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Respondent.

Electronically Filed
Apr 17 2019 04:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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1 THE COURT: -- I would ask you to rephrase. But you can certainly
2 ask about him.

3 MR. BASHOR: Okay.

4 THE COURT: Not him, personally.

5 MR. BASHOR: I understand.

6 THE COURT: A defendant.

7 MR. BASHOR: Right. Yeah.

8 THE COURT: Sure.

9 [Sidebar ends at 12:28 p.m.]

10 MR. BASHOR: Allow me to rephrase. Can you think of a reason
11 why a defendant -- any defendant may not testify?

12 PROSPECTIVE JUROR GRABER: Self-incrimination or failure to
13 include or exclude information. It may paint a picture that's not positive for
14 their case.

15 MR. BASHOR: Okay, what about nervousness? Could that be a
16 reason?

17 PROSPECTIVE JUROR 916: Sure.

18 MR. BASHOR: Public speaking issues?

19 PROSPECTIVE JUROR 916: Yes.

20 MR. BASHOR: That sort of thing? Can we pass the mic to Mr.
21 Jones, please? Mr. Jones, I'm going to be honest, I'm picking you because
22 you're 19. Okay.

23 PROSPECTIVE JUROR 131: Okay.

24 MR. BASHOR: You've indicated that -- are you -- would you
25 describe yourself as kind of shy?

1 PROSPECTIVE JUROR 131: Yes.

2 MR. BASHOR: Trouble talking with strangers?

3 PROSPECTIVE JUROR 131: Yes.

4 MR. BASHOR: Trouble talking with strangers that are double,

5 maybe -- no offense, triple your age?

6 PROSPECTIVE JUROR 131: Yes.

7 MR. BASHOR: So, let's say you're one of the 12, and you're the

8 young guy. Do you think you'd be able, on a case this serious, to go back

9 there and express your opinion?

10 PROSPECTIVE JUROR 131: No.

11 MR. BASHOR: Why not?

12 PROSPECTIVE JUROR 131: Because it's hard for me to talk to

13 people and stuff like that.

14 MR. BASHOR: Okay. Is it the nature of this particular case, or is

15 it --

16 PROSPECTIVE JUROR 131: It's just -- it's just me in general.

17 MR. BASHOR: Okay. Let's see. I'm trying to find more of the

18 young ones.

19 PROSPECTIVE JUROR 131: I wasn't satisfactory.

20 MR. BASHOR: No, no. Oh, no.

21 THE COURT: Very nervous.

22 MR. BASHOR: I don't know maybe you can express your opinion

23 okay. How about Mr. Perri? Will you pass that mic over here? You're a little

24 older.

25 PROSPECTIVE JUROR 000: Yeah.

1 MR. BASHOR: But still one of the younger folks. Would you
2 agree?

3 PROSPECTIVE JUROR 000: Yeah.

4 MR. BASHOR: Did you hear my questions I asked Mr. Jones?

5 PROSPECTIVE JUROR 000: Yeah.

6 MR. BASHOR: So, if you're the young guy, and you're back there
7 with people who have had far more life experience than you, would you be
8 able to express your opinion among strangers?

9 PROSPECTIVE JUROR 000: Probably.

10 MR. BASHOR: Even if those 11 strangers believed one way, and
11 you were the only one that believed the other way?

12 PROSPECTIVE JUROR 000: Yeah.

13 MR. BASHOR: Anybody here just a follower? That just -- they're
14 not going to be able to speak up? Anybody here just -- they don't care about
15 the opinions of others? No hands.

16 You're going to hear testimony from police officers and listen to
17 their testimony and assess their credibility. And we've already heard from the
18 Judge about, just by virtue of the fact, a police officer is a police officer, would
19 you find them more or less credible. That's not what this question is about.
20 But you are going to have to assess the credibility of police officers. And to
21 assess the quality of their investigation.

22 I have a five-year-old son who loves to dress up as a police officer,
23 arrest his little buddies, throw them in jail, with no investigation whatsoever.
24 That's great on the playground. Kind of hilarious to watch. But everyone
25 agrees that this is a courtroom. Yes?

1 PROSPECTIVE JURORS: Yes.

2 MR. BASHOR: And that even though these individuals are police
3 officers, you're going to have to be able to assess their credibility and assess
4 the quality of their investigation. Does everybody agree?

5 PROSPECTIVE JURORS: Yes.

6 MR. BASHOR: Does anybody think that they can't do that? No
7 hands. Mr. Harris, you probably can guess why I'm picking on you. We're
8 talking about police officers, and you were a military police officer, right?

9 PROSPECTIVE JUROR 947: Yes.

10 MR. BASHOR: And is there anything about your experience of
11 being a police officer and having to assess the credibility and quality of an
12 investigation of the officers in this case. Is there going to be anything about
13 your experience where you go back there and say, they over did it, or they
14 didn't do enough? That kind of thing, based on your experience?

15 PROSPECTIVE JUROR 947? No, based off the facts of the case,
16 they either did their job or they didn't.

17 MR. BASHOR: Right. And they have different protocols and
18 policies than, say military policemen.

19 PROSPECTIVE JUROR 947: Absolutely.

20 MR. BASHOR: I've, to be 100 percent honest with you, gone back
21 and forth about asking about this, all night, but I think to be fair, I got to ask
22 about it. And the 32 of you, with the exception of one, don't look like him,
23 right. Mr. Glover's African American. Is there anything about the fact that he's
24 an African American that's going to cloud your judgment, or have some kind
25 of assumption or pre- conceived notion about his behavior? Anything like that

1 at all? Anyone?

2 UNIDENTIFIED PROSPECTIVE JUROR: Absolutely not.

3 MR. BASHOR: Now's the time to say it. I mean you're under oath.
4 I don't relish in asking about this, but, unfortunately, I think in this day and
5 age, it's still relevant. No hands. Thank you.

6 I don't know this to be a fact, but in murder cases, in my
7 experience, and again, I don't want to speak necessarily for Mr. Stanton, but
8 I'm sure in his experience, sometimes there are quite a few individuals in the
9 gallery during a murder case. People who are relatives, friends, of either side.

10 Is there anything about their presence that would you find
11 intimidating? Is anybody going to be intimidated by the gallery? Anyone
12 going to say well, the Defense has 20 people in support and the State has 10,
13 therefore, the Defense is right? Anybody going to do that? No, right? And
14 vise-versa? No hands. Will you pass the microphone to Ms. Mazzei? Are all
15 killings the same?

16 PROSPECTIVE JUROR 004: No.

17 MR. BASHOR: And you might imagine why I'm picking on you.

18 PROSPECTIVE JUROR 004: I've got an idea.

19 MR. BASHOR: And so -- but you would agree that there's a
20 spectrum of killings, anything from a pure accident all the way to a pre-
21 meditated deliberate first degree count?

22 PROSPECTIVE JUROR 004: Yes.

23 MR. BASHOR: And as Mr. Stanton discussed you're going to get a
24 packet of instructions that come from the Judge that may or may not define
25 different kinds of killings on that spectrum. Does anybody say a killing is a

1 killing is a killing, and they're not going to be able to take a look at those
2 instructions?

3 UNIDENTIFIED PROSPECTIVE JUROR: No.

4 MR. BASHOR: Does everybody agree that not all killings are the
5 same?

6 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

7 MR. BASHOR: Everyone seems to be shaking their head. Anyone
8 disagree with that?

9 THE COURT: No positive responses.

10 MR. BASHOR: Mr. Stanton asked quite a bit about hand guns and
11 long guns. And I'm not at all going to attempt to get into a Second
12 Amendment debate with anyone, but guns are all over the media. And there
13 are people that hold strong opinions on both ends of ownership, types, to no
14 one should ever touch a gun, have a gun. Is there anything about the fact that
15 we know that a gun was used in this case, that's going to make anybody
16 uncomfortable at all? No responses.

17 Almost done, folks. Can we pass the mic to Mr. Huntsman? To the
18 back. Mr. Huntsman, you indicated -- and this individual may or may not
19 testify -- but you were a friend of Scott Hafen?

20 PROSPECTIVE JUROR 923: Correct.

21 MR. BASHOR: Do you talk about work?

22 PROSPECTIVE JUROR 923: No.

23 MR. BASHOR: Okay. So, it's a personal relationship. Work
24 doesn't really come up?

25 PROSPECTIVE JUROR 923: Correct.

1 MR. BASHOR: Is there anything about the fact that you're friends
2 with this individual that's going to affect your ability to assess his credibility in
3 this case?

4 PROSPECTIVE JUROR 923: I just know him well and know who he
5 is and his credibility.

6 MR. BASHOR: Okay.

7 PROSPECTIVE JUROR 923: Just probably his character of who he
8 is.

9 MR. BASHOR: But what I'm saying is your friends with the guy,
10 right?

11 PROSPECTIVE JUROR 923: Correct.

12 MR. BASHOR: Presumably, that means he's got a good credibility,
13 and he's a nice guy, and that kind of thing.

14 PROSPECTIVE JUROR 923: Correct.

15 MR. BASHOR: Okay. Is the fact that you have those beliefs going
16 to affect your ability to assess his testimony on the stand?

17 PROSPECTIVE JUROR 923: No.

18 MR. BASHOR: All right. I know that Mr. Barnes served on a grand
19 jury. Anybody else, grand jury? No hands. This is a weird and complicated
20 question. Anybody, not counting yesterday and today, anybody in this 32
21 know another member of the jury panel, outside of the last two days?

22 PROSPECTIVE JURORS: No.

23 MR. BASHOR: Neighbors, coworkers, former coworkers, friends?
24 All shaking their head. Is there anything that we need to know, that you
25 haven't said? Anyone? Anything that, for whatever reason, our exhaustive list

1 of questions haven't gotten to, and there's something we got to know? And I
2 guess to repeat, I mean the time is now.

3 THE COURT: It's Hillstead, right?

4 PROSPECTIVE JUROR 083: Yes. So, you mentioned -- you asked
5 yesterday if I was close to anyone or had been arrested. My son has also been
6 arrested, and he's been to prison twice for trafficking controlled substances.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR 083: I just wanted to let you know.

9 MR. BASHOR: And to anticipate some of the questions that Mr.
10 Stanton might have, was that here in Clark County?

11 PROSPECTIVE JUROR 083: It was.

12 MR. BASHOR: And how long ago was this?

13 PROSPECTIVE JUROR 083: He's been out of prison now for three
14 years.

15 MR. BASHOR: Okay. And presumably the Clark County
16 Prosecutor's Office was the prosecuting agency, right?

17 PROSPECTIVE JUROR 083: Correct.

18 MR. BASHOR: Same employer as Mr. Flinn and Mr. Stanton?

19 PROSPECTIVE JUROR 083: Correct.

20 MR. BASHOR: How do you -- was your son treated fairly, unfairly?

21 PROSPECTIVE JUROR 083: He was treated fairly.

22 MR. BASHOR: Is there anything about --

23 PROSPECTIVE JUROR 083: He was guilty. I mean, he knew, I
24 mean --

25 MR. BASHOR: And did it go to trial or --

1 PROSPECTIVE JUROR 083: No.

2 MR. BASHOR: Okay. And so, you don't hold any animosity
3 towards the State?

4 PROSPECTIVE JUROR 083: No.

5 MR. BASHOR: Anybody else?

6 PROSPECTIVE JUROR 086: I got one thing, I think related --

7 MR. BASHOR: Can you say your name, please?

8 PROSPECTIVE JUROR 086: Bryan Blake, 086.

9 MR. BASHOR: Yes.

10 PROSPECTIVE JUROR 086: To your previous question.

11 MR. BASHOR: Sure.

12 PROSPECTIVE JUROR 086: I don't know a juror, any of these
13 jurors, but somebody works for Jeffery Burr & Associates.

14 MR. BASHOR: Uh-huh.

15 PROSPECTIVE JUROR 086: Jeffery Burr is my stepfather-in- law.

16 MR. BASHOR: Okay. Good to know.

17 PROSPECTIVE JUROR 086: I didn't know if I should bring it up or
18 not.

19 MR. BASHOR: Thank you. Anybody else? Mr. Vinluan.

20 PROSPECTIVE JUROR 581: Yes. So, I have a close friends that's in
21 law enforcement, but he's in the state of California.

22 MR. BASHOR: Okay.

23 PROSPECTIVE JUROR 581: FBI agent.

24 MR. BASHOR: Do you talk about his work a lot?

25 PROSPECTIVE JUROR 581: What's that?

1 MR. BASHOR: Do you talk to him about him about work a lot?

2 PROSPECTIVE JUROR 581: No.

3 MR. BASHOR: Okay. Anything about that relationship that is
4 going to affect your ability to --

5 PROSPECTIVE JUROR 581: No.

6 MR. BASHOR: -- assess the credibility of a detective or a police
7 officer?

8 PROSPECTIVE JUROR 581: No.

9 MR. BASHOR: Thank you for bringing it up. Ms. Williams.

10 PROSPECTIVE JUROR 163: I don't know if it matters, but I've
11 known two people personally that have been shot. So, I don't know if that
12 matters. My ex-husband. Didn't know him at the time, but found out about
13 the information later on, when we got together. My ex-brother-in-law was
14 shot and killed. And that was a drive-by. Both situations were drive-by.

15 MR. BASHOR: Okay. Obviously, we have a murder case here
16 where the allegations was that somebody was shot to death. Do those
17 experiences kind of weigh on you?

18 PROSPECTIVE JUROR 163: No.

19 MR. BASHOR: Are those experiences and the emotion, I'm sure
20 you feel behind those experiences?

21 PROSPECTIVE JUROR 163: Yes, there was emotion in regard --
22 well, not so much my ex-husband.

23 MR. BASHOR: Right.

24 PROSPECTIVE JUROR 163: But my -- my brother-in-law, only
25 because we got the call at 2:00 something in the morning. So, that -- honestly,

1 still to this day if I get any calls early in the morning like that, first thing I kind
2 of panic a little bit, like why is somebody calling this early in the morning. But
3 besides that, that was it. That's the only feelings I have about it.

4 THE COURT: So, when I asked you if you or anyone close to you
5 have ever been a victim of a crime?

6 PROSPECTIVE JUROR 163: Oh, I'm sorry, I didn't put the two
7 together. I'm sorry.

8 THE COURT: How close were you anyway?

9 PROSPECTIVE JUROR 163: Not very close to my brother-in-law,
10 just that that was his brother.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR 163: Barely saw him.

13 THE COURT: Sorry, I didn't mean to interrupt you.

14 MR. BASHOR: No, Your Honor, thank you. You okay?

15 PROSPECTIVE JUROR 163: Oh, I'm good, yeah.

16 MR. BASHOR: Okay. All right. Anybody else? Thank you,
17 everyone, for your attention. Thank you.

18 THE COURT: Do you pass for cause?

19 MR. STANTON: I do.

20 THE COURT: Can I see counsel at the bench?

21 [Sidebar begins at 12:43]

22 THE COURT: Two questions. Do you have anything as a result of
23 a couple -- the last minute voir dire?

24 MR. STANTON: No.

25 THE COURT: And can I give them a restroom break?

1 MR. STANTON: Yes.

2 THE COURT: So, you can collect your thoughts and chit-chat to
3 speed up the --

4 MR. STANTON: Are you going to bring them in and then we pass
5 the sheet back and forth?

6 THE COURT: If you need me to, I will. I was just thinking we could,
7 you know, give them a little break --

8 MR. STANTON: Yeah, we can --

9 THE COURT: -- and do some of preliminary thoughts.

10 MR. STANTON: Yeah, yeah, yeah.

11 THE COURT: I assume you wanted them in the room, so you can
12 look at them?

13 MR. BASHOR: Yes, I'd prefer -- yeah.

14 MR. STANTON: Yeah, I don't have a preference.

15 MR. BASHOR: I would prefer, because that's how I --

16 THE COURT: Okay.

17 MR. BASHOR: Okay.

18 THE COURT: So, I'll give them a short break.

19 MR. BASHOR: Yes.

20 [Sidebar ends at 12:44 p.m.]

21 THE COURT: Okay. Ladies and gentlemen, we're going to take a
22 short recess. I'm going to ask that you come back at 1:00 and then we're going
23 to finish the jury selection process. And those of you that will be selected to
24 serve should know probably by 1:30 at the latest.

25 Okay. So, yesterday I neglected to mention to you that the lawyers

1 and the -- all persons involved in this case, it doesn't matter whether it's court
2 staff, lawyers, witnesses, you know, they cannot speak to the ladies and
3 gentlemen of the jury because to do so might contaminate your verdict.

4 So, if you're in the hallway, and you see a lawyer and they are
5 scurrying away from you, or avoiding eye contact, it's not because they're
6 being rude or anti-social, they are bound by ethics and the law, not to speak to
7 you. And mostly also because I would rock their world.

8 So, during this recess you can talk about anything you want, but
9 you can't talk about the case or anyone who has anything to do with this case.
10 If you could meet back up with my Marshal, Ramsey, at 1:00 in the pre-
11 designated area, we're going to bring you back in and then finish the selection
12 part of the jury selection. Okay.

13 THE MARSHAL: All rise. The jury is exiting.

14 [Outside the presence of the jury.]

15 THE COURT: The record should reflect we're outside the presence
16 of the prospective jury panel. Is there anything you'd like to address outside
17 the presence of the jury? The plan would be to bring them back in at 1:00. I'll
18 let you collect your notes and thoughts. Do your exercise or waive
19 peremptory challenges on the form, when you get it. Back and forth while
20 they're in the room. And then cross reference the list with your notes before I
21 call out the names of the jurors who will be seated in the case.

22 Then I was thinking I would read the introduction to the trial of the
23 case and then excuse them, because it has like all the preliminary nuggets of,
24 you know, you have to do parking, you know, this is how the trial is going to
25 work. Blah, blah, blah.

1 MR. STANTON: That's fine with the State.

2 MR. BASHOR: No problem, Your Honor.

3 THE COURT: Okay, and then we can hear -- and then we can take a
4 lunch break?

5 MR. STANTON: Yeah, because I just -- I meant to bring one case
6 over and copies for the Court and Defense Counsel --

7 THE COURT: Yeah, we're not going to do argument until after.

8 MR. STANTON: Yeah. Okay. I brought the wrong case, so.

9 THE COURT: So, I'm thinking -- yeah, I've got to give them a break
10 and --

11 MR. STANTON: Sure.

12 THE COURT: -- so that's the plan.

13 MR. BASHOR: Okay.

14 THE COURT: Be back at 1:00.

15 MR. STANTON: Okay.

16 MR. BASHOR: Thank you.

17 [Recess at 12:47 p.m., recommencing at 1:02 p.m.]

18 THE MARSHAL: All rise. The jurors are entering.

19 [In the presence of the prospective jurors.]

20 THE COURT: Counsel, will you stipulate to the presence of the
21 prospective jury panel?

22 MR. STANTON: Yes, Your Honor.

23 MR. BASHOR: Yes, Your Honor.

24 THE COURT: All right. All counsel and parties are present. The
25 record should reflect that this is the time for the State and the Defense to

1 exercise their peremptory challenges. I know you see a video in jury services
2 that tells you a little bit about this process. But what's required is that the
3 attorneys get to consult with each other, and their client, and exercise or waive
4 their peremptory challenges.

5 When they're done, then the Court will call out the names of the
6 jurors who are going to be seated in the case. State's first and Defense's first.

7 [Pause]

8 THE COURT: State's second? Defense's second?

9 [Pause]

10 THE COURT: The parties' third peremptory challenge.

11 [Pause]

12 THE COURT: The parties' fourth peremptory challenge.

13 [Pause]

14 THE COURT: Thank you.

15 [Pause]

16 THE COURT: The parties' fifth peremptory challenge.

17 [Pause]

18 THE COURT: The parties' sixth.

19 [Pause]

20 THE COURT: The parties' seventh.

21 [Pause]

22 MR. STANTON: Your Honor, can we approach?

23 THE COURT: Yes.

24 [Sidebar begins at 1:11 p.m.]

25 THE COURT: Is there a problem?

1 MR. STANTON: It's the waive, but I don't know where you want to
2 put it.

3 THE COURT: Just remember that one is State waived or whatever.

4 MR. STANTON: Okay.

5 [Sidebar ends at 1:11 p.m.]

6 [Pause]

7 THE COURT: So, State, I believe your eighth?

8 MR. STANTON: Yes.

9 [Pause]

10 THE COURT: The parties' ninth and final preemptory challenge.

11 [Pause]

12 THE COURT: Thank you. Can I see counsel at the bench? Actually,
13 just in the hallway just for this -- with your list. Be right back.

14 [Off the record at 1:18 p.m.]

15 THE COURT: Okay. Ladies and gentlemen, we're going to call out
16 -- I'm going to -- we, being me, call out the names of the jurors who are going
17 to be seated in this case. Before I do so, I want to extend my gratitude on
18 behalf of the attorneys, and the parties, and the Court. It's been a long jury
19 selection, two days long. And so, I appreciate that, you know, this isn't easy to
20 answer all of these personal questions, and I appreciate your professionalism
21 and courtesy.

22 If I call out your name, you have to stay. You're going to be sworn
23 and seated in the case, okay? So, Madrigal, Graber, Dwinell, Stettler, Cardoza,
24 Vinluan, Farfan, Mazzei, Morgan, Gevers, Chiesi, Williams, Rayna, and Jones.
25 The rest of you are excused, with the thanks of the Court.

1 [Excused jurors exit the courtroom at 1:20 p.m.]

2 THE COURT: Okay. So, here's how this works now. Now that
3 you're recovering from the surprise, you're going to be rearranged and given
4 different names. So, Ms. Madrigal, you're going to sit in that first seat. Your
5 new name is Juror Number 1 for the entire trial. Graber, you sit in the next
6 seat. You're Juror Number 2. Morgan, just move down, then Morgan -- I
7 mean, Ms. Dwinell, excuse me, you're Juror Number 3.

8 JUROR NUMBER 9: Okay.

9 THE COURT: No, Dwinell.

10 JUROR NUMBER 9: Oh, I thought you said Morgan.

11 THE COURT: I did.

12 JUROR NUMBER 9: Oh, okay.

13 THE COURT: I just called her by her fast name --

14 JUROR NUMBER 9: Okay.

15 THE COURT: -- by mistake.

16 JUROR NUMBER 9: Okay.

17 THE COURT: I meant Dwinell, but I was looking at Morgan at the
18 time. Stettler. Sir, you are Juror Number 4 in seat number 4.

19 JUROR NUMBER 4: Okay.

20 THE COURT: Ms. Cardoza, you are Juror Number 5 in seat number
21 5. Mr. Vinluan, you are Juror Number 6 in seat number 6. Farfan, you are
22 Juror Number 7 in seat -- in that first seat right behind you. Ms. Mazzei, you
23 are Juror Number 8. Ms. Morgan, you are Juror Number 9. Gevers is Juror
24 Number 10. Chiesi is 11. Williams is 12. Mr. Reyna, you're right here in this
25 first seat, 13. Mr. Jones, come on over.

1 Okay. So, all the peremptory challenges, having been exercised or
2 waived, I'm going to now have you stand up, raise your right hand, and take
3 the juror's oath.

4 [The jury was sworn]

5 THE COURT: Okay. Thank you. Please be seated. Is there any
6 juror that was unable to take the juror's oath for any reason? Okay. I saw you
7 all took the oath. Thank you.

8 Okay. So, here's how this is going to work. I'm going to read you
9 an introduction to the trial of the case. It basically tells you how this is going
10 to work, give you some practical information, that kind of thing. It'll take me
11 about -- I don't know -- 20 minutes or so, and then I'm going to let you go for
12 the day because we have some matters to attend to outside of your presence.

13 I'm going to read to you the introduction to the trial of the case. If
14 there's anything you don't understand, or you want an explanation for, when
15 I'm done reading it, just feel free to ask. Okay.

16 All right. Ladies and gentlemen, you are admonished that no juror
17 may state to a fellow juror any fact related to this case as of his or her own
18 knowledge, and if you discover during the course of this trial or after you retire
19 to go to the deliberation room that any other juror has personal knowledge of
20 the facts of this case, you have to disclose such situation to myself in the
21 absence of the other jurors. This means that if you learn, during the course of
22 the trial, that you were acquainted with any of the facts or witnesses, and you
23 didn't know it at the time or you didn't previously disclose that relationship to
24 me, you have to tell me.

25 Now, the jurors are always going to communicate to the Court

1 through the Marshal. During the course of this trial, I told you before, the
2 attorneys, court personnel, and any -- any court personnel or attorneys are not
3 permitted to converse with the ladies and gentlemen of the jury, because to do
4 so might contaminate your verdict. They're not being antisocial, but really the
5 only person that can speak to a juror is the Marshal, and that's why jurors tend
6 to hang together outside as they're in a trial, in a group, because they're not
7 supposed to be talking to anybody but each other. And even when they do
8 talk to each other, they can't talk about the case.

9 So, you are admonished that you are not to do any independent
10 investigation of the law or the facts on your own. So, what does that mean,
11 practically speaking? That means you can't visit the scene. Okay. You can't
12 go like on Sunday and go to the scene. You can't Google Earth it, okay? You
13 can't use the internet and do independent research of the law or the facts.

14 Everything that I'm about to read to you, if you think about it in
15 context of what we're trying to do here and why this is so important, these
16 rules exist to provide these people a level playing field, right? The evidence in
17 this case, which is the testimony of the witnesses and the exhibits introduced
18 into evidence are what a jury has to decide the case on. The jury doesn't
19 decide the case based upon one juror on the internet, or somebody out on a
20 smoker's patio, or some witness on a cell phone talking to somebody, you
21 don't even know who it is, that says something, right, because that's outside
22 our level playing field.

23 And so, these people just spent two days picking the jurors out of
24 the entire group of 75 people, plus 30 I had waiting in the wings today,
25 because they think you are going to follow your oath, you're going to take this

1 as serious as they need you to take it, right, and do what you promised to do
2 just now when you took the oath.

3 And so, that's -- you know, while it may not feel like it right now, a
4 very big honor and responsibility, okay. That's a compliment to you. And
5 because I know you're going to follow these rules, I lay them out very carefully
6 and slowly, and then if you have any questions, I'll answer them.

7 So, the introduction to the trial in the case that I'm giving you right
8 now is not a substitute for the detailed instructions on the law, which I will
9 give you at the close of the case before you retire to consider your verdict.

10 Now, this is a criminal case commenced by the State of Nevada,
11 which you already hear me refer to them as State versus Shawn Glover, the
12 Defendant. The case is based on an indictment or amended indictment. The
13 Clerk will now read the charges in the indictment to the ladies and gentlemen
14 of the jury and state the plea of the Defendant to the charges in the indictment.

15 THE CLERK: District Court, Clark County, Nevada, the State of
16 Nevada, Plaintiff versus Shawn Glover, aka Shawn Lynn Glover, Jr., case
17 number C-16-312448-1, Department 9, amended indictment.

18 State of Nevada, County of Clark. The Defendant above named,
19 Shawn Glover, aka Shawn Lynn Glover, Jr., accused by the Clark County grand
20 jury of the crimes of murder with use of a deadly weapon, felony NRS 200.010,
21 200.030, 193.165-NOC 50001; assault with a deadly weapon, felony NRS
22 200.471-NOC 50201; discharge of a firearm from or within a structure or
23 vehicle, felony NRS 202.287-NOC 51445, committed at and within the County
24 of Clark, State of Nevada, on or about the 1st day of January 2016, as follows:

25 Count 1. Murder with use of a deadly weapon, did willfully,

1 unlawfully, feloniously, and with malice aforethought, kill Patrick Fleming, a
2 human being, with use of a deadly weapon, to-wit: a handgun, by shooting at
3 and into the body of the said, Patrick Fleming, the said killing having been
4 willful, deliberate, and premediated.

5 Count 2. Assault with a deadly weapon, did willfully, unlawfully,
6 feloniously, and intentionally place another person in reasonable
7 apprehension of immediate bodily harm, and/or did willfully and unlawfully
8 attempt to use physical force against another person, to-wit: Miranda Sutton
9 with the use of a deadly weapon, to-wit: a handgun, by pointing said handgun
10 at the said, Miranda Sutton.

11 Count 3. Discharge of firearm from or within a structure or vehicle,
12 did willfully, unlawfully, maliciously, and feloniously, while in or under a
13 structure located at 4032 Smokey Fog, apartment number 201, North Las
14 Vegas, discharge a firearm within or from the structure while being within an
15 area designated by the city or county ordinance as a populated area for the
16 purpose of prohibiting the discharge of weapons.

17 Dated this 31st day of July 2018, Steven B. Wolfson, Clark County
18 District Attorney by David Stanton, Chief Deputy District Attorney, to which the
19 Defendant has entered pleas of not guilty.

20 THE COURT: All right. This case is based on that charging
21 document, which has been read to you by the Clerk. You should distinctly
22 understand that that charging document is simply a list of charges, and it is
23 not in itself any evidence of the allegations it contains. The Defendant has
24 plead not guilty to the charges. The State, therefore, has the burden of
25 proving each of the essential elements of each charge beyond a reasonable

1 doubt. As the Defendant sits there now, he is not guilty. The purpose of this
2 trial is to determine whether the State will meet that burden.

3 Under our system of criminal procedure, you are the sole judge of
4 the facts. You are to determine the facts from the testimony you hear and the
5 other evidence, including exhibits introduced in Court. It is up to you to
6 determine which inferences may be properly drawn from the evidence.

7 Now, the parties may sometimes present objections to certain
8 testimony or other exhibits. It is the duty of a lawyer to object to evidence that
9 he believes is not being properly offered, and you should not be prejudice in
10 any way against a party who makes objections on behalf of the party he
11 represents.

12 Now, at times, I may sustain certain objections or instruct you to
13 disregard certain testimony or exhibits. You must not consider any evidence
14 to which an objection has been sustained or which I have instructed you to
15 disregard.

16 So, how does that work practically speaking? Well, a lawyer asked
17 a question of the witness. Questions are not evidence in the case. Questions
18 are to be considered only as they supply the meaning to the answer of the
19 witness, which is the evidence in the case. The testimony of the witness under
20 oath is the evidence in the case.

21 So, if there's a question and the witness blurts out an answer
22 because there's an objection going, and the question, and the answer, and the
23 person doesn't, you know, do this for a living or whatever, they just answer
24 the question. If I sustain the objection, that means that you cannot consider
25 the testimony or the question, because I've sustained it. If I overrule it, you

1 can consider the testimony and, obviously, the question because that gives
2 meaning to the testimony. If I instruct you to disregard certain testimony or
3 exhibits, you cannot consider that in your deliberation.

4 Additionally, anything you may see or hear outside the courtroom
5 is not evidence in the case and must be disregarded. Additionally, if you see
6 or hear anything about this case outside the courtroom, it's your
7 responsibility, and you took an oath and promised all of us that you would let
8 my Marshal know.

9 Now, you're not to be influenced in any degree by any personal
10 feeling of sympathy for or prejudice against either the State or the Defendant.
11 Both sides are entitled to the same fair and impartial consideration. In
12 considering the weight and value of the testimony of any witness, you may
13 take into consideration the appearance, attitude, and behavior of the witness;
14 the interest in the witness in the outcome of the case, if any; the inclination of
15 the witness to speak truthfully or not; and the probability or improbability of
16 the witness's statements; and all of the facts and circumstances in evidence.
17 Thus, you may give the testimony of any witness just such weight and value
18 as you believe the testimony is entitled to receive.

19 Now, there are two kinds of evidence, direct and circumstantial.
20 Direct evidence is testimony by a witness about what that witness personally
21 saw, heard, or did. Circumstantial evidence is testimony or exhibits which are
22 proof of a particular fact from which, if proven, you may infer the existence of
23 a second fact, which sounds all complicated and legal-like but, really, it's
24 simple.

25 Same example in every case I always give. If it's cold tonight, and

1 cloudy, and you go out to lock up, and you're on your porch, and you can see
2 your own breath in the air and there's big, fat, white flakes falling from the sky,
3 and you reach out your hand and a big, fat, white flake falls on your fingertips
4 and it's wet and cold to the touch, that is direct evidence that it is snowing.
5 You can see it, you can feel it, you could probably even smell it.

6 If, however, it's a balmy 57 when you go out tonight, which we
7 know isn't going to happen, but let's just pretend. It's 57 degrees and
8 everything is fine. You lock up at 6:00 at night. You go to bed. Twelve hours
9 later, you go out to the porch and there is three feet of snow on the ground as
10 far as the eye can see all the way across the valley on your commute to work.
11 That is circumstantial evidence that it snowed overnight. The law permits you
12 to give equal weight to both kinds of evidence, but it is for you to decide how
13 much weight to give to any evidence.

14 Now, just like questions of the attorneys are not evidence in the
15 case, opening statements and closing arguments of the attorneys are not
16 evidence in the case. The arguments are intended to help you in
17 understanding the evidence and applying the law to the evidence, but the
18 statements themselves are not evidence in the case.

19 Additionally, any ruling, remark, or comment which I may make
20 during the course of this trial is not intended in any way to indicate my opinion
21 as to the facts of the case or to indicate my opinion as to what weight you
22 should give to the testimony of any witness.

23 I may even find it necessary to ask a question of a witness, and if I
24 do, it is for the purpose of bringing information to be brought -- that I think
25 should be brought out and not in any way to give my opinion or indicate any

1 opinion about the weight that you should give to the testimony of any witness.
2 I may also find it necessary to admonish a lawyer. And if I do, you should not
3 so prejudice against a lawyer or their client because I have found it necessary
4 to admonish him.

5 Additionally, you should understand that you will be given a
6 limited opportunity to ask questions of any witness called to testify in this
7 case. A question may be asked only in the following manner. Once the
8 witness is done testifying and the examination by the parties is done, I will
9 look to you and I will say, do any of the jurors have any questions you wish the
10 Court to ask the witness. If you do, you have to take your juror notebook on a
11 clean sheet of juror notebook paper, which isn't even full size as it is, but it
12 must be a full-size juror notebook paper, you have to write your juror number
13 on it -- 1, 2, 3, 4, 5, 6 and so on -- and you write the question as if I'm asking
14 the witness the question.

15 Once I've determined that anybody has a question, I will step
16 outside into the hallway, and I will discuss the procedural and substantive
17 propriety of the question, which is a fancy way of saying if I think it's properly
18 asked, I'll ask it. And if I don't, I won't. And if I don't, you can't speculate as to
19 what the answer would have been, and you can't discuss the question in the
20 jury deliberation room. Additionally, jurors should not give undue weight to
21 questions -- to answers to questions that they ask, but they should consider
22 that evidence as they do all other evidence in the case.

