.

14 Q Okay. And for those of us who don't know
15 exactly about all the different departments, is that commonly
16 known as CPS?

17 A Yes.

18 Q Okay. Child Protective Services?

19 A Yes.

20 Q Okay. And in this case, you were called because
21 you prepared certain -- authored certain reports; is that
22 right?

23 A Yes.

24 Q And you have a copy of your report in front of
25 you, I see?

1 A A case note, yes.

2 Q It's a case note, okay.

3 A Uh-huh.

4 Q And you have your attorney here today with you
5 in court?

6 A Yes.

7 Q Okay. And she's back in the back of the court,
8 right?

9 A Yes.

10 Q Okay. And I want to ask you, in October of
11 2010, did you have an investigator that you worked with named
12 Hava Simmons?

13 A Yes.

14 Q And that's H-A-V-A, last name S-I-M-M-O-N-S?

15 A Yes.

16 Q Okay. Did you happen to go with Investigator
17 Hava Simmons to visit Devonia Newman?

18 A Yes.

19 Q And where did that interview take place?

20 A University Medical Center.

21 Q Okay. And when you went there, how -- what was
22 the condition of Ms. Newman? Physical condition?

23 A Devonia was in the hospital. She had recently
24 been shot.

25 Q Okay. And so I understand that, and I know the

1 jury understands that.

2 A Uh-huh.

3 Q When you were talking to her, in other words,
4 was she lucid or was she, you know, groggy? That's what I
5 mean by what was her condition.

6 A I honestly can't recall her exact condition. I
7 -- she was -- she was able to speak with me and the
8 investigator.

9 Q And you were able to understand her?

10 A Yes.

11 Q Okay. Did Ms. Newman tell you that she would
12 not have been alive but for a man named Cornelius?

13 A Yes.

14 Q Did she say that things had not happened the way
15 that people were saying that they had happened?

16 A Yes.

17 Q And these are things that you specifically put
18 in your report or in your case note?

19 A Yes.

20 Q Okay. What I'm reading seems to be an accurate
21 rendition of what you put in your case note?

22 A Yes.

23 Q Do you recall that Ms. Newman stated to you that
24 the gunman had shot her in the back?

25 A Yes. That's what I put in the note.

1 Q And you were accurate when you prepared this,
2 weren't you?

3 A Yes.

4 Q Okay. You probably prepared this note sometime
5 right after; is that fair to say?

6 A Yes.

7 Q How does that work? In other words, you know,
8 it's not as though you wait a few years and then -- tell --
9 tell me how?

10 A We conduct the visit and then the notes have to
11 be put in within 48 hours.

12 Q Okay. So fair to say that these statements
13 would have been fresh in your mind?

14 A Yes.

15 Q Okay. And that's why you try to as accurately
16 as you can record them?

17 A Yes.

18 Q Okay. So you recall that Ms. Newman stated that
19 the gunman had shot her in the back?

20 A Yes.

21 Q Okay. And that Ms. Newman also stated that she
22 had seen three men grab drugs and money and leave the home?

23 A Yes.

24 Q Okay. And that again, I'm reading that
25 correctly from your note?

1 A From my note, yes.

2 MR. ORAM: Court's indulgence.

3 (Pause in proceedings)

4 MR. ORAM: That concludes my examination.

5 THE COURT: Do you have questions, Mr. Langford?

6 MR. LANGFORD: I do not, Your Honor. Thank you.

7 THE COURT: Any cross-examination?

8 MR. DiGIACOMO: I do, just briefly, Judge.

9 CROSS-EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Ma'am, what -- what part of CPS do you work for?

12 A I work for the permanency unit.

13 Q What does that mean that you do for a living?

14 A So that means that once the investigated --
15 investigation is concluded, I take over the case to either
16 reunify children with their families or find other means of
17 permanency for them.

18 Q And was this the first day that you ever met
19 Devonia?

20 A It was.

21 Q Okay. So Investigator Hava Simmons was doing
22 investigation of whether or not there's abuse or neglect or
23 whatever those issues are, your role is the reunification of
24 either the family or the placement in some place?

25 A Exactly.

1 Q Okay. When you go over there to speak to
2 Devonia, do you -- have you done any investigation into the
3 underlying facts of the case?

4 A No. I don't -- I don't conduct the
5 investigation, no.

6 Q So you're in a room with Devonia and
7 Investigator Simmons, and she starts speaking, and you try and
8 jot down -- did you take physical notes at the time?

9 A Yes.

10 Q Okay. So you try and jot down the best of what
11 you're hearing and then you ultimately place it in a case note
12 that's part of the CPS file --

13 A Yes.

14 Q -- would that be fair? You'd agree with me that
15 when you went there to see Devonia, she was at UMC in a
16 hospital room?

17 A Yes.

18 Q And she told you that -- well, you talked about
19 the fact that the other children were placed with their aunt,
20 and she was happy with that?

21 A Yes.

22 Q Right? And then she actually was upset because
23 CPS wasn't allowing her to see Cornelius, the person she
24 considered to be her father?

25 A Yes.

1 Q Okay. And she told you that there are certain
2 things that she disagreed with after she was speaking to
3 Cornelius about what CPS was saying happened at the scene --

4 A Yes.

5 Q -- is that fair?

6 A Yes.

7 Q And one of the things that she told you is that
8 she wasn't involved -- wasn't involved at all in the selling
9 of drugs and that she really wanted to see Cornelius?

10 A Yes.

11 Q Okay. And then she provides you kind of a -- a
12 story of kind of what happens and what -- in that she heard --
13 her mom heard a knock at the door, correct?

14 A Yes.

15 Q And then went to answer it, because a family
16 friend -- and she said a family friend asked to buy some drugs
17 and handed the mother a \$20 bill?

18 A Yes.

19 Q That's what she told you? And stated that as
20 soon as her mother tried to close the door, the man pushed it
21 open and shot her mother?

22 A Yes.

23 Q And Devonian stated she was stunned, but ran
24 after a few seconds?

25 A Yes.

1 Q And she says -- Devonia stated that is when the
2 gunman shot her in the back?

3 A Yes.

4 Q Did you know when she made that statement where
5 she had been shot?

6 A Not at that time, I did not.

7 Q Do you subsequently learn that she had been shot
8 in the stomach?

9 A Yes.

10 Q So you write it down as the gunman shot her in
11 the back, but ultimately you learn, no, she's been shot in the
12 stomach?

13 A Yes.

14 Q She made it back to the bathroom and closed the
15 door?

16 A Yes.

17 Q Told you that? And that Cornelius was in the
18 shower and called the police?

19 A Yes.

20 Q She said that she saw the gunman look in the
21 rooms where her siblings and aunt were -- were, but did not
22 bother with them, correct?

23 A Correct.

24 Q And then that's -- after that, there's a
25 statement in your report where it says something like Devonia

1 stated that she saw three men grab drugs and money and leave
2 the home?

3 A Yes.

4 Q She said that she was glad that nobody bothered
5 her brother and the sisters?

6 A Uh-huh.

7 Q Correct?

8 A Yes, she did.

9 Q Okay. She said that the kids did not see her
10 mother's face?

11 A Yes. That's what -- she said that, she reported
12 that.

13 Q And in response, you said that's still a loss to
14 her, that all the children are going to be receiving
15 counseling?

16 A Yes.

17 Q Okay. So she's saying, Hey, it's a good thing
18 the children didn't see my mother's face, and you still
19 explain to her, But they have a loss, so we're still going to
20 give them counseling?

21 A Yes.

22 Q And you're -- that's what you're talking to her
23 about is the fact that she's going to get counseling, as well,
24 and that there's -- this is going to be a difficult time for
25 her, and that's what your role is in the room, correct?

1 A Exactly. Yes.

2 Q Thank you very much.

3 MR. DiGIACOMO: I have nothing further, Judge.

4 MR. ORAM: Nothing further.

5 MR. LANGFORD: Nothing, Your Honor.

6 THE COURT: Ms. Flowers Holmes, thank you for being a
7 witness -- or, excuse me. Before you leave, a -- one question
8 that one of the jurors wanted me to ask.