23 Also, I've had to kind of draw some lines here. So, here's the lines
24 I've drawn on juror questions.

25 Number one. If it's not a full sheet of paper, I'm not going to take

1 it. If I get the equivalent of a Chicklet wrapper with a question on it, then I'm
2 not taking it. Number two. When I cross the threshold of the room, we're
3 done. You're not firing off papers to me in the back while I'm still dealing with
4 the other papers. I just -- it makes me nuts. So, I get to do little things -- little
5 things I can do and that's one of them. I will, however, wait until you're done
6 writing it out. I'll walk out in the hallway ,and then we'll go forward. The
7 attorneys are given the opportunity should they see fit to do any follow-up
8 strictly to juror questions.

9 Now, until this case is submitted to you, it's of crucial importance
10 that you not discuss it with anyone, even your fellow jurors. That ensures the
11 level playing field that I keep talking about. When you're in the hallway if you
12 want to talk about the weather or talk about your families, talk about whatever
13 you want, but just don't talk about the case or anyone who has anything to do
14 with the case or anything that has anything to do with the case until you're in
15 the jury deliberation room. It's important that you keep an open mind and not
16 decide any issue in the case until you know what the law is, and you've heard
17 the whole case.

18 Now, we're going to take -- now, that we have the jury selected,
19 tomorrow, for example, I'm going to tell you to come back at 9:00. And we're
20 going to have a regular schedule. We're going to take restroom breaks. We're
21 going to take a lunch break. But if you need a break before we were planning
22 to take one, it's not a problem. Just raise your hand and tell me you need a
23 break, a restroom break or whatever, and I'll take one. If you can't see an
24 exhibit or hear a witness, please raise your hand as an indication.

25 I don't have any problem with you bringing a beverage with a lid

1 or a cap or if you want to bring coffee in the morning and whatever. I just
2 can't have you bring in food, okay.

3 You are welcome during the course of this trial as far as your
4 lunch, we usually -- I try to wait a little bit -- the rush in downtown Las Vegas
5 starts at about 11:30 because lower court -- some of the lower courts start
6 really early. So, I try to push to 12:30 or 1:00 if I can go that far depending on
7 where we're at. If -- and I usually take an hour. You can do a couple of things.
8 My Marshal will give you places that you could go if you don't want to bring
9 something.

10 If you want to bring something, you hand it to my marshal in the
11 morning, whether it's frozen, and you want to put it in a microwave, there's
12 microwaves in the juror lounge where you could nuke a lunch. Or if you have
13 some, you know, refrigerated lunch bag, he'll put it in the fridge and then at
14 lunch, he'll give it back to you and you can go to the juror lounge. There's a
15 lounge there, I believe you know, with soda machines and, you know, you can
16 just chill out there if you want to. You can go off campus, as I call it, off the
17 RJC and just go sit somewhere else and take a break from this whole thing.
18 That's up to you as long as you don't talk about the case.

19 So, during this trial, you're going to see people coming in and out
20 handing me things, you're going to see me on the computer, you're going to
21 see me talking to my staff. You're not to draw any inference from that action.
22 I guarantee you 99.99999 percent of the time it has nothing to do with this
23 case. I have thousands of cases, okay, and I can't just disappear from them.
24 So, you're not to draw any inference from that.

25 It is incredibly important you've been given notebooks, or you will

1 be if you haven't yet, to take notes as you see fit of the trial testimony. The
2 reason for that is you're not going to have a transcript to consult at the close of
3 the case, okay. If the jury were to be go back in the jury deliberation room and
4 require to hear testimony again, first of all, in the playback department I
5 record, the jury would have to very carefully describe what's to be played
6 back. The court recorder would have to go in and find the location and cue up
7 her notes. I have to bring everybody in here. Then I have to bring the jury in
8 and do the playback of testimony.

9 Because those playbacks of testimony are very time-consuming, I
10 encourage you to listen carefully to the testimony the first time around and for
11 that reason, we've given you notebooks. Your notebooks cannot leave the
12 courtroom. So, what happens is you get the notebook in the morning, you
13 have it, you take notes. You leave it in your chair. Nobody sees the juror
14 notebooks even after the verdict is done. After the verdict is done, my Marshal
15 rips out the notes and throws them away. I have never seen the notes from a
16 juror notebook in over 200 trials, okay. They're private to you, but you can't
17 take them out of the room.

18 You are -- I believe I mentioned yesterday and if you didn't hear it, I
19 don't recall which group or who I mentioned it to, the whole group possibly,
20 your parking just got upgraded. My Marshal is going to give you a map. You
21 are going to park somewhere closer now. We just don't have enough room
22 there for everybody. But once you get seated as a juror, you go to a new
23 parking place that's right across the street much closer. You must -- this is so
24 crucial. Is everyone listening? There is no, I lost my ticket from the parking
25 garage fund, from the county. You've got to save that ticket. You have to

1 bring it in here so that we can validate it, so you can park for free. Do you
2 understand? Yes. Okay.

3 So, the trial is going to proceed in the following manner. One of
4 the Deputy District Attorneys will make an opening statement which is an
5 outline that helps you understand what the State expects to prove. Please
6 remember that the opening statements are not evidence in the case. They're
7 simply -- they serve as an introduction to the evidence which the party making
8 the statement intends to prove. Then the Defense may present an opening
9 statement, but they do not have to.

10 Then the State will present its evidence in its case-in-chief. Any
11 witnesses that are called for the State, the counsel for the Defendant, one of
12 them, may cross-examine the witnesses. Following the State's case, the
13 Defendant may present evidence. And if so, the Deputy District Attorneys, one
14 of them, may cross-examine any Defense witness. However, as I've said,
15 repeatedly, and you've heard during voir dire, the Defendant is not obligated
16 to present any evidence.

17 After all the evidence has been presented, I will instruct you on the
18 applicable law. After the instructions have been read to you, the lawyers will
19 have the opportunity to present their closing arguments. Closing arguments
20 are not evidence, just as what is said in opening statements by the attorneys
21 are not evidence. The arguments are designed to summarize and interpret the
22 evidence. Since the State has the burden of proving the Defendant guilty
23 beyond a reasonable doubt, they have the right to open and close the final
24 arguments. After the arguments have been completed, then the jury will retire
25 to deliberate on the verdict.

1 So, do you have any practical questions about how this is going to
2 proceed? We're going to go 9:00 to 5:00 tomorrow. We'll take a morning
3 recess. It's the only day I can start at 9:00 because I don't have any other cases
4 set. Other days I can't, and I'll start a little later. And I apologize to you for
5 that. Yes?

6 UNIDENTIFIED JUROR: On Monday, do you know what time
7 approximately you're starting if it goes --

8 THE COURT: We wouldn't start -- 10:30.

9 UNIDENTIFIED JUROR: Okay. Thank you.

10 THE COURT: Anybody else have any questions? Okay. So, here's
11 how this works. My Marshal has information on you from Jury Services. He
12 will give you a number for any emergencies. I would just point out that
13 tomorrow morning at 9:00, if you're not here, we're all sitting here staring at
14 your empty seat. So fun. So, please be mindful of that.

15 I'm about to read to you an admonishment. Nevada law requires
16 that I read this to you at every overnight recess and every restroom break. The
17 first few times I'm going to sit -- I'm going to talk slowly, you know, compared
18 to my usual. And then I'm going to pick up the pace. I'm picking up the pace
19 not because I don't think you're taking it seriously. The opposite, because I
20 know you're taking it seriously, I know you heard it, I know you promise to
21 follow it. And so, I don't need to belabor the whole thing.

22 One thing I didn't mention is in addition to not doing any
23 independent investigation of the law or the facts, you cannot engage in social
24 media about this case or anything to do with this case. You can't tweet, you
25 can't Snapchat, you can't Twitter, you can't do anything. Not tweeting,

1 snapping, Instagramming, Facebooking, I don't know. I know there's a million
2 other ones, GroupMeeting, WhatsApping. I could list it forever. You can't do
3 any of it until you're done as a juror. When I discharge you as a juror, you'll be
4 free to say or not say whatever you want, but until then, you made a promise,
5 and we expect you to stick to it.

6 So, I'm going to read the admonishment which is really me just
7 saying it because I know it by heart. And then I'm going to see you tomorrow
8 at 9:00. You are admonished not to talk or converse among yourselves or with
9 anyone else on any subject connected with this trial. You're not to read,
10 watch, or listen to any report of or commentary on the trial by any person
11 connected with this case or any medium of information, including without
12 limitation, newspapers, television, the internet, or radio. You're not to form or
13 express any opinion on any subject connected with this trial until the case is
14 finally submitted to you.

15 Mr. Jones, you don't have to stress about this. It's going to be
16 okay. I promise. And if you're worried, you just let me know about anything,
17 and we'll deal with it, okay? So, relax. You're excused.

18 THE MARSHAL: All rise. The jurors are exiting.

19 [Outside the presence of the jury.]

20 THE COURT: The record should reflect we're outside the presence
21 of the jury. Before I let you go for a lunch break and come back to argue
22 whatever you want to argue about, I'm going to take -- first of all, the record
23 should reflect on the peremptory challenge form which will be marked as
24 Court's exhibit first in order number --

25 THE CLERK: 1.

1 THE COURT: It will obviously not go back to the ladies and
2 gentlemen of the jury. Excuse me, the record should reflect that this reflects
3 the challenges of each party including that the State waived two peremptory
4 challenges, and the defense waived your final?

5 MR. BASHER: Yes.

6 THE COURT: Okay. And so that's marked Court's Exhibit 1.

7 (Court's Exhibit 1 marked for identification)

8 THE COURT: And is there anything that you need to address? I
9 would like to give my staff a full hour just because, you know -- you know how
10 it is. So, it's ten to 2:00. Can you come back at ten to 3:00?

11 MR. BASHER: Yes, Your Honor.

12 MR. STANTON: Come back at 3:00?

13 THE COURT: Sure. 3:00. How long are you going to argue?

14 MR. STANTON: I think with this Court, it's going to be pretty
15 concise as far as presentations.

16 MR. O'BRIEN: No more than two hours.

17 THE COURT: Are you kidding?

18 MR. O'BRIEN: Yes.

19 THE COURT: Okay. How long, an hour?

20 MR. O'BRIEN: Yeah, I think so. Mr. Stanton has the case. I haven't
21 had a chance to read it, but I don't think --

22 THE COURT: Can I have that case before I go or --

23 MR. STANTON: I brought the wrong one over, but I can send it to
24 defense counsel and the Court.

25 THE COURT: Yeah. Can you send it to my law clerk?

1 MR. STANTON: Sure. It's by the California Supreme Court. So,
2 it's one of those really long opinions, but the section that's relevant is only like
3 two pages. So, I didn't want to print out just the relevant sections and
4 everybody goes, well, where's the rest of it. So, it's actually better I'll email it
5 to you, because I think it's like 60 pages long.

6 THE COURT: Oh, okay. That's fine.

7 MR. BASHER: Thank you.

8 THE COURT: Thank you. 3:00 then, yes?

9 MR. BASHER: Yeah.

10 MR. O'BRIEN: Yes, Your Honor.

11 THE COURT: Thank you.

12 [Recess at 1:50 p.m., recommencing at 3:04 p.m.]

13 THE MARSHAL: Remain seated. Come to order. Court is back in
14 session.

15 [Outside the presence of the jury.]

16 THE COURT: Okay. This is the time set for -- to continue the
17 hearing outside the presence of the jury on Glover, excuse me, C312448-1. So,
18 same attorneys and the Defendant are present. Do you wish to be heard?

19 MR. STANTON: Yes, Your Honor. If I could kind of set the table
20 and frame the issue. So, in talking to Mr. Bashor prior to today's proceeding, I
21 inquired of him if he -- if it was his intent to elicit from the two main State's
22 witnesses -- and for the record, that would be Miranda Sutton who is the
23 victim's wife, and Akira Veasley, V-E-A-S-L-E-Y, I believe, who is the
24 stepdaughter of the victim and daughter of Ms. Sutton. They are present at
25 the time of the shooting.

1 All parties to include Mr. Fleming know the Defendant for some
2 period of time. He was at the home at their -- with their permission. And they
3 had known the Defendant for some period of years. That knowledge includes
4 knowledge of Mr. Glover's past to include, from their perspective, that he was
5 and may still be involved in gang activity, that he's committed more than one
6 murder, and that he has an extensive record and criminal conduct involving
7 acts of violence.

8 The predicate to all of that is on January 1, where this shooting
9 takes place, initial responding officers and investigating detectives get a
10 statement from both of those witnesses. As I mentioned to the Court earlier,
11 that statement, what I'll call 1.0, gives a generalized, but non-specific
12 description of the events that took place. As I understand --

13 THE COURT: What do you mean generalized but non-specific?

14 MR. STANTON: For example, they use a nickname by the name of
15 Hatch to describe to detectives who the person that they see inside their home
16 at the time of the shots being fired. Hatch is a nickname of the Defendant. So,
17 they don't use his actual name.

18 And so, at this juncture, the police aren't told of the actual names
19 as the witnesses have it. And they talk about that one of the reasons the
20 shooting took place had to do with Mr. Fleming selling narcotics and
21 somebody was over there to purchase them, to wit, Hatch, and they heard
22 shots. In both 1.0 and 2.0 -- and I anticipate their trial testimony -- they are not
23 watching Mr. Fleming or the Defendant literally as the shots are being fired.
24 They are feet away. They are very focused to the argument that's escalating
25 that involves everybody in the home, the four principal adult occupants of the

1 structure, the Defendant, the victim, and these two female witnesses.

2 The argument begins or at least comes to its crescendo when the
3 Defendant, from Mr. Fleming's perspective, interjects himself to both his wife
4 and to his stepdaughter on what he perceives to be strictly a family issue and
5 family business. That begins a dialogue between Mr. Fleming and the
6 Defendant, ultimately culminating, as the witnesses I believe will testify, in Mr.
7 Fleming saying, well why don't you and me go outside to discuss it.

8 And as they start walking down the stairs, Ms. Veasley and Ms.
9 Sutton break eye contact from the situation and proceed to walk in a different
10 direction. Almost instantaneously, they hear three gunshots. They both come
11 rushing back to -- all this occurs on a staircase. At the bottom of the staircase
12 is Mr. Fleming with an obvious significant gunshot wound to the head and
13 other parts of his body. He is not moving. And he is deceased there upon
14 officers and other responders first coming to the scene.

15 Supporting the count of assault with a deadly weapon is their
16 testimony that as they're looking down at the bottom of the stairs, they see Mr.
17 Glover turn the firearm in their direction and tell them in kind of a direct
18 manner not to talk about what just happened with anybody. I'm paraphrasing,
19 obviously.

20 THE COURT: I doubt they describe something so polite.

21 MR. STANTON: And so, after that happens and within minutes of
22 first responders primarily because of the nature of the call, North Las Vegas
23 uniformed police officers soon followed up by detectives, these two witnesses
24 give a version of 1.0, which is that a shooting took place, that they're there, but
25 it's -- they're relatively vague on details and they talk about some aspect to

1 narcotics activity.

2 THE COURT: Is there -- so there's a difference between vague and
3 false or, you know, stating one thing and then later stating another. Meaning
4 -- I have no idea what was said, but let's just say like hypothetically, oh, the
5 shots were at the top of the stairs in 1.0 and they were down the bottom of the
6 stairs at 2.0. Like differences, you know, differences as opposed to vague or
7 omission. There's false or mistaken and then there's omitted, two different
8 things.

9 MR. STANTON: Okay. Well, there's certainly omissions.

10 THE COURT: Right. That I --

11 MR. STANTON: There's no questions about that.

12 THE COURT: That I got.

13 MR. STANTON: And there are aspects of what they tell the
14 detectives that are directly false to when you compared it to 2.0.

15 THE COURT: Like? Can you give me some examples of the more
16 material things, arguably?

17 MR. STANTON: What is going to be clearly different from their
18 trial testimony in 2.0 is the extent of they knew the person inside the home.

19 THE COURT: The extent that they knew the person?

20 MR. STANTON: Right.

21 THE COURT: Oh.

22 MR. STANTON: They tell the detectives that they don't know who
23 it is, they didn't -- you know, don't know the person very well. And that's
24 clearly false from their what I believe is 2.0 in their trial testimony.

25 THE COURT: Okay. Anything else?

1 MR. STANTON: Once again, the aspect of narcotics, I think they're
2 going to tell you that this had nothing to do with narcotics.

3 THE COURT: Okay.

4 MR. STANTON: Those are two that jump off to -- at the top of my
5 head. So ,the next day, the 2nd of January, they contact detectives. Oh, let
6 me back up. They express to the detectives their concern for their safety.

7 THE COURT: In 1.0?

8 MR. STANTON: One -- well, when they interact with the detectives,
9 I don't know that it's in part of the recorded interview, but their testimony is --
10 is that they had expressly stated on more than one occasions especially to
11 uniformed officers, so this is prior to the recorded statement or at least not to
12 detectives that they were fearful for their lives and they were hopeful that
13 police officers would remain at the scene until -- if and until someone was
14 caught.

15 THE COURT: Okay.

16 MR. STANTON: So, their level of concern expressed from them, I
17 believe if asked, they would tell you that it was immediate, and it was
18 expressed to law enforcement.

19 THE COURT: Is that the same day as 1.0?

20 MR. STANTON: Yes. That's on the 1st of January.

21 THE COURT: Okay.

22 MR. STANTON: That's within minutes if not hours of the 911 call
23 that they placed to authorities.

24 THE COURT: Okay.

25 MR. STANTON: So, on the 2nd of January, Ms. Sutton and Ms.

1 Veasley contact the police and agree to a second interview now for purposes
2 of this discussion 2.0. And in 2.0, they tell what --

3 THE COURT: They contact the police or the police contact -- the
4 detectives or the detectives contact them?

5 MR. STANTON: They contact police.

6 THE COURT: Okay.

7 MR. STANTON: There is -- in that second interview is what I
8 believe from talking to them prior to this trial, their testimony is going to be
9 consistent with 2.0. And in that version of events, they say they know the
10 Defendant, they've known him for a long period of time. They describe the
11 argument about what the argument was about. It starts with Mr. Fleming first
12 and his stepdaughter who is 21 years of age. He is not her biological father.
13 Ms. Sutton kind of intervenes on her daughter's behalf in the argument, and
14 the argument kind of morphs into Mr. Fleming now arguing with both Ms.
15 Veasley and Ms. Sutton.

16 And through a series of events that are both visually observed and
17 are verbally stated, the Defendant interjects himself by talking to the daughter,
18 talking to the wife one-on-one, and they will describe what their conversation
19 with the Defendant was. In essence, he was offering to insert himself into this
20 issue. Mr. Fleming sees this, and that's when he begins to say, hey, what are
21 you doing? This is none of your business, the invitation to go outside, and
22 then they describe him as they last see him, Mr. Fleming walking first down
23 the stairs, the Defendant following him, and then within seconds, the
24 gunshots, and then they observe the threat.

25 It is the State's belief -- now kind of coming full circle to frame the

1 issue -- it's the State's belief that if the defense seeks to introduce inconsistent
2 statements, the State is entitled to address the rationale and the explanation, if
3 one exists, about why those explanations are different. And the explanation
4 coming from this family from the person who's the author of the statement is
5 going to be their fear of the Defendant based upon concrete facts as they
6 understood them to be. And I believe that there's in some areas of their belief,
7 overwhelming evidence to prove what they suspect to be true about the
8 Defendant's background and the basis of their fear and thus an explanation of
9 why the statements would be inconsistent.

10 THE COURT: So, if you had one of these witnesses on the witness
11 stand, my guess is they're not going to say gang activity, felonies and acts of
12 violence, and more than one murder. They have, I assume, an entire long
13 laundry list of specific things. What is that going to be? How, as an offer of
14 proof?

15 MR. STANTON: As an offer of proof, they're going to -- they
16 believe that the Defendant has committed multiple acts of murder and that he
17 has committed multiple acts of violent conduct against others. I'll leave it in
18 that frame as opposed to addressing specific crimes. That he is a member of --

19 THE COURT: Well, what would they say? What have they said?

20 MR. STANTON: Right. That he is -- that and in addition, that he --
21 they believe him to be a member of a gang, a known gang.

22 THE COURT: What gang?

23 UNIDENTIFIED ATTORNEY: Gerson.

24 MR. STANTON: Gerson Park, GPK.

25 THE COURT: Okay.

1 MR. STANTON: And, thus, kind of the -- that specific comment
2 address their concern then and even further from the time that the statements
3 were made that whether the Defendant was in custody or not, they had
4 concerns. And that's why they said 1.0.

5 So, under 50.135, I believe Nevada law (2)(b): A witness is afforded
6 an opportunity to explain or deny -- this is all presuming under (2) that
7 extrinsic evidence of prior contradictory statement is inadmissible unless
8 they're afforded an opportunity to explain to deny the statement and the
9 opposite party is afforded an opportunity to interrogate the witness therein.

10 It's clearly designed to be argued to this jury that their statements
11 are unreliable. Therefore, the evidence against the Defendant does not satisfy
12 the State's burden. And I think it is contemplated by the statute both here and
13 in the federal system that you cannot be permitted to do that without an ability
14 to completely and fully explain why the inconsistencies exist.

15 My reading of the statute or the case law is that to the extent that I
16 find cases on point, and there's not many, they leave it to the discretion of the
17 trial judge to the extent of the -- of what the Court feels is appropriate to meet
18 the definition of the ability to explain their inconsistencies and the motivation
19 between statements 1 and 2 in this particular case.

20 And as such, if it goes to the weight that is going to be argued by
21 Defense counsel to this jury, either in the form of its not credible or that there's
22 an alternative suspect, then it becomes as probative as you could possibly get
23 in a case like this as to why there would be a distinction between a witness'
24 statement 1.0 versus 2.0. And without the ability for them to explain it, I think
25 arrests the jury's ability to attach the weight that they deem to it after hearing

1 the explanation and the demeanor and the tenure of the witnesses in a three-
2 dimensional format.

3 So, I think that's as best I think I can do to frame it as I see the
4 issues right now.

5 THE COURT: Did you want to address the case that you gave the
6 defense and the Court?

7 MR. STANTON: Yes. The case is -- it's kind of a lengthy thing, but
8 what I thought was of note was that even in a case where there's not evidence
9 directly attributable to a defendant making the threats. Their -- the fact of their
10 threats and the details of the threats was admissible to show the nature of
11 their testimony and the inconsistencies that the defense claimed that there
12 were. And I think procedurally the trial judge warned defense counsel on
13 several different occasions relative to this issue and to a warrant that was
14 outstanding as to another -- or one of these testifying witnesses.

15 THE COURT: Why she left town and didn't handle her warrant --

16 MR. STANTON: Correct.

17 THE COURT: -- was because she would say I was getting threats
18 versus, you know, she's just a dishonest person running from the justice
19 system.

20 MR. STANTON: Correct. And so, to me, the issue is, look, if you're
21 going to go down the road of introducing inconsistent statement and you have
22 full knowledge as you do here that there is a history between these witnesses
23 and the Defendant and that they've known each other for a protracted period
24 of time, that they have this perspective of your -- of the Defendant's
25 background, that they're -- you can't have it both ways. You can't seek to elicit

1 the inconsistencies to try and blow up the State's case and impeach their
2 credibility while handcuffing them and not giving them the ability to explain
3 and to let the jury assess whether or not those are inconsistencies that have any
4 weight or meaning.

5 THE COURT: By the way, before we hear from the defense on that
6 issue, did you and Mr. Bashor talk about the expert issues that you were
7 having?

8 MR. STANTON: Yes. We're going to address that kind of when it
9 gets a little closer to Detective Wilson's testimony, but the concern that Mr.
10 Bashor has about testimony regarding no evidence at the scene supports self-
11 defense, as I see this case, I mean I haven't heard their opening argument yet,
12 but I don't see that I would be asking that question of Detective Wilson. I think
13 that's just a matter more of argument than a Q&A in this case.

14 THE COURT: So, I haven't heard an opening statement yet and I
15 haven't heard any argument from them, but if it's a self-defense case and not a
16 whodunnit, then why does it matter? I mean as long as they say I was scared
17 -- you know, since it's self-defense, there's no question as to who did it. We
18 know who did it, and it's just a matter of why it was done -- than thinking that's
19 pretty scary. I'm just curious, if it's self-defense and not a whodunnit.
20 Because your argument is more compelling if it's a whodunnit and less
21 compelling if it's a self-defense case.

22 MR. STANTON: Well, and --

23 THE COURT: Which means you may not get a ruling before your
24 opening statement.

25 MR. STANTON: Well, I don't know, Your Honor.

1 THE COURT: Because my view, we start to do balancing here
2 and --

3 MR. STANTON: I'm trying to piece together what -- I mean --

4 THE COURT: Do you see what I'm saying, though?

5 MR. STANTON: I do see what you're saying. And the defense has
6 shown me photographs that they're going to proffer that deal with DNA
7 testing of the vehicle. I would assume, maybe as often is the case and maybe
8 my assumption is incorrect, that they're going to challenge the completeness,
9 the integrity of the investigation by Detective Wilson who is the primary
10 homicide detective in the case.

11 Now, if there's someone that's going to challenge what she does
12 and how she does it, you know, Detective Wilson might have an answer, then I
13 think --

14 THE COURT: She is Detective Wilson? You're using personal
15 pronouns. Is that a --

16 MR. STANTON: Detective Wilson is a female.

17 THE COURT: Okay. Not the witness?

18 MR. STANTON: No.

19 THE COURT: One of the -- okay.

20 MR. STANTON: And Detective --

21 THE COURT: I mean she's a witness, but you know what I mean,
22 not a layperson?

23 MR. STANTON: Right. Right. Right. That she might -- her answer
24 to why she did what she did and when she did it may speak to the issues of
25 self-defense and the evidence that she observed at the scene, but I can't

1 predict that now and that's not the issue that I'm raising to the Court. I agree
2 with the Court that if this is purely a self-defense case, then maybe the scope
3 of the explanation need not be as in-depth or as broad, but if -- I don't see that
4 happening if you're looking at alternative suspects, which is what I think
5 they're going to proffer.

6 THE COURT: Okay. Well, and part of your response to Mr.
7 Stanton, I would suggest you address that. There's nothing that says I have to
8 rule on this until the time that I've -- until the time comes. And, quite frankly,
9 I'm not going to allow a tactical advantage to either side and then have it taken
10 advantage of.

11 MR. BASHER: Right.

12 THE COURT: If it's left to my discretion as to what's admissible,
13 let's face it. If it's a whodunnit, not why it was done, then it's -- it can be
14 probative. It's certainly prejudicial, but it's also probative, and then it becomes
15 a weighing analysis on all of these things, each one and how far it goes if at all
16 versus why it happened, in which case it becomes less of a weighing analysis
17 because it's not as probative, quite frankly, but it sure is prejudicial.

18 So, I appreciate you might want a ruling in advance, but I don't
19 think I have to do that. And I'll hear from you, and you can certainly comment
20 on that as part of your -- because, quite frankly, if I don't know what your
21 defense is, I'm not going to rule on it.

22 MR. BASHER: I understand, Judge. Could I have the Court's
23 indulgence?

24 THE COURT: Because if it's a whodunnit, it's one thing. If it's a
25 self-defense case --

1 MR. STANTON: Well, Judge, just -- and I understand that, and I
2 think defense counsel does. But when we talked about this yesterday and the
3 reason why we're requesting it to be put in front of Your Honor now is counsel
4 wanted to know the answer before they did their opening, which I think is
5 probably an important thing for them to know. But I understand the Court
6 that, you know, until the issue is ripe in front of you, then you're not compelled
7 to give any evidentiary ruling, but --

8 THE COURT: Yeah. I don't give an advisory --

9 MR. STANTON: -- I'm not here to --

10 THE COURT: -- decision so that, you know -- you know, there's
11 nothing that -- because it depends on what the defense is as to how probative
12 it is. I mean you're sitting here arguing to me how devastating to the State it
13 can be and how it limits -- handcuffs you and blah-blah-blah. It doesn't
14 handcuff you if it's a self-defense case. It just allows a boatload of bad acts in.

15 MR. STANTON: Well, I wouldn't get --

16 THE COURT: So --

17 MR. STANTON: Your Honor, if it's a pure self-defense case, I'm not
18 asking for a boatload of bad acts to come in because then the inconsistency
19 isn't that probative.

20 THE COURT: Correct. So, that's what I'm saying. So, perhaps
21 they should address that in part of their -- not only do they persuade me that
22 you're wrong, but they also persuade me that the time is right for the ruling in
23 advance.

24 MR. BASHER: Can I have the Court's indulgence for like a minute?

25 THE COURT: Sure.

1 [Pause]

2 MR. O'BRIEN: Thank you, Your Honor. Your Honor, let me start --
3 knowing the Court's inclination, let me start by saying it is likely a whodunnit
4 case or at least the opening will be on a whodunnit theory. As the evidence
5 comes out, of course, there's a possibility of pivoting.

6 THE COURT: One moment. I need to take notes. You know, I wish
7 I could remember all the -- every single thing that everybody says in all my 120
8 murder cases, but I want to make sure I don't miss anything. So, if you'd just
9 give me one moment.

10 MR. O'BRIEN: Sure.

11 [Pause]

12 THE COURT: Okay.

13 MR. O'BRIEN: Let me start by saying I do want to express some
14 appreciation to the State for having this conversation ahead of trial. It
15 infuriates the Defense to constantly be surprised. It's obviously a competitive
16 endeavor trial. We're not cooperating in doing it. But on something this big,
17 we do appreciate having this conversation ahead of time.

18 THE COURT: Me too.

19 MR. O'BRIEN: So, I agree with most of what the State has laid out
20 in terms of the difference between what's being called Statement 1.0 and 2.0,
21 but it's -- I would say it's not simply vaguery in 1.0. In fact, it's misleading
22 information provided by the two women to the police. First, Ms. Sutton
23 provides information to the police that she saw nothing, didn't hear from
24 anyone, someone knocked at the door and shot her husband. That's the first
25 statement provided. The second statement --

1 THE COURT: Wait one moment. Saw nothing, didn't what?

2 MR. O'BRIEN: Didn't hear anything other than a gunshot.

3 Someone knocked at the door, and her husband's dead.

4 THE COURT: Okay.

5 MR. O'BRIEN: The next -- when the police arrive and start
6 interviewing, they speak with the two women separately. Akira tells the
7 officers that she doesn't know the man who was there, the drug customer.

8 THE COURT: Akira is Veasley?

9 MR. O'BRIEN: Akira is the stepdaughter. Stepdaughter.

10 THE COURT: Okay. So, using last names so I can keep track of
11 everybody.

12 MR. O'BRIEN: Veasley.

13 THE COURT: Veasley, thank you. Because we have a Sutton and
14 we have a Veasley.

15 MR. O'BRIEN: Sure.

16 THE COURT: All right.

17 MR. O'BRIEN: And, Your Honor, Veasley tells the police
18 specifically they don't know the man.

19 THE COURT: This is in 1.0?

20 MR. O'BRIEN: This is 1.0, Your Honor. Veasley says, I don't know
21 the man. My mother's never met the man. He's a man with an afro. I think
22 his name is Hatch. Police then interview Miranda. Miranda -- sorry, last
23 names, Sutton. Police then interview --

24 THE COURT: Thanks.

25 MR. O'BRIEN: -- Sutton. Sutton gives a sort of similar version but

1 instead she says she's met this man one time before at their previous
2 residence. No name is provided. She didn't really interact with him. The
3 suspect tried to talk to her. That's all she knows. This was probably a drug
4 deal gone wrong. There was some issues in the past on drug -- on drug
5 dealing and some anger on the deceased's part about drug dealing in the last
6 24 hours.

7 So then within 24 hours, the two women then talk to the police
8 again. And --

9 THE COURT: You disagree it was at their behest?

10 MR. O'BRIEN: Well, I have not pre-trialed them, but I will say the
11 police -- from the information I have from North Las Vegas Police, the police
12 are not contacted by Ms. Veasley or Ms. Sutton. They're contacted by a
13 relative of the deceased, his brother. The deceased's brother tells the police
14 these women are lying. They know who killed my brother. You need to
15 interview them again.

16 Now, what happens from there, there is no discussion in the report
17 whether the women subsequently called detectives or whether the detectives
18 called the women. But that is the first intervention is a call from the brother of
19 the deceased.

20 So, to take a step back into the -- I think that lays out the factual
21 allegations, Your Honor. Towards the statute of 15.135, starting with just a
22 plain reading of the statute, (2)(b) giving the witness an opportunity to explain,
23 the question becomes how broad that opportunity is going to be, how broad
24 the Court will allow that opportunity to be because you're correct in terms of
25 the statements in 1.0 and the statements in 2.0, they're very similar. The man

1 at the bottom of the stairs says: Don't f'ing rat on me. It's on you and your
2 children. It is a death threat to the women and the small children that are in
3 the house.

4 In terms of an opportunity to explain, that's also Count 2 in this
5 case, Assault With A Deadly Weapon. The suspect points a firearm at the two
6 women and threatens to kill them if they talk and their children if they talk.
7 Discussions of gang activity, allegations or rumors of prior murders, and a
8 prior conviction veer us into prior bad act territory, which is why I'm saying the
9 question of how much will the Court allow the witness to explain becomes -- I
10 think the Court's correct. It is the balancing test of 403 or 48.0452.

11 And I don't -- not to lay it out too much, but I think the Court's very
12 aware how much the Supreme Court has warned both prosecutors and judges.
13 And in at least one case *Griffith v. State* has warned the defense as well do not
14 veer into prior bad act territory. It is very discouraged. The default is that it is
15 not admissible. And that's the territory that we are in. And I want to suggest it
16 was possible if the State believed that we were going down this route, it was
17 possible to file a motion to admit prior bad acts or a motion in limine to
18 preserve the issue. Because we are now on day 2 of trial and figuring it out in
19 the afternoon -- and I do appreciate the heads up on the opportunity before the
20 opening, but I also think it's a little late in the game for us to be having the
21 conversation.

22 So, I think under the balancing test, the question of -- we turn into
23 the question of other relevant non-propensity purpose exception and whether
24 this is fitting underneath that, what the relevance would be. I think the stated
25 relevance, if I understand it correctly, is to explain why the witness lied to the

1 police the first time around or why the witnesses lied to the police the first
2 time around. But once we get to that balancing test of probative value versus
3 prejudicial nature of the testimony, I think prejudicial nature of saying there is
4 a person that has previously been killed by Shawn Glover tips prejudicial
5 nature. The scales are essentially way out of balance, especially when we
6 realize that this becomes cumulative evidence.

7 The women according to both of their statements 1.0 and 2.0 see a
8 man above the deceased body of their father -- or their husband and their
9 stepfather, and he makes a verbal threat to kill them and their children if they
10 talk. That is sufficient explanation. Going beyond that tips us into cumulative
11 evidence and prior bad acts. Thank you, Your Honor.