9 You mentioned that you prepare your reports in about
10 48 hours after or within 48 hours of the interview?

11 THE WITNESS: Yes.

12 THE COURT: Is that 48 hour calender hours, or do you
13 have -- or is it just two days or two business days?

14 THE WITNESS: Well, two business days, yes.

15 THE COURT: Two business days?

16 THE WITNESS: Yes.

17 THE COURT: So if you interviewed on a Friday, you do
18 it maybe Monday or something like that?

19 THE WITNESS: Right. Exactly.

20 THE COURT: All right. Have a good day.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. SGRO: Willis Ifill. If I may approach the
24 clerk, Your Honor?

25 WILLIS IFILL, DEFENDANT'S WITNESS, SWORN

1 THE COURT: Yes.

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

4 THE WITNESS: It's Willis, W-I-L-L-I-S, Ifill,
5 I-F-I-L-L.

6 DIRECT EXAMINATION

7 BY MR. SGRO:

8 Q Good morning, sir.

9 A Good morning.

10 Q Sir, how are you employed?

11 A I'm a private investigator.

12 Q And what's the name of your company?

13 A Southwest Investigations.

14 Q And in your capacity as a private investigator,
15 did there come a time when Mr. Oram and I asked you to do some
16 work for us on a case called State of Nevada vs. David Burns?

17 A Yes, sir.

18 Q And did you get some specific assignments to do
19 in the course of that project?

20 A Yes, sir.

21 Q Was one of those assignments to interview
22 somebody named Cornelius Mayo?

23 A Yes, sir.

24 Q And did you do that assignment?

25 A Yeah. I interviewed him on October the 9th of

1 2014.

2 Q Where -- where was the interview?

3 A Interview was conducted at his residence, which
4 is -- if I can just refer to my notes?

5 Q Do you have a report, sir?

6 A Yes, sir.

7 Q And would that refresh your recollection as to
8 the specific address?

9 A Yes, sir.

10 MR. SGRO: May he do so, Your Honor?

11 THE COURT: Yes, certainly.

12 THE WITNESS: He was interviewed on the 9th of
13 October, approximately 2:15, at 2700 North Rainbow Boulevard,
14 Apartment 2095.

15 BY MR. SGRO:

16 Q Now, when you went to Mr. Mayo -- well, let's
17 back up.

18 First of all, is it your common practice to identify
19 yourself when you approach someone you're going to interview?

20 A Yes, sir.

21 Q And how do you identify -- how did you identify
22 yourself in this case when you went to speak with Mr. Mayo?

23 A I've got my state ID for the private
24 investigator.

25 Q Okay. And did you tell him anything beyond

1 that?

2 A Basically, I indicated that we were working the
3 case State of Nevada vs. Burns in reference to the incident at
4 his -- at his home. And I also provided him with a business
5 card.

6 Q All right. Does your business card say DA on
7 it?

8 A No, it does not.

9 Q Now, I want to talk about some specific areas of
10 inquiry. There was an issue in this case about a 911 call
11 that Mr. Mayo made; you were aware of that, right?

12 A Yes, sir.

13 Q Did you ask Mr. Mayo whether he contacted anyone
14 before he dialed 911?

15 A Yes, sir.

16 Q And what did he tell you?

17 A He indicated that he had contacted his brothers,
18 because of the -- the situation, and he wanted them to come
19 over to the house so that they can "go handle their business."

20 Q So coming over -- so Mr. Mayo's brother's coming
21 to the house to handle their business; that was the phrase
22 that he used?

23 A That's correct.

24 Q Did you ask -- strike that. And there was no
25 doubt as Mr. Mayo relayed that to you that he was talking

1 about that phone call being placed prior to 911?

2 A No doubt.

3 Q Did there come a time when you asked him about
4 whether or not he owned a gun?

5 A Yes.

6 Q And what did he tell you?

7 A He indicated that he had kept the firearm in the
8 house, but I believe it was that day or sometime within that
9 timeframe said he's loaned it to one of his home boys, because
10 he didn't want to keep the gun in the house, because there
11 were kids, you know, in the residence.

12 Q Okay. So did he tell you whether or not
13 Stephanie Cousins knew that he owned a gun?

14 A Yes.

15 Q Did there come a time when you interviewed --
16 I'm sorry -- Devonia Newman?

17 A Yes, sir.

18 Q And did you ask her in a similar fashion
19 questions about the event?

20 A Yes, sir.

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

22 THE COURT: Yes. Do we have a date and time when
23 that occurred?

24 MR. SGRO: Oh, I'm sorry, Your Honor.

25 BY MR. SGRO:

1 Q What's the date --

2 THE COURT: I think a foundation would be appropriate
3 under the circumstances.

4 MR. SGRO: Thank you.

5 BY MR. SGRO:

6 Q What's the date and time of the interview?

7 A It occurred on the same date, October 9th, 2014,
8 and it was -- give me one moment -- approximately 4:00 in the
9 afternoon.

10 Q How long did you spend with Mr. Mayo?

11 A Mr. Mayo, I'd say probably about an hour, hour
12 and 10 minutes.

13 Q And was there also another person from my office
14 named Jamie that was with you at Mr. Mayo's interview?

15 A Yes, sir.

16 Q And then did Mr. Oram and I join you and Jamie
17 at Devonia's interview?

18 A In the afternoon, yes, sir.

19 Q All right.

20 MR. SGRO: May I, Judge?

21 THE COURT: Yes.

22 MR. SGRO: Thank you, Judge. May I ask a couple of
23 questions from here, Your Honor?

24 THE COURT: Yes.

25 BY MR. SGRO:

1 Q So when you're speaking to Devonian, do you
2 remember handing her a copy of the tape-recorded police
3 statement?

4 A Yes, sir.

5 Q And did she have any comments about the accuracy
6 or the rendition contained within the four corners of the
7 police statement?

8 A Yeah. She had indicated that in some areas of
9 the statement -- and I guess let me backtrack.

10 She had stated that she had had a meeting, I believe
11 it was that morning, I'm not sure if it was the district
12 attorney himself or herself, or the investigator. But she
13 felt that whoever the individual that she had spoke with was
14 kind of, you know, I guess putting words in her mouth or
15 trying to -- I don't know, that the officers may have -- there
16 was some blanks and stuff in the statement and she had some
17 concerns about that.

18 Q So did you ask her to sort of put that in her
19 own words and write it out in her own hand?

20 A I did.

21 Q And did she do that?

22 A Yes, she did.

23 Q And does that appear to be what's marked as
24 Defense Exhibit EE?

25 A That's correct.

1 Q And did you sign and date this note after she
2 made it?

3 A Yes, I did.

4 MR. SGRO: Move for its admission, Your Honor.

5 MR. DiGIACOMO: No objection.

6 THE COURT: Be received.

7 (Defendant's Exhibit EE admitted.)

8 BY MR. SGRO:

9 Q Did you ask her to do the best she could to
10 summarize her feeling about what the police statement
11 included?

12 A Yes.

13 Q And is Defense Exhibit EE a reflection of that
14 request?

15 A That's correct.

16 Q And does it say, "After reading my statement, I
17 didn't feel that things I said were from me, like something on
18 the statement didn't seem right to me." And then she signed
19 it?

20 A Yes.

21 Q Did there come a time during the interview you
22 had with Ms. Newman that you asked her identify for you
23 certain characteristics of who the assailant was?

24 A Yes.

25 Q And did she indicate to you at some point that

1 the person was wearing a hat and wearing a bandanna?

2 A That is correct. I believe she said it was a
3 orange hat, possibly with some form of logo on the top, but
4 she couldn't recall it. Also, the individual had a bandanna
5 covering his face. Yeah.