12 MR. STANTON: First of all, it kind of disheartens me to hear
13 arguments which blend terms, but have no relevance to the argument.
14 Counsel suggests that this could have been raised pretrial in two forms, one
15 by the State filing a prior bad act motion

16 THE COURT: You're not offering it for motive, intent, opportunity,
17 lapse, some mistake, or accident, so I get it.

18 MR. STANTON: Yeah. I mean that's --

19 THE COURT: I get it.

20 MR. STANTON: And the analysis they're in is --

21 THE COURT: But a motion in limine is what he was also referring
22 to, which is you could say, hey, there's two different inconsistent statements,
23 just doing this earlier. What we're doing right now could have been done
24 earlier is the point of what his argument was.

25 MR. STANTON: Yeah, but the State's belief is the statute speaks

1 for itself. The statute says -- the plain reading of the statute says that if -- the
2 State's position is this. We had no intention in opening or in direct
3 examination of Ms. Veasley or Ms. Sutton to address 1.0 at all, zero. We were
4 going directly to their statement for the sole and direct purpose of avoiding the
5 issue of getting into a full explanation because in this case, for those two
6 witnesses, the answer is significantly addressed by their knowledge of the
7 Defendant's background. So --

8 THE COURT: By the way, is that in 2.0?

9 MR. STANTON: The explanation?

10 THE COURT: Yeah.

11 MR. STANTON: No, not in the detail of what I've described.

12 THE COURT: What's in 2.0?

13 MR. STANTON: Pardon me?

14 THE COURT: What's in 2.0 as the detailed explanation for why
15 yesterday we didn't know them and today we do?

16 MR. STANTON: That they were afraid.

17 THE COURT: No other details?

18 MR. STANTON: Not on the recording. They go into detail with the
19 detectives --

20 THE COURT: Well, yeah. That's what I'm getting at.

21 MR. STANTON: Yes.

22 THE COURT: What do they tell the -- what do you, as an offer of
23 proof, believe the evidence would show they told the detective was the reason
24 2.0 is different than 1.0?

25 MR. STANTON: Everything I just outlined.

1 THE COURT: So, all this stuff?

2 MR. STANTON: The gang, the murder. And, in fact, their belief
3 that the Defendant had committed multiple murders.

4 THE COURT: And they purport their basis of knowledge to be?

5 MR. STANTON: Their knowledge of the Defendant, his associates,
6 the length of time they'd known him, and what they --

7 THE COURT: And how long did they say they've known him?

8 [State counsel confer.]

9 MR. STANTON: I would say a few years, for sure. And Mr.
10 Fleming, the decedent, knows the Defendant very well. And part of what they
11 know came from Mr. Fleming, in part.

12 THE COURT: Okay. I'm sorry. I interrupted you with your
13 blending of --

14 MR. STANTON: So, I mean --

15 THE COURT: I didn't mean to cut you off.

16 MR. STANTON: -- if the Court is comfortable because it is -- it is
17 not 4804 --

18 THE COURT: Right.

19 MR. STANTON: -- subsection 2. The State's not moving to admit it
20 under those grounds. And, thus, the pretrial raising this issue is, look, you're
21 at your peril if you're seeking to admit an inconsistent statement knowing
22 what the law permits that witness to say as an explanation for the
23 inconsistencies. It also goes without, I think any reasonable dispute, that the
24 defense knows what the underlying facts that these witnesses are going to say
25 about the threats and how that impugns their client's credibility and the

1 potential that that evidence might be admissible.

2 So, it's the strategy of the defense to admit the inconsistent
3 statements. So, if there's anybody that needs to do a motion in limine, it
4 would seem to me it's the party that's pursuing that defense and that
5 evidentiary strategy of introducing an inconsistent statement. I mean I can't
6 open the door myself. And, thus, I'm not offering 1.0, and then turning around
7 and say, guess what, it's an inconsistent statement. And I think under the
8 statute, I might be able to. But the State has no intention to doing that.

9 So, while I think it's certainly my argument is more for the record
10 than it is to Your Honor about the timing of this, I think there can be no further
11 explanation of their -- the explanation absolutely is necessary and pursuant to
12 the law.

13 I agree with the Defense counsel is what's the scope. What I didn't
14 hear is the answer to the Court's primary question: Is this a self-defense case
15 or is this case of whodunnit? And I would agree with the Court that the
16 probative value attached to that threat and the change of it is directly linked to
17 that.

18 Now, maybe they don't want to disclose it at this point, and we
19 wait until that happens, and then we rule on the evidence and the admissibility
20 of the first statement and the basis and the explanation attended to therein
21 when that card is played or when in real time as it goes. It --

22 THE COURT: So, because that's basically what I'm being asked to
23 do, is give an anticipatory -- everything that I would rule on this depends on
24 what questions are asked and how the defense is framed because some kind
25 of claim of prejudice to the State and the 51.35, the whole public policy reason

1 driving 51.35(2)(b) is so that we don't have a complete bastardization of
2 justice, so that we don't pretend like there's just a special world of facts where
3 we just keep out things that are ugly for the Defendant that leave kind of a
4 false impression about someone's motive when they're giving a statement.
5 That's what this is about.

6 And that's hard to weigh when I don't know what you're going to
7 say.

8 MR. O'BRIEN: Your Honor, I apologize for interrupting, but didn't I
9 start my argument by saying what we were --

10 THE COURT: This is a whodunnit. Yes, you did. And you said we
11 reserve the right to, how did you say, inversely lean to something else? You
12 had a very interesting phrase that I liked because I've never heard it before.

13 MR. O'BRIEN: Pivot.

14 THE COURT: Pivot. I heard pivot. I never heard pivot before. And
15 so, can you give me an example of pivot before I chisel a ruling into Moses'
16 tablet and you all carry it to the mountain, because I'm subject to revisiting
17 anything if I hear questioning, and I think there's extreme prejudice on either
18 side, quite frankly.

19 MR. O'BRIEN: Your Honor --

20 THE COURT: For example --

21 MR. O'BRIEN: -- here --

22 THE COURT: -- let me just give you an example so you can
23 address it. Let's say I make a ruling, and I allow some generically coded
24 version of what they want to do in in the event that the witness is significantly
25 pursued on cross-examination about truthfulness and voracity related to the

1 first statement versus the second. Because let's face it, I guess that's an
2 important part and there'll be some motive I guess to make up something
3 within 24 hours of your husband being shot on a stairway. I guess I'll know it
4 when I see it.

5 If it's not that significant, then, you know, Count 2 and, yeah, I
6 knew him to be a violent person, would probably be allowed as much as I
7 allow it to go. If the entire trial is, she's a big fat liar because, you know, they
8 were in with the mob, and that's who had to do it, and she has a motive to
9 fabricate for my client because of X, Y, and Z, and I hear this big elaborate
10 version of whatever, then I guess, you know, I would take a different approach
11 in my ruling. And it's hard to do that in advance.

12 MR. O'BRIEN: Your Honor, I apologize if I said it sloppily. I said
13 that our theory is whodunnit.

14 THE COURT: Right.

15 MR. O'BRIEN: It's the first time that I've really ever revealed a
16 theory on the record, but I went out on that ledge.

17 THE COURT: Right. I know that.

18 MR. O'BRIEN: And so, I've said that it's whodunnit. However,
19 Your Honor, to give you an example of what a pivot would be, when I told --
20 when essentially in ex parte communication one time told Judge Herndon
21 what our theory of defense was, and he said, I'm telling you ahead of time I'm
22 not allowing that testimony in, it pushed me into changing the defense based
23 on the Court's ruling.

24 So, I am saying this is a whodunnit. If the Court rules in a way that
25 leaves that to be a straightforward guilty finding, and we have no other option,

1 then I think the defense would reserve the right to pivot. However, that said,
2 this case has been prepped as a whodunnit. This opening has been prepped
3 as a whodunnit. It is a whodunnit case.

4 MR. STANTON: Well, then, Your Honor, I guess the probative
5 value is from the State's perspective could not be higher to explain 1.0 versus
6 2.0, especially in light of the fact of their knowledge of the Defendant, the
7 failure to give descriptive -- his name, his description, and all the other
8 attended facts that they give in 2.0 is now couldn't be highlighted as more
9 probative.

10 MR. O'BRIEN: Just the last thing I'll say, Your Honor, and I
11 appreciate the Court's time and letting us talk multiple times. Every other
12 statute that talks about admitting the prior conviction employs a balancing
13 test. Even when the defendant takes the stand and the State is presumptively
14 allowed to impeach, the balancing act exists. And it exists for this reason.

15 You talked about creating a fair trial for both sides so that the
16 scales aren't tipped on one way or the other so that we're not hiding
17 information from the jury. But in doing that, to create a fair trial, we do hide
18 information from the jury. We make sure that the unfairly prejudicial
19 information is kept out of the jurors' hands. That's what we're asking for here
20 is if your ruling is under a whodunnit that the prior statement of witnesses
21 would be open to these women's discussion of their hearsay or their hearing
22 of rumors about Shawn Glover, Your Honor, we would ask that you keep out
23 any information about any prior conviction and anything we would
24 characterize as a prior bad act. Thank you.

25 THE COURT: Anything else?

1 MR. STANTON: Your Honor, the comment, and I wrote it down
2 when counsel said it, he goes: The count of assault with a deadly weapon
3 when a man at the bottom of the stairs is pointing a gun at them and saying,
4 the language that he used from -- quoting from the witness's statement, that's
5 sufficient to explain 1.0 from 2.0. Well, that may be Counsel's view of it, but
6 what he's saying is, look, that's sufficient because that should be sufficient for
7 the trier of fact, the twelve, to make that determination. Well, he can't make
8 that claim.

9 And, thus, when your case is hinged as it is that these people are
10 describing an alternative suspect and in conjunction with that, I'm going to be
11 presenting photographs and testimony through cross-examination that the
12 State or the detectives did an incomplete investigation, then it begs for that
13 evidence to be introduced so that the jury can put it into proper context.

14 And we're not seeking to admit a prior conviction as the case law
15 from the Nevada Supreme Court that I believe counsel is citing without
16 quotation to the name, is a reference to a conviction, a felony conviction. The
17 type of conviction has such a prejudicial impact, it was certainly admissible for
18 impeachment purposes, but that there was a weighing between the type of
19 conviction and its relevance for the fact that someone has been a prior
20 convicted felon of which that felony conviction was irrelevant for the
21 testimony, but substantially prejudicial. There is no, in my opinion, analytical
22 framework where that is the same thing as what's being addressed here.

23 THE COURT: Anything else because I'm not cutting you short?

24 MR. STANTON: Not on behalf of the State.

25 THE COURT: Anything else?

1 MR. O'BRIEN: Your Honor, we'll submit.

2 THE COURT: By the way, did we ever make a record with the case
3 that you gave to the defense and to the Court to look at to draw a brief analogy
4 to?

5 MR. STANTON: No, we didn't, Your Honor. It was *People v.*
6 *Williams*, found at 315 P.2d 1.

7 MR. O'BRIEN: I apologize, Your Honor. P.3d.

8 MR. STANTON: P.3d. Sorry.

9 THE COURT: Okay. A couple of things. Knowing very little about
10 the examination of the witnesses in advance, exactly how cross will go, and
11 how direct will go, I am just making a ruling anticipatorily that the -- that there
12 will be pursuit of these witnesses with 1.0 and 2.0 impeachment because this
13 is an identity case. And, you know, I appreciate that *People v. Williams* -- I
14 mean it's kind of demonstrative of the underlying problem, but it's not exactly
15 on point. But the gist of it is exactly what I already talked about with 50.135,
16 which is like (2)(b), which is the whole public policy behind allowing someone
17 to explain themselves.

18 The problem I have here, is I'm not going to allow someone to
19 explain themselves with a couple of murders. So, I am going to allow -- and,
20 you know, this is where witness prep is going to be so crucial. So crucial. And
21 I might require a quick evidentiary hearing outside the presence with each
22 witness, because I am going to allow the State to inquire if they have a
23 knowledge of his history of -- that he had a history of violence in his past. And
24 I may allow gang membership, no GPK in Gerson Park this or that. Just gang
25 membership generically once I hear their basis for that understanding. I need

1 to have some understanding of the context of what they think before I can
2 decide.

3 I'm on a -- I feel like I'm on a tight rope balancing. But at some
4 point, there's just no you can't say anything about the fact that you know he's
5 a violent person, and your opinion, and that he's a gang member, and that he
6 made a threat to you because the two go hand in hand. And so -- but I'm not
7 going to allow prior murders. It's over the top, and I'll get reversed even
8 though you make a good argument and, you know, it is what it is.

9 So, I don't know what you want to do with that, but I'm on the cusp
10 on gang membership and leaning towards allowing it in generic terms. And
11 that they're familiar that he has a history of violence against persons. And I
12 would do a little evidentiary hearing, maybe talk to them myself once I hear
13 what they would say outside the jury about their parameters and cross my
14 fingers that -- and I'm going to allow the State to lead.

15 MR. STANTON: And, Judge, I think we are in agreement, full
16 agreement with that procedure, because I think it's clear then from the record
17 and doesn't need to delve into have any evidentiary hearing about what we
18 did or didn't prep them on. They're both very receptive. They know that there
19 is a danger zone, and we told them be very careful about what you answer and
20 listen to the directions of the Court. So, I think that --

21 THE COURT: Did you hear about Barker's trial?

22 MR. STANTON: Pardon me.

23 THE COURT: Did you hear about Barker's trial?

24 MR. STANTON: I did.

25 THE COURT: With the cop that was told that --

1 MR. STANTON: I did.

2 THE COURT: -- there's a parameter.

3 MR. STANTON: Yeah.

4 THE COURT: And the cop just ignored the parameter. You know,
5 sometimes it's just they get caught up in whatever, and they're not thinking,
6 and it slips out. So --

7 MR. STANTON: I don't think that person had testified before, so --
8 but in our discussion with these two witnesses -- and I can't say this in all my
9 cases -- but these two witnesses are cognitive, understand the principles, are --
10 will take advice and directive from the Court. So, I think that is an excellent
11 thing.

12 Now, they're our first two witnesses. So, after openings when we
13 open this case, we start with them.

14 THE COURT: Okay. So, that was the first part of my ruling. The
15 second part of my ruling is that if the Defense requests -- because this is
16 clearly being -- this is not evidence that the Defendant committed a bad act.
17 And the jury has to be -- well, doesn't have to be, but will be instructed at your
18 request. This is evidence of the mindset of the witness to possibly explain in
19 her own words why she might change her story. It's not evidence that the
20 Defendant did anything. It's just what evidence she thinks in her head, and
21 that's it.

22 And so, a jury gets told those things at the time that it's admitted.
23 You've heard evidence that this witness had certain beliefs about the
24 Defendant's past. That evidence was not offered and may not be considered
25 by you to find that he is a person of bad character or had a propensity to, you

1 know, commit crimes. That evidence was offered to you for your
2 consideration as to how that understanding might have affected the witness' --
3 you know, might affect the witness or might affect the witness' recollection or
4 statements, or may or may not affect the witness' statements, or may have or
5 may have not affected the witness' statements, something to that effect.

6 Now, clearly, that's a strategic thing. You know, *Williams* talks
7 about it in that case that the State -- but that's just generic 101. Every time
8 you're going to let something in, you give an instruction, especially when it's a
9 nuanced purpose of admission under 50.135(2)(b). And so, especially you got
10 a lawyer on the panel, she'll get it right away. That's just what this lady thinks,
11 and because she thinks it, that may have had an impact on her statements.
12 Maybe it did, maybe it didn't. That's for you to determine, but it doesn't mean
13 he did anything.

14 Come up with an instruction if you want, and I will give it. If you
15 don't want, we'll make a great record about strategically you don't want it. I
16 can't imagine it, though. I think you want it.

17 MR. O'BRIEN: And, Your Honor, I think our instructions are due
18 tomorrow morning. Is that what we agreed to?

19 MR. STANTON: Mr. Bashor --

20 MR. BASHER: Yeah.

21 MR. STANTON: -- agreed to it.

22 MR. O'BRIEN: Okay. We'll have that in the packet, Your Honor.

23 THE COURT: Okay. And then, you know, I'll look at it while your --
24 I don't know, they're the first witnesses. So, maybe I need to look at it like first
25 thing in the morning.

1 MR. O'BRIEN: Okay.

2 THE COURT: Because I might make suggestions you like. If you
3 don't, believe me, I have no -- but, you know, if you think about it, I think you
4 can come up with something that specifically tells the jury this is how you're to
5 consider this, blah-blah-blah. It's kind of a -- what's the name of that case that
6 we do the instructions all the time? *Tavares*?

7 MR. STANTON: Yes, *Tavares* the --

8 THE COURT: The hybrid. Because it really is --

9 MR. STANTON: It's a hybrid of *Tavares* is what --

10 THE COURT: Yes.

11 MR. STANTON: -- I was thinking as you were making that.

12 THE COURT: It's only because it relates to the witness' state of
13 mine and nothing to do with anything about the Defendant. So, you can even
14 -- you know, just because a witness may have heard things doesn't mean the
15 Defendant committed any crime, and it cannot be considered by you that he
16 committed any crime. The real issue is how it may or may not impact the
17 mindset of the witness. That's what the relevance is, and if you come up with
18 something, you know I'll give it.

19 MR. O'BRIEN: Understood, Your Honor.

20 THE COURT: Anything else?

21 MR. STANTON: Not on behalf of the State, Your Honor.

22 THE COURT: Okay.

23 /////

24 /////

25 /////

1 MR. BASHER: 9:00 tomorrow, correct, Judge?

2 THE COURT: 9:00 tomorrow.

3 [Proceedings concluded at 3:57 p.m.]
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16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/visual proceedings in the above-entitled case to the
18 best of my ability.
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11 SHAWN GLOVER, aka SHAWN LYNN)
12 GLOVER, JR.,)

13 Defendant.)
14)

CASE NO. C-16-312448-1

DEPT. IX

15 BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
16 WEDNESDAY, AUGUST 1, 2018

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 3**
18

19 **APPEARANCES:**

20 For Plaintiff:

DAVID STANTON, ESQ.
WILLIAM FLINN, ESQ.

21
22 For Defendant:

ROBERT E. O'BRIEN, ESQ.
RYAN J. BASHOR, ESQ.

23
24
25 RECORDED BY YVETTE G. SISON, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, August 1, 2018

2
3 [Case called at 9:07 a.m.]

4 [Outside the presence of the Jury]

5 THE COURT: Okay. So, this is the time set for the continued trial
6 on State vs. Shawn Glover, C-3124481. Counsel, could you state your
7 appearance before we bring in the jury?

8 MR. STANTON: David Stanton and William Flinn on behalf of the
9 State.

10 MR. BASHOR: Ryan Bashor and Robert O'Brien on behalf of Mr.
11 Glover who's present and dressed appropriately.

12 THE COURT: All right. Is there anything outside the presence of
13 the jury before you do your opening statements, and then I'll -- or I don't know
14 if you're going to do an opening statement, but if you choose to do an opening
15 statement, then I would take maybe a short rest. How long are they going to
16 be?

17 MR. STANTON: I would imagine mine's about a half an hour --

18 THE COURT: Okay.

19 MR. STANTON: -- 35 minutes.

20 THE COURT: What about you?

21 MR. O'BRIEN: Probably around 20 minutes, Your Honor.

22 THE COURT: So, then we could just take a quick break and
23 perhaps calls your first witnesses and do the little mini hearing that I
24 suggested.

25 MR. STANTON: Yes.

1 THE COURT: And then we'll go from there. There was something I
2 said -- you walked out yesterday. I think the phrase I used was flew out of here
3 like Batman. You were like phoom (phonetic).

4 MR. STANTON: Yeah.

5 THE COURT: And I had an after thought --

6 MR. STANTON: The kids.

7 THE COURT: -- that I wanted to tell you, and I mentioned it to the
8 defense to tell you, which was --

9 MR. STANTON: They did.

10 THE COURT: -- I made -- okay, I made that ruling yesterday and on
11 -- I turned around, and you were gone. So, I told the defense to tell you if
12 there was a pivot, the likes of which we discussed yesterday, then I would
13 revisit the ruling that I had made. And I know I haven't made a specific
14 detailed ruling on the -- you know, there's what I may allow after we hear from
15 the two witnesses, but I just wanted to tell you that because I didn't tell you
16 that before you left.

17 MR. STANTON: I appreciate it.

18 THE COURT: Thank you.

19 MR. STANTON: And Counsel did inform me.

20 THE COURT: Thank you.

21 MR. O'BRIEN: And then obviously after that, before we bring the
22 jury back in, we'll refine my poorly worded limiting instruction?

23 THE COURT: Your what?

24 MR. O'BRIEN: We'll refine the --

25 THE COURT: Oh, yeah. Yeah.

1 MR. O'BRIEN: Okay.

2 THE COURT: Can I have whatever you're looking at?

3 MR. O'BRIEN: Sure. I emailed it to --

4 THE COURT: So, I can look at it while you're doing your opening?

5 MR. STANTON: I actually thought it was pretty good.

6 MR. O'BRIEN: Well, thanks.

7 MR. STANTON: The hybrid Tavares [phonetic] I think is what it's

8 now going to be called.

9 THE COURT: We're going to call it the Togliatti.

10 MR. STANTON: The Tog.

11 THE COURT: The Tog.

12 [Pause]

13 THE COURT: Do you have a problem on line 4 with saying instead

14 of these beliefs, either the witnesses' beliefs or any beliefs by the witnesses?

15 MR. O'BRIEN: Not at all. That's fine.

16 THE COURT: You see, I'm just being really specific.

17 MR. O'BRIEN: I appreciate it. I told you it was poorly worded.

18 THE COURT: Can you send this to --

19 MR. O'BRIEN: I did. To Diane.

20 THE COURT: Oh. Is she here today?

21 THE CLERK: She'll be in later.

22 MR. O'BRIEN: I can --

23 THE COURT: She'll be in later.

24 MR. O'BRIEN: I have it on my phone Dropbox, I believe. I can

25 email it to anybody.

1 THE COURT: Can you email it to my --

2 THE LAW CLERK: Just email it to me.

3 THE COURT: -- Nick Lasso, my law clerk, please? All right. So, I'm
4 going to make -- I don't know. I'll propose some changes. I just --

5 MR. O'BRIEN: Great, Your Honor. Thank you.

6 THE COURT: -- want to sit with it for a minute.

7 MR. O'BRIEN: Sure.

8 THE COURT: Okay. Anything else before you do your opening
9 statements?

10 MR. STANTON: Not on behalf of the State.

11 MR. BASHOR: Not on behalf of the Defense, Your Honor.

12 THE COURT: And you're doing the opening statement?

13 MR. O'BRIEN: Yes, Your Honor.

14 THE COURT: Do you all have the technology that you need?

15 MR. STANTON: I am hooked up and test run it, so I'm good.

16 MR. O'BRIEN: Good over here.

17 THE COURT: Okay. Do you have a hard copy of any PowerPoints
18 you're using?

19 MR. STANTON: I do. And I can deliver that. There are some
20 notes, but I'll bring over a clean copy.

21 THE COURT: Okay. So, if you could do that after the lunch hour,
22 I'd appreciate it.

23 MR. STANTON: Sure.

24 THE COURT: Do you --

25 MR. O'BRIEN: And no PowerPoint here, Your Honor.

1 THE COURT: Okay. All right. So, at this time --

2 THE CLERK: (Indiscernible).

3 THE COURT: Sure. If he could bring them in.

4 THE MARSHAL: All rise for the jury. The jurors are all present,
5 ma'am.

6 [In the presence of the jury]

7 THE COURT: Counsel, will you stipulate to the presence of the
8 jury?

9 MR. STANTON: Yes, Your Honor.

10 MR. BASHOR: Yes, Your Honor.

11 THE COURT: Okay. Ladies and gentlemen, unless any of you have
12 any questions this morning about the process, we're going to begin the trial.
13 We'll hear the opening statements. Then I'll take a recess -- a morning recess
14 for you to take a restroom break, stretch your legs. And then we're kind of
15 going into, you know, your participation mode and more of an observation
16 mode except for at the end of each witness I will ask you if you have any
17 questions you wish the Court to ask the witness as I told you about yesterday.
18 Okay.

19 So, does anybody have any questions before we start about the
20 process? All right. There being no questions, at this time, State, opening
21 statement.

22 MR. STANTON: Thank you, Your Honor. Madam Recorder, can I
23 have -- thank you.

24 [OPENING STATEMENT BY THE STATE]

25 Ladies and gentlemen, this case begins factually in the time of the

1 murder itself, which is January 1st, 2016. And this is the location where
2 Patrick Fleming was murdered. In this home during this day are four adults.
3 There are some minor children, but the four adults inside the home are
4 Miranda Sutton. She is Patrick Fleming's, the victim in this case, wife. Also
5 present in the home is Akira Veasley. She is the stepdaughter to Mr. Fleming
6 and the daughter to Ms. Sutton. She's in her early twenties. There is Patrick
7 Fleming, as I just mentioned. And there's the Defendant.

8 In this case, you will hear that on January 1st, the beginning of a
9 series of dominoes that falls leading up to Mr. Fleming's murder is an
10 argument -- a verbal argument between Mr. Fleming and his stepdaughter.
11 You'll hear briefly about the nature of that argument, that Mr. Fleming was
12 upset about his stepdaughter seeing another young man under circumstances
13 that he and Akira did not agree.

14 During that verbal argument, you'll hear from Miranda Sutton and
15 from Akira that Ms. Sutton intervenes on her daughter's behalf on the side of
16 the argument -- the verbal argument. You will also hear, and I ask, as I'm sure
17 you will, to pay special attention to the facts as they describe it about the
18 Defendant's behavior as this argument is ongoing in the home.

19 You will hear that the Defendant gets involved in the argument,
20 and he gets involved in a couple of different ways. And you'll hear that from
21 Ms. Sutton and Ms. Veasley about how that occurs, and when that occurs, and
22 with whom.

23 Suffice it to say, that just prior to the critical events and the murder
24 itself, there is a time where the Defendant speaks to Ms. Sutton alone. And the
25 victim, Mr. Fleming, sees that, and he's not happy about it. And so, he and the

1 Defendant are engaged in now a verbal argument about the Defendant's
2 ongoing interjection into a family dispute that he has no standing to. Once
3 again, this is from Mr. Fleming's perspective.

4 And right at a critical moment, you will see several photographs in
5 this case of a portion of that interior of the home. So, if you go back and recall
6 in the first photograph, there's a garage door open. And at the back of that
7 garage doors, there's a door that leads into the home itself. And immediately
8 upon entering that door is a stairwell up into the general residence where the
9 rooms, the kitchen, and everything else is located.

10 So, after this final confrontation occurs, you will hear that the
11 Defendant makes some comments to Miranda prior to them being seen
12 coming out of the bedroom or from a room. She will describe to you what the
13 Defendant tells her and the words that she remembers him uttering to her
14 about what he is willing to do and get involved in in this case.

15 Then, ladies and gentlemen, there is a discussion between the
16 Defendant and Mr. Fleming about going outside of the home to talk this out.
17 And what happens is that Ms. Sutton and Ms. Veasley are at the top of the
18 stairs. They're observing the argument and what's occurring. And then
19 there's the interjection of let's go outside.

20 And to go outside, Mr. Fleming makes a fatal error. And what he
21 does, ladies and gentlemen, is he walks down the stairs first with the
22 Defendant behind him. Ms. Veasley and Ms. Sutton who -- have known the
23 Defendant for a period of time, he is a friend or an acquaintance of Mr.
24 Fleming, and Ms. Sutton and Ms. Veasley know him and have seen him
25 repeatedly in the past.

1 So, Mr. Fleming walks down the stairwell. You can see the width
2 and the length of the stairwell in the photos and you're about to see that in a
3 photo that I'm going to show you. Behind him, as I mentioned, Mr. Glover
4 was walking. Unbeknownst to anybody, Mr. Glover is armed. He's armed
5 with a .40 caliber semi-automatic handgun.

6 Ms. Sutton and Ms. Veasley will tell you that after they see them
7 walking down the stairs after that discussion, they turn their attention to what
8 they're going to do next. And almost immediately, they hear three gunshots
9 ring out. They run to the stairs -- the top of the stairs and they look down the
10 stairs and this is what they see. That is Mr. Fleming. He is dead. He's been
11 murdered.

12 You're going to hear testimony about his wounds that are critical
13 in this case. And, ladies and gentlemen, the door that you see down there is
14 the door that I mentioned earlier. One is the exit to the garage and to outside.
15 And as I mentioned to you, there's wounds to Mr. Fleming. Mr. Fleming, you
16 will hear from a witness I believe today -- this afternoon, a doctor, -- a
17 specialized doctor. Her name is Jennifer Corneal.

18 She is a physician, and she deals as a medical examiner at the
19 coroner's office with a medical procedure called an autopsy. And she's
20 dealing with a subspecialization called pathology and forensic pathology. It's,
21 as she will describe to you, the study of injuries, the cause and manner of
22 death and the injuries that cause death. You will hear from her some very
23 specific aspects of the wounds to Mr. Fleming because while Mr. Fleming will
24 not be here to testify, the wounds and evidence on his body is telling,
25 compelling evidence to tell you how he was killed and by whom.

1 First of all, Dr. Corneal will tell you that he died from multiple
2 gunshot wounds, one in particular. And I'll get to that in just a moment. She
3 will describe the locations of the wounds. And, ladies and gentlemen, you will
4 hear that Mr. Fleming was shot in three areas of his body, generally his leg, his
5 torso, and the fatal gunshot wound, a massive injury, a headshot with a .40
6 caliber semi-automatic handgun.

7 She will also talk about the directionality. And by that, in an
8 autopsy, the observations both externally to show, in a gunshot wound, what
9 wound is the entrance and whether or not there is a corresponding exit. In this
10 case, Mr. Fleming suffered three gunshot wounds. Two were what's called
11 penetrating gunshot wounds, meaning that the bullet went in but did not exit.
12 Those bullets or fragments thereof were removed as evidence during the
13 autopsy procedure. And one wound was what's referred to as a perforated
14 gunshot wound with a recognized entrance and a recognized exit. And you
15 will hear Dr. Corneal, and through photographs of those injuries, describe how
16 she can determine what are entrance and what are exit gunshot wounds.

17 But in addition to that examination, there is an internal
18 examination. And in the internal examination, it is noted and marked about
19 what damage is done internally. And you will hear that. And you will also
20 hear the directionality, the directionality of how that bullet passed through Mr.
21 Fleming. And that is important, ladies and gentlemen, because it absolutely
22 corroborates Ms. Veasley and Ms. Sutton about what they observed just
23 before the gunshots. And that is the Defendant, Mr. Glover, following right
24 behind Mr. Fleming as he's walking down the stairs because you will see, in
25 especially the head wound, the trajectory is downward.

1 In addition, you will hear the doctor testify about in her medical
2 opinion which of these gunshot wounds are lethal and those that are not,
3 independently of one another. And certainly, when you hear the testimony
4 regarding the head wound, you will hear testimony from Dr. Corneal that that
5 is an instantaneously incapacitating wound and a fatal wound.

6 In addition, ladies and gentlemen, you're going to see that there is
7 a shot from behind multiple -- that there are two bullets recovered from both
8 Mr. Fleming's head as well as his arm, that there is from the crime scene
9 evidence of one round that strikes ultimately directly under Mr. Fleming's
10 body. And so, let me show you that.

11 So, what you're looking at here is the close-up at the bottom of the
12 stairs. Mr. Fleming has now been taken from the scene. The carpet in the left-
13 hand photograph has been pulled back. You will see closer photographs of a
14 bullet hole in that carpeting. And in the center is the tile with distinct marks
15 showing a bullet impact at that site. And what that means from a homicide
16 detective's perspective as to how Mr. Fleming is positioned, the number of
17 wounds, and the exiting of wounds, that tells you where Mr. Fleming was
18 when that shot entered and exited his body.

19 Immediately adjacent to Mr. Fleming's body at the bottom of the
20 stairs are two expended cartridge cases. They're both .40 caliber. They are
21 semi-automatic rounds. And you will hear from the primary homicide
22 detective in this case, Detective Wilson, that as of today or her testimony
23 tomorrow, there's been no weapon recovered by their investigation associated
24 with those two and ultimately three rounds.

25 You will also hear testimony that when they examined the scene,

1 once again, which include Mr. Fleming's body, right at his waist band is a gun.
2 Mr. Fleming was carrying a semi-automatic handgun on his person as you see
3 it there, not withdrawn, but literally that's the condition at the scene. And,
4 ladies and gentlemen, you're going to hear evidence in this case about that
5 weapon because as you can imagine, this weapon is part of a crime scene.
6 And you're going to hear from a crime scene analyst and from the detective
7 about the condition of this weapon and how a weapon like this is handled and
8 processed at the scene.

9 You're going to hear that it is photographed both in its natural
10 condition as you see here, but that after the scene is processed, and you see in
11 that photograph the yellow, what we call, evidence tents, with the numbers on
12 them, have a very specific purpose and design, that they are to mark evidence
13 in a crime scene and that they have a corollary cognition to the crime scene
14 diagram.

15 So, there's a crime scene diagram that will be introduced as
16 evidence in this case. And certain items of evidence are denoted in the index
17 by a number, and those numbers on the index correspond to the evidence
18 tents that you see actually at the crime scene.

19 So, what you see here at the scene in the photographs and in all
20 the photographs that will be admitted, you will see numbers. It will tell you,
21 number one, that the scene has been processed, and it's towards the end of
22 the process, but, also, that it will tell you, and you can use as reference when
23 you look at the crime scene diagram where those items are located and a
24 reminder what each one of those items are.

25 So, in this particular case, that weapon was discovered and as you

1 will hear from the crime scene analyst, after it is collected physically as
2 evidence, it is examined by crime scene investigators in a methodical
3 patterned way. And one of the things that they do in the methodical manner is
4 that they photograph it, and they note the condition of the weapon as they find
5 it.

6 So, what you see here are two photographs in that progression of
7 processing the weapon Mr. Fleming had. And there's two very important
8 things about it. Number one, it's in the condition on his body as you see on
9 the left. Number two, ladies and gentlemen, it's a 9 millimeter. It's a 9
10 millimeter semi-automatic handgun. And on the right, you will see the
11 depiction of it now in a what's referred to as a render-safe condition. The slide
12 is ejected and locked back. And you will hear testimony that it had
13 ammunition in the magazine which is on the far-right upper portion, that's in
14 the handle portion of the semi-automatic handgun.

15 So, it had ammunition in it, but it had no round in the barrel of the
16 weapon. And, thus, this weapon is -- has ammunition, but it's not ready to
17 fire. So, anybody that pulled the trigger, as you will hear from witnesses, this
18 weapon would not have fired. It physically has to be loaded by sliding back
19 the handle that you see in the condition it is, and the handle has to come
20 forward to then load the weapon.

21 So, ladies and gentlemen, the facts of this case as I've just outlined
22 is that there is a three-shot close -- or at least relatively close range firing once
23 into the head, into the body, and into the central area of the pelvic region,
24 actually the leg. And those wounds are fatal to Mr. Fleming. And as I
25 mentioned to you in the last part of this story and what the evidence will show

1 you, is that Ms. Sutton and Ms. Veasley are staring down the stairs at a scene
2 that they know -- is becoming real to them. That from Ms. Sutton's
3 perspective, her husband is lying dying on the floor. And Ms. Veasley
4 observes her stepdad in the same condition.

5 But Ms. Sutton will tell you that when she's staring down the
6 stairwell and what leads to Count 2 of this case, the assault with a deadly
7 weapon, because as she's staring down and absorbing what she's seen, after
8 she heard the gunshots, went to the stairwell and looked down, at the bottom
9 of that stairwell is Shawn Glover. And what does Mr. Glover do? He points
10 the gun at Ms. Sutton, and he utters these words: If you and your kids don't
11 want to -- or want to make it, shut the fuck up. And then he flees from the
12 home.

13 Ladies and gentlemen, at the end of this case, Mr. Flinn and myself
14 are going to ask you to find the Defendant guilty of first-degree murder with
15 the use of a deadly weapon, assault with a deadly weapon, and discharging a
16 firearm in a structure. And that is going to be based upon the evidence in this
17 case. Thank you.

18 THE COURT: All right. At this time does the Defense wish -- does
19 the Defense wish to make an opening statement?

20 MR. O'BRIEN: Yes, Your Honor. If we can just clear the screen.

21 [OPENING STATEMENT BY THE DEFENSE]

22 MR. O'BRIEN: Shawn Glover did not kill Patrick Fleming and yet he
23 was put in handcuffs, arrested, and charged with a crime he -- crimes he did
24 not commit. Now, he sits at a table with Mr. Bashor and is forced to defend
25 himself against a crime he didn't commit. This is exactly why there's a

1 presumption of innocence in this country.

2 Now, the question for you in this case is going to be does the
3 prosecution have enough evidence to show that Shawn Glover committed
4 these crimes beyond a reasonable doubt. The judge has already told you, as
5 the jury, you are the people in this trial who find the facts. You'll sit through
6 the evidence, you'll sit through the testimony. And at the end, you'll weigh out
7 who is credible, what to rely on, and to evaluate whether the prosecution has
8 met its burden of proving that Shawn Glover committed these crimes beyond
9 a reasonable doubt.

10 Now, in order to try to figure out what happened, you might look
11 to physical evidence. But in this trial, you will hear that there are no
12 fingerprints, no DNA, no gunshot residue, no video surveillance, none of those
13 things to tie Shawn Glover to these crimes. What you will be relying on is the
14 testimony of Ms. Veasley and Ms. Sutton. They're the two adults who were at
15 the property at the time, as the prosecution said. The problem is going to be
16 that they gave three versions of what happened that day to police.

17 On New Year's Day when Ms. Sutton is at the bottom of the stairs,
18 she calls 911. And the version she tells the police is that she doesn't know
19 who shot her husband. Someone knocked on the door, shot her husband.
20 She didn't see anything. She doesn't know anything.

21 A couple of hours later the police arrive or a couple of hours later
22 into the investigation, police talk to Ms. Veasley. And she says, actually the
23 suspect is a man named Hatch, my father deals marijuana. Patrick Fleming
24 deals marijuana. And Hatch is a customer of my father's. He was sitting on
25 the couch for a while. I was having an argument with my dad down in the

1 garage. And then Hatch talked to my mom, Miranda, for a minute, and then he
2 ultimately shot Patrick. She'll explain Miranda doesn't know this person. She
3 -- Ms. Sutton has never met this person, and Akira does not know this person
4 either. Ms. Veasley does not know this person.

5 She'll explain to police at that time that when Ms. Sutton and her
6 hear three gunshots, they run over to the stairwell to look down. And what
7 they see is the body of Patrick Fleming. He is dying, or he is dead due to
8 multiple gunshot wounds. Ms. Veasley tells the police she sees no one else.
9 The suspect must have run out the door, but she does know that Patrick
10 Fleming's Dodge Durango was missing. They keep the keys on the counter.
11 They always keep them on the counter, and the keys aren't there, and the
12 Dodge Durango's gone.

13 The same day, New Year's Day 2016, the police interview Miranda
14 Sutton. They want to find out what she saw, what she knows. She explains to
15 police at that time, I think there was a guy here. He's a customer of my
16 husband's. He's a customer of Patrick Fleming's. He was sitting on the couch.
17 My daughter, Akira Veasley, and my husband were arguing down in the
18 garage. I went down to check on what happened with them.

19 I don't really know this guy. I've seen him maybe one time before
20 at a previous house that we had. And she'll explain to police that she does not
21 know information about who this person is. But if they give her until 6:00 p.m.
22 that night, she will come back and give them the name of the person who shot
23 her husband.

24 The very next day, January 2nd, Akira Veasley and Miranda Sutton
25 will tell police we lied yesterday. It was Shawn Glover who shot Patrick

1 Fleming. We were scared because he threatened us. With these three
2 versions of what happened on January 1st, 2016, and you trying to sort
3 through what is true and what is not, you would usually want to rely on some
4 type of evidence beyond the statements, but you will not have that here. You
5 will not have the fingerprints of the man who ran out the door of the
6 townhome from the door. You will not see evidence about fingerprints on the
7 door of the Dodge Durango or inside the Dodge Durango that the suspect
8 stole.

9 You will not hear if there's any DNA evidence tying Mr. Glover to
10 that townhome. You will not hear that there's any DNA evidence tying Mr.
11 Glover to the Dodge Durango. You will not see any video surveillance of the
12 suspect running out of the townhome into a townhome community, a gated
13 townhome community. You will not hear about gunshot residue testing on
14 Mr. Glover or anyone else.

15 At the end of this trial, you'll be left with the word of these two
16 women to determine is there enough evidence to find a man guilty of murder.
17 And at the conclusion of this trial, we are going to say we are going to ask you
18 to find Shawn Glover not guilty of these crimes because there's simply not
19 enough evidence. Thank you.

20 THE COURT: Okay. Ladies and gentlemen, we're going to take a
21 brief recess for you to use the restroom and us to address a couple of matters.
22 During this recess, you're admonished not to talk or converse among
23 yourselves or with anyone else on any subject connected with this trial.
24 You're not to read, watch, or listen to any report of or commentary on the trial
25 by any person connected with this case or any medium of information,

1 including without limitation, newspaper, television, the Internet, or radio.
2 You're not to form or express any opinion on any subject connected with this
3 trial until the case is finally submitted to you.

4 Oh, I don't know exactly how long it'll be, but I appreciate your
5 patience, and we'll bring you back in when we're ready. Please follow my
6 Marshal.

7 THE MARSHAL: All rise. The jurors are exiting.

8 [Outside the presence of the jury.]

9 THE COURT: Counsel?

10 [Sidebar begins at 9:43 a.m.]

11 THE COURT: Just a suggestion, it's your instructions. I'll read
12 them any way you want me to read them. Just a suggestion. Here's your
13 original to compare and contrast. This is the original. Oh, you have that,
14 right?

15 UNIDENTIFIED ATTORNEY: Yes. Right.

16 THE COURT: Okay. So that just has --

17 UNIDENTIFIED ATTORNEY: This is the --

18 THE COURT: -- that's just a couple -- a little nuanced --

19 MR. O'BRIEN: Okay.

20 THE COURT: -- changes.

21 MR. STANTON: Judge, how do you want to do this? Do you want
22 it one at a time or both together?

23 THE COURT: Yeah.

24 MR. STANTON: One at a time?

25 THE COURT: You mean those ladies?

1 MR. STANTON: Yes.

2 THE COURT: One at a time. I wanted to hear exactly what they
3 were going to say about the gang membership, specifically. If you could like
4 run through that real quick before I go and say -- also, I want it made very
5 clear, and I'll say this on the record, that this was what they heard, not who
6 they heard it from or anything else, but that's what they heard. I mean I'll
7 assume they didn't watch anybody -- they didn't watch him shoot somebody
8 other than allegedly, you know -- didn't see him in a gang or --

9 MR. STANTON: They heard it from him.

10 MR. BASHOR: He's told them, and he sat there showing them
11 videos of these are my homies in New York and stuff doing, you know, this
12 and that with their guns.

13 THE COURT: It's still --

14 MR. BASHOR: And they know he couldn't have killed somebody
15 because he just got out of prison for --

16 THE COURT: It's still --

17 MR. BASHOR: -- manslaughter.

18 THE COURT: It's still a hearing. Sorry.

19 MR. STANTON: From a reliable source.

20 THE COURT: No elaboration, just hearing. I heard.

21 MR. STANTON: And he's the father of her grandchildren. It's not
22 like they're strangers. That's the scenario.

23 THE COURT: Well, that would explain why we hang out with
24 people who we think more than other people. Okay. Well, that makes more
25 sense to me. None of that made any sense. I have no pride of ownership or

1 authorship.

2 MR. O'BRIEN: I like it.

3 THE COURT: I don't care.

4 MR. O'BRIEN: I'm fine. This is fine.

5 THE COURT: I'm just throwing it out there.

6 MR. O'BRIEN: This is -- actually, the wording especially at the end
7 is better, so.

8 THE COURT: Okay. You need to say, if believed. That's what I --
9 you know, because you need to put out there that it's subject to belief.

10 MR. O'BRIEN: Right.

11 MR. STANTON: Fine.

12 THE COURT: Okay. So --

13 MR. BASHOR: And then you're requesting?

14 MR. STANTON: Yes.

15 MR. BASHOR: Okay.

16 THE COURT: My other question is this. You're entitled to have it
17 read as each witness says their thing, I think. Also, at the -- if you want to --
18 me to give it in the actual instructions at the end.

19 MR. O'BRIEN: Uh-huh.

20 THE COURT: I might change that first sentence to say, ladies and
21 gentlemen, because --

22 MR. O'BRIEN: Right.

23 THE COURT: -- that's at the end.

24 MR. O'BRIEN: No, and I -- yeah, and there might be a -- there's an
25 instruction that's a little less specific, too, that's usually given at the end. It

1 references this more specific instruction.

2 THE COURT: Okay. So, whatever you want to do for the end, let
3 me know.

4 MR. O'BRIEN: Okay.

5 THE COURT: Because right now this doesn't say, you know,
6 instruction blank.

7 MR. O'BRIEN: No, it does not. Absolutely not.

8 THE COURT: This is just what I'll do right now.

9 MR. O'BRIEN: I appreciate that.

10 THE COURT: And then give me in your -- I'm just going to read it.
11 I don't think you need to file it --

12 MR. O'BRIEN: That's fine, Judge. And --

13 THE COURT: -- unless you want to.

14 MR. O'BRIEN: No.

15 THE COURT: Okay. So, let's hear from the witnesses first.

16 [Sidebar ends at 9:46 a.m.]

17 [Outside the presence of the jury.]

18 THE COURT: Okay. So, there's a limited instruction or a
19 cautionary instruction that has been proposed by the defense. Oh, I'm sorry.
20 He's not here. One moment. I can wait. He's using the restroom?

21 MR. O'BRIEN: No, he's not.

22 MR. BASHOR: No, he's going to get the witnesses.

23 THE COURT: I meant the Defendant.

24 MR. BASHOR: Okay. Sorry.

25 THE COURT: I can wait if he has to use the restroom.

1 UNIDENTIFIED MALE: Oh, no. He's --

2 THE CLERK: We just had him in there.

3 THE COURT: Okay. So, we're back on the record. We had a brief
4 bench conference so that I could give the defense a slightly amended version
5 of a cautionary instruction, which I think is, you know, better. Nothing
6 personal to you. I think yours is great. I just think this is better, but I have no
7 pride of authorship, and I told you if you don't want to use it, don't use it.
8 And --

9 MR. O'BRIEN: I would like to use it.

10 THE COURT: And you would like to use it?

11 MR. O'BRIEN: Yes.

12 THE COURT: So, I'll read it into the record: Now I'm going to
13 caution the ladies and gentlemen of the jury that the testimony that the
14 witness believed the Defendant was gang-affiliated and/or had a history of
15 violence against persons is being offered and may only be considered by you
16 solely for the purpose of explaining the state of mind of the witness at the time
17 she made her statement to police on January 1st, 2016. The testimony, if
18 believed, was not to be -- excuse me -- is not to be considered as substantive
19 evidence that the Defendant is in fact gang-affiliated, and/or has a history of
20 violence against persons, or that he is a person of bad character.

21 So, what I think I didn't mention yesterday, but I will when the
22 witnesses come in here, is that I'm allowing -- aware of a history of violence
23 against persons and general, vague gang affiliation potentially depending on
24 what I hear with the understanding that the witness can say she heard it. She
25 can't say she heard it from the Defendant. She can't say anything else. Let's

1 just keep it contained. And I will give you some latitude to lead the witness so
2 that there is no -- while I know the district attorney's position, the State, is that
3 the source of information that she has that would give her this state of mind
4 was, fill in the blank.

5 MR. STANTON: From the Defendant.

6 THE COURT: And unless you want me to allow such a thing?

7 MR. O'BRIEN: No.

8 THE COURT: I didn't think so. I think it's enough to show her state
9 of mind, and why she might change her story over time to show that he -- that
10 she believed he was -- had been violent against people in the past, that he was
11 a gang member, and that's what she heard and believed, and that's it.

12 So, if we could bring --

13 MR. STANTON: Judge, is it proper for us within your ruling to ask
14 the witness that they heard it, and they believed it to be true? That they
15 personally believed it to be true?

16 THE COURT: Yes. That's kind of the point.

17 MR. STANTON: I think so, too.

18 MR. FLINN: And I did, in speaking with them, advise them because
19 I've obviously been talking to them about -- that there's going to be limitations,
20 but that the purpose of this is that the Court would advise them --

21 MR. STANTON: What those limitations are --

22 THE COURT: I will advise them.

23 MR. FLINN: -- so they're prepared for that.

24 THE COURT: I will advise them.

25 MR. STANTON: Miranda Sutton, Your Honor.

1 THE COURT: So, the record should reflect we've been outside the
2 presence of the jury since they've been excused. And we're calling in the first
3 witness.

4 THE MARSHAL: Follow me, please.

5 THE COURT: Ma'am, if you could approach the witness stand.
6 Once you're there and you're ready, if you could face my clerk. Raise your
7 right hand and be sworn.

8 MIRANDA SUTTON, PLAINTIFF'S WITNESS, SWORN

9 THE MARSHAL: Please be seated.

10 THE COURT: Okay. I'm sorry about this. One second. We're
11 outside the presence of the jury right now. The district attorney is going to ask
12 you some questions. The defense counsel may also ask you some questions.
13 And then we're going to talk about your testimony before the jury. Regardless
14 of what is asked of you in front of the jury, we're not going to discuss this little
15 hearing right here in front of the jury. We might say things like, you said
16 before, or you've said in the past, but we're not going -- you know, your
17 answer shouldn't be, yeah, in the little mini hearing five minutes ago, right,
18 because this is off -- outside of their consideration.

19 THE WITNESS: Okay.

20 THE COURT: Okay.

21 DIRECT EXAMINATION

22 BY MR. FLINN:

23 Q So, Ms. Sutton, you've testified in this case before, correct? You
24 remember that?

25 A Yes.

1 Q And you testified about giving statements about what happened
2 on January 1st, 2016 to police, correct?

3 A Yes.

4 Q And I know that on the day of the murder of your husband, you
5 told police one version of what happened that day, correct?

6 A Yes.

7 Q Yes. And then on the next day, January 2nd, you and your family
8 reached out to police and you told them a different version or a more detailed
9 version of what happened the previous day, and that included who shot your
10 husband?

11 A Correct.

12 Q What I'd like for you to tell the Court, because you previously
13 testified that you -- the second statement was truthful and that the first version
14 was not because you were afraid --

15 A Exactly.

16 Q -- is that correct?

17 A Yes.

18 Q So, what I'd like, if you could tell the Court, please, the reasons,
19 whatever they may be, however many or how few there are, that you were
20 afraid at that particular time that you gave the statement and what about it
21 made you change your mind the following day?

22 A During the interview, I felt intimidated because once I asked the
23 officers if they could stay there with us, because I was in fear of my life, they
24 told me, no, they could not. There was not enough police officers to stay. All I
25 could see was my husband on the ground. That's all I could see. I was in fear

1 of my life. I had already been threatened. And I was not okay until my family
2 came in.

3 Q Did you also previously explain, and I believe in that second
4 statement to police, that there were things that in addition to having just been
5 threatened the day before by the Defendant, that you knew about him that
6 made you believe those threats to be true; is that correct?

7 A Yes.

8 Q Could you explain what - what those are to the Judge, please?

9 A I know that he has a violent past, that my husband is laying on the
10 floor, that he had just been murdered, and that I had been threatened. And I
11 still had my kids and myself inside of the apartment there in the townhouse.
12 And my biggest fear was getting out alive.

13 Q You, in that second statement to police also talked to them about
14 the Defendant, his family and friends, and, for example, videos he had shown
15 you, things of that nature, correct?

16 A Yes.

17 Q What were you talking about when you explained that to the
18 detectives?

19 A The nature of -- I know who he is.

20 Q What do you mean by that, who he is?

21 A That he was an active gang member. That -- you know, that he
22 was sitting there watching the videos that morning of different instances that
23 had happened the night before, New Year's Eve. The simple fact that my
24 husband was laying on the floor was the biggest part of everything.

25 MR. FLINN: No more questions, Your Honor.

1 THE COURT: So, when you say I know he had a violent past, you
2 know that how; all the possible ways you know that?

3 THE WITNESS: Because I knew that he had been in prison before.
4 I knew that --

5 THE COURT: I mean how did you know that?

6 THE WITNESS: From my daughter --

7 THE COURT: Okay.

8 THE WITNESS: -- Angela.

9 THE COURT: So, someone told you?

10 THE WITNESS: Yes. She had told me that -- of his past that
11 he -- you know, I knew that myself, that he had been in prison
12 before, but I thought that everything was okay.

13 THE COURT: So, what you knew about the Defendant's past you
14 either knew from the Defendant or your daughter?

15 THE WITNESS: I knew from the Defendant, his self, because I
16 knew that he had gotten out of prison. I knew that him and my daughter had
17 dated before when they were in high school. And I knew that she told me that
18 he had went to prison, you know, when he disappeared for a long period of
19 time. I knew that he had just murdered my husband, and he was laying on the
20 floor and that's all I could really see.

21 THE COURT: Do you have any questions for the witness on this
22 specific topic?

23 MR. FLINN: No.

24 THE COURT: Okay. So, because --

25 MR. BASHOR: Your Honor, I would like to be heard --

1 THE COURT: Yes. Do you want to --
2 MR. BASHOR: -- outside the presence of the witness.
3 THE COURT: Can you step out just for one second in the hallway --
4 I mean in the little room there?
5 THE MARSHALL: Follow me, please.
6 [Outside the presence of the witness]
7 MR. BASHOR: I guess, Judge, you know, yesterday it was
8 proffered that --
9 THE COURT: Why don't we hear from both of them and then you
10 can argue?
11 MR. BASHOR: Okay.
12 THE COURT: Because otherwise we're going to -- we're going to
13 have --
14 MR. BASHOR: That makes sense, Your Honor.
15 THE COURT: Does that make sense?
16 MR. BASHOR: Yes, it does.
17 THE COURT: Okay. Let's call the other witness in.
18 MR. FLINN: It's Akira Veasley.
19 THE MARSHAL: Akira Veasley. Follow me, please. Watch your
20 step.
21 THE COURT: If you could face my Clerk, raise you right hand and
22 be sworn.
23 AKIRA VEASLEY, STATE'S WITNESS, SWORN
24 THE CLERK: Please be seated.
25 THE COURT: Okay. Before the District Attorney and possibly the

1 Defense Attorney or myself ask you any questions, we're doing this hearing
2 outside the presence of the jury. And later when you testify before the jury,
3 we're not going to reference this hearing. They're not even going to know
4 what happened.

5 THE WITNESS: Okay.

6 THE COURT: And so, if you say something today in this hearing
7 and one of the attorneys asks you about it, they may say something like you
8 testified before or you testified in the past, such and such.

9 THE WITNESS: Okay.

10 THE COURT: It would be helpful if you didn't say oh, you mean in
11 the little mini hearing when no jury was here? Do you see what I'm getting at?

12 THE WITNESS: Uh-huh.

13 THE COURT: Is that a yes?

14 THE WITNESS: Yeah.

15 THE COURT: Okay. So, at this time, State, if you want to ask
16 questions about our narrowed topic for the purpose of this hearing?

17 MR. FLINN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. FLINN:

20 Q So, Ms. Veasley, I'm just going to ask you a few questions about
21 statements you gave to police on January 1st, 2016 and January 2nd, 2016,
22 okay?

23 A Okay.

24 Q And so, January 1st, was the day your stepdad, Patrick Fleming, of
25 course, was killed in the home, right?

1 A Yes.

2 Q So, that day you told police that the man that shot your dad was
3 somebody by the name of Hatch, right?

4 A Yes.

5 Q The following day you and your mom, Miranda Sutton, went to the
6 police and told them what you explained was the truth and that it was actually
7 Shawn Glover, correct?

8 A Correct.

9 Q Now, what I want you to tell the Court is the reasons that you have
10 for telling one thing on the 1st, and then telling something else on the 2nd.
11 So, what about the events that day, what you know about Shawn Glover, and
12 anything else that was in your head made you do that course action?

13 A I was just scared. After the events that happened, I didn't know
14 what to do. I just never been in that predicament before. And just the events
15 that happened that day I was scared. I looked in my mom's eyes, and she just
16 looked at me, and I was scared. I didn't know what else to do.

17 Q What, in particular, made you scared?

18 A Shawn, the way -- you know, what happened right there, you
19 know. Just everything that happened that day made me scared, you know.
20 The prior things before made me scared.

21 Q What prior things?

22 A As far as like behavior, you know, the way he acted towards
23 people, the things that were happening that day, the event that happened.
24 And, again, I was just scared. I didn't know what else to do. I didn't know
25 what I should do being in this predicament.

1 Q Did -- you testified about when your dad was shot --

2 A Yes.

3 Q -- and that you heard the Defendant make threats to you and your
4 mom, correct?

5 A Correct.

6 Q Did you have reasons, based on your knowledge of Shawn, and
7 anything you knew about him, and his relationship with your family, did you
8 have any reason that you thought he was serious about that threat?

9 A Yeah, just due to the threats and what happened in the past, what
10 he had stated that day, you know, as far as if -- if you, you know, do this, I'm
11 going to do that. So, that did make me scared. It made me, you know, feel in
12 fear of my life, so I didn't know what else I should do. I -- I didn't know.

13 Q Were -- at the -- were you aware at that time about Shawn Glover's
14 past and having been in prison?

15 A Yes.

16 Q How were you -- how did you know about that?

17 A Just through people, you know, he say, she say. As far as social
18 media, as far as things I looked up, as far as things, you know, what has been
19 said. Again, with those prior events I was in fear.

20 Q Did you know or believe you knew why he had been in prison?

21 A Yeah. For -- for I think it was, if I'm not mistaken, a murder. I'm
22 not sure.

23 Q And --

24 THE COURT: What prior events are you talking about? Are you
25 talking about that or something else?

1 THE WITNESS: No. The events that happened that day.

2 THE COURT: Okay.

3 THE WITNESS: As far as him, you know, doing what he did, as far
4 as what was said that day, as far as me being scared, as far as me, you know,
5 knowing that the kids were in the house and, you know, trying to defend them,
6 as well.

7 BY MR. FLINN:

8 Q Now, this house was your sister, Angela's, right?

9 A Correct.

10 Q And Angela and Shawn Glover had a relationship, right?

11 A Correct.

12 Q Did Angela talk to you about Shawn Glover and things that went
13 on with them?

14 A No, she did not.

15 Q She left that out?

16 A She didn't really mention like the full extent, but she did mention
17 that, you know, that they did have arguments, that they did have their own
18 problems, as well.

19 Q So, when the -- when you said that you knew that the Defendant
20 had been in prison, you believed it was for a murder, are you talking
21 about -- you're not talking about what happened that day, right; you're talking
22 about a murder from before, and he was in prison and then released for that?

23 A That's correct.

24 Q Were you familiar with the Defendant's gang affiliations?

25 A I was not, but I was aware of it, but I -- I didn't know.

1 Q You were made aware by somebody else?

2 A Yes, that's correct.

3 Q But you didn't have, like, firsthand knowledge of it?

4 A Through Facebook. That was the only thing, but other than that,
5 no.

6 Q How so through Facebook?

7 A Because we were Facebook friends, so I can see everything that
8 was being posted.

9 Q So, did he post things that you interpreted as related to gang
10 activity?

11 A Yes.

12 Q And his affiliations with gang -- with a gang?

13 A Yes.

14 Q When you made the decision to tell -- to leave Shawn Glover's
15 name out of your statement to police on January 1st, and you used the name
16 Hatch, were any of these things, other than just I know you've already talked
17 about the obvious events that day --

18 A Uh-huh.

19 Q -- the shooting of your dad and the threats, did any of these things
20 factor into whether or not you believed Shawn Glover was serious about those
21 threats?

22 A Yeah. I felt that he was serious about the threats. I didn't doubt
23 him at all.

24 Q Did you have -- that day, the following day, did you have concerns
25 about your own safety?

1 A Yeah. That night -- the following night after I was receiving
2 random friend requests, after, you know, certain threats were made, I was in
3 danger and scared for my life, so I did feel that way. I -- I felt like I was in
4 danger, and I was -- I was scared.

5 THE COURT: I'm sorry, could you repeat, random friend requests
6 and then you said something else, something about threats; is that what you
7 said?

8 THE WITNESS: Yeah. Yes. I -- I'm not completely sure, but I heard
9 that there was a threat about me and my mom if we told, we were going to be
10 killed next or something to that stipulation.

11 MR. FLINN: No other questions, Your Honor.

12 MR. BASHOR: No questions.

13 THE COURT: Okay. Could you step outside for a second, please?

14 THE WITNESS: Yes.

15 THE COURT: I'd appreciate it.

16 THE BAILIFF: Watch your step, follow me.

17 [Outside the presence of the witness]

18 THE COURT: Well, before I hear from you, I would -- do you have
19 your -- can you give me your proposed instructions, please, the ones I just
20 gave you?

21 MR. BASHOR: Yes.

22 THE COURT: Could you approach? Okay. Can you approach
23 again? I'm sure Mr. Stanton appreciates you getting his paper for him. This is
24 what you're arguing about?

25 MR. BASHOR: Yes, Your Honor. I think you read my mind.

1 THE COURT: Okay. So, based upon the testimony of the
2 witnesses, balancing -- all the balancing in the world, I appreciate that there's
3 some evidence of knowledge of gang affiliation, but the gist of this is that
4 these women both believed he went to prison before for some kind of death of
5 another, at the hands of another, and the mother -- I mean the wife of the
6 decedent testified that she knew he had a violent past. And so, that's where
7 I'm going to leave it. I'm going to allow the District Attorney to talk about the
8 witness' beliefs of the history of violence, but I'm going to exclude gang
9 affiliation because it's not really the impetus of this. It's mostly a deceased
10 relative, a very serious threat, and a history of violence.

11 MR. BASHOR: And, Your Honor, just in case an appellate tribunal
12 were to think that I've acquiesced, obviously, our objections from yesterday as
13 to any of this I would renew. You've ruled, but I don't want someone to say --

14 THE COURT: Well, that's fine.

15 MR. BASHOR: -- well, he was okay with the instruction later on.

16 THE COURT: No, I know. The record should reflect that you've
17 objected to any history of violence or any testimony about any history of
18 violence. And, honestly, you know, the problem I have is I don't know what
19 those videos -- you know, once I open the door a little bit, I don't know what
20 it's all about, and we could have a collateral trial on how that message of
21 violence was communicated to these witnesses. And I don't want to get -- I
22 don't want to get into it that far. I will tell you, though, depending on what
23 questions you ask, if you open the door to how they knew this information --

24 MR. BASHOR: Yeah, I'm not --

25 THE COURT: -- the fact that the Defendant is the one they know it

1 from is, you know -- I'm not going to thought to exclude it if you ask.

2 MR. BASHOR: I'm going to put a deadbolt on that door, Judge.

3 THE COURT: All right. Just checking. Okay. So, what I'm inclined
4 to do now is bring in the witnesses, tell them about the Court's ruling. I would
5 -- on one hand I want to encourage leading. On the other -- you know, just to
6 confine them. On the other hand, which one of you is examining these
7 witnesses in front of the jury? Because if it's you, you're going to have to
8 change your style a little bit. Leading is to keep the deadbolt on what I've
9 allowed, not to spoon feed the witness your words.

10 MR. FLINN: No, I understand.

11 THE COURT: So, like I just heard some of those leading questions.
12 So, do you understand what I'm getting at?

13 MR. FLINN: I do, Your Honor.

14 THE COURT: Okay.

15 MR. FLINN: I was trying to direct them just to get through the
16 short hearing versus what I would ask in front of a jury.

17 THE COURT: Okay.

18 MR. FLINN: Based on all of their conversations with us previously.

19 THE COURT: Okay. I understand. I'm just saying I don't know
20 what you're going to do.

21 MR. FLINN: No, I understand.

22 THE COURT: I'm just trying to give you a head's up --

23 MR. FLINN: No, I understand.

24 THE COURT: -- that if there's an objection to leading questions like
25 that, I'm going to sustain them. Okay. So, could you bring in the ladies,

1 please?

2 [In the presence of the witnesses]

3 THE COURT: Okay. If you could just stand right there by the
4 District Attorneys. Okay. So, here's the thing. You're both going to testify in
5 this trial. I know testifying can be very stressful. And I've made a few rulings
6 based upon arguments of the attorneys and some testimony that you gave
7 here today. And the rulings relate to what the District Attorneys can have you
8 say on the witness stand, okay?

9 And so, what I'm going to do is I'm going to give them some
10 latitude to ask you specific questions when it gets to the area of Mr. Glover's
11 history, meaning they'll ask you questions like then what happened, then what
12 happened; open-ended questions. When we get to things that you know about
13 his history, they're going to be very specific, because I'm not allowing you to
14 testify about his gang membership, okay? What I'm allowing you to testify
15 about is that you have a belief about his violent past. You can't say murder,
16 you can't say prison; violent past. That's what I heard from both of you here
17 today. It's a more general phrase for the prison case, okay?

18 So please don't reference prison. The District Attorney's not going
19 to ask you about prison. Please don't reference the gang membership. The
20 District Attorney's not going to ask you about the gang membership. And then
21 if, you know, the Defense were to ask you, I'll cross that bridge when I come to
22 it, okay?

23 And so, when they're getting to the point of what you know about
24 Mr. Glover, they're really just talking about did you understand -- you know,
25 had you heard he had a violent past? We're not going to talk about videos or

1 things that he said or told you, just did you hear that he had a violent past and,
2 you know, whatever you believed about him having a violent past as far as I
3 believed he was violent, you can say that, but no gang membership, okay?

4 Okay. Any questions?

5 And here's the thing. If I - I'm going to be listening really carefully.
6 So, if I interrupt you, if I say oh, excuse me, just stop and the District Attorney
7 will re-guide you. I know it's awkward and I'm sorry. Okay?

8 UNIDENTIFIED FEMALE: Okay.

9 THE COURT: Okay. Thank you very much. Anything else?

10 MR. BASHOR: Not from the Defense, Your Honor.

11 MR. FLINN: Nothing.

12 THE COURT: Okay. I'm going to look to you, Mr. Bashor or
13 whoever's witness this is.

14 MR. BASHOR: It will be me, Your Honor.

15 THE COURT: To when you want me to read this? You know, look
16 at me because there's a time usually before, or in the middle, or during or at
17 the -- you know, I'll be looking for you to, you know, right after she says it.

18 MR. BASHOR: Right.

19 THE COURT: If you could just give me the --

20 MR. BASHOR: Okay.

21 THE COURT: -- you know, some kind of sign --

22 MR. BASHOR: All right.

23 THE COURT: -- when you'd like that done.

24 MR. BASHOR: You know, the --

25 THE COURT: Yeah. Not the sign of the cross or the sign for a

1 strike, but.

2 MR. BASHOR: Okay.

3 THE COURT: All right. Perfect. Anything else?

4 MR. FLINN: No, Your Honor.

5 THE COURT: Okay.

6 [Pause]

7 THE MARSHAL: All rise. The jury is entering. The jury is all
8 present, Your Honor.

9 [In the presence of the jury.]

10 THE COURT: Counsel, will you stipulate to the presence of the
11 jury?

12 MR. FLINN: Yes, Your Honor.

13 MR. BASHOR: Yes, Your Honor.

14 THE COURT: All right. At this time, State, call your first witness.

15 MR. FLINN: The State calls Miranda Sutton, Your Honor.

16 THE MARSHAL: Follow me, please.

17 THE COURT: Ma'am, if you could face my Clerk, raise your right
18 hand, and be sworn.

19 MIRANDA SUTTON, STATE'S WITNESS, SWORN

20 THE MARSHAL: Please be seated. State and spell your name for
21 the record.

22 THE WITNESS: Miranda Sutton, M-I-R-A-N-D-A S-U-T-T-O-N.

23 THE COURT: State, when you're ready.

24 MR. FLINN: Thank you, Your Honor. Can I kind of drag this back a
25 little bit --

1 THE COURT: Sure.

2 MR. FLINN: -- so I'm out of the way?

3 DIRECT EXAMINATION

4 BY MR. FLINN:

5 Q Good morning, Ms. Sutton.

6 A Good morning.

7 Q Is it all right if I call you Miranda?

8 A Yes.

9 Q Miranda, I want to talk to you about January 1st, 2016, specifically,
10 okay?

11 A Okay.

12 Q At that time, back then on January 1st, a little over two years ago,
13 where were you living?

14 A With my daughter at 38 -- it was Foggy Smock -- Smokey Fog
15 Avenue. I remember that.

16 Q Okay. You're not sure of the number, but Smokey Fog Avenue?

17 A Right.

18 Q And when -- and that's in North Las Vegas?

19 A Yes.

20 Q City of North Las Vegas, correct?

21 A Yes.

22 Q Here in the county. You said you lived with your daughter; who is
23 that?

24 A Angela. It was my goddaughter, Angela.

25 Q Your goddaughter, Angela. The house itself, what I want you to do

1 is explain to the jury how the house is situated; does that make sense? So --

2 A It's a townhouse.

3 Q It's a townhouse. Is there another unit attached to it?

4 A Yes, with a townhouse.

5 Q Okay. So, where the townhouse, is the -- how are the living
6 arrangements? Are there multiple levels? What are the basics of that?

7 A It's a two-story level. When you come in, you have the entrance
8 and a garage on the lower floor. You go up a flight of stairs, which is -- you'll
9 see in the pictures how the stairs go. And you're up in the second part of the
10 townhouse.

11 Q So, let me just backtrack a little bit. So, on the ground floor -- I'm
12 on the ground floor and you said there's a garage?