6 Q And did -- when you got the facial features of
7 the assailant, did you ask her to draw it out?

8 A I did.

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

10 THE COURT: Yes.

11 BY MR. SGRO:

12 Q And does that drawing appear in her hand signed
13 by her and signed by you on Defense Exhibit DD?

14 A Yeah. That's my signature affixed.

15 MR. SGRO: Move for its admission, Your Honor.

16 MR. DiGIACOMO: No objection, Your Honor.

17 MS. WECKERLY: Your Honor, we've already previously
18 stated the State's position on these.

19 THE COURT: Is that no objection?

20 MS. WECKERLY: No, it's not no objection. But I
21 understand the Court made a different ruling.

22 THE COURT: Oh, even though it was not timely
23 produced --

24 MS. WECKERLY: It was not timely produced.

25 THE COURT: -- the objection's overruled. It'll be

1 received.

2 MR. SGRO: Thank you, Your Honor.

3 (Defendant's Exhibit DD admitted.)

4 BY MR. SGRO:

5 Q Have I put on the screen now Defense Exhibit DD,
6 which reflects what Devonia drew relative to the facial
7 features of the assailant?

8 A Yes, sir.

9 Q Did she also -- well, strike that. Did you ask
10 her what color skin tone the assailant had in this case?

11 A I did. She actually indicated that once, I
12 guess, she had gone down, she got a good look at the
13 individual's facial features, because apparently whoever the
14 shooter was rifled through her pockets. And she indicated it
15 was at a distance approximately 8 to 10 inches. And she said
16 that the assailant was of her same skin complexion, if not a
17 little darker.

18 Q Okay. So someone that had her same complexion
19 or a darker skin complexion than her?

20 A That is correct.

21 MR. SGRO: That's all, Your Honor. Pass the witness.

22 MR. LANGFORD: Nothing, Your Honor.

23 MS. WECKERLY: Your Honor, may the Court take
24 judicial notice of the fact that defense counsel just handed
25 us these reports while the jury was out on a break?

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MS. WECKERLY:

4 Q Good morning, sir.

5 A Good morning, ma'am.

6 Q How are you?

7 A I'm fine, thank you.

8 Q You are a private investigator?

9 A Yes, ma'am.

10 Q How long have you worked as a private
11 investigator?

12 A I've been on my own right now for three years,
13 and prior to that I was with the Clark County Public
14 Defender's Office for four years.

15 Q Okay. And when you were working at the PD's
16 office --

17 A Uh-huh.

18 Q -- had you worked anywhere prior to that, like,
19 as a -- any kind of officer in any, like, police or maybe a
20 related agency?

21 A I've been a deputy probation officer from 2000
22 to 2008, and before that when I first came into State of
23 Nevada, I was a corrections officer.

24 Q Okay. And certainly -- well, let me ask you
25 this. When you met with both of these witnesses, did you have

1 a tape recorder with you or something that, you know, a
2 digital recorder I guess is more modern?

3 A No.

4 Q And have you done that before?

5 A Have I done?

6 Q Have you ever taped someone you were
7 interviewing?

8 A I generally don't tape. I -- I usually
9 handwrite. Because if it's -- if it's taped, then it becomes
10 discoverable, and we'd have to, you know, turn that over. And
11 so I usually take handwritten notes.

12 Q Okay. And did you take any handwritten notes at
13 -- for these interviews? Because what I have right now are
14 typed.

15 A What's that?

16 Q I have right now typed notes.

17 A Yes.

18 Q So this wouldn't be your handwritten notes?

19 A No.

20 Q Where are those?

21 A The handwritten -- what we do is I would type up
22 a report or what have you, and then my handwritten notes get
23 shredded.

24 Q Okay. So those have been destroyed?

25 A Yeah.

1 Q And there is not recording, because then you'd
2 have to give it to us ahead of time?

3 A That is correct. That's my understanding.

4 Q Okay. So was that a request made of you not to
5 record it?

6 A No. It's been through my training and
7 experience, having been with the Public Defender's Office and
8 the attorneys that I've worked with over there, basically, I
9 mean, it was not a policy, but it was all procedure to just,
10 you know --

11 Q Right.

12 A -- take things in your mind, take copious notes
13 and --

14 Q Okay. And that's from the defense side, right?
15 Because you'd have to turn it over?

16 A Right.

17 Q Okay. So it's probably a tactical reason,
18 right, to not tape?

19 A You would have to ask that of the attorneys.
20 I --

21 Q Okay.

22 A -- for me, it's just -- it's just common
23 practice for me.

24 Q Okay. From working for the Public Defender's
25 and private --

1 A That's correct, ma'am.

2 Q Okay. Now, certainly, given your background and
3 when you worked in corrections and even as -- certainly your
4 background as a investigator now, would you agree with me that
5 people's ability to recall events is better closer in time to
6 the event versus about five years from the event?

7 A Absolutely.

8 Q And would you agree with me that the best way to
9 memorialize what they say or what their impressions were would
10 be to record -- record them close in time to the event?

11 A If -- if you can, yeah.

12 Q If -- if possible?

13 A If possible.

14 Q That's optimal. Did you -- were you provided by
15 the attorneys in this case any police reports?

16 A Oh, yeah. When I'm assigned on a case, I get
17 all of the State's discovery. What I do is I go through the
18 witness statements, police reports, just to kind of develop a
19 theory of the case. And at that point, I mean, we do kind of
20 case reviews. And then Mr. Sgro, whoever my attorney is,
21 gives me assignments or we provide feedback, what do we --
22 what we believe needs to be done, who needs to be interviewed.
23 And then we go out and interview the -- the individuals.

24 Q Would you have reviewed all of the discovery,
25 like all those four binders of police reports in this case, or

1 do you try to concentrate on certain parts?

2 A No. I -- I get -- every -- whatever the State's
3 discovery is, Mr. Sgro would have provided me, again, for my
4 review, all the audio tapes, police recalls, catalogues. And
5 I review all of that stuff, look for, you know, fact check,
6 look for inconsistencies. And then we start to develop a
7 theory of the case.

8 Q Okay. And what -- what does that mean, develop
9 a theory of the case?

10 A Well, we -- we -- what happens is you
11 cross-reference what the -- the police statements and
12 interviews say with, you know, the -- the alleged victim, if
13 possible. And look at our client's statement and
14 codefendant's statements and then cross-reference it. And
15 then we go out, as I said, we go out and we conduct
16 interviews.

17 Q Okay. Now, one of the interviews you did was
18 Mr. Mayo?

19 A That is correct.

20 Q And in his interview he told you that he never
21 saw the shooter during this incident?

22 A That's correct.

23 Q And he said that as of October 9th of 2014?

24 A That is correct.

25 Q Now, I want to put your report --

1 MR. SGRO: It's not in evidence, Your Honor.

2 THE COURT: Sustained.

3 BY MS. WECKERLY:

4 Q Flip to page 2 of your report. Now, I
5 understood from your testimony on direct that Mr. Mayo told
6 you that he ended up speaking with family members prior to the
7 police --

8 A That's --

9 Q -- and they came over to handle their business?

10 A No, I didn't say they came over. I said he
11 called them to come over.

12 Q Prior to calling the police?

13 A That is correct.

14 Q Okay. And did they make it there before the
15 police got there?

16 A I don't believe so.

17 Q Did you ask him that?

18 A Yeah.

19 Q And he said that they got there after the
20 police?

21 A That's my understanding. That's correct.

22 Q Okay. Is that in your report?

23 A No.

24 Q Okay. Did you review his 911 call?

25 A I did.

1 Q Okay. And it's your belief that he made that
2 call sometime after he called family members?

3 A That is correct.

4 Q And what -- how many times did you listen to
5 that call?

6 A Over -- I mean, I been on this case close to two
7 years. So I've reviewed that in different stages. So I
8 couldn't --

9 Q A lot?

10 A A lot.

11 Q A lot. Okay. And so that is -- that call is
12 made after he calls family members, but presumably, is that
13 call -- the 911 call, made after he's seen the two victims?

14 A Is the 911 --

15 Q Call made after he --

16 A The 911 call was made because in it he
17 specifically -- he's -- he's kind of freaking out, for lack of
18 a better term --

19 Q No, I -- yeah. I agree.

20 A -- and -- because he -- and he's saying on
21 there, Oh, my God, they blew her bleeping face off --

22 Q Uh-huh.

23 A -- or whatever. Come on, come on, get here,
24 come on. And then you hear the phone smash against the wall.
25 So.

1 Q Okay. But it's your belief that he, although
2 he's so animated and obviously in shock, it's your belief that
3 he made another call before that --

4 MR. SGRO: Objection to his --

5 BY MS. WECKERLY:

6 Q -- talking to family members?

7 MR. SGRO: -- his belief, Your Honor. I believe --

8 THE COURT: Sustained.

9 BY MS. WECKERLY:

10 Q Is it your -- that's what --

11 MS. WECKERLY: Well, that's what he wrote in his
12 report.

13 Q That's what you wrote, right?

14 A That's correct.

15 Q Okay. So he made some call to family members to
16 come handle business. What did that mean?

17 MR. SGRO: Calls for speculation. I think it was
18 just a quote that was elicited.

19 THE COURT: If he has an interpretation of what that
20 means --

21 MS. WECKERLY: Is Mr. Sgro testifying?

22 THE COURT: -- we'll let him -- we'll -- that may
23 mean something and -- I think. So I'll let -- if he can
24 interpret it, fine. If not, I understand.

25 MS. WECKERLY: Okay.

1 BY MS. WECKERLY:

2 Q Who did he call?

3 A His brothers.

4 Q What are their names?

5 A I have no idea. He said --

6 Q Did you ask him?

7 A He said he called his brothers.

8 Q Okay. Did you ask him who his brothers were?

9 A No. But he did indicate that shortly after I
10 believe it was this -- this incident, he spoke more of his --
11 one of his brothers being shot by the police and so --

12 Q And who is that, what was that brother's name?

13 A He didn't indicate that.

14 Q Okay. Did he tell you the number he dialed?

15 A You know what, I asked him for his -- his phone
16 to -- because he had made reference to some text messages and
17 stuff. He said that he did not have that phone or that he
18 would have provided it to me. And he never did.

19 Q Okay. But what I -- my question was, is did he
20 tell you the number he dialed before he called the police?

21 A No, he did not.

22 Q Okay. Did you ask him?

23 A What's that?

24 Q Did you ask him for that number?

25 A For the number?

1 Q Yeah.

2 A He said he was going to get us the phone to --
3 so I can review it to see what the text messages were and so
4 we can --

5 Q Yeah. And I think we're maybe miscommunicating.
6 I'm not talking about the text messages. I'm talking about
7 this call that you report that he made before 911.

8 A Right.

9 Q Who did he call?

10 A Called his brothers.

11 Q And we don't know their names?

12 A No.

13 Q And you didn't ask him?

14 A For his brother's names?

15 Q Right.

16 A No.

17 Q Okay. So obviously you didn't talk to them and
18 verify any conversation took place or anything like that?

19 A One's dead.

20 Q Well, I assume that's not who --

21 A One --

22 Q -- you're --

23 A Right.

24 Q -- that he's calling.

25 A I'm just -- I'm just saying, he was supposed to

1 provide the phone so I can, you know --

2 Q Right.

3 A -- review call logs, phone --

4 Q But my question is did you do any followup to
5 see what that meant or what he was talking about?

6 A What what meant?

7 Q Who he called or what number he dialed before he
8 called 911, as you're reporting here.

9 A No, he did not. Again, he didn't provide me
10 with his phone, so.

11 Q Okay.

12 A And then when I tried to follow up with him, I'd
13 gone back to the residence and there was a breakdown in, I
14 guess, communication with the family members and whatnot. And
15 I never had contact with him after that, albeit I tried on
16 approximately two to three occasions.

17 Q Okay. And you also write in your report that
18 you -- that Mr. Mayo met with Detective Shoemaker to show him
19 text messages from his phone?

20 A Hang on one sec. Yes.

21 Q Did he give you the name Shoemaker?

22 A Did he give me -- no, he said he met with the
23 detective.

24 Q And so you put in the name Shoemaker?

25 A What's that?

1 Q Did you put in the name Shoemaker here in your
2 report?

3 A If it's in here, yeah.

4 Q Okay. So you inserted that he met with
5 Detective Shoemaker?

6 A And I believe that -- that possibly came from my
7 reviews of the, you know, the police reports or whatever the
8 case may be.

9 Q Okay. So in your --

10 MR. SGRO: Counsel, what page you on?

11 MS. WECKERLY: 2.

12 MR. SGRO: Give me a little bit more than that?

13 MS. WECKERLY: Third paragraph from the bottom in the
14 middle, Cornelius says he met with Detective Shoemaker to show
15 him text messages.

16 BY MS. WECKERLY:

17 Q So that reference to the name Shoemaker is from
18 your read of police reports that you were provided?

19 A Yeah. I believe that's --

20 Q All right. So he didn't --

21 A He said -- he said he had met with -- he was --
22 either met with those -- had shown one of the detectives the
23 text messages in reference to the text from California.

24 Q Okay. But you inserted the name?

25 A Yeah.

1 Q Okay. Now, on the last page of your report, you
2 talk about Mr. Mayo saying that he normally was in possession
3 of a gun?

4 A Yes.

5 Q What were his exact words on that?

6 A He basically said that he had -- had firearms in
7 -- in the residence. But again, on that day or before that he
8 had loaned it to one of his "homeboys" because he didn't want
9 to keep guns in the house, because the kids were in the house
10 and -- but, yeah, he said he -- he had had firearms in the
11 residence.

12 Q When was the most recent time he had the gun in
13 the house?

14 A I couldn't tell you that. I interviewed -- I
15 interviewed him on the 9th, and I believe he had stated that
16 prior to this incident he had guns in the house --

17 Q Right.

18 A -- and that he had loaned to -- so I -- I
19 couldn't tell you when he --

20 Q Did you ask him how much prior he allegedly had
21 this gun in the house?

22 A It -- how much prior?

23 Q You're saying in your report as I understand it
24 that Mr. Mayo said, Oh, my gosh, on this night I didn't have
25 my gun in the house.

1 A He -- he said that on -- during the incident he
2 did not have the gun in the house because he had loaned it to
3 one of his homeboys or whatever, because --

4 Q Right.

5 A -- he had kids in the house and he didn't want
6 the gun to be around.

7 Q Okay. Well, those kids lived there all the
8 time.

9 A Uh-huh.

10 Q So what my question is, when was the most recent
11 time he told you that he had a gun in the house?

12 A It would be the -- prior to this incident, that
13 -- that day or that afternoon or -- before his homeboy picked
14 it up.

15 Q So he said --

16 A He loaned it out.

17 Q So he said to you that earlier that day his
18 friend came and got the gun?

19 A He said his homeboy, he had loaned the gun to
20 his homeboy.

21 Q That same day?

22 A That was -- that was his statement. Yes.
23 He's --

24 Q Okay. What time was that?

25 A I have no idea.

1 Q Did you ask him?

2 A No.

3 Q Did you ask him who the friend was?

4 A No. That's -- I mean, he's not going to tell me
5 who he gave a gun to. He's indicated that on the day prior --
6 before this incident, he loaned the gun to one of -- I'm
7 telling you -- these are his statements.