13 A Yes.

14 Q And there's also a front door?

15 A Yes.

16 Q If I go in through the front door, where am I standing?

17 A On the landing. There's a landing right there in front of the front
18 door.

19 Q Right in front of the door you said a landing. And by landing I
20 assume you mean the bottom of a stairway?

21 A Yes.

22 Q Are there any other doors in that landing?

23 A There's a front door and there's a garage door.

24 Q So, a door that leads outside and a door that leads into a garage?

25 A Right.

1 Q And then so if you're standing there, the only places you could go
2 at that point are out the front door, out to the garage, or up the stairs?

3 A Up the stairs, right.

4 Q Okay. So, if you start to go up the stairs, what do you see or where
5 do you go in the house?

6 A You go right into the dining room from the steps. And right off
7 from there is the kitchen. And then you had Angela's room right in front of the
8 kitchen almost and the boys room was off to the side.

9 Q Now, I'm going to ask you a little bit more about who the people
10 are that you're talking about.

11 A Okay.

12 Q So, if you walk up the stairs, you're in the dining room. There's a
13 living room straight through--

14 A Right.

15 Q -- do I have that right?

16 A Right.

17 Q The boys' room, and you said Angela's room?

18 A Yes.

19 Q Are too?

20 A Angela's room -- if I'm standing here and this is the front door,
21 Angela's room was off over here, and the boys room is off over here to the
22 right-hand side. Right here you have the dining room going into the living
23 room.

24 Q If you could, I know you said this is Angela's house, your
25 goddaughter. Would you please tell the jury who all was living in this

1 particular townhouse at that time?

2 A Yes. When we first got there it was my daughter, Angela, and her
3 three kids. Then my husband, myself. My daughter was just -- Akira, which
4 was 21 came, and we had twins that's 12 years old, they also came.

5 Q So, there are four -- if I counted correctly, four adults living in the
6 house and then some small children?

7 A Yes. It was --

8 Q Younger children.

9 A -- Angela's house that was there and myself and my husband,
10 Patrick, came and Akira was there.

11 Q Okay. Were there any other adults at that time?

12 A Not when we first got there.

13 Q When did you first get there?

14 A We had been there almost a week prior to.

15 Q So, about a week before January 1st, 2016?

16 A Yes.

17 Q So, during that period from when you first got there to January 1st,
18 did anyone else come and stay at that house?

19 A Shawn -- Shawn came and stayed there.

20 Q When you say Shawn, did you know a last name for Shawn?

21 A Shawn Glover.

22 Q The person you described known to you as Shawn Glover, is that
23 person present in the courtroom today?

24 A Yes.

25 Q Could you please tell the Court where that person is sitting and just

1 identify some clothing he's wearing?

2 A Right there with the green tie on.

3 MR. FLINN: May the record reflect she identified the Defendant?

4 THE COURT: The record shall so reflect.

5 BY MR. FLINN:

6 Q So, the Defendant came during that week and was staying at the
7 house?

8 A Yes.

9 Q How so? I mean who does he know at the house that he would
10 come and stay there?

11 A Angela. He has a daughter by her, also.

12 Q So, he has a child in common with Angela?

13 A Yes.

14 Q And so, during that week he came to live at the house, as well?

15 A Yes.

16 Q So, as of January 1st there's a total of five adults that are now
17 living in the house and then there's the children?

18 A Right.

19 Q Okay. Starting with in the morning of January 1st, 2016, of course,
20 who was home in the morning?

21 A We had all gotten up that morning from the New Year's Eve. And
22 Angela had to be to work at 10:00. Patrick took Angela to work that morning.
23 And I think he went by his job after that to grab his check.

24 Q So, Patrick you said took Angela to work. I assume he drove?

25 A Yes.

1 Q So, he drove Angela. Approximately at the time how old was
2 Angela? If you know.

3 A Thirty something.

4 Q Thirty something. Fair enough. So, he took her to work. And did
5 he use his own vehicle or was there some other vehicle there?

6 A Yes, he used his own vehicle. He had just taken both of them to
7 work the day before.

8 Q So, he took her to work on the morning of the 1st?

9 A Uh-huh.

10 Q And you thought maybe he stopped by his job to pick up a check?

11 A Right.

12 Q Did there come a point that morning where he arrived back at the
13 house?

14 A Yes.

15 Q What happened when Patrick came back to the house?

16 A When Patrick came back to the house, he came in and he was
17 discussing something about the night before when my daughter was -- had
18 went out. And he said that he was going to look at something on his phone
19 and went to go check out his phone, or what the video was, or whatever. And
20 he said that he wanted to talk to Akira, my 21-year-old. And they went
21 downstairs to talk, and I went with them. And it was a lot of arguing and a lot
22 of discussion down there about her being -- of her age and her being a
23 responsible 21-year-old at the time. And --

24 Q Let me stop you for just a second. So, you said Patrick came back
25 and you said with your daughter, and you, obviously, just mentioned Akira,

1 that's who you're referring to?

2 A Yes.

3 Q And when you say go downstairs, where downstairs?

4 A Into the garage.

5 Q So, down that stairs, that landing, and then through the door into
6 the garage area?

7 A Yes.

8 Q Okay. So, again, if you could just kind of slowly, what is really the
9 nature of the discussion that's going on?

10 A Akira going out the night before, and Patrick seen a video of her
11 the night before and discussing with her about lying to him.

12 Q What did he think she was lying about?

13 A About having a young man in his vehicle when he asked her not to.

14 Q So he, Patrick, and Akira were addressing that --

15 A Exactly.

16 Q -- in the garage?

17 A Yes. And was me and Patrick really addressing it.

18 Q And so you joined in on this discussion, right?

19 A Yes.

20 Q Would you describe it as a talk, an argument? I mean what was
21 sort of the tone of that?

22 A It was an argument, it was a loud argument. It was a lot of
23 shouting and that's primarily why we went to the garage. There was a lot of
24 handclapping, you know, when you talk with your hands. But other than that,
25 no, it was a typical argument that we were having.

1 Q So, while this is going on, does anyone else come down to the
2 garage while you're having this argument?

3 A Yes. Shawn came down to the garage, and he had the house
4 phone in his hand. It was a phone. I don't know if it was the house phone or
5 cell phone. I knew he had a phone. And he said that Angela's on the phone.
6 And I said yes? And she -- I was talking to Angela on the phone, and she said
7 mommy, are you okay?

8 MR. BASHOR: Objection, Your Honor, hearsay.

9 THE COURT: Okay. Counsel --

10 MR. FLINN: It's not offered for the truth, Your Honor. She's --

11 THE COURT: Okay. Then it's not relevant, so it's sustained.

12 BY MR. FLINN:

13 Q So, he -- the Defendant, told you someone's on the phone and
14 handed you the phone?

15 A Yes. And I told Angela I was okay, everything was fine. And he left
16 back out.

17 Q So, at that point the Defendant leaves the garage?

18 A Right.

19 Q Did he go outside or through the door to the stairway?

20 A He went back up into the townhouse.

21 Q So, what did you, Patrick, and Akira do at that point?

22 A Nothing. We were still standing there discussing everything and
23 actually calming down. It wasn't a big discussion after all - after, you know, so
24 long. It was like everything had gotten out, everybody had said what they had
25 to say. And Shawn came back downstairs.

1 Q So, everybody had said what they said, but the Defendant came
2 back down to the garage?

3 A Yes.

4 Q What happened when the Defendant came back to the garage?

5 A He asked me if he could speak with me upstairs.

6 Q Did you agree to do that?

7 A Yes.

8 Q So, you and the Defendant walked back upstairs?

9 A Yes.

10 Q Was it just you two or was --

11 A It was just me and him.

12 Q So, Patrick --

13 A And Akira were still in the garage.

14 Q Okay. So, when you got upstairs, where did you -- where did you
15 go to talk to the Defendant?

16 A Into Angela's room. He went towards Angela's room.

17 Q What did you two talk about?

18 A He came in there, and he asked me, do you want me to handle this,
19 do you want me to take care of it? And I said take care of what, handle what?
20 And he said well, he's down there fighting you guys. I said no, he's not. I said
21 we're down there, and there's a lot of handclapping, but everything is okay.
22 Trust me, I got this, there's no problem.

23 Q When the Defendant said do you want me to take care of this, what
24 were you thinking he meant by that? What was your state of mind on that?

25 MR. BASHOR: Objection, Your Honor. It calls for speculation.

1 THE COURT: Her state of mind?

2 MR. BASHOR: As to what he might mean by something.

3 THE COURT: He asked her what she believed him to be saying.

4 MR. BASHOR: Very good, Your Honor.

5 THE COURT: Not what he was saying. With that understanding
6 that's what the question is being asked, it's overruled.

7 BY MR. FLINN:

8 Q You can answer.

9 A Repeat it, please.

10 Q Sure. You said that the Defendant told you -- you know, asked you,
11 do you want me to handle this?

12 A Yes.

13 Q And then you responded to him that you got this, but what made
14 you respond in that way?

15 A Yes. I thought, that he thought, that we were fighting down there,
16 Patrick was fighting us. And I said no, that's not the case, we're down there
17 doing a lot of shouting. And as that right there was said, Patrick and Akira was
18 coming back up the steps. And he could see them --

19 Q Let me stop you right there. So, you had this conversation. You
20 said I got this. And by now Patrick and Akira are coming up from the garage?

21 A Yes.

22 Q Do they come to the same place that you and the Defendant are
23 talking?

24 A They're coming up to where we are. I'm coming out of the
25 bedroom, and they're coming up the stairs. And they're smiling, talking, and

1 everything is okay.

2 Q When they get up there, what happens next?

3 A It's like a whole different vibe. Patrick asked Shawn what does he
4 want to talk to his wife about. And Shawn said well, you're down there
5 tripping with them and fighting them. And Patrick said, no, I'm not. And
6 Patrick went to touch Shawn on his shoulders to say man, no, I'm not. And
7 Shawn did some move like this, like man, get off me, you're too close to me.

8 MR. FLINN: And, for the record, Your Honor, she kind of put her
9 hands out, palms up, away from her body.

10 THE COURT: The record shall so reflect.

11 THE WITNESS: And that's when Patrick looked at Shawn and said,
12 do we have a problem, do we need to talk? He said well let's -- let's go down
13 here, let's go -- we talk.

14 BY MR. FLINN:

15 Q You said he said let's go down there. Who's he?

16 A Patrick looked at Shawn and said, let's go downstairs so we can
17 talk.

18 Q So, now when he says that, you and Akira are still standing up
19 there toward the top of the stairs, correct?

20 A Yes.

21 Q What happens after Patrick says let's go downstairs?

22 A Patrick looked right at me, and I said no, you don't need to talk to
23 him. And Patrick pushed me to the side and went right on downstairs first.

24 Q So, you see Patrick start walking down the stairs?

25 A Yes.

1 Q Where is the Defendant at that point?

2 A Coming right behind him.

3 Q So, when you say coming behind him, is he also going
4 downstairs?

5 A Yes, he's going downstairs also.

6 Q As they start walking down the stairs, what do you do?

7 A I'm going back up toward Angela's room to get the stuff for the
8 baby, and I hear the shots.

9 Q You say you hear the shots. Can you just -- just back up. You're -
10 going toward Angela's room. What do you hear?

11 A Three loud shots.

12 Q When you heard those three shots, can you say how long had it
13 been since you saw the Defendant and Patrick start walking down the stairs?

14 A It couldn't have been a couple seconds. Patrick is tall. He went
15 downstairs first. Shawn came right after him. I had already turned around to
16 go to the bedroom and I heard -- before I even got in the bedroom, I heard the
17 shots.

18 Q When you heard the shots, what did you do next?

19 A Looked straight at Akira to make sure, because I know I don't have
20 hearing problems that bad, I said did you hear that? And we ran to the stairs.

21 Q So, you and Akira ran toward the stairs?

22 A Yes. The stairs, the way the stairs are, there's -- when you come
23 off of the -- from upstairs there's a little landing. There's a little stairwell, a
24 little staircase, and then there's a landing. And then there's another set of
25 staircases down below that that goes all the way to the front door.

1 Q So, you came over to the stairs?

2 A Yes. And we were like on the top -- on the top of the -- of the
3 landing. I was looking straight down at him and Akira was right behind me.

4 Q So, just so I have this clear, you're on that couple steps down, then
5 a landing?

6 A Yes.

7 Q And you're looking down the rest of the stairs?

8 A Yes.

9 Q What do you see as you look down those stairs?

10 A I see Patrick laying on the floor, and I see Shawn standing over
11 him.

12 Q How did -- how did Patrick look to you at that point laying there?
13 Was he moving, was he saying anything?

14 A No, not at all. Not at all. He looked like he was slumped over on
15 his side. And I could see Shawn standing down there with the gun, and I could
16 see him standing over Patrick, and he's standing there looking at me with the
17 gun in his hand. When I looked down, I could see he looks up at me with the
18 gun in his hand.

19 Q So, as you're looking down the Defendant lifts the gun and points
20 it in your direction?

21 A Yes.

22 Q Did you or the Defendant say anything at that point?

23 A I raised my hands, and he said don't tell on me. He said
24 something like don't tell on me, don't say anything. And all I could do was
25 raise my hands and say okay. I really thought that I was going to be shot next.

1 Q When he said that and that's what you're thinking, what did you do
2 next?

3 A I panicked. All I could do was stand there. He was trying to get out
4 of the garage door trying to move Patrick's body with the door to get out of the
5 garage door. That's the only way you could get out of the door because
6 Patrick's body was in front of the garage door and the front door.

7 Q Did you see whether the Defendant made it out one of those doors
8 at that point?

9 A You could hear the garage door going up. You could -- you knew
10 that he was - all I know is that I was trying to get to Patrick. By then Akira had
11 called 911 and I was on the -- the phone, and she asked me to try and do CPR.

12 Q So, as you were coming down the stairs, and saw all of this, and
13 the Defendant pointed the gun at you, where was Akira; if you know?

14 A I -- I knew she was behind me and then when I raised my arms, I
15 don't know what -- you know, all I could say was okay to her.

16 Q You said that Akira called 911, but you talked to them?

17 A Yeah. She had to call 911. I know that I had the phone somehow
18 because I had to do -- try to do CPR.

19 Q So, at some point you're listening to the phone and being told to
20 try to do CPR?

21 A Yes.

22 Q So, did you go down the stairs to where Patrick was laying and try
23 to do that?

24 A Yes. Shawn had already went down to Patrick. I don't know where
25 the phone came from, but I knew that I was doing the CPR on him. I had to

1 pull him toward me because he was face down when I got to him. I had to pull
2 him toward me over so that I could do the CPR on him.

3 Q So, did you turn him more so that then his -- he would be more
4 facing up?

5 A Yes. To see his face to try and do the CPR.

6 Q Did -- when you went up to him to try to do that, was -- did he have
7 anything obvious to you in terms of just being hurt?

8 A Yes.

9 Q What was that?

10 A Obviously, when he was down, I could see the back of his head. It
11 was engorged, it was big right here. When I turned him over, you know, I
12 knew right then and there that he had - -it was -- it was in his head.

13 Q So, you tried to do CPR at that point?

14 A Yes.

15 Q Did Patrick respond at all to you trying to do CPR?

16 A No.

17 Q At what point did you stop? There are some tissues just to the
18 right of you.

19 A Thank you. I didn't stop until the officers came in. And they had to
20 come through the garage, because they couldn't come through the front door.

21 Q So, at some point police officers arrive and make their way in?

22 A Yes.

23 Q That's when you stopped?

24 A Yes. And they took over.

25 Q Where did you go after the officers arrived and took over the

1 situation?

2 A They told us to go back upstairs, and we were upstairs.

3 Q Was Akira upstairs when you went up there?

4 A Yes, Akira was up there.

5 Q You previously said that there were I think it was a total of five
6 smaller children, not adult children, that were living in the house?

7 A Yes, there were. Yes.

8 Q Where, if you know, were those children while all of this was going
9 on?

10 A They were -- when we went downstairs in the beginning, they were
11 all like in the living room, in the bedroom, playing games, you know, video
12 games.

13 Q So, after the Defendant and Patrick went downstairs, and Patrick
14 was shot, and you went back up, where were the children?

15 A They were in the room with the door closed.

16 Q Had you closed that door?

17 A No. The door was open when we went downstairs. The kids told
18 me that Shawn put them in a room. That he took the clothes off the door, that
19 he put them in a room and closed the door and told them to stay in the room.

20 MR. FLINN: May we approach the Clerk, Your Honor?

21 THE COURT: Yes.

22 [Clerk and State counsel confer]

23 MR. FLINN: Your Honor, for the record I'm showing Defense
24 counsel State's proposed Exhibits 4, 5, 6, 7, 10, and 11.

25 MR. BASHOR: Judge, may we approach?

1 THE COURT: Yes. Can I see you in the hallway for a minute? I'm
2 going to step outside in the hallway. If you can remain seated and not talk to
3 anyone, I'm going to be right back.

4 [Court and counsel exit courtroom at 10:43 a.m., not recorded]

5 [Court and counsel return to courtroom at 10:44 a.m.]

6 THE COURT: Okay. So, State you had a motion?

7 MR. FLINN: Yes, Your Honor. The State moves to admit State's
8 proposed Exhibits 4, 5, 6, 7, 10, and 11 by stipulation of the parties.

9 THE COURT: Okay. So, any time the lawyers enter a stipulation,
10 whether it's to admit something or they admit -- they stipulate to the existence
11 of a particular fact, that means they've agreed, and you have to regard that fact
12 as proved. And the stipulation to admit these means that the Defense and the
13 State have agreed to their admission. 4, 5, 6, 7, 10, and 11 are admitted.

14 [STATE'S EXHIBITS 4, 5, 6, 7, 10, AND 11 RECEIVED]

15 MR. FLINN: Thank you, Your Honor.

16 BY MR. FLINN:

17 Q So, Miranda, I'm going to show you some photographs of the
18 house on Smokey Fog and ask you to explain to the jury what they're looking
19 at, okay?

20 A Okay.

21 Q I'm going to show you State's Exhibit 4, and I'm going to put that
22 up on the screen. Can you see that picture on the screen in front of you,
23 Miranda?

24 A Yes.

25 Q Okay. So, as we're looking at that building there, what is the jury

1 looking at?

2 A You're looking at the front of the townhouse.

3 Q So, there --

4 A Right there where it says 102 is where the garage is. And right
5 there where the white truck is, is the front entrance. If you go down that
6 sidewalk, it's the front entrance.

7 Q Now, just so -- to make sure we're talking about the same thing,
8 the white truck that you're referring to, is that what -- the vehicle we're looking
9 at on the left-hand side of the picture?

10 A Yes, that's --

11 Q And there's a sidewalk next to it?

12 A Right.

13 Q So, the garage door -- it looks like there's three garage doors.
14 The one that's open went to your townhouse?

15 A Yes.

16 Q And that sidewalk, does that go toward the front door?

17 A Yes.

18 Q I'm going to show you State's Exhibit 5.

19 A That's down the sidewalk. That's the apartment 201.

20 Q So, the sidewalk you were just talking about comes around the
21 building where those numbers are?

22 A To the front door right there, to 201.

23 Q That's the front door?

24 A Yes.

25 Q I'll show you Exhibit 6.

1 A That's the garage. Right there is the door. Right in front of that
2 door is where Patrick was laying at. And this is the door that Shawn exited out
3 of, the garage door. That's the garage door. It opens up.

4 Q When you say the door, we're obviously -- we're looking inside
5 the garage?

6 A Yes.

7 Q And would it be fair to say toward the top right section of that
8 picture is the door you're talking about?

9 A Yes.

10 Q Just past what looks like a mattress?

11 A Yes.

12 Q And Patrick's body is on the other side of that door?

13 A Of that door, yes.

14 Q I'm showing you State's Exhibit 7. Is that just a little bit closer
15 up of that door?

16 A Yes.

17 Q That's the same door?

18 A Yes.

19 Q I'll show you Exhibit 10.

20 A That's the -- that's the stairwell.

21 Q I'm going to zoom out real quick before you -- okay. What are
22 we looking at there?

23 A That's the stairwell. At the bottom -- down here, at the bottom is
24 where Patrick was laying at. The steps that go up -- and then up where you
25 see the plant at, there's a landing right there. So, it's like a little -- you could

1 peek around the corner to see down into the stairwell.

2 Q So that landing, if you walk up the stairs to where you described
3 that plant, the rest of the stairs, the couple more stairs you talked about, that's
4 to the right?

5 A Yes. And it goes straight up into the townhouse.

6 Q So, when you came down and saw Patrick's body and the
7 Defendant pointed the gun at you, where were you standing in the picture?

8 A I was standing right up here at the top where you see there's
9 another little banister that's hanging out, right there. All you had to do is look
10 around the corner to just look down. That's as far as I went. When I looked
11 down, I look around that corner.

12 Q So, you looked around the corner toward the bottom of the
13 stairs?

14 A Yes.

15 Q I'm going to show you exhibit -- State's Exhibit 11.

16 A Yes. That's the top of the stairs. That leads into the townhouse.
17 This is the landing that I was telling you about, the second -- the first landing
18 right here that leads down.

19 Q In the lower right corner? I'm sorry. In the lower right corner of
20 the screen is the landing?

21 A Yes. That's the landing right there. There's a set of stairs about
22 three or four steps that goes down. And then that's the landing, the first
23 landing. And then it goes down into the stairwell and there's a second landing
24 at the bottom of the steps.

25 Q So, when -- as you described Patrick started to walk down the

1 stairs --

2 A Yes.

3 Q -- and then the Defendant started to walk behind him, are you
4 standing near this area?

5 A No.

6 Q So, where are you in relation to this part?

7 A I'm all the way over here by Angela's room when they start to go
8 downstairs.

9 Q So, you saw them start to go down and that's when you're
10 walking away from this spot?

11 A Yes. I was over here near the stairs. I was blocking Patrick's
12 way. That's why he pushed me to the side.

13 Q Okay.

14 A And as soon as he walked downstairs, I started walking toward
15 the bedroom because I figured he had it. You know, he's just going to go
16 down there and talk to him like he talked to us.

17 Q So, as we're looking at this picture, you -- they start going down
18 the stairs, and you turn just as we're looking at it to the left?

19 A Uh-huh.

20 Q Okay.

21 THE COURT: Is that a yes?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MR. FLINN:

25 Q When you testified that the Defendant pointed a gun at you and

1 spoke to you --

2 A Yes.

3 Q -- do you recall, at the moment, the precise words that the
4 Defendant said to you?

5 A All I know is he said something like don't snitch on me, don't tell.
6 I seen his mouth moving. All I could do was put my hands up and say okay. I
7 knew that I -- I could see my husband laying right there on the ground. I just
8 felt like all he -- all he had to do was just -- I don't even know why I'm sitting
9 here right now.

10 Q The day after this happened you talked to the police. And do
11 you recall telling them the precise words that the Defendant said to you at that
12 point?

13 A It was fresher then, yes.

14 Q Would reviewing a transcript just of that statement refresh your
15 memory about what the Defendant said to you?

16 A Yes, it could.

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

18 THE COURT: Yes.

19 BY MR. FLINN:

20 Q I'm going to show you a page of that and if you could just read this
21 paragraph to yourself and then tell me when you're done.

22 [Witness reviews document]

23 A Yes.

24 Q Does that refresh your memory?

25 A Yes.

1 Q Would you please tell the jury --

2 A To the --

3 Q -- specifically what he said?

4 A He said, if you and your kids want to live, you'll shut the fuck up.

5 MR. FLINN: No further questions, Your Honor.

6 THE COURT: Cross-examination.

7 MR. BASHOR: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BASHOR:

10 Q Good morning.

11 A Good morning.

12 Q I'd like to talk to you a little bit about some events leading up to
13 this day. It's my understanding that you, and your husband, and your
14 daughter, Akira, were living at a different location, and then moved in with
15 Angela; is that correct?

16 A Yes.

17 Q And that was about two weeks before this occurred?

18 A Yes, about two weeks.

19 Q So, it would be fair to say you were kind of transitioning from one
20 residence --

21 A To another.

22 Q -- to another?

23 A Yes.

24 Q Okay. And by happenstance it was the holiday season, so you got
25 to spend it together?

1 A Yes.

2 Q Now, Mr. Glover wasn't there -- and I don't know why I'm making
3 that noise, so I'm going to stand back. But Mr. Glover wasn't there when you
4 moved in, right?

5 A Right.

6 Q Mr. Glover moved in on Christmas Eve?

7 A Right. About that, yes.

8 Q And between Christmas Eve and New Year's Day, roughly seven to
9 eight days, he had been in and out of the townhouse, right?

10 A Yes.

11 Q Staying away from Angela?

12 A He had been -- yes. At first, it was like he was in and out and then
13 he came and stayed.

14 Q And then he stayed?

15 A Yeah.

16 Q Okay. And obviously we've heard about this townhome, and I
17 don't think it's -- you would agree it's not designed for I don't know how many
18 people in that apartment, 11 or 12 of you, right?

19 A Actually, him and Angela had her bedroom.

20 Q Right.

21 A Me and my husband, we had blowup beds. So, we had a blowup
22 bed that was very comfortable. And all the kids were on the video games all
23 night, so they were --

24 Q I don't mean to criticize the mode of living. I'm just saying it's
25 close quarters for 11 people?

1 A It was close, yes. Yes.

2 Q Okay. And so, by that nature it would be -- you would agree
3 that Shawn and Patrick would have interactions with one another over those
4 seven to eight days?

5 A Daily, yes.

6 Q And, in fact, on New Year's Eve Patrick had driven Shawn to work?

7 A Yes.

8 Q Now, I want to direct your attention to that day. You called -- well,
9 Akira called 911, right?

10 A I believe so, yes.

11 Q And handed you the phone?

12 A Yes.

13 Q And you're on the phone with the operator, correct?

14 A Yes.

15 Q And you -- the call is made right after the suspect leaves, right?

16 A Right.

17 Q There's no delay, right?

18 A No, I don't know. I -- I was standing down there, and he was trying
19 to get out the door. I knew I felt Akira behind me, but I don't know -- I don't
20 even know when she called 911.

21 Q It would be fair to say it was in a matter of seconds after the
22 suspect --

23 A It wasn't that long after that, no, it wasn't.

24 Q Right. You weren't waiting 20, 30, 40 minutes --

25 A No.

1 Q -- to call 911?

2 A No.

3 Q You wanted to get your husband some help?

4 A Right.

5 Q As soon as possible?

6 A Exactly.

7 Q And I would think it would be safe to assume Akira would want the

8 same thing?

9 A Yes.

10 Q When you're on the 911 call -- would it be fair to say that call

11 occurred around 12:05?

12 A It could, yes, about that time.

13 Q Okay. And you're in shock?

14 A Yes.

15 Q And you're hysterical?

16 A Yes.

17 Q You're crying?

18 A Yes.

19 Q You want to do whatever you can to help your husband?

20 A Yes.

21 Q And the 911 operator wants to know what kind of services are

22 needed, right?

23 A Yes.

24 Q And you indicate that someone had shot your husband?

25 A Yes.

1 Q And you had stated that your husband had answered the door and
2 he had been shot, correct?

3 A Yes, I think I did state that.

4 Q And when asked if you knew who shot your husband, you stated I
5 don't know, I don't know?

6 A I did say that.

7 Q When asked if you saw anything at all, you indicated that no,
8 correct?

9 A That I had just been threatened, and I see my husband laying there.
10 Yes, I did say that.

11 Q Okay. And that you stated all you knew he was on the phone, and
12 someone was supposed to come over, I don't know who it was?

13 A Yes, I did say that. Now --

14 MR. BASHOR: I have no idea why -- my cell phone is in the bag.

15 [Court recorder and counsel confer]

16 MR. BASHOR:

17 Q Let's talk about -- obviously, the first responders come in, right?

18 A Yes.

19 Q They secure the scene, right?

20 A Yes.

21 Q You are -- because of where Patrick's located, you're upstairs?

22 A Yes.

23 Q And eventually detectives come?

24 A Yes.

25 Q And the first responders and the detectives -- the first responders

1 are in their uniforms, right?

2 A Yes.

3 Q And they have their guns, and their tasers, and that sort of thing,
4 right?

5 A Yes, they do.

6 Q And the detectives are there. They're armed with different things,
7 right? They're usually in civilian clothes, correct?

8 A Right. Right.

9 Q And they're armed with like a recording device?

10 A Yes.

11 Q That's kind of like their weapon, right?

12 A Yes.

13 Q And at this point you have a discussion with the detectives,
14 correct?

15 A Yes.

16 Q And at some point, a recorder is put in front of you, right?

17 A I believe so. I know that they asked me to write a statement out or
18 they wanted to record what was going on, yes.

19 Q Okay. And so as far as you knew, the conversation was going to
20 be recorded?

21 A I -- I really don't - don't even remember that part.

22 Q Okay. Now, you had stated that you were obviously in fear for
23 your life, right?

24 A Yeah.

25 Q The suspect had pointed a weapon at you, right?

1 A Yes.

2 Q And so you have, you would agree, three options at this point,

3 right?

4 A Uh-huh.

5 Q You can tell them exactly what happened, right?

6 A Yeah.

7 Q You can tell them nothing?

8 A Right.

9 Q Or you can tell them something that wasn't the truth?

10 A Right.

11 Q And when they asked what happened that day, you begin to

12 describe that your husband, Patrick Fleming, sold marijuana?

13 A I do say -- they said something like that, and I do recall something

14 to that effect.

15 Q I'm not talking about they said it. I'm saying you said that your

16 husband was --

17 A You know, I really could not tell you word for word -- verbatim

18 what I said, because I was sitting there in tears --

19 Q That's okay. I understand.

20 A -- crying that whole time. I do recall them saying something about

21 a recording and asking me -- but I do remember telling them also that -- that

22 he couldn't have gotten that far. There's only desert around us and that he

23 had just shot my husband, and I know of him having a 50- round gun, that he

24 couldn't have been that far. He had to be in that - in that same townhouses.

25 Q Okay. And we'll get to that, okay?

1 A Okay.

2 Q What I'm asking you is at the beginning of the interview you had
3 told the officers that your husband, Patrick, was looking for a re-up?

4 A I may have said that.

5 Q Would looking at your statement to the police on September 1st
6 refresh your recollection?

7 A No, it wouldn't, really.

8 Q It would not?

9 A No, because I was so out of it that day that it happened that I
10 never, ever, made a statement to -- well, I never signed a statement or did a
11 written statement because I was still in fear. And I asked the officers that day if
12 they could stay with me and my kids, and they said that they did not have
13 enough manpower to do that.

14 MR. BASHOR: The Court's indulgence.

15 [Pause]

16 BY MR. BASHOR:

17 Q You don't recall telling the detectives that the deal didn't go
18 through, I know this morning he kept saying he had to recop or get some
19 weed?

20 A I do believe I said that after they stated that no, they could not stay
21 there with me and provide safety for me and my -- my kids. I do believe that
22 that was said after that.

23 Q The answer to my question, ma'am --

24 A At the beginning, I did not know what to say to the officers or the
25 policemen there because I felt like I was still in danger.

1 Q The answer is yes?

2 A And I did not -- I'm sorry.

3 Q The answer is yes, correct?

4 A Say it again. What was the question?

5 Q Do you -- you don't recall?

6 A I don't recall.

7 Q You don't recall --

8 A I don't.

9 Q -- saying to the police that the deal didn't go through --

10 A I could have said that, yes.

11 Q Ma'am, I'm not done with my question.

12 A I'm sorry.

13 Q That the deal didn't go through, and I know this morning he kept
14 saying that he had to recop or get some weed; you don't recall saying that?

15 A I could have said that to the police officers. I'm not sure what I said
16 after that. I was still distraught, I was still shaking, and I was still asking for
17 services that they could not provide. So, I'm not exactly sure. I didn't even
18 want to give out his name because I was so scared.

19 Q Okay. Maybe because it's a lie, right?

20 A No, it couldn't have been a lie.

21 MR. FLINN: Objection. Argumentative.

22 THE COURT: Sustained.

23 BY MR. BASHOR:

24 Q Now --

25 A I stayed there, Shawn did not. I'm sorry, sir.

1 THE COURT: It's okay. I'm sorry, one second. If I sustain the
2 objection, that means that the question is not proper, I'm not allowing it --

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: -- and he has to move on, so don't answer, okay?

5 THE WITNESS: Okay.

6 THE COURT: Thank you.

7 MR. BASHOR: The Court's indulgence.

8 [Pause]

9 BY MR. BASHOR:

10 Q Do you recall telling the detectives that your husband had to make
11 a run, and it was something to do with weed, and he kept talking about it the
12 night before?

13 A You keep asking me these questions, but I'm not familiar with
14 them. I'm not exactly sure what I told them. I do know that I said can you
15 guys stay here with us. And when they told us there was no additional
16 protection, I'm not sure what I said because the police couldn't help me at that
17 time, and I knew that he was still in the vicinity. There was nothing that no
18 one could do. The only thing that I wanted to do was get my kids and get out
19 of there.

20 Q Okay. Let's talk about the argument.

21 A Okay.

22 Q Do you have a recollection of that?

23 A Yes, I do.

24 Q Okay. Do you recall telling -- so, as I understand it, Patrick was
25 arguing with Akira, right?

1 A Yes. He was --

2 Q And the argument with --

3 A -- actually, he was arguing with me and Akira.

4 Q Okay, good. We'll get to that.

5 A Okay.

6 Q The argument started with Akira, correct?

7 A Yes.

8 Q Okay. And that was because Patrick had her followed the night

9 before?

10 A Yes. Yes.

11 Q Because he didn't want a boy in his car, right?

12 A Something to that. We -- I never exactly knew exactly what it was.

13 All I knew we were arguing about her age and her being responsible and not

14 the typical average 21-year-old.

15 Q Patrick had someone following her and spying on her, right?

16 A One of his friends. One of his so-called friends had videotaped or

17 something of the -- the event from that night before.

18 Q So, Patrick had his friend videotape his daughter on a date?

19 A Yes.

20 Q That was upsetting to Akira?

21 A It was upsetting to us all. That's why we were discussing it and

22 there was an argument. And it turned from a simple hold on, she's 21 years

23 old, you know, and she's being responsible. You told her you wanted her back

24 by 11:30, and it was a decent time because of his traditions of New Year's Eve,

25 and she did that. So, he had her followed to say that no, she wasn't with a boy

1 in her -- in his vehicle.

2 Q It would be fair to say that Akira was screaming, right?

3 A It was safe to say we were all screaming.

4 Q Was Akira screaming?

5 A Yes.

6 Q Were you screaming?

7 A I was screaming.

8 Q Was Patrick screaming?

9 A He was talking loud. Patrick -- Patrick's voice carries loudly.

10 Q At about 11:35 you go downstairs and let him know that
11 you want to get going, right?

12 A To tell him that -- we had previous things to do. We had --

13 Q That you wanted to go look for an apartment?

14 A Well, we had an apartment. We had to go put the money down on
15 the apartment and get going that day to transfer all of our things over there to
16 that apartment.