8 Q Yeah, I know. I'm just trying to figure out
9 what was asked of him. And so we don't have a recording. So
10 my question --

11 A What was --

12 Q My question is was he asked what time he gave
13 the gun to the friend --

14 A No.

15 Q -- or to the homeboy?

16 A No.

17 Q You didn't ask him that?

18 A No.

19 Q You -- did you ask him the name?

20 A Of the homeboy?

21 Q Yeah.

22 A No.

23 Q Did you ask him what type of gun it was?

24 A No.

25 Q Did you ask him what caliber it was?

1 A No.

2 Q Did you ask him where he kept the gun?

3 A It -- it's my understanding -- and again, this
4 is four months ago, but I believe it was in the bedroom.

5 Q And we would know for sure what he said if it
6 had been taped, right?

7 A Yeah.

8 Q Okay. But we don't have that?

9 A Right.

10 Q And he said he kept it in the bedroom; did he
11 say where in the bedroom?

12 A Like, in the dresser area or somewhere on top.

13 Q Okay. And you did no followup or actually
14 didn't ask any followup questions on that?

15 A Did I do -- as I indicated, I tried to do
16 followup with him, but --

17 Q With regard to the gun.

18 A No.

19 Q Okay. So let's talk about Devonia. She told
20 you that the person who shot her -- well, actually, let me
21 back up.

22 She told you that the person who came to the door was
23 Stephanie Cousins?

24 A That is correct.

25 Q And that she knew this, like, four and a half

1 years after the incident? And she told you that the person
2 who shot her and rummaged through her pockets was wearing
3 overalls?

4 A That is correct.

5 Q And she -- when she was describing the
6 complexion of the individual, the person was described by her,
7 according to you, as a little bit darker than her own skin?

8 A Her complexion to -- oh, maybe a little bit
9 darker, correct.

10 Q What was the lighting in the room at the time of
11 the incident?

12 A She said -- I'm -- I'm guessing that the --

13 Q No, not guessing. What was it?

14 A Oh, I -- I have no idea.

15 Q Okay. That was my question. Now, on the next
16 part of your report, you talk about how she said that her
17 voluntary statement to the police didn't seem right to her.
18 Okay. And then you give an example that she said, I hadn't
19 seen this person in my life, how would I be able to give a
20 physical description of them?

21 A Say that again? I'm sorry.

22 Q On the next part of your report, you say that --

23 A What -- what page are we on?

24 Q 2.

25 A Okay.

1 Q That Devonia said that with regard to her police
2 statement, that some of it doesn't seem right to her, correct?

3 A That's -- that's what she said, yes.

4 Q In what way didn't it seem right?

5 A Well, she -- she said that there were some
6 blanks or spaces that were left out in the report. And she
7 also made reference to, at the time that I guess she was
8 interviewed or whatnot, she was drugged. So she didn't
9 believe that -- and she had -- I don't know if it was you,
10 ma'am, or someone at your office she said she had met with, I
11 guess earlier that morning before we interviewed her.

12 Q Uh-huh.

13 A And she said that -- and it's not a direct
14 quote, but she felt like things were intentionally left blank
15 or that they were trying to make her say things that, in fact,
16 she hadn't said.

17 Q Okay. Now --

18 A So she was -- she seemed like she was a bit
19 confused in terms of the process and maybe some statements may
20 have been left out and some things.

21 Q So she was concerned about, as I understand from
22 what you're saying, the blanks in her transcript?

23 A Right. The interview that morning at the DA's
24 office or with --

25 Q Okay. And you're aware now that she said that

1 she wasn't pressured by either side in this case to say
2 anything?

3 A Oh, yeah. I didn't feel that she was pressured.

4 Q Okay. So what her concerns were, were the
5 blanks in the statement and what else?

6 A And the interview that morning with a member of
7 the DA's staff or -- I don't know if it was the attorney,
8 investigator.

9 Q Okay.

10 A She just said --

11 Q And what was her concern about that interview?

12 A In -- in terms of -- she just felt like, I don't
13 know if -- if the individual which she had met with --

14 Q Uh-huh.

15 A -- was trying to pressure her into making
16 certain statements or what have you.

17 Q Did she say she felt pressured?

18 A Yes.

19 Q Okay. And you're aware now she's testified that
20 she didn't --

21 A Well, I --

22 MR. SGRO: Objection. Asked and answered. And he
23 wouldn't be -- he --

24 THE COURT: Overruled.

25 MR. SGRO: -- the exclusionary rule has been evoked

1 [sic], Your Honor.

2 THE COURT: Overruled.

3 MS. WECKERLY: Not by us.

4 THE WITNESS: Am I aware as to?

5 BY MS. WECKERLY:

6 Q She -- she testified in this case already --

7 A Okay.

8 Q -- and she said that she didn't feel pressured
9 by you or anybody who's interviewed her in this case.

10 A Well, I wouldn't know that because I didn't have
11 any discussion with Mr. Sgro --

12 Q Okay.

13 A -- in reference to this --

14 Q Okay. But your --

15 A -- these proceedings.

16 Q But your representation is when she spoke to
17 you --

18 A On October the 9th.

19 Q Uh-huh. That she said she felt pressured?

20 A That is correct.

21 Q Now, I don't see that in your report, the word
22 pressure. Is that your word or her word?

23 A No, that's -- I believe that's what she had --
24 not in the statement that she had written out on the 9th with
25 the bandanna, that's what -- I believe that's where it -- it

1 was...

2 Q This is Defense EE. Yeah. Where did she say
3 she was pressured?

4 A Well, based on this, where she says, "The
5 statement didn't seem right to me."

6 Q Right.

7 A That's --

8 Q So she didn't say pressure?

9 A She said pressured when we -- we -- when we
10 interviewed her. But she didn't put it in her statement here.

11 Q Where does it say pressured in your report?

12 A It doesn't.

13 Q It doesn't?

14 A Right.

15 Q Okay. And I guess if she had been taped, we'd
16 know that?

17 A Yeah.

18 Q Now, in your report, you indicate that you were
19 doing the interview of her. Was anybody else present as you
20 spoke to her?

21 A Yes.

22 Q Did anyone else ask questions at the same time
23 you were?

24 A At the same time?

25 Q Uh-huh.

1 A No. I -- I asked questions, the attorney asked
2 questions.

3 Q Okay. And you were able to keep notes of all of
4 it?

5 A What's that?

6 Q And you were able to keep notes of all of that?

7 A Yeah.

8 Q And that's -- and that's been destroyed, though,
9 right?

10 A My handwritten stuff and whatnot? Yeah. Well,
11 except the picture and the -- of the stuff that...

12 Q Okay. And you had her draw a picture four and a
13 half years after the incident, correct?

14 A Yeah.

15 Q Okay. Would you agree with me that a
16 photographic identification is always or typically or
17 generally more accurate than a 17-year-old's handwritten
18 drawing five years, four and a half years after an incident?

19 A Oh, anytime you can get a photograph, it's --

20 Q A photographic identification's probably better?

21 A But in -- in terms of that, in terms of her
22 depiction, I don't think we'd get a photograph of a guy with a
23 bandanna and a hat. So -- but anytime you can get a
24 photograph, it would be beneficial.

25 Q It's a better ID?

1 A Yeah.

2 Q Thank you.

3 THE COURT: Anything further?

4 MR. SGRO: Just a second, Your Honor. No.

5 THE COURT: All right. Thank you for being a
6 witness.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You'll be excused, sir.

9 THE WITNESS: Thank you.

10 MR. SGRO: And that concludes our presentation, Your
11 Honor.

12 THE COURT: All right. Mr. Langford, you may call
13 your first witness.

14 MR. LANGFORD: I do not have any witnesses to call,
15 Your Honor.

16 THE COURT: All right.

17 MR. LANGFORD: I rest.

18 THE COURT: A rebuttal?

19 MR. DiGIACOMO: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, that's
21 all the witnesses and the evidence in the case. It's now my
22 obligation to read to you instructions on the law. Those
23 instructions are pretty much prepared, but I've got to finish
24 them. And before I do, we'll -- I'll do that over the lunch
25 hour. We'll come back at 1:00 and you'll listen to my closing

1 instructions. The instructions are going to take about 45
2 minutes to read to you. Believe me, they're long. And after
3 that you'll listen to the closing arguments of counsel.

4 During the recess it's again your duty not to
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, or radio. You
9 may not form or express an opinion on any subject connected
10 with this case until it's finally submitted to you.

11 And it is still not submitted to you. We'll be in
12 recess till 1:00 this afternoon. Have a good lunch.

13 (Jury recessed at 11:51 a.m.)

14 THE COURT: Record reflect the jury has left the
15 courtroom. Counsel are familiar with my Proposed jury
16 Instructions Nos. 1 through 53. Does the State object to the
17 giving of the -- any of those instructions?

18 MS. WECKERLY: No, Your Honor.

19 THE COURT: Does the defense wish to make any
20 objections to those instructions?

21 MR. ORAM: Your Honor, we have already sent over to
22 the Court any objections that we had. The Court has made
23 rulings. The only thing I want to put on the record, and I
24 can't remember if we did it the other day, and that was the
25 Haglemeyer [phonetic] instruction, which we asked to be --

1 THE COURT: It was not on the record, I don't think.
2 So you're going to object to Instruction Nos. --

3 MR. ORAM: It -- that would be --

4 THE COURT: -- 8 and 9.

5 MR. ORAM: Yes. And we would ask that they not be
6 given. And there was lengthy discussion as to our tactical
7 reasons for doing so. And -- and the reason I put that on the
8 record, Your Honor, is because I could see how postconviction
9 counsel, in the event of a conviction, could look at this and
10 say, Why would you want the Haglemeyer instructions out? The
11 Haglemeyer being 9, that I recognize as Haglemeyer vs. State
12 of Nevada.

13 For tactical reasons we wanted it out. My
14 understanding is the Court is giving them over our objection.

15 MR. LANGFORD: The same objections as Mr. Oram.

16 THE COURT: And it's my understanding that the State
17 thinks that I should give them?

18 MS. WECKERLY: Yes, Your Honor. We do have a witness
19 in this case who was a charged co-defendant. And based on
20 that we have to corroborate her testimony, based on that case.
21 And the jury needs to be instructed.

22 THE COURT: I'm concerned that it might be err if I
23 do not give instructions 8 and 9. Therefore, I feel compelled
24 to do so.

25 Anything further on the instructions before I read

1 them to the jury after lunch?

2 MR. ORAM: Yes, Your Honor. One other one. You may
3 recall that on -- we e-mailed the Court stating that we didn't
4 believe that there was evidence of flight as to Mr. Burns.
5 Mr. Burns apparently comes from California. You heard his
6 statement where he said in a letter that our visit to
7 California was -- or our visit to Las Vegas was over. I
8 looked at the date that the bus was, and that was a Sunday. I
9 think it's not uncommon for people from California to go back
10 home on a Sunday. It's 36 hours after the crime. It just
11 does not appear to be flight to me.

12 THE COURT: I'll help you out, because you don't know
13 the number of it. It's Instruction No. 14 you want to object
14 to.

15 MR. ORAM: Yes. It is No. 14, yes.

16 THE COURT: That's -- I'm sure you knew that. I
17 think arguably the defendants leaving town, changing their
18 names to get on the bus and so on, that is arguably a flight,
19 that the State could argue. So I'm -- I'm going to give the
20 -- they -- the State offered it, I think I'm going to give it.

21 Anything further with regard to instructions before I
22 read them to the jury?

23 Oh, I've got something. When I read the Instruction
24 No. 3, which is the one -- the lengthy one that lists the
25 contents of the superseding indictment, I'm not going to read

1 for the jurors the numbers of the NRS, because they wouldn't
2 know what that is, anyway. I'm just going to read the charges
3 and the contents to the jury.

4 MR. ORAM: No objection.

5 MR. DiGIACOMO: No objection.

6 MR. LANGFORD: No objection.

7 MR. ORAM: And -- and then, Judge, there are three
8 instructions that I often raise on I think hundreds of appeals
9 now that have always been denied. I understand that Mr. Burns
10 has waived his penalty phase for life without parole if he's
11 convicted and an appeal. Again, they're issues that I raise
12 only in preservation of attacking --

13 THE COURT: You want to object to Instruction No. 5,
14 which defines it beyond a reasonable doubt.

15 MR. ORAM: Yes, Your Honor.

16 THE COURT: I thought so.

17 MR. LANGFORD: Your Honor -- go ahead.

18 MR. ORAM: And I'll submit it to the Court with that.

19 MR. LANGFORD: It is also -- would be my intent, Your
20 Honor, and I always do this to preserve for the record, it
21 would be my intent to argue to the jury what reasonable doubt
22 means and to use common -- everyday common sense issues. I
23 think the Supreme Court is dead wrong on this issue. And
24 until they change their minds, I'm going to continue to say I
25 am going to argue that this afternoon. I believe Mr.

1 DiGiacomo is going to say I object, that's not a proper
2 argument. And the Court will sustain his objection. But I
3 need to make the record.

4 MR. DiGIACOMO: Well, I believe Mr. Langford is aware
5 that the Supreme Court said it's misconduct for either party
6 to quantify, qualify, or give those type of examples that Mr.
7 Langford wants to give. I think for the record we accept that
8 he's going to offer it. He's not going to do it, so that he's
9 not going to force us to object here. So that was for the --

10 MR. LANGFORD: I -- I don't want to have to make them
11 object in front of the jury and --

12 THE COURT: I'm not prepared to overrule the Supreme
13 Court, at least today. So the objection is already sustained
14 without your having to -- to do it.

15 MR. LANGFORD: Thank you, Your Honor.

16 MR. DiGIACOMO: Judge, the only other thing is both
17 parties, both defendants have requested the -- this is just
18 for the record, the right of the defendant not to testify.
19 That instruction is in there, or the number --

20 THE COURT: It is in there.

21 MR. DiGIACOMO: It is in there. But for the record,
22 they are asking for it on the record.

23 MR. ORAM: Yes, that's correct on behalf of Mr.
24 Burns.

25 MR. LANGFORD: On behalf of Mr. Mason, as well.

1 THE COURT: All right. And you request that I read
2 the instructions before argument?

3 MR. LANGFORD: That's correct.

4 MR. ORAM: Yes, Your Honor.

5 THE COURT: All right. We'll see you at 1:00.

6 MR. SGRO: We have to -- that resolved the
7 instructions, Your Honor. But relative to the scheduling, the
8 -- the way that we had it mapped out is that Mr. Langford was
9 going to go first in closings.

10 THE COURT: Okay.

11 MR. SGRO: But by the time we read instructions and
12 Ms. Weckerly concludes, I'm told she -- they --

13 THE COURT: Is Ms. Weckerly doing the opening?

14 MS. WECKERLY: Yes.

15 THE COURT: Oh, okay.

16 MR. SGRO: I'm told they're going to --

17 MR. DiGIACOMO: That'll be 3:00.

18 MR. SGRO: I'm told they'll be done around 3:00. And
19 I also --

20 THE COURT: I don't want to waste the rest of the
21 day.

22 MR. LANGFORD: I -- I am not --

23 THE COURT: The least we can do is Langford.

24 MR. LANGFORD: I'm not prepared to argue today, Your
25 Honor.

1 THE COURT: But now -- now's a good time to start
2 working on it.

3 MR. LANGFORD: I -- well --

4 THE COURT: The case is four and a half years old.
5 Maybe is a good time for you to start working on it.

6 MR. LANGFORD: You know, they've got two attorneys.
7 They've got two attorneys. It's just me. I apologize that
8 I'm not able --

9 THE COURT: Well, how about ---

10 MR. LANGFORD: -- to do the work of --

11 THE COURT: -- how about Mr. Sgro doing his first
12 argument? I understand Sgro, and even though this is no
13 longer a death penalty case and you don't have a right to two
14 arguments, I'll let you have two. But at least one of you
15 could make their argument.

16 Mr. Sgro?

17 MR. ORAM: Court's indulgence.

18 MR. SGRO: Obviously --

19 THE COURT: I'll let you make yours. We'll be recess
20 till 1:00.

21 MR. ORAM: Your Honor, I'll tell you what. As -- as
22 a courtesy to the Court, I will make mine after --

23 THE COURT: You'll make yours.

24 MR. ORAM: And then I guess --

25 THE COURT: Mr. Oram's going to make his. We'll

1 leave Sgro for tomorrow morning, and then Langford thereafter.