17 Q And that's what you -- you took note of the time that it was 11:35,
18 right?

19 A Well, I said it was 11:35, because I looked at the time. Instead of
20 you arguing with Akira, we have things to do.

21 Q Okay. So, that part of your statement to the police on January 1
22 you have a perfect recollection of, right?

23 A I'm not exactly sure if that was the exact time. It could have been
24 around that time because I know that it -- about the time that she got off, and I
25 thought I was looking at the time because of the situation that we were in

1 going to get started with our day.

2 Q In your statement to police on January 1st, you indicated to them
3 that you didn't get a good look at the suspect; is that correct?

4 A I'm not exactly sure.

5 Q All right.

6 A Like I told you previously, we just -- and I just stated that, that
7 when the officers told me that there was no one that could stay there with me
8 and my kids, that I feared -- I was in fear. All I could see was the gun pointed
9 up at me. And I'm not sure why he didn't shoot me that day myself.

10 Q And, again, there'd be no point to show you the transcript?

11 A No.

12 Q All right. Now, do you remember telling the police that your
13 memory was off since your last surgery?

14 A No. I told them that I had a lot of things going on since my last
15 surgery, but my memory wasn't off that -- not to know what had had
16 happened to my husband. Me and my husband had been together for all
17 these years. I would know exactly what happened to him.

18 Q And that's why you told the police you didn't know who shot your
19 husband on January 1st?

20 A No. I told the police that when they told me that they could not
21 stay there with me and my kids in the house that my husband was laying on
22 the floor of that had just been shot and murdered.

23 Q Okay.

24 THE COURT: Ms. Sutton, because the recording equipment can't
25 get two people talking at once, I need you to let him finish his question before

1 you start your answer, okay?

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 BY MR. BASHOR:

5 Q So when asked if you could describe the individual on that day,
6 you don't recall telling the police no, my memory is kind of off since my last
7 surgery?

8 A I can tell you this right here. I could describe him pointing that gun
9 up at me. That's the only thing I could see. When the officers was talking to
10 me, that's the only thing I could see. That since they could not stay with me,
11 that he was going to run back up, and he'll shoot us all up.

12 Q Okay. So, it's fair you're really adamant today, right?

13 A I'm sorry?

14 Q You're really adamant about what happened today, right?

15 A Yes.

16 Q Yeah. You can't answer a yes or no question. So when -- you
17 want the killer of your husband brought to justice, right?

18 A Yes.

19 Q And so then you decide on January 1st, to lie to the police?

20 A No. What I did was on January 1st, not tell the exact same story
21 that they wanted to know and hear, because I was in fear of my -- my life and
22 then my kids were still there, and my husband's body had not even gotten up
23 off the floor yet. But he had been killed and murdered. That's the only thing I
24 was thinking of that day. Now, when my family got to me that night and took
25 me out of that, like the surrounding that it had happened in, I calmed down,

1 and we went to the police station the next morning to tell them exactly who it
2 was, what had happened, everything.

3 Q Do you recall stating that the individual came into the front door on
4 January 1st?

5 A I'm not sure. What I -- that -- that's my whole point to you. I'm not
6 exactly sure what I said to the officers January 1st, because I was scared and
7 alone with my husband still laying down there and my kids in a room
8 somewhere that I don't even know about.

9 Q You were alone, yes?

10 A Alone in that situation, yes.

11 Q Right. And there were how many responding officers with
12 handguns?

13 A But how many stayed with me and my kids is the question.

14 Q Okay. I'm asking you a question, ma'am. How many responding
15 officers were in the apartment when you were home alone?

16 A I'm not exactly sure. All I know is they were there. I'm not -- I'm
17 not even sure if I looked up at them that day.

18 Q How many detectives? How many detectives?

19 A There could have -- there was quite a few detectives that day, but
20 then they didn't threaten me with their gun that day, either.

21 Q You'd agree that their guns were protecting you?

22 A They was protecting me, yes, as long as they were there in
23 that -- in that townhouse with us --

24 Q And when you were in the --

25 A -- but when they told me that they could not stay with us, there

1 was nothing that they could do.

2 Q When you were talking to them, they were in the townhouse, right?

3 A Yes.

4 Q Protecting you, right?

5 A Yes.

6 Q And then you lied to?

7 A I'm not sure if I lied to them. I didn't write out a statement that
8 day.

9 Q And the statement --

10 A And as I -- I'm sorry.

11 Q -- that the police recorded, you have no recollection of, right?

12 A I'm sorry?

13 Q And the statement the police recorded you have no recollection of?

14 A No, not today because I never signed anything that day. And like I
15 told the investigator, give me time to get me and my kids together, and you
16 will know everything that you need to know. Get us out of this right here place
17 where my husband is dead at, please. I begged them that day to stay with us.

18 Q Going back to the argument, you testified on direct examination
19 that Shawn had come down at one point and returned back upstairs, correct?

20 A Yes. He came downstairs with the phone and said that Angela was
21 on the phone and returned back upstairs.

22 Q And then came down a second time and asked if he could speak
23 with you?

24 A Yes.

25 Q While that was happening, the argument between Akira and Patrick

1 ends?

2 A No. They were finishing up. It was -- it wasn't -- the argument in
3 the ending was not between Patrick and Akira. He looked at her and said
4 something -- it was directed to me and him. Me and him was arguing,
5 because I was telling him of her age and as I was doing it, I was like this and as
6 you see, I have had surgeries on my ears, so I'm louder than what I really think
7 I am. I think I'm loud -- not loud now, but I'm louder than what I really think I
8 am. So, downstairs in the garage it was amplified and we're down there
9 screaming, and my voice is getting loud, and I'm clapping, this is nothing
10 unusual. This is a conversation I'm having with my husband.

11 Q Okay.

12 A This is an argument conversation that we all -- that, you know, that
13 I'm having with my husband concerning my daughter just standing right there.

14 Q You testified on direct examination that when Akira and Patrick
15 came out from the garage and started heading upstairs, the argument between
16 the two of them seemed to be over; is that fair?

17 A Yes.

18 Q And that they were smiling?

19 A Yes.

20 Q And talking?

21 A I think that Patrick's whole thing that day was to scare Akira
22 and -- and that was it. Her being her age, just turning 21 almost, you know,
23 and being with a new boyfriend and everything, it was a scare tactic for her. It
24 wasn't for anyone else. And I was trying to tell him to calm down. And that's
25 all it was. It wasn't anything serious that, you know --

1 Q So the argument wasn't all that serious?

2 A No, not to --

3 Q It was normal?

4 A It wasn't -- it was not normal, but it wasn't anything to, you know,
5 get your feathers ruffled about.

6 Q Uh-huh. Nothing to kill over, right?

7 A I'm sorry?

8 Q Nothing to kill over?

9 A Not that my -- no, not that I could see.

10 MR. BASHOR: The Court's indulgence.

11 [Defense counsel confer]

12 BY MR. BASHOR:

13 Q Towards the end of the interview you don't remember -- do you
14 recall telling the police that they should go and check the facility for cameras?

15 A The facility for cameras, yes.

16 Q You remember that part?

17 A That they should have cameras outside of the townhouses.

18 Q And that you give them an approximate time, 11:45, for them to go
19 and look at the cameras?

20 A It had not happened that long before that. An approximate time,
21 yes.

22 Q Okay. An approximate time, you recall that part?

23 A No. I recall me telling them that he did -- I know of him having a 50
24 round drum, that my husband was there on the ground, and that he could not
25 have gotten out of the townhouses not by foot, and he did not have a vehicle.

1 So, where is he? He has to still be here in the vicinity.

2 Q Okay.

3 MR. BASHOR: Your Honor, may I approach? First of all, I have no
4 further questions, and can I approach?

5 THE COURT: Sure. Can I see counsel in the hallway? Can you
6 remain seated and not talk to anyone again?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 [Court and Counsel exit the courtroom at 11:17 a.m., not recorded]

10 [Court and Counsel return to courtroom at 11:21 a.m.]

11 THE COURT: Okay. Ladies and gentlemen of the jury, we're going
12 to take a short restroom break. During this recess you are -- and you're going
13 to follow my Marshal. During this recess you are admonished not to talk or
14 converse among yourselves or with anyone else on any subject connected
15 with the trial, not to read, watch, or listen to any report of, or commentary on
16 the trial by any person connected with this case or any medium of information
17 including, without limitation, newspaper, television, the internet, or radio. Do
18 not to form or express any opinion on any subject connected with this trial
19 until the case is finally submitted to you. No social media, no tweeting, no
20 Facebooking, no twitting, no snapchatting, none of that. See you in a few.

21 THE MARSHAL: All rise. Jury exiting.

22 [Outside the presence of the jury.]

23 THE COURT: The record should reflect we're outside the presence
24 of the jury. In the back hallway there I discussed with you a scheduling
25 problem that the Court has that has nothing to do with this case, but that

1 Justice Hardesty would like my attendance tomorrow at the meeting that we
2 talked about at the calendar call. I told you about the email I sent to him. I
3 think I can get out of the meeting early, but I can't take a pass on the whole
4 meeting. I mean he wants me to attend, it's his commission, I committed to it,
5 so we're going to rediscuss the schedule for tomorrow. And so, I just want to
6 put you on notice to the extent you have to make plans or whatever, you can
7 do that.

8 Okay. You wished -- the witness needed to use the restroom, so it
9 seemed like a good time to give the jury a break, and we can make a record of
10 whatever you want to make. You can sit down. Thank you. Whatever you
11 want to make a record of. I would note that no one asked me to give any
12 admonishment and --

13 MR. BASHOR: Well, I don't think it would have been appropriate at
14 that time anyway because the logical -- excuse me -- the logical progression
15 would be yes, I lied. And then on redirect examination it would be let's
16 explore those reasons.

17 THE COURT: Right. Which they haven't done.

18 MR. BASHOR: Right. And my point is, since she won't admit or
19 doesn't recall lying, then there's no need to explain under the statute.

20 THE COURT: Well, here's the thing. There's two witnesses, right?

21 MR. BASHOR: Right.

22 THE COURT: And so, so far there's this witness who's very clear
23 about everything, and I don't know that it needs to be redirected. I don't quite
24 frankly -- well, I think she's very clear on her feelings. And so, for this witness I
25 don't necessarily disagree, but I'll hear from the State.

1 MR. STANTON: Well, first of all, she doesn't -- first of all, the way
2 counsel phrased her testimony the State will disagree. Number one, that she
3 -- her statement is that she doesn't remember lying. No. She remembers the
4 statement, she remembers that she gave it, she remembers that she didn't
5 give complete accurate details. Whether or not you want to say it's a lie, I
6 don't think she's going to concede it is or at least to the extent that it's a
7 conditional lie. She just doesn't remember -- because counsel's asking the
8 question, do you remember telling the detectives this?

9 THE COURT: Right.

10 MR. STANTON: So, she's not denying that the statement was
11 made and that the statement has things that are different from her current
12 testimony or version the next day. So, is it --

13 THE COURT: Yeah, but she already testified why didn't you
14 tell -- why didn't you tell. I mean that's already been covered, and she
15 answered the question with all kinds of things that didn't have anything to do
16 with past violent history. And so, I don't know that there's something to go
17 back on in redirect. I don't -- I mean I get from the Defense perspective you
18 want to call it a lie. She's explained her statement. And so, I guess I don't
19 know what we're pre-arguing about.

20 MR. BASHOR: Okay. That's fair.

21 THE COURT: She couldn't be any more clearer like, you know.

22 MR. STANTON: But that answer is not -- is in response to, do you
23 remember saying this to the detectives. It's, I believe, a substantively and
24 qualitative different concept to ask her what -- and as we planned to do, in a
25 leading fashion, were you also concerned about information that you knew

1 that the Defendant had committed other acts of violence. In a leading question
2 specifically within the framework of the instruction and that would be the sole
3 question to her to explain what occurred.

4 And just so the record is abundantly clear, that the strategy of the
5 State as it relates to this issue is, as I stated before, we were not going to touch
6 the inconsistent statements. So, that it is abundantly clear that that is a
7 strategic choice by the Defense to do that under the law in the State of Nevada
8 at the cost to the State's case of not eliciting obviously an inconsistent
9 statement, which I think there is a cost for us to bear in that regard, but
10 pursuant to the Court's directive, and I believe consistent with what the law
11 permits, she is entitled to explain the differences in her inconsistent
12 statements, and I believe within the parameters of the Court's ruling she's
13 entitled to fully explain.

14 THE COURT: Which I just listened to for 20 minutes, but. So, I
15 understand the nature of your objection. I heard her testimony prior to the
16 hearing. I'm relying on that testimony, I'm standing by my previous ruling, but
17 I'm not allowing gang membership, I'm not allowing any specifics, and that's
18 it. Anything else?

19 MR. BASHOR: No, Your Honor.

20 MR. STANTON: No, Your Honor.

21 THE COURT: Okay. So, is she out there? Can we -- can we --

22 [Plaintiff and Defense counsel confer]

23 MR. BASHOR: Your Honor, how do I go about ordering a JAVS of
24 her testimony?

25 THE COURT: Ask her, and she'll give it to you. You don't have to

1 order it.

2 MR. BASHOR: Okay.

3 THE COURT: She'll burn a copy of it.

4 MR. BASHOR: Thank you.

5 THE COURT: By lunch or like right before you leave, can you,
6 please?

7 MR. BASHOR: Thank you.

8 [Court and Marshal confer]

9 THE COURT: Okay. Are they ready?

10 THE MARSHAL: In about one minute they'll be ready.

11 THE COURT: Okay. I don't know -- hey, State, can you go look for
12 your witness? She just went to the bathroom and --

13 MR. STANTON: Yeah, she came back and went back in the side
14 room, I believe.

15 THE COURT: Okay.

16 MR. STANTON: She came back.

17 THE COURT: Okay. Will you bring them in when they're ready?

18 THE MARSHAL: Yes.

19 MR. STANTON: And just a reminder to the Court and counsel, I
20 have Dr. Corneal coming here as the first witness in the afternoon session.

21 THE COURT: Okay.

22 MR. STANTON: I told her to be here at 1.

23 THE COURT: Okay.

24 MR. STANTON: I could use a couple minutes for her to review the
25 specific autopsy photographs.

1 THE COURT: I'm going to have the jury come at 1:15.

2 MR. STANTON: Okay.

3 THE COURT: Because I might not be able to take a break until
4 12:15, depending on how you guys go.

5 MR. STANTON: And then my guess is, is that once we're done
6 with this witness, it might be better -- because the next witness is Ms. Veasley,
7 and we wouldn't be able to complete her testimony, so we'd have to either
8 stop hers or just break and then come back to a witness out of order.

9 THE COURT: Okay.

10 [Court and Clerk confer]

11 THE COURT: Do you want to get the witness, so we can bring the
12 jury in when she's already sitting in the seat?

13 THE BAILIFF: Sure.

14 THE COURT: Thank you.

15 THE MARSHAL: Watch your step. All rise. The jury is entering.
16 The jury's all present, ma'am.

17 [In the presence of the jury.]

18 THE COURT: Counsel, will you stipulate to the presence of the
19 jury?

20 COUNSEL: Yes, Your Honor.

21 THE COURT: Okay. Ma'am, before we continue with your
22 examination, do you understand you're still under oath?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: All right. Redirect.

25 MR. FLINN: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. FLINN:

3 Q Miranda, when you talked to the police on January 1st, 2016, right
4 after Patrick had been shot --

5 A Uh-huh.

6 Q -- and you told them what happened --

7 THE COURT: One second. All I can hear is around you talking.
8 One second.

9 MR. BASHOR: And just while we're doing that, I apologize. Can
10 we approach really quickly?

11 THE COURT: Yes.

12 [Sidebar begins at 11:34 a.m.]

13 THE COURT: I'm sorry, but everybody is like just full on talking on
14 the way in here. The people, I can't even blame the people. It's my staff, as
15 well.

16 MR. BASHOR: I don't think this has been a problem so far, but I
17 neglected to invoke the exclusionary rule at the beginning of the witnesses
18 being called. Like I said, I don't think it's been a problem. And I think the other
19 witnesses have been outside, it's just --

20 THE COURT: But they cannot be for (indiscernible).

21 MR. BASHOR: And I don't know who these people are, either, and
22 that's the reason why --

23 THE COURT: Can you tell Mr. Stanton, please?

24 MR. FLINN: I can tell you none of these people are witnesses. The
25 only other lay witness we are calling at this point is Akira, who's already been

1 in the courtroom, so the Court knows.

2 THE COURT: Okay. I can accept that.

3 MR. FLINN: And anybody else --

4 THE COURT: Will you accept that? I'll make a record that you
5 invoked it up here at the bench.

6 MR. BASHOR: And I've already been in the courtroom. She was in
7 the courtroom earlier. She's not in the courtroom.

8 MR. FLINN: Correct. For the evidentiary.

9 MR. BASHOR: Right.

10 THE COURT: Okay.

11 MR. BASHOR: Thank you.

12 THE COURT: Okay.

13 [Sidebar ending at 11:35 a.m.]

14 THE COURT: Okay. Now that we can hear you, State, go ahead.

15 MR. FLINN: Thank you, Your Honor.

16 BY MR. FLINN:

17 Q Okay. I'm just going to repeat that. Miranda, when you, on
18 January 1st, after -- right after Patrick had been shot, and you told police what
19 was going on and left out that it was the Defendant who shot Patrick, did you
20 believe -- did you believe that the Defendant had committed other acts of
21 violence against other people in the past?

22 A I know he had, yes.

23 MR. FLINN: Nothing further, Your Honor.

24 THE COURT: Anything else? Ladies and gentlemen, I'm going to
25 caution you now, ladies and gentlemen of the jury, that the testimony that the

1 witness believed the Defendant had a history of violence against persons is
2 being offered and may only be considered by you solely for the purpose of
3 explaining the state of mind of the witness at the time she made her statement
4 to police on January 1st, 2016. This testimony, if believed, is not to be
5 considered as substantive evidence that the Defendant has a history of
6 violence against persons or that he is a person of bad character.

7 Now, do any of the ladies and gentlemen of the jury have any
8 questions you wish the Court to ask the witness? There being no questions,
9 thank you very much, ma'am, for your testimony. You're excused. State, call
10 your next witness.

11 MR. FLINN: The State calls Akira Veasley, Your Honor.

12 THE MARSHAL: Watch your step.

13 THE COURT: If you could when you're ready, face the Clerk, raise
14 your right hand and be sworn.

15 AKIRA VEASLEY, STATE'S WITNESS, SWORN

16 THE CLERK: Please be seated. State and spell your name for the
17 record.

18 THE WITNESS: It's Akira Veasley, A-K-I-R-A V, as in Victor,
19 E-A-S-L-E-Y.

20 MR. FLINN: Thank you, Your Honor.

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MR. FLINN:

24 Q Ms. Veasley, is it okay if I call you Akira?

25 A Uh-huh.

1 Q So, I want to talk to you about January 1st, 2016 specifically, okay?
2 At that time where were you living?

3 A We were living with Angela in the townhouse. We were staying
4 with them.

5 Q Do you remember the street the house was on, the townhouse?

6 A It was Lamb, and I think it was Tropical or Centennial.

7 Q In North Las Vegas, right?

8 A Yeah, in North Las Vegas.

9 Q And you said Angela; who is Angela to you?

10 A Godsister.

11 Q Who else did you live with at that time at that house?

12 A It was me, my mom, my brother and sister, Angela and her three
13 kids, and Patrick.

14 Q And your mom is Miranda?

15 A Yes.

16 Q And Patrick is your dad or stepdad?

17 A Yes.

18 Q Were there -- when it came to January 1st, were there any other
19 adults staying at the house?

20 A Yeah. Shawn.

21 Q When you say Shawn, do you know Shawn's last name?

22 A Glover.

23 Q And is that person that you know as Shawn Glover present in
24 Court today?

25 A Yes.

1 Q Could you please tell the jury where that person is sitting and the
2 clothing he's wearing?

3 A A suit, sitting right there. He has a tie on with a white shirt, the
4 long dreads.

5 MR. FLINN: Would the record reflect she identified the Defendant,
6 Your Honor?

7 THE COURT: The record shall so reflect.

8 BY MR. FLINN:

9 Q So, the Defendant was also staying there at the time, right?

10 A Correct.

11 Q So, on the morning of January 1st, what were you doing?

12 A We had got up. Everything was okay. And that's when Patrick, he
13 was talking on the phone with, I don't know, I think one of his friends or
14 something, and he started getting mad at me because I went out the prior
15 night, and I wasn't supposed to have my boyfriend in the car. So, he was
16 saying like he was mad at me over that. And he was mad at my mom's friend
17 over gift presents. So, we started to argue in the garage, like we went
18 downstairs to the garage area and started to argue.

19 Q Just you and Patrick?

20 A Just me and Patrick.

21 Q Was anyone else in there at the time?

22 A Not at the time.

23 Q And those were the primary things you were arguing about?

24 A Yeah.

25 Q While you were arguing about that did anyone else come to the

1 garage?

2 A Yeah. So, my mom came to the garage. She came to the garage
3 first, and she joined the argument, and then that's when Shawn came down
4 there and gave my mom the phone.

5 Q So while you, your mom, and Patrick are arguing, at some point
6 the Defendant comes in and hands your mom the phone?

7 A That's correct.

8 Q Did the Defendant stay for the rest of the argument or did he leave
9 the room?

10 A No. He gave my mom the phone real quick. She talked on the
11 phone for about like a minute or two, and then he left. And then we continued
12 to argue, and then he came back down.

13 Q What happened when the Defendant came back down to the
14 garage?

15 A So, that's when he told my mom that he wanted to talk to her, and
16 they went out of the garage up the stairs.

17 Q So, at that point it's just you and Patrick in the garage?

18 A Correct.

19 Q Miranda, your mom, and the Defendant are now --

20 A Gone upstairs.

21 Q -- have gone in towards the stairway?

22 A Uh-huh. Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes. Sorry.

25 THE COURT: Thank you.

1 BY MR. FLINN:

2 Q At some point, do you and Patrick stop arguing?

3 A Yeah. So, shortly after Shawn and my mom go upstairs, we stop
4 arguing. He was like I'm sorry, you know, you're grown, blah, blah, blah. And
5 we exited out the garage and started going upstairs.

6 Q So, you said he said he was sorry --

7 A Yeah.

8 Q -- you're grown. So, would it be fair to describe the argument at
9 that point as it's now calm?

10 A Yeah. So, everything -- it was okay. Everything was done.
11 Everything is fine at this point.

12 Q So, you two started to walk up the stairs. Where did you go when
13 you got up the stairs?

14 A I went and sat on the couch. And Shawn and Patrick they were
15 standing up arguing. And then my mom, she was like kind of close to
16 the -- the -- to Angela's door -- to Angela's bedroom door.

17 Q So, when you're sitting on the couch --

18 A Uh-huh.

19 Q -- can you hear this argument between Patrick and the Defendant?

20 A Yes. They're right there in front of me.

21 Q What did you hear them arguing about?

22 A Basically, Shawn was saying something like Patrick was trying to
23 beat on me and my mom. He heard us crying. And this is his house. And
24 Patrick was like I'm not beating on them, you know, I'm just having a
25 conversation. And I think that's when it was like Shawn got even more mad,

1 and then Patrick like grabbed him by his elbows, and he was like, you know,
2 it's not like that, I'm just trying to have a conversation, you know. And then
3 Shawn's like no, get off me. So, at that point, I'm not sure -- I don't recall who
4 said, you know, let's go downstairs, but someone said let's go downstairs and
5 let's talk. So, at that point, Patrick starts going down the stairs, and then
6 Shawn, and then that's when I heard the -- the gunshots.

7 Q So, from -- just sort of backing up. From where you're sitting on
8 the couch you heard all this happen. And then did you personally see Patrick
9 start going toward the stairs?

10 A Yes.

11 Q And you saw him walking down the stairs?

12 A Yeah. I seen him going down the stairs first.

13 Q You say first, meaning ahead of the Defendant?

14 A Correct.

15 Q So, the Defendant is behind Patrick. And does he also go down the
16 stairs?

17 A Yes.

18 Q Based on where you're sitting at some point they now are out of
19 your line of sight?

20 A Yeah. So, where I'm sitting, as soon as they start going down the
21 stairs, they are out of sight.

22 Q Approximately how -- you said you heard -- well, after they started
23 going down the stairs, what exactly did you hear?

24 A So, I heard the footsteps at first because there's stairs right here
25 and then there's some more stairs going this way. So, you can hear them

1 going down these stairs, but once they're turning, you hear about like one or
2 two more steps, and then you hear the three gunshots.

3 Q So, you heard three gunshots?

4 A Yes.

5 Q Could you describe hearing those three gunshots? You know,
6 were they -- was it, you know, one right after the other, was there any timing
7 lapse? Can you just describe that?

8 A So, the first one went, and then there was a pause, and then the
9 other two let off. So, it was like the first one, pause, boom, boom.

10 Q When you heard those gunshots, approximately how much time
11 had gone by since you -- since you had -- since you watched the Defendant
12 follow Patrick down the stairs; if you could estimate?

13 A About like ten to 15 seconds. It was real -- it was really quick.

14 Q When you heard those gunshots, what did you do?

15 A I looked up at my mom, and then we ran to the stairs.

16 Q When you got to the stairs, did you start going down the stairs?

17 A No. So, my mom started to go down the stairs first, and then I was
18 right behind her.

19 Q So, you stayed behind your mom?

20 A Uh-huh.

21 Q What did you hear or see as the two of you went down the stairs?

22 A So, I seen Patrick laying on the floor, and I seen Shawn there. And
23 he was just yelling out threats. And my mom's just like why did you do this,
24 why did you do this? And I was just behind her, you know, just scared. And
25 then at that point I started to run back up the stairs.

1 Q What, specifically, do you recall the Defendant saying at that time?

2 A I know he stated something about us not telling on him and that
3 we -- he told us that he wasn't a joke. He's like I'm not a joke, I told you guys I
4 wasn't a joke. And something about not snitching on him. And that's all I
5 could remember. And then that's when he started to leave.

6 Q When he started to leave, did you see -- did you see where he
7 went?

8 A Yes. He went outside of the garage door.

9 Q Through the door of the landing to the garage?

10 A Yeah.

11 Q That direction? Can you describe what Patrick looked like at the
12 bottom of the stairs? I mean was he talking, moving? Any -- something of that
13 nature?

14 A No. I think at that point he was -- he was gone, because he was
15 just laying there.

16 MR. FLINN: No further questions, Your Honor.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. BASHOR:

20 Q Are you okay? Do you need a break?

21 A No, I'm good. I'm good.

22 Q There's tissues right there.

23 A Okay.

24 Q It's still morning barely, so I'm going to say good morning.

25 A Good morning.

1 Q All right. I'm going to talk to you about the couple weeks leading
2 up to when this happened, okay. It's my understanding that you, Patrick, and
3 Miranda were kind of in between houses, right?

4 A Correct.

5 Q And you were in the townhouse that your sister owned or leased?

6 A Yes.

7 Q And your sister being Angela?

8 A Yes.

9 Q And so -- and when you moved in, Shawn wasn't there already,
10 right?

11 A Correct.

12 Q He moved in approximately Christmas Eve?

13 A Yeah, about like two days before Christmas.

14 Q Okay. And so, over those seven or eight days you were able to
15 observe Shawn's interactions with Patrick, right?

16 A Yeah. He -- he didn't come over. He only came over one time
17 before he actually came the two days prior. So, I seen him one time, he came
18 over for about ten minutes, and then he left.

19 Q So, during that eight days was Shawn in that townhouse or not?

20 A No. So, during -- during the time that we first moved in, he was
21 not there.

22 Q Okay. Exactly. And I apologize if I -- I don't mean to be confusing.
23 So, you move in --

24 A Uh-huh.

25 Q -- you're there for a little while, ten days, a couple weeks, right?

1 A Exactly.

2 Q And then Shawn moves in approximately two days before
3 Christmas, right?

4 A Yes.

5 Q And so during that seven or eight days between Christmas
6 Eve-ish and New Year's Day, Shawn's around a lot?

7 A Yes, that's correct. Yeah.

8 Q Okay. All right. And so, you, during that period of time, obviously,
9 given it's a two bedroom townhouse and there are 11 or 12 of you, you're
10 going to interact with one another, right?

11 A Yeah. Yeah.

12 Q And in your observations of Patrick and Shawn, they seemed to be
13 getting along?

14 A Exactly.

15 Q Okay. And, you know, during that time it happened to be -- the
16 family got to be together around the holidays, right?

17 A Yes.

18 Q Is that fair? Yes?

19 A Yes.

20 Q Because in addition to Angela, one of the children in the home was
21 the daughter of Shawn and Angela?

22 A Correct.

23 Q Now, I'm going to draw your attention to the argument in the
24 garage, okay?

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes.

3 Q Okay. You were arguing with Patrick about what he perceived that

4 you lied to him, right?

5 A Yes.

6 Q And that you were instructed not to have a boy in his car, right?

7 A Yes.

8 Q And in fact, at least at some point, there was a boy in his car?

9 A Yes.

10 Q And he knew this because he had you followed?

11 A Yes.

12 Q And so he -- this was upsetting to him?

13 A Uh-huh.

14 Q Yes?

15 A Yes.

16 Q And he wanted to confront you with that, right?

17 A Yes.

18 Q So, you're in the garage, and it would be fair to describe the

19 argument as pretty loud, right?

20 A Yes.

21 Q You're -- you're yelling and shouting, right?

22 A Yes.

23 Q He's yelling and shouting, right?

24 A Yes.

25 Q You're 21 years old, right?

1 A Yes.

2 Q You're an adult?

3 A Yes.

4 Q You don't want to be followed?

5 A Yes.

6 Q Right. You want to be able to interact with your friend -- your

7 boyfriend, however you wish?

8 A Yes.

9 Q It's not like you're 14, right?

10 A Yes.

11 Q Okay. And because the argument is so loud, Miranda comes down

12 and enters into the argument, as well, right?

13 A Yes.

14 Q And she kind of comes to your defense, right?

15 A Yes.

16 Q For that very reason we just discussed, that -- that you're a woman,

17 right?

18 A Yes.

19 Q And at age 21 you should be able to do whatever you want without

20 being followed?

21 A Yes.

22 Q But at the end of the -- the time -- at some point Miranda goes

23 upstairs, right?

24 A Correct.

25 Q And you and Patrick are left alone in the garage?

1 A Uh-huh. Yes.

2 Q Yes? And you wrap up the argument, right?

3 A Yes.

4 Q And as you exit the garage and enter the residence, again, as

5 you're heading up the stairs, the argument is over?

6 A Yes, that's correct.

7 Q Okay. You had -- I think you stated on direct examination that

8 Patrick had apologized where he kind of came to your senses like you're right,

9 you're 21 years old?

10 A Yes.

11 Q Now, I'm going to ask you questions specifically about the

12 statement you gave to police on January 1st, 2016, okay?

13 A Okay.

14 Q And you would agree that that's the day of the incident, correct?

15 A Yes.

16 Q And that your statement to police occurred a couple hours after

17 this had happened?

18 A Yes.

19 Q Just to set the scene, obviously, you had called 911, right?

20 A No.

21 Q You didn't call and then hand the phone to your mother?

22 A Yes, I dialed. Sorry. Yes.

23 Q Yeah, sorry. If I'm confusing, please correct me if it's confusing,

24 okay? All right. So, you actually physically dialed 911, yes?

25 A Yes.

1 Q And you hand the phone to your mom, right?

2 A Yes.

3 Q And you do that right away?

4 A Yes.

5 Q As soon as it's -- as soon as the suspect has left the residence, you
6 called?

7 A Yeah. So, he left, we locked the garage door, and we ran back
8 upstairs. And that's when we -- I'm sorry. My mom ran back upstairs and
9 that's when we had called 911.

10 Q So, about a matter of seconds after the suspect had fled?

11 A Yeah. About like ten, 30 seconds.

12 Q Right. Because you want to get medical attention to your dad as
13 soon as possible?

14 A Yes.

15 Q All right. Now, just talking about your statement to police on
16 January 1st, 2016, they ask you what happened that day, right?

17 A Yes.

18 Q And you tell them that there was a man named Hatch in the house?

19 A Yes.

20 Q And that Hatch was a customer of your father, Patrick?

21 A Yes.

22 Q And that Patrick would average two to three customers a day
23 selling marijuana?

24 A Yes.

25 Q That Hatch was one of those customers?

1 A Yes.

2 Q You weren't sure how Hatch had arrived?

3 A Yes.

4 Q You knew that during the argument Hatch was waiting upstairs?

5 A Yes.

6 Q At some point during the argument Hatch comes down the stairs,
7 interrupts, and asks to speak with your mom?

8 A Yes.

9 Q And so, your mom follows?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes.

13 Q And then that's -- Patrick and you leave the garage a few moments
14 later?

15 A Yes.

16 Q And Patrick is upset with Hatch for talking to Miranda?

17 A Yes.

18 Q Okay. And that Hatch shouldn't be being nosey into what was a
19 family argument?

20 A Exactly.

21 Q Now, in that statement you told the police you'd never seen Hatch
22 before, right?

23 A Yes.

24 Q And that you told the police as far as you knew, your mom didn't
25 know Hatch?

1 A Yes.

2 Q You were asked if Hatch went by any other names. You said you
3 didn't think so?

4 A Right. Correct.

5 Q That you didn't know whether or not Hatch had any tattoos?

6 A No.

7 Q And towards the end of the statement with police on January 1st,
8 2016, the subject of your dad's car comes up, right?

9 A Yes.

10 Q The Dodge Durango?

11 A Yes.

12 Q And the people that are allowed to drive the Dodge Durango, are
13 you?

14 A Yes.

15 Q Miranda?

16 A Yes.

17 Q Patrick?

18 A Yes.

19 Q And probably Angela, right?

20 A Yeah.

21 Q Okay. And Patrick had a habit of leaving the keys to that car on the
22 countertop?

23 A Correct.

24 Q And you had noticed sometime between after 911 was called and
25 when you spoke to the police that the keys were missing?

1 A Yes.

2 Q And because you noticed this, you told the police?

3 A Yes.

4 Q Okay. Now, I'm going to ask you questions about your second
5 statement, okay, the next day; do you understand?

6 A Yes.

7 Q All right. At that point you tell the police Hatch --

8 A Yes.

9 Q -- is Shawn Glover?

10 A Yes.

11 Q Now, on the day in question this was very shocking, right?

12 A Yes.

13 Q It was very emotional I would assume?

14 A Yes.

15 Q That you were scared?

16 A Yes.

17 Q Based on what you said on direct examination you were afraid?

18 A Yes.

19 Q Okay. And for those reasons you told the police that the individual
20 was Hatch?

21 A Yes.

22 Q And it was your statement the next day and your testimony today
23 that Hatch is Shawn Glover?

24 A Yes, that's correct.

25 Q So, before on January 1, when you told the police you had never

1 seen Hatch before, that wasn't true, correct?

2 A Yeah, that was not true.

3 Q And because he was living with you?

4 A Yes.

5 Q And you had obviously interacted with him in the past?

6 A Yes.

7 Q That again when you told the police that your mom doesn't know

8 Hatch, or at least as far as you knew she didn't know Hatch, that wasn't true?

9 A Correct.

10 Q And that you're not sure -- you told the police you weren't sure that

11 even if Patrick had seen Hatch before?

12 A Correct.

13 Q You told the police that you did not know whether Hatch went by

14 any other name as we've covered, right?

15 A Correct.

16 Q And the next day and today you're saying the other name is Shawn

17 Glover?

18 A Yes.

19 Q You described at the top of the stairs that during the argument

20 with Hatch and Patrick that Patrick had reached out his hands to tell Hatch it's

21 not like that?

22 A Yes, correct.

23 Q It wasn't a violent lunge or anything like that, right?

24 A No. It was just like, you know, like hey.

25 Q Hey, listen to me?

1 A Yeah, exactly.

2 Q You've got it all wrong?

3 A Exactly.

4 Q All right. Now, when you called 911, would it be fair to say that the
5 police arrived fairly quickly?

6 A Yes.

7 Q It probably felt like an eternity, right?

8 A Yeah.

9 Q But upon reflection you would agree it was only a matter of a
10 couple of minutes?

11 A Yeah.

12 MR. BASHOR: The Court's indulgence.

13 [Defense counsel confer]

14 BY MR. BASHOR:

15 Q My co-counsel reminded me about the Dodge Durango. In
16 addition to noticing the keys weren't there --

17 A Uh-huh.

18 Q -- where Patrick had routinely parked the vehicle, the vehicle wasn't
19 there, right?

20 A Correct.

21 Q We'll hear later that the vehicle was recovered, but as far as you
22 knew, the regular spot where Patrick, you, and Miranda would park, the Dodge
23 Durango was missing?

24 A Exactly.

25 Q Along with the keys?

1 A Yes.

2 MR. BASHOR: Nothing further.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. FLINN:

6 Q Akira, when you told the police that it was -- that it was Hatch and
7 didn't use the Defendant's real name at that time, did you personally believe
8 that the Defendant had been violent toward other people in the past?

9 A Yes.

10 MR. FLINN: Nothing further, Your Honor.

11 THE COURT: Okay. Again, Ladies and Gentlemen of the jury, the
12 testimony that the witness believed the Defendant has a history of violence
13 against persons is being offered and may only be considered by you solely for
14 the purpose of explaining the state of mind of the witness at the time she
15 made her statement to police on January 1st, 2016. The testimony, if believed,
16 is not to be considered as substantive evidence that the Defendant has a
17 history of violence against persons or that he is a person of bad character.
18 With that, thank you very much.

19 I'm sorry, do any of the ladies and gentlemen of the jury have any
20 questions you wish the Court to ask the witness? There being no questions,
21 thank you very much for your testimony. You're excused. Can I see counsel
22 about scheduling?

23 [Sidebar begins at 12:02 a.m.]

24 THE COURT: So, we break now, and I tell them 1:15?

25 MR. FLINN: Yeah.

1 THE COURT: Okay. Ramsey?
2 THE MARSHAL: Yes, Your Honor?
3 THE COURT: When you're done can you come up here?
4 THE MARSHAL: Okay.
5 THE COURT: Okay.
6 MR. STANTON: If I could just have Ramsey or someone here at 1.
7 THE COURT: Yeah.
8 MR. STANTON: So, I can get the doctor in here, and then we
9 could --
10 THE COURT: How about 1:05, so I can give them at least an hour?
11 MR. STANTON: Yeah, sure.
12 THE COURT: You know we had an entire lawsuit with the
13 Marshals.
14 MR. STANTON: Really?
15 THE COURT: Yes. So, I wanted to take them out the back, and
16 then take them either down the back door just to the ground floor in the back
17 elevator.
18 THE MARSHAL: Okay.
19 THE COURT: Okay. Cool.
20 MR. STANTON: Thanks.
21 [Sidebar ends at 12:03 p.m.]
22 THE COURT: Okay. Ladies and gentlemen, we are going to recess.
23 It's 12:03. We're going to recess until 1:15 for lunch. My Marshal is going to
24 give you a meeting location to meet with him where he'll bring you back
25 upstairs after lunch.

1 So, during this recess you're admonished not to talk or converse
2 among yourselves or with anyone else on any subject connected with the trial.
3 Do not to read, watch, or listen to an report of, or commentary on, the trial by
4 any person connected with this case or any medium of information, including
5 without limitation, newspaper, television, the internet or radio. You're not to
6 form or express any opinion on any subject connected with this trial until the
7 case is finally submitted to you. You've got about an hour and 12 minutes.

8 THE MARSHAL: All rise. The jury is exiting.

9 [Outside the presence of the jury.]

10 THE COURT: Is that door shut? I can't see. Is that door shut?

11 UNIDENTIFIED SPEAKER: Yes.

12 THE COURT: Okay. The record -- thank you. The record should
13 reflect we're outside the presence of the jury. So, I just wanted to make a
14 record that there was one time when the Defense asked to approach. In the
15 record it was at 11:35 a.m. And we had a bench conference where the Defense
16 brought to the Court's attention that while the exclusionary rule had not been
17 previously invoked that the Defense wished to invoke it at that time. The State
18 made it clear that other than the two female witnesses who just testified today,
19 there have been no witnesses present in the courtroom for today's
20 proceedings whatsoever and that besides these two ladies, everyone else is a
21 non-related witness, correct?

22 MR. STANTON: Correct, Your Honor. Yes.

23 THE COURT: So even though it hadn't been invoked before, it was
24 of no import because no one was here.

25 MR. STANTON: I assumed that they -- it had been invoked. I don't

1 recall that it was, but I assume in every case it has, so that's where the State
2 rolls.

3 THE COURT: Okay. So, the way the State rolls. Good to know.
4 So, anything else on that exclusionary rule being invoked at 11:35 a.m.?

5 MR. BASHOR: No, Your Honor.

6 THE COURT: Okay. So, Defendant gets his lunch break. You all
7 get your lunch break. Can you tell Ramsey that -- to ask him to meet the D.A.
8 here at 1:05?

9 UNIDENTIFIED MALE: I will.

10 THE COURT: Okay. You don't have to tell him right now, just, you
11 know, when he's done with those people.

12 UNIDENTIFIED SPEAKER: Okay.

13 THE COURT: Okay, thanks. Okay.

14 MR. STANTON: Thank you, Your Honor.

15 MR. BASHOR: Thank you.

16 [Recess at 12:06 p.m., recommencing at 1:15 p.m.]

17 THE COURT: We're back on the record in State v. Shawn Glover.
18 Outside the presence of the jury. All attorneys and the Defendant are present.

19 [Outside the presence of the jury.]

20 MR. STANTON: Your Honor, the next witness is Dr. Corneal. Mr.
21 Bashor informed me that -- there are two areas of concern from the State. Mr.
22 Bashor informed me that he is going to seek to inquire as to one of those areas
23 of concern. So ,the first area is at autopsy, a projectile was removed from Mr.
24 Fleming that was unrelated to this case. It was from an obvious and apparent
25 older injury. It was noted both in photograph form and in Dr. Dutra's autopsy

1 report. Both Dr. Dutra and Dr. Corneal would, I believe, testify that that
2 implement, and the injury, and artifact had nothing to do with the cause and
3 manner of death. And as such I believe the inquiry in that is wholly irrelevant.

4 THE COURT: Okay. Is that it?

5 MR. STANTON: Yes.

6 THE COURT: What's the relevance?

7 MR. BASHOR: Judge, I would just submit that the old projectile
8 could go to prior enemies, alternate suspects. I don't plan to harp too terribly
9 into it, it's just that the fact that it exists. And I think that that's --

10 THE COURT: Prior enemies and alternate suspects.

11 MR. BASHOR: Correct.

12 THE COURT: Okay. So, what, if any, additional information do you
13 have about the time or evidence would you be able to -- because if this
14 becomes an issue, even though you might not have noticed witnesses, I might
15 allow you to get into it if I allow it. I'm not saying I'm allowing it, I'm just
16 curious. Do you have a witness that says that was 30 years ago, two years
17 ago, six minutes ago; how -- what do you know?

18 MR. STANTON: For me?

19 THE COURT: Yes.

20 MR. STANTON: I have -- other than it is a completely healed injury
21 with no evidence of its tracking and no signs of that it be of recent vintage. As
22 far as --

23 THE COURT: So, have you asked his family, hey -- I mean usually
24 when someone gets shot, someone besides that person knows or has an idea
25 of when that happened.

1 MR. STANTON: I personally did not. I'm not aware of anything in
2 the investigative file that would answer that question.

3 THE COURT: I'm sure you have a high -- I'm going to go with two
4 rows of potential witnesses behind you. So, do you want to talk to one of
5 them, since one of them is raising their hand?

6 MR. STANTON: 1993.

7 THE COURT: Thank you. So, if he -- could you call that witness
8 forward, please?

9 MR. STANTON: Certainly.

10 THE COURT: We're going to have a little hearing.

11 MR. STANTON: Okay. Can you come forward?

12 MR. GIVENS: I'm his dad.

13 MR. STANTON: Okay. Come on up.

14 THE COURT: Sir, if you could approach the witness stand, please.

15 MR. BASHOR: I think you're fine, Doctor.

16 DR. CORNEAL: Okay.

17 THE COURT: Sorry. Real quick.

18 DR. CORNEAL: No, I just wanted to make sure I didn't need to
19 leave the room.

20 THE COURT: Sir, could you face my Clerk while you're still
21 standing, raise your right hand, and be sworn.

22 MELVIN A. GIVENS, III, PLAINTIFF'S WITNESS, SWORN

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

25 THE WITNESS: Melvin A. Givens, III. G-I-V-E-N-S.

1 THE COURT: And can you move your chair up a little? Okay. The
2 District Attorney is going to ask you about your relationship with the named
3 victim in this case and some other questions about the topic that we've been
4 discussing, okay?

5 THE WITNESS: Yes.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, how are you related to Patrick Fleming?

9 A I'm his father.

10 Q And do you have personal knowledge of when Patrick suffered the
11 injury that you heard raised in court that is some sort of a projectile, some part
12 or portion of a bullet that was inside his body?

13 A Yes, I do.

14 Q And when did that event occur?

15 A November 11, 1993, right after his birthday.

16 Q And was that here in Las Vegas or some other location?

17 A Yes. Yes.

18 Q Okay. And did it have anything to do with either the Defendant or
19 the case that we're here on trial this week for?

20 A No.

21 Q Do you know anything about who the author of the injury to your
22 son was?

23 A Well, he was walking down the street off of McWilliams [phonetic],
24 and he was over in the project area off of Washington. And he was walking
25 with another guy and some guy came around the corner and asked him a

1 question. It was like a drive-by shooting. And they asked him a question, do
2 he know such and such and such, and he said, no. So, he turned to walk away,
3 and they shot him in the back three times.

4 Q Okay.

5 A And they shot his friend, also.

6 Q Thank you very much. I have no further questions.

7 MR. BASHOR: I don't have any questions, Your Honor.

8 THE COURT: Okay. Thank you very much, sir, for your testimony.

9 THE WITNESS: All right.

10 THE COURT: Okay. Is there anything else?

11 MR. BASHOR: No, Your Honor.

12 THE COURT: Anything else?

13 MR. STANTON: Not any other evidence or argument from me on
14 this issue.

15 THE COURT: All right. Based upon the only reliable evidence,
16 which is testimony under oath of the named victim's father that this projectile
17 was at or around 25 years ago, I won't allow the inquiry. It is significantly
18 more prejudicial than probative to somehow paint him as I don't know what
19 and the idea that somehow retribution is happening 25 hour -- 25 years later is
20 a stretch, at best. Anything else?

21 MR. STANTON: And, Your Honor, the other -- just for the record,
22 the other matter was the toxicology report of Mr. Fleming, as well.

23 THE COURT: One second, one second.

24 [Court and Marshal confer]

25 THE COURT: Okay.

1 MR. STANTON: Mr. Bashor indicated to me that they are not going
2 to go into that area of inquiry. I would have had the same objection for the
3 same reasons, but since he's not going into it, I appreciate that, so that's not
4 an issue, but I just wanted to put it on the record that that issue was discussed
5 between me and Defense counsel prior to this.

6 MR. BASHOR: And, Judge, if we were pursuing a different line of
7 defense, obviously, I would have a different position, but I don't think that a
8 small amount of marijuana in Mr. Fleming's system has anything to do with
9 this case.

10 THE COURT: Okay. Thank you.

11 MR. STANTON: That's it. Nothing further on behalf of the State.

12 THE COURT: Okay. Bring in the jury. Doctor? By the way, do you
13 have any objection to the named victim's father remaining in the courtroom?

14 MR. BASHOR: No.

15 THE COURT: Okay.

16 MR. BASHOR: He's not on our witness list.

17 THE COURT: No. Okay.

18 MR. BASHOR: That's fine.

19 THE COURT: But technically he testified.

20 MR. BASHOR: Oh, I understand, but, no, that's fine, Your Honor.

21 THE COURT: Okay.

22 [State counsel and Court Recorder confer]

23 THE MARSHAL: All rise. The jury is entering. The jury is all
24 present, ma'am.

25 [In the presence of the jury.]

1 THE COURT: Counsel, will you stipulate to the presence of the
2 jury?

3 MR. STANTON: Yes, Your Honor.

4 MR. BASHOR: Yes, Your Honor.

5 THE COURT: Doctor, if you could please face my Clerk, raise your
6 right hand, and be sworn.

7 DR. JENNIFER CORNEAL, PLAINTIFF'S WITNESS, SWORN

8 THE CLERK: Please be seated. Would you state and spell your
9 name for the record?

10 THE WITNESS: Jennifer Corneal, J-E-N-N-I-F-E-R C-O-R-N-E-A-L.

11 MR. STANTON: May I proceed, Your Honor?

12 THE COURT: Yes. Thank you.

13 DIRECT EXAMINATION

14 BY MR. STANTON:

15 Q Ma'am, how are you employed?

16 A I'm a medical examiner at the Clark County Office of the Coroner
17 Medical Examiner.

18 Q And I'd like to talk to you about, in kind of general terms, your
19 background both from an educational perspective, as well as your professional
20 experience. Do you have an educational background that allows you and
21 assists you in performing your functions at the Coroner's office?

22 A I do.

23 Q And what is your educational background?

24 A I'm a doctor. I completed medical school. I then completed four
25 years of a pathology residency. I'm a board certified anatomic pathologist. I

1 then completed a year of subspecialty training in forensic pathology, and I'm a
2 board certified forensic pathologist.

3 Q And the -- I'll get into the area of pathology and the subcategories
4 that you just mentioned, but you are a licensed physician here in the State of
5 Nevada?

6 A I am.

7 Q And you perform functions to include a medical procedure as part
8 of your duties called an autopsy?

9 A Correct.

10 Q How many autopsies have you been involved in as -- either as the
11 primary physician or an assisting capacity in your career?

12 A Over 1,000.

13 Q And does that also include injuries involving gunshot wounds?

14 A Yes.

15 Q Is there a significant number of those thousands that gunshot
16 wounds are part of your examination?

17 A Yes.

18 Q Doctor, let me ask you some questions about the area of
19 pathology. And once again in general terms can you explain what pathology
20 means?

21 A Pathology is a study of disease processes. They consider the
22 pathologist the doctor's doctor. So, if you have a biopsy or specimens taken
23 from you, the pathologist looks at that and gives a diagnosis.

24 Q So, that could be say skin tissue involving some sort of suspected
25 disease, and they're looking for a specialized assessment from a physician

1 focused in that field?

2 A Yes.

3 Q And then you mentioned there's something called anatomical
4 pathology; what is that?

5 A Pathology is divided into anatomical pathology and clinical
6 pathology. Anatomical pathology includes forensic pathology, which is what I
7 do. Surgical pathology, which is what I was talking about when you get a
8 biopsy, or an organ taken out, and they look at it and give a diagnosis to the
9 doctor. Clinical pathology, on the other hand, has to do with microbiology,
10 chemistry. Pathologists are the ones who run the labs in the hospitals, so
11 clinical pathologists tend to do that.

12 Q And the final field is forensic pathology. Can you explain what that
13 sub-specialization is in?

14 A Forensic pathology is the subspecialty of anatomic pathology that
15 looks at medical legal death. And my job, as part of that, is to perform
16 autopsies and determine cause and manner of death.

17 Q And could you describe what cause of death means to you in the
18 medical legal context?

19 A Cause of death is the immediate reason somebody has died.

20 Q And how many categorizations are used in your field as coroners
21 both here and across the country?

22 A For manner of death?

23 Q Well, cause of death can be a wide range. Manner of death.

24 A For manner of death, there are five categories; there's natural,
25 accident, suicide, homicide, and then when the death doesn't fit into either of

1 those categories there's an undetermined category, as well.

2 Q And, Doctor, did I ask you to review an autopsy report and the
3 investigative file to include photographs contained within the Clark County
4 Coroner's Office as it relates to an ultimate autopsy report of Patrick Fleming,
5 dated January 2nd, 2016?

6 A You did.

7 Q And based upon your review, you were asked by me and your
8 office to come in and testify to the cause, and manner, and findings as a result
9 of that autopsy, correct?

10 A Yes.

11 Q Now, let me just begin. You were not the attending physician on
12 January 2nd, 2016 here; is that correct?

13 A That's correct.

14 Q It would have been Dr. Dutra?

15 A Yes.

16 Q And he is retired from the Coroner's office?

17 A Yes.

18 Q Doctor, were you able to review a series of photographs about the
19 findings and the conclusions in the autopsy report?

20 A I was.

21 MR. STANTON: Your Honor, prior to Dr. Corneal's testimony this
22 afternoon, she has reviewed what has been marked by your Clerk as State's
23 Exhibits 36 through 48. I'd move for their admission at this time.

24 MR. BASHOR: Your Honor, we have a stipulation. No objection.

25 THE COURT: 36 through 48 are admitted by stipulation.

1 [STATE'S EXHIBITS 36 THROUGH 48 RECEIVED]

2 BY MR. STANTON:

3 Q In addition, Dr. Corneal, I asked you prior to your testimony to
4 select via file numbers out of a large number of photographs, photographs
5 that you believe might assist the jury in understanding your testimony and the
6 findings in this case; is that accurate?

7 A Yes.

8 Q And they are depicted in the photographs that I just mentioned?

9 A Yes.

10 Q Doctor, let me first ask some background questions about the
11 autopsy proceeding and that medical procedure. Could you explain kind of
12 what the examination entails, in particular, the external and internal exam?

13 A Yes. The autopsy, as he stated, consists of an external
14 examination, which is just looking at the outside of the body, documenting
15 hair color, eye color, tattoos, scars, and any injuries that might be seen. And
16 then we open the body, we examine the organs, we examine the inside tissues
17 to look for again more injuries and also any natural disease processes which
18 might contribute or cause death.

19 Q And during that process there are a number of items of evidence
20 that are memorialized, both by the physician, as well as a photographer?

21 A Yes.

22 Q So, let me begin now in addressing your assessment of the injuries
23 that were noted on Mr. Fleming. And if -- I plan on going through the order
24 that they're listed in the autopsy report. Are you comfortable with that order?

25 A Yes.

1 Q Okay. So, how many gunshot wounds were observed and
2 documented on Mr. Fleming?

3 A Three.

4 Q And I'd like to begin with gunshot number one. Could you tell us
5 anatomically where that gunshot wound was located?

6 A The gunshot wound was on the back of the head on the left side.

7 Q And could you tell whether or not that wound was an entrance or
8 exit gunshot wound?

9 A It was an entrance gunshot wound.

10 Q I'd like to show Exhibit 39 to you. Let me ask you a couple
11 questions first. Obviously, anatomically, we're looking at Mr. Fleming's back
12 of his head?

13 A Yes.

14 Q And the condition around the wound in his hair, is that something
15 that's done as part of the autopsy procedure?

16 A It is.

17 Q And why is that?

18 A Prior to shaving the head we photograph the wound as it is. But
19 then in order to better visualize the wound, we shave around it, so we can see
20 the wound edges, determine if there's abrasions, determine if there's soot in
21 that area.

22 Q Okay. And we'll get into a little bit of each one of those, but I want
23 to go to Exhibit 40. Is that a close-up photograph of the same anatomical area
24 and wound that we saw in the previous photograph?

25 A It is.

1 Q Dr. Corneal, how do you determine that that is an entrance
2 gunshot wound?

3 A Entrance wounds seem to be punched out. In other words, you
4 cannot re-approximate them. They also tend to have a rim of abrasion. And --

5 THE COURT: I'm sorry, what?

6 THE WITNESS: I was trying to like show them the rim of abrasion
7 on this one.

8 THE COURT: And what's the problem?

9 MR. STANTON: We're no longer on the touch screen. So, I think --

10 THE WITNESS: Oh, I'm sorry. I'm used to --

11 THE COURT: Yeah. Well, hold on.

12 THE WITNESS: -- the touch screen.

13 MR. STANTON: We've graduated to a mouse, so if you could
14 just wait one second. Oh, there you go.

15 THE WITNESS: Okay.

16 THE COURT: Wait.

17 MR. STANTON: If you click on the pencil.

18 THE WITNESS: Then I just point?

19 MR. STANTON: Yes.

20 THE WITNESS: Technology. Okay. So, this area here is a rim of
21 abrasion. That just occurs when the projectile enters the skin; it rubs this area
22 off.

23 THE COURT: We solved it.

24 UNIDENTIFIED MALE: Okay.

25 BY MR. STANTON:

1 Q And could you kind of contrast what an exit wound would look like
2 versus what we see here?

3 A Sure. So, an exit wound on the other hand is more of a tearing of
4 the skin. It actually can be pushed back together. We call it a laceration. And
5 there can be abrasion, but usually there's not abrasion and there's no soot or
6 stippling around the wound.

7 Q So, now what I'd like to do, Doctor, is go back to the previous
8 photograph and ask you some questions about the internal assessment of the
9 injuries of that wound. Is it -- what do you do or what is normal about
10 determining, from an internal examination, where --

11 MR. STANTON: -- that's still frozen on the previous photograph.
12 Oh, I think you have to --

13 THE WITNESS: What did I do?

14 THE COURT: Wait. Just go ahead and say it.

15 THE CLERK: You click the other arrow down.

16 MR. STANTON: I think if she -- oh, no, there you go. You got it.
17 Sorry.

18 BY MR. STANTON:

19 Q So, let me go back to Exhibit 39. Doctor, what is done to determine
20 the path or trajectory of that bullet?

21 A The scalp is reflected, and a portion of the skull was removed. The
22 brain is also removed and dissected. And as we radiograph everyone, we
23 knew the projectile was in his right jaw area, so that was dissected out from
24 below.

25 Q And could you tell me what path, anatomically, to your frame of

1 reference that you use in all wounds that this bullet -- gunshot injury, took
2 inside his head?

3 A Sure. First, just to explain anatomic paths, when we're talking
4 about the body, front is the front of your body with your hands, with your
5 palms, facing forward. The tops of your feet would be forward. The soles
6 would be back. Top, bottom, just like you would think. So, this went back to
7 front, left to right, and downward.

8 Q So, the trajectory as we see it is left to right and downward?

9 A Yes.

10 Q You indicated that through x-rays you determined that there was a
11 bullet still in Mr. Fleming associated with this entrance gunshot wound?

12 A Yes.

13 Q Before we get to where the bullet came to rest, where did it go
14 through anatomically before it came to rest?

15 A It went through his brain. It transected his brain stem. And then it
16 went down into his oral cavity fracturing his jaw.

17 Q So, the skull is fractured?

18 A Yes.

19 Q And then you said it dissected the brain stem. Is that an important
20 organ when you're examining injuries in that region of the body to note?

21 A Yes.

22 Q We'll get back to that in just a second, but let me go to the
23 mandible; what was the condition of the mandible?

24 A The mandible was fractured.

25 Q As a result of the bullet striking that bone?

1 A Yes.

2 Q And so for those not familiar, the mandible is part of the jaw area
3 of our bodies?

4 A Yes. It's your jaw on the bottom here.

5 Q The lower jaw?

6 A The lower jaw.

7 Q So, let me talk to you about your assessment from a medical
8 perspective, Dr. Corneal, as to whether or not this wound, number one, was
9 instantaneously incapacitating in your opinion?

10 A Yes.

11 Q Does that have something to do with the transection of the brain
12 stem?

13 A Yes.

14 Q Can you explain that?

15 A Within your brain stem and the mid-brain is an area that controls
16 respiration. So, if you transect the brain stem, you no longer can cause your
17 lungs and diaphragm to work, and you instantaneously die.

18 Q Now, there is another part of gunshot wounds that you look at
19 from a forensic pathology perspective and that is whether or not you can tell
20 or see signs of evidence of the range that the weapon was from the person or
21 the injury at the time it was inflicted?

22 A Yes.

23 Q Are you familiar with that process?

24 A Yes.

25 Q And that process leaves physical evidence that you see on a

1 regular basis with some -- certain gunshot wounds?

2 A Correct.

3 Q What is that that you're looking for?

4 A What we're looking for is either soot or stippling around the wound
5 and in the wound edges. So, soot is the gray material that will be deposited
6 around the wound edges. Stippling, on the other hand, is an injury that is
7 caused by unburnt gun powder striking the skin.

8 Q And so you can have, based upon what you observe, a range of
9 distances approximately based upon your visual observation of the wound?

10 A Yes.

11 Q And in this particular case there -- were there any signs?

12 A No.

13 Q Are there factors that affect, especially in this region and with what
14 you see with Mr. Fleming's hair, that affect your ability to see that?

15 A Yes.

16 Q Can you explain that?

17 A Anything in between the gun when it's fired and the decedent, the
18 body, can cause the stippling or soot not to appear; in this case his thick hair.

19 Q And since there's no evidence, what is the determination if you're
20 not certain of the distance?

21 A Indeterminate.

22 Q And is that the conclusion that you draw to the gunshot wound
23 we've just been discussing?

24 A Yes.

25 Q Doctor, let me ask you now about wound number two. Can you

1 describe the general area where wound number two was involved?

2 A Wound number two it was in the right upper arm.

3 Q And I'm going to show you State's Exhibit 38. And could, number
4 one, you orient us anatomically on Mr. Fleming where we're looking at now?

5 A His back is up in the photo. This is the gunshot entrance wound on
6 his inner right upper arm.

7 Q And is that an entrance or exit gunshot wound?

8 A An entrance wound.

9 Q And let me show you Exhibit Number 43. Is that a closer up
10 photograph of that same wound?

11 A It is.

12 Q Now, let me go to Exhibit 44. It, I believe, is self-explanatory in that
13 photograph anatomically, but is there a corresponding exit wound depicted in
14 that photograph?

15 A Yes. The exit wound on the outer right upper arm.

16 Q Now, Doctor, let me talk to you about this wound. Let me ask you
17 about the track that was observed by the internal examination in this area.
18 What were you able to determine?

19 A The bullet entered the inner upper arm. It broke his humerus,
20 which is the bone in your upper arm, and then exited the outer upper arm.

21 Q So this had a corresponding entrance and an exit with no bullet
22 found associated with this gunshot wound?

23 A There were fragments of a bullet, but the fragments broke off in
24 the broken arm, and then the later exited, yes.

25 Q Now, Doctor, let me ask you a couple questions about that wound.

1 Was it, in your opinion, from a medical degree of certainty, an incapacitating
2 one?

3 A No.

4 Q Was it a fatal one?

5 A No.

6 Q And the final wound -- gunshot wound number three,
7 anatomically, where was that wound observed?

8 A That was in the right groin area.

9 Q I'm going to show you Exhibit Number 45. Is this the upper right
10 thigh area?

11 A Yes.

12 Q And is that rod there for a reason?

13 A It's -- yes.

14 Q And what is that reason?

15 A It's showing trajectory.

16 Q So, the same thing about a location or the trajectory path that you
17 previously described from an internal, this wound can be shown by an
18 external demonstration which is depicted in this photograph?

19 A Yes.

20 Q Doctor, was this wound incapacitating?

21 A No.

22 Q Was this wound in and of itself fatal?

23 A No.

24 Q There was no bullet or projectile associated with this wound?

25 A Correct.

1 Q And the track pattern was what, anatomically, to the description of
2 Mr. Fleming's body as you describe wounds?

3 A Right to left, front to back, and downward.

4 Q Doctor, what was the cause of Mr. Fleming's death?

5 A Gunshot wound to the head.

6 Q And what is the manner of death?

7 A Homicide.

8 Q At the hands of another?

9 A Yes.

10 MR. STANTON: Pass the witness.

11 THE COURT: Cross-examination.

12 MR. BASHOR: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BASHOR:

15 Q Good afternoon, Doctor.

16 A Good afternoon.

17 Q I'm going to start where Mr. Stanton left off. We heard that you
18 have classifications for the manner of death, correct?

19 A Yes.

20 Q And part of your responsibility as a forensic pathologist,
21 particularly when you are working for the county, is that you report your data
22 to the Bureau of Vital Statistics?

23 A Yes.

24 Q And we do that because we want to know how our populations are
25 passing away, right?

1 A Correct.

2 Q So if it's -- you know, there's a -- we could discover that a disease
3 that has an oddly large population in a small area, the powers at be could
4 figure out how to take care of something like that, right?

5 A Right.

6 Q Okay. So, when you use your classifications it's something that
7 you use in your profession, correct?

8 A Yes.

9 Q And it's something that the Bureau of Vital Statistics understands
10 and utilizes?

11 A Correct.

12 Q So, the way you would use the word homicide doesn't necessarily
13 mean whether something's a murder, a manslaughter, or an involuntary
14 manslaughter, right?

15 A Correct. It's not a legal definition.

16 Q Correct. Exactly. So, the definitions that we use are different than
17 the definitions you use?

18 A Correct.

19 Q Okay. Now, we've heard that the ranges of the wounds in all three
20 of the wounds is an intermediate range, correct?

21 A Indeterminate.

22 Q I'm sorry, indeterminate range. Can you describe to the ladies and
23 gentlemen of the jury what a contact wound is?

24 A A contact wound occurs when the gun is pressed against the skin.
25 There's usually charring, soot, sometime an abrasion ring, sometimes you can

1 see the muzzle imprint.

2 Q Okay. And the reason for that is because it's pressed right against
3 the skin, you understand when a firearm ejects or fires a projectile, a flame
4 comes out of the end of the muzzle, right?

5 A Yes.

6 Q Causing the end of the muzzle to then heat up dramatically and
7 quickly?

8 A Yes.

9 Q And so, if a wound you observed had that kind of characteristic,
10 you would make a determination that it was right up against the skin?

11 A Yes.

12 Q And for these three are we able to eliminate contact wound?

13 A With the hair and the clothing, not completely, but most likely, yes.

14 Q Okay. Fair enough.

15 MR. BASHOR: Thank you, Your Honor.

16 THE COURT: Redirect?

17 MR. STANTON: No questions.

18 THE COURT: Do any of the ladies and gentlemen of the jury have
19 any questions you wish the Court to ask the witness? There being no
20 questions, thank you very much for your testimony. You're excused.

21 THE WITNESS: Thank you.

22 THE COURT: State, call your next witness.

23 MR. STANTON: Renee Harder.

24 THE MARSHAL: Follow me. Watch your step.

25 RENEE HARDER, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Please be seated. Will you state and spell your name
2 for the record.

3 THE WITNESS: Renee Harder, R-E-N-E-E H-A-R-D-E-R.

4 MR. STANTON: May I proceed, Your Honor?

5 THE COURT: Yes. Thank you.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Ma'am, how are you employed?

9 A I am a crime scene analyst for the City of North Las Vegas.

10 Q Can you tell me about what job responsibilities you have in that
11 capacity?

12 A Yes. It is my job to respond to crime scenes and document the
13 crime scene, including all evidence, properly collecting and impounding all
14 evidence located.

15 Q How long have you been a crime scene analyst?

16 A Just shy of 14 years.

17 Q And is there some training and experience that you have with you
18 both educationally and then kind of in the course of your employment?

19 A Yes.

20 Q Could you describe that?

21 A I have an associate's degree in criminal justice. Once hired I
22 attended the Las Vegas Metropolitan Police Department's Crime Scene
23 Investigations Academy. After successfully completing the academy, I went
24 through the North Las Vegas Police Department's field training program,
25 which I successfully completed. Since then, over the last 14 years, I have

1 completed hundreds of hours of different forensic discipline classes.

2 Q And I know this might be for you a difficult figure to come up with
3 some degree of precision, but I'm looking to an area of what you are
4 comfortable in approximating. How many crime scenes have you been
5 involved in in a professional capacity either as the principal crime scene
6 analyst assigned to that scene or in an assistant capacity?

7 A All kinds of crimes?

8 Q Yes.

9 A Thousands.

10 Q And there is a crime scene analyst in your department, as well as
11 the Metropolitan Police Department, kind of a seniority aspect when you have
12 a more serious scene; is that true?

13 A Yes.

14 Q And could you describe kind of how that works if you're brand new
15 versus someone with your experience about what type of scenes you would
16 go to?

17 A Entry level crime scene investigators will not be primary on things
18 like homicides or officer involved shootings. The senior or level two CSI's
19 would take primary on those kinds of calls.

20 Q Okay. There are a group of crime scene analysts that respond to
21 some scenes?

22 A Yes.

23 Q Can you describe how -- and my first part of my question is, within
24 crime scene analysts themselves and then I'll get to detectives as a byproduct
25 of your answer, but could you describe to the jury how in a scene such as this,

1 a serious scene, crime scene analysts work together and how those
2 responsibilities are broken down?

3 A In a scene such as this, usually at least two crime scene analysts
4 would arrive -- would go to the scene. We would then discuss the scene and
5 we would split up the duties so that one person isn't in charge of the entire
6 investigation.

7 Q And is there kind of a communication process that exists between
8 the analysts about their jobs and functions as you go through scenes?

9 A Yes.

10 Q Can you kind of once again, in a general fashion, kind of explain
11 how that works?

12 A Usually one CSI will be in charge of photographs and collecting
13 evidence. Another CSI might handle the diagram portion. If there are other
14 scenes associated, like search warrants or vehicles, someone -- we would split
15 those up, so that one person doesn't have to handle all aspects of the scene.

16 Q And now I'd ask you about how that works in the interaction with
17 law enforcement and, in this particular case, at a homicide scene how you
18 interact and what that interaction is with homicide detectives.

19 A When the detectives arrive on scene, they let us know what they
20 need from us above and beyond what we might already have decided to
21 complete. And like I said, that would have to do with search warrants and
22 what they might be looking for on warrants and situations like that.

23 Q And then prior to your testimony today I had you review Exhibits 1
24 through 35 marked for this trial. Are you familiar with those photographs and
25 crime scene diagram that are marked accordingly?