2 MR. SGRO: Langford -- Mr. Langford would have to go
3 first thing tomorrow morning and I'll finish.

4 THE COURT: We're not going to break up --

5 MR. SGRO: Well, Your Honor, I'm not ready today. I
6 have a Powerpoint, we've gotten the DVDs the other day.

7 MR. DiGIACOMO: We're ready.

8 MR. SGRO: Well --

9 THE COURT: Well, we'll have -- we'll have Oram this
10 afternoon. Okay.

11 MR. SGRO: And we have to do Mr. Langford out of
12 order.

13 MS. WECKERLY: No.

14 THE COURT: Then we'll do Mr. Langford.

15 MR. ORAM: Then why don't we do them all?

16 MR. SGRO: Then, yeah, the alternative would be --

17 MR. ORAM: Just get them done today.

18 MR. SGRO: -- let's stay late.

19 MR. ORAM: Let's stay late and get them done.

20 THE COURT: Well, let's see how long it takes.

21 MR. ORAM: See what --

22 THE COURT: I don't know --

23 MR. ORAM: [Indiscernible].

24 THE COURT: -- how long you guys are going to take.

25 MR. ORAM: Judge, can we tell you what the problem

1 is? We've had a capital case with Mr. DiGiacomo. What --
2 what was very good for Mr. DiGiacomo is --

3 THE COURT: This is no longer a capital case.

4 MR. ORAM: No, I understand that. But what happened
5 is we all finished except for Mr. DiGiacomo, and then he was
6 able to get up and just have a whole morning with everybody
7 fresh. We don't want to do that. I think it's fair that
8 either we all go --

9 MR. DiGIACOMO: Amazing what the truth --

10 MR. ORAM: -- or --

11 THE COURT: I'm not going to waste a half a day.

12 MR. ORAM: No. That's fine.

13 THE COURT: Okay. Let's start this afternoon and see
14 how long Ms. Weckerly takes.

15 MR. ORAM: Okay.

16 THE COURT: All right.

17 (Court recessed at 11:59 a.m., until 1:05 p.m.)

18 (In the presence of the jury.)

19 THE COURT: You may be seated. State of Nevada vs.
20 Mason and Burns. The record will reflect the presence of both
21 defendants, their attorneys, the district attorney, and all
22 officers of the court and the ladies and gentlemen of the
23 jury.

24 Ladies and gentlemen, I'm going to read instructions
25 on the law to you now. These are in writing. They're long,

1 they're complicated. Keep in mind that you miss something,
2 you don't completely understand them, you're going to have a
3 copy of these instructions to take back to the jury room with
4 you. And you can go over them then again at your leisure if
5 you wish. You don't have to take notes, because you're going
6 to get a copy, complete set. As a matter of fact, I'm reading
7 them from a copy. And you're going to get a copy to have with
8 you when you're deliberating.

9 (Jury instructions read.)

10 THE COURT: All right. Ladies and gentlemen, that
11 concludes the instructions on the law. As I told you, they're
12 kind of lengthy. Most of them are required by -- they are
13 statutes and case directions that I read to you. So they're
14 -- that's why they're kind of long and lengthy, because
15 they're written by legislators.

16 And it's now the opportunity of each of the lawyers
17 to argue the case to you. Unlike opening statements where the
18 lawyers gave you an idea of what the evidence was going to be,
19 at this point it's the opportunity of the lawyers to explain
20 to you what evidence they think you should believe and what
21 evidence they think you might not want to believe, and how you
22 should apply that evidence to the instructions on the law that
23 I have given you.

24 Because the State has the burden of proof in this
25 case and in every criminal case, the State has the right to

1 begin and end the arguments. So the State argues first, then
2 each of the three defense lawyers will be given the
3 opportunity for an argument. And then the State will be given
4 an opportunity for reply. That's the procedure in every
5 single case.

6 I'm not sure we're going to complete all the
7 arguments today. They may go into tomorrow. But we'll start
8 with the State's argument for -- the opening argument first.
9 And I think Ms. Weckerly's going to do that?

10 MS. WECKERLY: Yes, Your Honor.

11 THE COURT: All right. Ms. Weckerly. Yes? Whoa.

12 UNIDENTIFIED JUROR: I know this is unusual, but I
13 could take a restroom break?

14 THE COURT: You want a recess?

15 UNIDENTIFIED JUROR: No, just a restroom break real
16 quick.

17 THE COURT: We'll take a recess for just a few
18 minutes.

19 UNIDENTIFIED JUROR: Yeah, could we please.

20 THE COURT: During the recess it's again your duty
21 not to converse among yourselves or with anyone else on any
22 subject connected with this trial, or to read, watch, or
23 listen to any report of or commentary on the trial from any
24 medium of information including newspapers, television, or
25 radio. You may not form or express an opinion on any subject

1 connected with this case until it's finally submitted to you.
2 And it's still not submitted to you.

3 We'll be in recess for about 10 minutes, everybody
4 get a restroom break.

5 (Court recessed at 2:03 p.m. until 2:15 p.m.)

6 (In the presence of the jury.)

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

11 As I indicated to you, ladies and gentlemen, the
12 State is given the opportunity to make the first opening
13 statement and the last one, and so the State -- I understand
14 Ms. Weckerly is going to go first.

15 Ms. Weckerly.

16 MS. WECKERLY: Thank you. Thank you.

17 STATE'S CLOSING ARGUMENT

18 MS. WECKERLY: Good afternoon. At this point in the
19 proceedings, you've heard a lot about I guess the comings and
20 goings of Cornelius Mayo, and he is someone who in this case
21 when you hear about him is sort of easy to take issue with and
22 somewhat easy to criticize because of what was going on in the
23 house at the time this crime occurred, and maybe even to a
24 certain extent Derecia Newman as well.

25 And when he came before you, he said that he doesn't

1 know where the drugs came from and that he wasn't involved in
2 that sort of activity, and to a certain extent, maybe he
3 doesn't want to face the role he played in the offense that
4 took place on August the 7th of 2010, and it probably wasn't
5 the most courageous moment in his life when he was in the
6 bathroom hiding at the time his girlfriend and daughter got
7 shot.

8 But let's remember what the facts of the case are.
9 He didn't shoot anybody in the head, and he didn't shoot a
10 12-year-old girl. So any further discussion about him or some
11 possible gun fight taking place in that apartment that morning
12 is misguided and disregards literally every piece of evidence
13 in this case and all of the testimony that you've heard and
14 every exhibit that you've seen.

15 His charges, child neglect, trafficking, that's left
16 for another jury and another day. They were dealing drugs out
17 of that apartment, and that made him the target, and that's
18 sort of just the facts of the case. This isn't the time or
19 the place to judge the actions of Derecia Newman or Cornelius
20 Mayo. It's just a fact that comes into this case.

21 At this point, ask yourselves what the point of
22 suggesting Cornelius Mayo actually having a gun was. Is the
23 defense suggesting to you that someone came in, shot Derecia
24 Newman in the head, ran down the hallway chasing Devonia,
25 shoots through the bathroom door, and it's actually Cornelius

1 who shoots Devonia after that? Is that what they're
2 suggesting to you?

3 Now, remember, it was a little while ago, but in
4 opening statements, Mr. Sgro actually played a portion of
5 Devonia's interview, and he actually even went over it with
6 Detective Bunting today. It was those lines on the transcript
7 -- you might recall that -- and he asked Detective Bunting
8 today and he suggested in his argument in opening statement
9 that in that blank spot that was regarded as unintelligible,
10 in that spot, that's Devonia recounting a telephone call, the
11 9-1-1 call or some call that Cornelius Mayo made, and
12 according to the defense interpretation, Devonia reports
13 hearing Mayo saying, I shot my daughter, or something to that
14 effect.

15 Now let's listen to the defense opening argument.

16 (Audio/video played.)

17 MR. SGRO: Objection. This is not evidence. This is
18 completely improper.

19 THE COURT: This is not in evidence?

20 MS. WECKERLY: This is in evidence.

21 MR. SGRO: I thought she said the opening argument --
22 opening statement.

23 MS. WECKERLY: This is the excerpt that was played by
24 the defense.

25 THE COURT: She can play what --

1 MR. SGRO: The opening statement?

2 THE COURT: -- you played in opening statement.

3 MR. ORAM: Judge. Judge.

4 MS. WECKERLY: I'm going to restart it because it was
5 interrupted by counsel.

6 (Audio/video played.)

7 MS. WECKERLY: So he -- they showed you that slide
8 and injected their own interpretation of the audio, and it
9 says, Telling family where we stay. He said, I shot my
10 daughter. Now, you will be the ultimate interpreters of what
11 that recording says, and you'll have the full recording on a
12 disc in the deliberation room, and you'll be able to listen to
13 it as many times as you want.

14 The State's interpretation of what she's saying is
15 different.

16 (Audio/video played.)

17 MS. WECKERLY: The State's interpretation is what
18 Devonia is reporting her dad saying is, My daughter got shot.
19 My daughter got shot. But as I said, you will have the
20 recording back there. You can play it for yourselves and make
21 your own determination individually and collectively regarding
22 what was said.

23 The other suggestion made by the defense is that
24 somehow Cornelius Mayo made another call before calling 9-1-1
25 on the morning of the incident. We'll be -- in a second, I'll

1 play for you his 9-1-1 phone call to the police that morning.
2 The first portion I'm going to play is the point where -- at
3 least according to what the recording is saying -- Cornelius
4 Mayo is coming out and discovering that his girl has been
5 shot, and he's not talking about Derecia. He's talking about
6 Devonia, and at the end of the clip, he actually says, Lay
7 down, or, Stay there, Devonia.

8 (Audio/video played.)

9 MS. WECKERLY: The State's interpretation of that is
10 that it's Cornelius Mayo finding Devonia, seeing she's shot,
11 believing she's dead and actually telling her to lay down. As
12 he described for you in his testimony, he was in the back
13 bedroom with her. He sees her, and then he goes to the front
14 part of the apartment, and that's when he sees Derecia.

15 I'm sure you've noted, as you just heard, the strain
16 in his voice, the stress and the surprise upon seeing the
17 injuries to his daughter. The suggestion that he made some
18 other phone call to call his friends over is absurd. He is
19 discovering her for the first time.

20 And now listen to what the State suggests to you is
21 him discovering Derecia.

22 (Audio/video played.)

23 MS. WECKERLY: Now, in that clip, that's obviously
24 Mr. Mayo describing seeing Derecia, and you can hear -- he's
25 almost nonverbal because he's so shocked and alarmed at what

1 he -- what he has seen, and it doesn't sound like someone who
2 has made some other phone calls to arrange to alter the
3 evidence in the case.

4 When he sees both of these women -- or a young girl
5 and a woman who are important in his life, he is literally on
6 the phone to 9-1-1, and you know from the testimony in this
7 case that the police arrive -- he meets them in the street,
8 and they're there about three minutes after the 9-1-1 call.
9 There's simply no time for him to alter the crime scene in any
10 way, and the idea that maybe he did it, maybe he did alter
11 that scene, well, he sure didn't do a good job, did he?
12 Because there's crack rocks all over the floor of that room.

13 Now, another suggestion we've heard from the
14 defendants throughout the trial is that Cornelius Mayo -- and
15 this was mentioned in opening statement -- somehow suggested
16 to Devonian prior to her interview with Detective Bunting that
17 the assailant, the person who shot her, was wearing overalls
18 and that he wanted Devonian to blame this person and somehow
19 say it in her interview.

20 This suggestion is sort of interesting in itself
21 because Cornelius Mayo -- if he really wanted that idea to be
22 put forth -- he didn't say it in his interview, and I'm
23 guessing he didn't tell Devonian to say the other thing she
24 said in her interview as well about him hiding in the
25 bathroom, about drugs being in the house and about other

1 activities of drug sales in the house back and forth.

2 Cornelius Mayo didn't have much of an opportunity to
3 edit or select what Devonian ended up telling Detective
4 Bunting, and remember, when she's talking to Detective
5 Bunting, this is a 12-year-old girl. It's not the 17 year old
6 who's been through Family Court, knows what happened to her
7 dad -- who she considers her dad who is now being charged with
8 drug offenses, knows what happened to her family after. That
9 is a more sophisticated kid, a kid who's more conflicted.
10 When she's 12 years old, she's just blurting out information
11 that she knows to the detective without understanding any of
12 the consequences for Cornelius and her family.

13 Cornelius drinks. He admitted to you that he smokes
14 marijuana. He certainly gambles. He said that, and the
15 evidence shows that he and Derecia were selling some amount,
16 some low amount of rock or crack cocaine out of their house.
17 So he was a small-time dealer, and that activity put children
18 at risk, and he may not be the pillar of the community, but he
19 isn't the villain in this case. He didn't blow off Derecia
20 Newman's face, and he didn't shoot Devonian.

21 Those acts were done by robbers and killers, and
22 that's a whole different level. Those acts were done by
23 people willing to prey on other people, willing to victimize
24 and willing to target what they viewed as an easy target or
25 someone who would be less defensible.

1 You will have this gun in evidence. This is State's
2 Exhibit 320. Pick it up. It is heavy, and what happened in
3 this case is David Burns took this gun in his hand, and he put
4 it up to another individual's head, Derecia Newman. He put it
5 up to her forehead, and he pulled the trigger. It was a
6 violent act. When he did that, half of her face came off.
7 That's different than selling a rock crack here or there. So
8 maybe we can make assessments about Cornelius's character, but
9 it really doesn't have much to do with this case.

10 As jurors in this case, what you owe the state of
11 Nevada and certainly what you owe the defense, too, is to
12 fairly and accurately evaluate the evidence in this case and
13 apply the law that the Judge just read to you in the form of
14 the jury instructions. In this case, like every other
15 criminal case, there are two questions at issue: What crimes
16 were committed? And who committed the crimes?

17 And in this trial, you heard the facts of the case,
18 and the facts of the case were presented to you through
19 evidence, and much like cell phone records, evidence tells you
20 what happened. It doesn't tell you what didn't happen. It
21 doesn't tell you what's plausible, what could've been, what
22 might've been if things were different or different people
23 were in the car. It tells you what happened.

24 Our burden is to prove to you what happened beyond a
25 reasonable doubt, to prove to you who committed these crimes

1 beyond a reasonable doubt. It is not our job to prove a
2 negative or to disprove that anyone else could have committed
3 these crimes beyond a reasonable doubt. That's an impossible
4 standard. We present the evidence. It shows you who
5 committed the crimes.

6 So you'll have that packet of the instructions that
7 the Judge just read to you. I'm going to go over some of them
8 with you, and I'm sure the defense may go over some of them,
9 too, but you'll have the entire packet along with all the
10 exhibits that have been admitted, and you can use them as you
11 decide and evaluate the evidence in this case and also what
12 crimes the defendants are guilty of.

13 One thing to remember is you've heard about a lot of
14 people who've been involved in this case. You've heard about
15 Stephanie. We've heard a lot about Job-Loc, and there's --
16 and Donovan is kind of, you know, thrown in the mix, too, but
17 what your focus is in this trial as jurors in this case, you
18 are here to determine whether the defendants are guilty or not
19 guilty from the evidence in this case.

20 You're not called upon to return a verdict as to the
21 guilt or innocence of any other person. So if the evidence in
22 this case convinces you beyond a reasonable doubt of the guilt
23 of one or -- one or both of the defendants, you should so
24 find, even though you may believe one or more other persons
25 are also guilty.

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