1 A Yes.

2 Q And do they accurately depict the crime scene document diagram
3 prepared in this case, as well as photographs at various different stages at this
4 primary scene as the scene was processed?

5 A Yes.

6 MR. STANTON: Your Honor, I move for 1 through 35 into
7 evidence.

8 THE COURT: Stipulated?

9 MR. BASHOR: We stipulate.

10 THE COURT: 1 through 35 are admitted by stipulation.

11 [STATE'S EXHIBIT 1-35 RECEIVED]

12 MR. STANTON: Thank you, counsel.

13 BY MR. STANTON:

14 Q So, let me talk to you about kind of when you arrive at a scene
15 after you've been briefed some kind of -- in this case involving a structure;
16 what is kind of the first step in photographing or documenting the location that
17 you're at?

18 A We would first document the exterior of the residence showing the
19 address, showing the basic condition of the exterior.

20 Q I'm showing you State's Exhibit 4. Is this the exterior photograph
21 of the scene that you responded to on January 1st, 2016?

22 A Yes.

23 Q Let me go to Exhibit Number 5. Is that kind of a reference with a
24 number that's important to you; why is that photograph --

25 A Correct. This shows the front door of the specific unit involved in

1 this incident.

2 Q Now, there's been previous testimony that I won't belabor about
3 certain aspects inside the garage, but fair to say that that is a photograph taken
4 by crime scene analysts upon their arrival and processing of the scene?

5 A Correct.

6 Q Then let me go to State's Exhibit 1 and what is that?

7 A This is a diagram of the residence.

8 Q Commonly referred to as a crime scene diagram?

9 A Correct.

10 Q And there's a couple things that I want to talk to you about.
11 Number one here is a staircase?

12 A Yes.

13 Q And then a figure of a body here?

14 A Correct.

15 Q And that's once again to demonstrate -- kind of to orient us, with
16 some of the pictures that are also used to document these areas?

17 A Yes.

18 Q We have a reference of north and the physical address and the
19 apartment number?

20 A Correct.

21 Q Now, in the next document I'm going to show you, Grand Jury
22 Exhibit Number 2, or not Grand Jury, Trial Exhibit Number 2, there's a series
23 of numbers that are depicted. And I'll focus first around the body figure. Can
24 you tell me what those are designed to depict?

25 A Yes. The numbers that you see here all are associated with pieces

1 of evidence that were -- that were collected at the scene.

2 Q And then is there an index that's associated with that?

3 A Yes.

4 Q And let me show you Exhibit Number 3. Is that the index for the
5 numbers that are depicted on the crime scene?

6 A Yes.

7 Q So, the description is by the crime scene analyst of the item that
8 we see here, and those numbers reference the diagram itself?

9 A Correct.

10 Q I gotcha. So, now let me go to Exhibit Number 8. Can you tell us
11 where inside the home that is and what we're looking at?

12 A This is at the top of the first set of stairs looking down into the
13 entryway. The doorway straight in front of you is that front door. And then
14 the doorway to your left is the garage.

15 Q Now, Ms. Harder, in this photograph we do not see any yellow
16 evidence tents. Does that tell you something about when this photograph was
17 taken in comparison to some others?

18 A This would be taken prior to any investigation, any locating of
19 evidence. This was our initial photographs.

20 Q Okay. Now, let me go with Exhibit 9. Can you tell us what that is
21 and how it compares and contrasts with the previous photo?

22 A Right. This is the same view, except in this photo you can see
23 evidence tents in the middle under his arm showing where some evidence had
24 been located.

25 Q And so if I could, going back to Exhibit Number 1, this is the raw

1 diagram without any evidence depicted on it, and this Exhibit 2 is the same
2 diagram, but with it processed and memorialized as to specific evidentiary
3 items?

4 A Correct.

5 Q I want to now ask you about Grand Jury Exhibit Number 12. And
6 can you tell us where we are in this photograph?

7 A This is at the bottom of that same stairway, a closer photo of the
8 deceased in that entryway.

9 Q And the doors that are around his person, is one of those the
10 garage door?

11 A Correct. The door near his right hand would be the door to the
12 garage. The door near his head is the door to -- that's the front door.

13 Q Now, I want to draw your attention to a couple of items here.
14 Number one is this area under Mr. Fleming's head, this carpeting I'm pointing
15 to. Do you recall that in some subsequent photos we have closer up
16 photographs of that area?

17 A Yes.

18 Q Can you describe kind of how the processing works from the
19 overall photographs here to when evidence tents are applied and then when
20 Mr. Fleming is removed from the scene? Can you explain how that process
21 works?

22 A When we arrive on the scene, we take overall photos before
23 anything is disturbed, or touched, or moved. It's just to show the condition
24 when we first arrived. We will then locate any evidence, photograph it. We
25 will then place those evidence markers down and re-photograph the scene

1 again showing all those evidence markers. Once the victim was removed, we
2 then continue to look for evidence under where his body was. And in this
3 case, we did locate additional evidence on and under that carpet.

4 Q And there is a particular agency within Clark County that has a very
5 prominent role when it comes to a deceased person at the scene; is that
6 correct?

7 A Yes.

8 Q Who is that?

9 A The Clark County Coroner's Office.

10 Q And is there a kind of a mandated procedure about how the
11 processing of the body and areas around the body work in conjunction with
12 the Coroner's office?

13 A Yes. The Coroner's office has jurisdiction over the body. We are
14 not to touch it or move it until they are on scene, and they are able to do their
15 concurrent investigation.

16 Q And there's actually an investigator from the Coroner's office that
17 comes to the scene working with you and the detectives?

18 A Correct.

19 Q So, I want to go to Exhibit 13. Do you recognize that as you got a
20 closer picture of Mr. Fleming?

21 A Yes.

22 Q I want to point in kind of an orientation fashion in this broader
23 photograph to a couple items that aren't as well seen in it. For the record,
24 above Mr. Fleming's left arm against the wall, do you see the item that I'm
25 pointing to there?

1 A Yes, sir.

2 Q Is that item something that is photographed, tagged, and
3 impounded in the closer set of photographs in this case?

4 A Yes, it is.

5 Q And what was that item?

6 A That's a .40 caliber cartridge case.

7 Q And let me direct your attention to Mr. Fleming's right elbow here,
8 almost in the middle bottom third of the photograph; are there a number of
9 evidentiary items located against, near, and underneath his body in that area?

10 A Yes.

11 Q And, finally, in the waistband area that I'm pointing to now on Mr.
12 Fleming's front stomach area, do you recognize that item?

13 A Yes.

14 Q And what was it?

15 A Later to be determined a nine millimeter Glock, Model 19 handgun.

16 Q Going to Exhibit 16, is that something we've seen before in the
17 photographs that I presented to you?

18 A Yes. That's the .40 caliber cartridge case.

19 Q And that's now a closer picture?

20 A Correct.

21 Q And this is prior to the processing from tagging and identifying
22 evidentiary items by number?

23 A Correct.

24 Q Okay. Now, let me go to Exhibit 17. What has happened from a
25 crime scene analyst's processing perspective that you now clearly see in this

1 photograph?

2 A This is that second round of photos that I described where we now
3 go through and mark our items of evidence and then re-photograph
4 everything with its numerical marker.

5 Q So, let me go to the index, Exhibit Number 3, and if I go to this
6 index and go to number one, let me zoom in. What is the description of item
7 number one?

8 A One Winchester Smith & Wesson 40 cartridge casing.

9 Q So, the item numbers once again here correspond to the visual
10 yellow tags we would see in any photograph?

11 A Correct.

12 Q Let me go to Exhibit 18. What is that a photograph of?

13 A This is that same cartridge case, now numerically marked and a
14 close-up of it.

15 Q Why is that particular type of evidence tag put next to this item, the
16 ruler aspects of it?

17 A To show size.

18 Q So, there's kind of an identification, as well as a scale, that's
19 inserted for size?

20 A Correct.

21 Q Exhibit 20, what are we looking at there?

22 A This is the deceased's midsection showing again item number two
23 and three and then the firearm in his waistband.

24 Q Exhibit 19?

25 A This shows item number two and three closer, item number two

1 being a bullet and item number three being a red Bic lighter.

2 Q Exhibit 22. I'd like you to focus on item number eight at the open
3 area in the middle -- or at the bottom of the door to the top of the photograph.

4 A That's an additional cartridge case, .40 caliber, that was located,
5 and marked, and re-photographed.

6 Q And Exhibit 21?

7 A And that's a close-up of that same cartridge case.

8 Q I'd like to go to Exhibit 26 and now ask you about evidence tag
9 number nine; what is that?

10 A Evidence tag number nine I believe is a defect that's found in the
11 carpet. It's bullet fragments in the carpet.

12 Q And let me show you a close-up in 23.

13 A Oh, it's a cartridge.

14 Q Was there something close to the defect in the carpet also at or
15 near tag number nine?

16 A Yes. Number nine's actually the cartridge case. It's another .40
17 caliber cartridge case.

18 Q Exhibit 24. Obviously, Mr. Fleming is no longer there.

19 A Correct.

20 Q There's now item number ten. Can you tell me what item number
21 ten is?

22 A Item ten should be the defect in the bullet fragments.

23 Q And Exhibit 25?

24 A That's a close-up photo of those fragments.

25 Q Now, was there a process in which this area, the area I've just

1 shown depicted by tag number ten and that matte type carpeting adjacent to
2 the garage door that it's processed further. Can you explain what you do and
3 how it was done in this case?

4 A In this case, these fragments were collected after being
5 photographed. The carpet is then removed and we're photographing the
6 underside of the carpet, as well as the tile floor underneath.

7 Q I'm showing you Exhibit Number 28. Is that kind of the process
8 that you just described in the photograph as we're going through them.

9 A Yes.

10 Q And Exhibit 29, what are we looking at there?

11 A That's the underside of that mat, showing the defect on the
12 underside of the mat.

13 Q And on the top side of that would have been the bullet fragment
14 that was impounded?

15 A Correct.

16 Q And let me go to Exhibit 30 and tag 11. What are we looking at
17 there?

18 A This is additional bullet fragments and the broken tile underneath
19 that defect in the carpet.

20 Q Exhibit 32, what is that?

21 A That's a photograph, stepped back just a little bit so you can see
22 the entire defect in the tile.

23 Q And once again, 31, is that a sequential photograph now up close
24 of the previous?

25 A Correct.

1 Q That was tile underneath the carpeting?

2 A Yes.

3 Q Now, I want to show you Exhibit 33. Can you tell us what we're
4 looking at there and where is that in the scene?

5 A This is the handgun in a leather holster that is in the waistband of
6 the victim.

7 Q Now, is there a procedure, kind of a strict line about how handguns
8 such as this found in a scene is processed?

9 A Yes.

10 Q Can you describe that for me?

11 A The handgun was removed from the holster, then you drop the
12 magazine out and lock the slide back to make it safe, noting whether or not
13 any live ammunition or cartridge cases come out of the slide when we rack it
14 back. We then count all the live ammunition that's in the magazine,
15 photograph the gun and all of its make, model, serial number, all of its
16 designators.

17 Q And this particular gun was processed in that fashion?

18 A Yes.

19 Q I would like to show you next in order State's Exhibit 34. What are
20 we looking at there and where in the process are, we seeing this weapon?

21 A This would be the first photograph taken after removing it off of
22 this person. It's still in the holster.

23 Q And Exhibit 35?

24 A This would be after it's removed from the holster, the magazine
25 has been dropped and the slide has been locked back. The ammunition is still

1 in the magazine.

2 Q What was the condition of this weapon at the time that it was
3 processed, as you just described?

4 A There are 15 live 9 millimeter cartridges in the magazine and there
5 was nothing in the chamber.

6 Q Are you familiar with semi-automatic handguns?

7 A Yes.

8 Q Do you also qualify, in your capacity as a Crime Scene Analyst, to
9 carry a firearm with the North Las Vegas Police Department?

10 A Yes, I do.

11 Q How often do you qualify with a weapon?

12 A Four times a year.

13 Q And that's every year since you've been employed in that capacity?

14 A Correct.

15 Q What kind of weapon, revolver or semi-automatic do you carry?

16 A I carry a 9 millimeter Glock Model 26.

17 Q Semi-automatic handgun?

18 A Correct.

19 Q So, would it be fair to say that you're familiar with how to load it,
20 operate, and fire that weapon?

21 A Yes.

22 Q So, let me ask you this question, in the condition that the gun was
23 in, that is, as you testified, the magazine had live rounds in it, but none in the
24 pipe or in the barrel end. If I pulled out that Glock and squeezed the trigger
25 would the gun go off?

1 A No.

2 Q What would be required in order to make this Glock operational so
3 that if I pulled the trigger the gun would fire?

4 A The slide would have had to have been racked back to put a round
5 into the chamber.

6 Q Thank you.

7 MR. STANTON: Your Honor, I don't believe I have any further
8 questions. I pass the witness.

9 CROSS-EXAMINATION

10 BY MR. O'BRIEN:

11 Q Good afternoon, Ms. Harder.

12 A Good afternoon.

13 Q I want to start with a few general questions. I know you talked a
14 little bit about your background and your training to become a CSA.

15 A Uh-huh.

16 Q Let's talk a little bit about the responsibilities of a CSA. You just
17 basically respond to crime scenes to document the crime?

18 A Document and collect evidence, yes.

19 Q And by collecting evidence, recovering physical evidence and
20 fingerprints?

21 A Correct.

22 Q And also performing a variety of investigative tasks, potentially?

23 A Yes.

24 Q Okay. And to accomplish that, you carry test kits and evidence
25 collection materials with you?

1 A Yes.

2 Q Okay. Obviously, you're in North Las Vegas official uniform right

3 now?

4 A Yes.

5 Q You're not driving around in your personal vehicle?

6 A No.

7 Q Okay. When you're on the job, you're on the job?

8 A Correct.

9 Q Okay. So, you're using a North Las Vegas police vehicle?

10 A Yes.

11 Q And I assume the vehicle is stocked with those kits?

12 A Yes.

13 Q Okay. Do you personally stock the vehicle when you begin your

14 shift?

15 A Yes.

16 Q Okay. And the test kits, just some of the materials that you could

17 collect include DNA?

18 A Yes.

19 Q Fingerprints?

20 A Yes.

21 Q Gunshot residue?

22 A Yes.

23 Q Blood?

24 A Yes.

25 Q And there's a kit to actually test if something is blood?

1 A Presumptively, yes.

2 Q Okay. And, also, a collection of firearms, as in this case, you did?

3 A Yes.

4 Q Okay. And then part of your job -- an important part of your job is
5 also protecting the integrity of the evidence?

6 A Yes.

7 Q Specifically, part of your training, I imagine, with the Metro
8 Academy, was making sure there's no pollution?

9 A Yes.

10 Q And by -- or by pollution, I guess, a better phrase might be
11 contamination?

12 A Yes.

13 Q Okay. And that, in part, that's why you wear gloves?

14 A Yes.

15 Q When you're on the scene?

16 A Correct.

17 Q Okay. So -- and you talked a little bit about when you arrive on the
18 scene talking to detectives about what they might want investigated?

19 A Correct.

20 Q All right. And when we say detectives, essentially the lead officer
21 on the case; is that correct?

22 A In this case, it's -- I mean the detectives. There are patrol officers
23 there, but when detectives and CSI are called out, they become the lead
24 investigators.

25 Q Okay. And I think you also said you would ask the detective what

1 he or she might want investigated, but that's on top of what you, in your
2 training, see should be investigated, correct?

3 A Correct.

4 Q All right. And then once evidence is collected, you send the
5 evidence to the lab for testing?

6 A No.

7 Q Okay. How does -- the detective chooses what goes to the lab for
8 testing?

9 A Correct.

10 Q Okay. And does the detective have your office send --

11 A No.

12 Q -- that for testing, or the detective handles that themselves?

13 A The detectives handle those requests themselves.

14 Q Okay. So, you're more on the collection side, and then once, after
15 that point, the detectives are making the calls?

16 A Correct.

17 Q Okay. Ask you a few questions about -- did you have a chance to
18 review the reports from -- for this case?

19 A Yes.

20 Q Okay. Specifically, you authored a report in this case?

21 A I did.

22 Q And there was a second CSA on the scene; is that correct?

23 A Yes, the CSI official was actually primary on this case.

24 Q Okay. So, the CSI official also collected some evidence?

25 A The CSI official collected all scene evidence at the residence.

1 Q And by the residence, we're referring to the townhome at 4032
2 Smokey Fog?

3 A Yes.

4 Q Okay. Smokey Fog Avenue in North Las Vegas?

5 A Yes.

6 Q Okay. Just to give a sense to the jury of what we're talking about,
7 you're familiar with this area of North Las Vegas?

8 A Yes.

9 Q Okay. I'm showing you what's been marked as Defendant's
10 Proposed Exhibit I. And --

11 MR. STANTON: Well, Judge, just for the record, counsel showed
12 me Defense A through K. I have no objection to them being admitted. I think
13 that needs to be on the record before they publish it.

14 THE COURT: Okay.

15 MR. STANTON: Thank you.

16 THE COURT: I didn't pay attention to that part. Sorry about that.

17 MR. O'BRIEN: My apologies. Thank you, counsel.

18 THE COURT: So, do you move to admit by stipulation?

19 MR. STANTON: Yes.

20 THE COURT: A through K?

21 MR. STANTON: Those are the ones I've reviewed, Your Honor.

22 MR. O'BRIEN: I believe that's all I have.

23 THE COURT: Okay. A through K are admitted by stipulation.

24 [DEFENDANT'S EXHIBIT A-K RECEIVED]

25 MR. O'BRIEN: Thank you again, counsel.

1 BY MR. O'BRIEN:

2 Q We're looking at Defense Exhibit I. Do you recognize the area
3 depicted in this?

4 A Yes.

5 Q And, specifically, what are we looking at?

6 A We're looking at a bird's eye view of the northern area of North Las
7 Vegas, the Lamb and Centennial area.

8 Q And down towards the bottom right, is that Interstate 15 crossing
9 through the photo?

10 A Yes, it is.

11 Q Okay. And along the top edge is the northern edge of the
12 Woodbury Beltway of 215?

13 A 215, correct.

14 Q Okay. I'm showing you what's been marked as Defense Exhibit J.
15 Do you recognize this area?

16 A Yes. This is the neighborhood that the incident took place.

17 Q Okay. Specifically, the area around Smokey Fog Avenue?

18 A Correct.

19 Q And Smokey Fog is pictured on the -- say the top --

20 A Top right.

21 Q -- the upper part of the photo?

22 A The top right, yeah.

23 Q Thank you. I'll come back to that photo, but to give a sense of
24 where -- let me show you Defense Exhibit K. What are we looking at in
25 Defense Exhibit K?

1 A This is a closer look of Smokey Fog Avenue and showing the
2 specific townhome that we're talking about.

3 Q And that's the address again, 4032 Smokey Fog Avenue?

4 A I believe so. I would have to doublecheck. I didn't respond to the
5 actual house, so.

6 Q But that is the address marked on the photo of this?

7 A That is, yes, 4032.

8 Q Okay.

9 A Yeah.

10 Q Going back to Exhibit J. We talked a little bit about CSI Fischer
11 being primary when --

12 A Yes.

13 Q -- the two of you were at the scene?

14 A Yes.

15 Q I would like to talk to you a little bit about fingerprint collection.

16 A Okay.

17 Q Okay. Part of your job is -- and your expertise, is processing
18 evidence for fingerprints?

19 A Yes.

20 Q And obtaining both suspect and elimination prints?

21 A If requested, yes, we will collect suspect and elimination prints.

22 Q So, if the detective essentially asked you for that, that's something
23 that you could take care of?

24 A Yes.

25 Q All right. And in taking fingerprints, you use various methods, very

1 different scientific methods of collecting those, correct?

2 A Yes.

3 Q Sometimes powder, sometimes chemicals?

4 A Correct.

5 Q All right. And in this case, I believe -- and there's one method that
6 is magnetic powder and a magnetic wand?

7 A Yes.

8 Q You're familiar with that -- with that technique?

9 A Yes.

10 Q Specifically, just explain it to the jury. Essentially, it non-
11 scientifically is a stick with a plunger in it, and you depress the plunger, which
12 brings up a magnet towards a collection of iron dust, essentially?

13 A The fingerprint powder has a magnetic component to it so that it
14 adheres to the wand.

15 Q Okay. And then you then brush that wand lightly against the
16 surface?

17 A Correct.

18 Q To determine if there are any fingerprints?

19 A Right.

20 Q Okay. And then once that's done -- let me ask you a few questions
21 about what's often called lifting a print. Once -- if a print is uncovered by that
22 powder, do you then use tape to collect that fingerprint?

23 A Correct.

24 Q Okay. Putting the tape over the magnetic powder image of the
25 fingerprint --

1 A Uh-huh.

2 Q -- and the tape then is removed to collect the fingerprint?

3 A Correct.

4 Q So that it can later be tested?

5 A It can later be compared, yes.

6 Q Okay. And in this case, there were some fingerprints taken from
7 4032 Smokey Fog; is that correct?

8 A By CSI Fischer, yes.

9 Q Yes. In fact, there were two lifts that CSI Fischer did?

10 A Yes.

11 Q The first one --

12 MR. O'BRIEN: The Court's indulgence.

13 BY MR. O'BRIEN:

14 Q The first lift CSI Fischer took for was from the front door of the
15 property?

16 A I believe both of them were from the exterior of the front door.

17 Q Okay. Exterior, essentially outside, the outside section?

18 A Yes.

19 Q Okay. And Lift 1, CSI Fischer refers to as good comparable quality?

20 A Yes.

21 Q And to explain that a little bit to the jury, there's a comparison
22 phase once a fingerprint's collected?

23 A Yes.

24 Q And if it's of comparison quality, essentially the fingerprint can be
25 compared to an elimination print?

1 A Yes, it can be compared to other fingerprints. No known prints of
2 either suspects, or victims, or whomever.

3 Q Thank you. Much more eloquently worded. And that comparison
4 is, in part, to determine the existence of any similarities between the two
5 prints?

6 A Yes.

7 Q And, of course, dissimilarities between the two prints?

8 A Correct.

9 Q But it's worth noting that CSI Fischer noted that this is not AFIS
10 quality print?

11 A Correct.

12 Q Can you explain AFIS quality to the jury?

13 A Correct. If a fingerprint is of AFIS quality that means that it's clear
14 enough to put into the computer, where the computer can then run it against
15 the Western Identification Network first to see if it matches anyone who's ever
16 been put in the system before, but it has to be of a sufficient quality to do so.

17 Q And from your knowledge of the investigation, was Lift Number 1
18 ever compared with the Defendant, Shawn Glover?

19 A I don't believe so.

20 Q Okay. There was a second lift we talked about from the front door,
21 correct?

22 A Yes.

23 Q And this one, in particular, was a poor candidate for comparison?

24 A Correct.

25 Q Which also means automatically it's also not of AFIS quality?

1 A Correct.

2 Q Okay. And from your review of CSI Fischer's work, do you have
3 any knowledge of fingerprints taken from a counter inside 4032 Smokey Fog?

4 A I do not have knowledge of that, no.

5 Q Okay. Do you have any knowledge of fingerprints taken from car
6 keys?

7 A Car keys?

8 Q Car keys.

9 A No.

10 Q Do you have any knowledge of fingerprints taken from the railing
11 leading down the stairs at 4032?

12 A No.

13 Q And none were taken -- as far as you know, none were taken from
14 the wall leading down the stairs?

15 A No.

16 Q And no fingerprints were taken near the couch on the second
17 floor?

18 A Not to my knowledge.

19 Q Okay. And none were taken from the .40 caliber shells that were
20 found; is that correct?

21 A Correct.

22 Q And we talked a little bit about CSI Fischer's investigation. Before I
23 move on, when you responded to the property, you were not asked to work
24 inside the residence, correct?

25 A Correct.

1 Q The detective asked you to go to a vehicle that was located on the
2 property?

3 A Yes.

4 Q Okay. And do you recall where the vehicle was located?

5 A It was in the parking lot, and it was off of Pepper Thorn, but I -- I'm
6 sorry, I don't remember the cross street.

7 Q If I show you Defense Exhibit B, is this a photo that you took?

8 A Yes, sir. Thank you.

9 Q And did you take this photo probably just for this reason?

10 A Yes, sir.

11 Q Okay. And it looks like it's the intersection of Pepper Thorn and
12 Beige Bluff; is that correct?

13 A Yes.

14 Q All right. And that is where the vehicle was located?

15 A Correct.

16 Q All right. On the map, do you see the intersection of Pepper Thorn
17 and Beige Bluff?

18 A Yes.

19 Q Would you please mark that for the jury? It looks like now we have
20 to use the mouse rather than the touch screen.

21 A Oh, sorry.

22 Q The little red crayon, and if you could circle it, please? Thank you
23 very much. I'm showing you what's been marked as Defense Exhibit A. Do
24 you see a vehicle that you investigated in this photo?

25 A I don't see a picture. I'm sorry. Do I have to --

1 MR. STANTON: You have to get rid of the --

2 MR. O'BRIEN: Oh, I apologize.

3 BY MR. O'BRIEN:

4 Q If you could use the mouse again and go to the arrow, click on
5 the arrow. Thank you so much. Again, sorry, this is Defense Exhibit A. Do
6 you see a vehicle that you investigated on January 1st, 2016?

7 A Yes.

8 Q That's specifically the Dodge Durango towards the left side of the
9 photo?

10 A Yes, sir.

11 Q All right. And showing you Defense Exhibit C, this is a closer view
12 of the Dodge Durango?

13 A Yes.

14 Q And you did -- you did some investigation inside of the vehicle, as
15 well?

16 A Correct.

17 Q When you arrived at the scene, detectives were already there?

18 A Yes.

19 Q And specifically, Detective Wilson was present?

20 A Yes.

21 Q And did Detective -- you noted in your report Detective Wilson had
22 the keys to the vehicle at that time?

23 A Correct.

24 Q This was around -- do you recall what time you left?

25 A Around 3:30.

1 Q 3:30 p.m.?

2 A Yes.

3 Q Okay. I'm showing you Defense Exhibit D. This is a photo that you
4 took?

5 A Yes.

6 Q And it's essentially just the interior, front interior of the Durango?

7 A Correct.

8 Q Okay. Going back to Defense Exhibit C. When you arrived at the
9 scene, does the detective -- does the detective tell you the importance of the
10 vehicle?

11 A I usually get a small briefing, yes.

12 Q Okay. And in this case, there was concern that the suspect had
13 stolen this vehicle?

14 MR. STANTON: Object to any answer that deals with Detective
15 Wilson or any other person's opinion. That's hearsay.

16 THE COURT: Counsel, you want to rephrase?

17 MR. O'BRIEN: Yes, Your Honor.

18 BY MR. O'BRIEN:

19 Q In this instance, you were asked to investigate this vehicle -- well,
20 let's just leave it there. You were asked to investigate the vehicle, correct?

21 A Yes.

22 Q Okay. The detective did not ask you to take fingerprints of the
23 vehicle?

24 A No.

25 Q Okay. And you ultimately did not take fingerprints of the vehicle?

1 A No.

2 Q Okay. Did not take fingerprints of the door exterior?

3 A No.

4 Q Okay. And obviously going along with that, there were no
5 fingerprints in the interior of the vehicle, as well?

6 A No, sir.

7 Q Okay. I would like to take a step back from fingerprints for a
8 second and talk to you a little bit about gunshot residue.

9 A Okay.

10 Q One of the kits that your -- that you carry with you when you're
11 working is a gunshot residue test?

12 A Yes.

13 Q Essentially, it's a kit?

14 A Yes.

15 Q Okay. And the testing involves, in this particular gunshot residue
16 testing is testing for lead, barium, and antimony, always difficult to say?

17 A Yes.

18 Q And the reason, the reason those particles in particular are being
19 tested is that those are in the residue produced from the firing of a weapon?

20 A Correct.

21 Q A handgun, essentially. Once a handgun is fired, that -- those
22 particles are in the residue produced?

23 A Yes.

24 Q And part of the reason for that is that they are present in the primer
25 of a cartridge?

1 A Yes.

2 Q So, the primer of essentially the bullet or the cartridge inside the
3 gun contains these particles?

4 A Yes.

5 Q And then when fired, that's why they are present?

6 A Yes.

7 Q All right. To -- and this -- part of the science behind it is that these
8 particles are ejected from the barrel of the gun when fired?

9 A Yes.

10 Q And it leaves a residue in the area around the gun at the time of
11 the firing?

12 A Correct.

13 Q And that residue can be tested?

14 A Yes.

15 Q If requested, a person's hands can be swabbed?

16 A Yes.

17 Q And a gun residue test run off of that swab?

18 A Correct.

19 Q And part of the reason we might test hands, or we might be
20 requested to test hands is the residue -- if a gun was in someone's hand and
21 that gun was fired, the residue would fall onto that hand?

22 A Correct.

23 Q All right. You could also swab clothing, correct?

24 A Yes.

25 Q And in this case, while you did not go to the property, are you

1 aware of any gunshot residue testing that was done?

2 A I did respond to the property, I just wasn't dispatched there. So, I
3 wanted to correct myself on that one. I did later respond to the property, I was
4 dispatched to the vehicle. Sorry.

5 Q Okay.

6 A But not to my knowledge, no.

7 Q And I want to talk to you a little bit about DNA collection and
8 testing. I'm showing you Defense Exhibit E. I know we're bouncing back and
9 forth, but what is pictured in Defense Exhibit E?

10 A This is the driver's side of the Durango, where I've marked with
11 evidence markers the areas that I want to swab for DNA.

12 Q Okay. And we talked a little bit -- the Prosecution talked to you a
13 little bit about markers. Essentially, it is marking the, as you just said, the
14 spots in a photo where you're going to test?

15 A Correct.

16 Q I'm showing Defense Exhibit F. Are we looking at your hand in the
17 bottom left corner?

18 A Yes, sir.

19 Q Okay. And that is you swabbing an area for DNA?

20 A Yes.

21 Q All right. And I'm showing you Defense Exhibit G. Similarly, this is
22 your hand swabbing the steering wheel for DNA?

23 A Correct.

24 Q And Defense Exhibit H, you're hand swabbing the, I assume the
25 gear shift?

1 A Yes.

2 Q Okay. I want to talk to you a little bit about DNA and why you
3 would swab an area.

4 A Okay.

5 Q Touch DNA, in particular, it's a forensic method for analyzing DNA
6 that might be left at the scene of a crime?

7 A Correct.

8 Q And it's called, specifically, touch DNA because the testing requires
9 very small samples in order to be tested?

10 A Yes, it's an area where someone has touched and left epithelial
11 DNA.

12 Q Okay. And when you're swabbing these areas, you're looking for
13 touch DNA?

14 A Yes.

15 Q Okay. In this instance, the detectives did not ask you to test this
16 DNA?

17 A I don't test DNA.

18 Q Okay. I thought that. As far as you know, the detective did not
19 send the DNA to be tested?

20 A I wouldn't know.

21 Q Okay. All right. So, as we said earlier, you did your job of
22 collecting?

23 A Correct.

24 Q At that point, it's the lead investigator's job to decide what to do?

25 A Yes, sir.

1 Q Thank you.

2 MR. O'BRIEN: The Court's indulgence.

3 BY MR. O'BRIEN:

4 Q And Ms. Harder, just -- you mentioned epithelial DNA, just so the
5 jury knows, epithelial DNA is essentially skin cells?

6 A Skin cells, yes.

7 Q Okay. And that was part of when we were discussing touch DNA
8 and what might be collected and ultimately tested?

9 A Correct.

10 Q Okay. A few more questions about the investigation inside of the --
11 inside of the property at 4032 Smokey Fog. We talked a little bit about
12 fingerprints, and to the best of your knowledge, there was no DNA taken inside
13 of 4032 Smokey Fog?

14 A Not to my knowledge.

15 Q Okay. And by taken, essentially collected with the swab method as
16 we saw in the photos?

17 A Right.

18 Q All right. But -- actually, let me be more particular. There was a
19 swab taken of Mr. Fleming's mouth, a buccal swab?

20 A That was probably done at the autopsy.

21 Q Okay. Okay. So not done inside the house, as far as you know?

22 A I wouldn't assume so.

23 Q Okay. So, in that vein, there was no DNA taken from the -- any
24 counter in the property?

25 A Not to my knowledge, no.

1 Q Okay. And no DNA taken from the couch?

2 MR. STANTON: Objection, asked and answered. The bannister
3 going down the stairs, the couch, the counter, all have been asked and
4 answered.

5 THE COURT: Is this the last area?

6 MR. O'BRIEN: This is the last area and, Your Honor, I did ask about
7 fingerprints, but not about DNA. This is the very last area.

8 THE COURT: Okay.

9 BY MR. O'BRIEN:

10 Q So, no DNA was collected from the couch, as far as you know?

11 A Not to my knowledge.

12 Q And no DNA was collected from the railing on the way down the
13 stairs?

14 A Not to my knowledge.

15 Q Or from the wall along the way down the stairs?

16 A Not to my knowledge.

17 Q And no DNA was collected from the .40 caliber shells that were
18 found?

19 A Not to my knowledge, no.

20 Q Okay. Thank you very much.

21 THE COURT: Redirect?

22 MR. STANTON: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. STANTON:

25 Q And counsel just asked you about three areas of forensic items that

1 you are certified and trained to collect, gunshot residue, fingerprints, and DNA
2 as well I want to focus on. You're familiar with all those?

3 A Yes.

4 Q Okay. So, let me ask you this question. Let me give you a good
5 surface for prints to be left, start off with fingerprints. Glass, non-porous
6 surface, and I'm not moving when I grab -- grasp it, and I'm a secretor, and I
7 have oils coming out of my hands. Probably a pretty good candidate that a
8 latent of comparison quality will be left under those circumstances?

9 A Yes.

10 Q All things being. Will it tell you when I left that print?

11 A No.

12 Q It won't tell you the date, times, circumstances of when I put that
13 print on there?

14 A No.

15 Q What happens if I move it when I touch that glass?

16 A It will most likely be smudged.

17 Q And in smudged prints, it greatly affects the quality of the print for
18 comparison purposes?

19 A Yes.

20 Q Let me shift to DNA. I'm walking down the stairwell and I put my
21 hand on the railing inside this home. Would I leave DNA, generally speaking?

22 A Probably.

23 Q Possibly. Will it tell you when I left the DNA?

24 A No.

25 Q Will it tell you what circumstances I left the DNA, at least touch

1 DNA as opposed to blood or some other DNA rich fluid?

2 A No.

3 Q Let me talk about gunshot residue. You, on several questions
4 asked by Defense counsel, asked about the collection of gunshot residue. Are
5 you familiar with the limitations on gunshot residue as far as what it will tell
6 you?

7 A It will basically tell you whether someone was around a gun being
8 fired.

9 Q Okay. Will it tell you whether or not I held a gun in my hand and
10 fired it?

11 A No.

12 Q So, if we had four people in a room and let's assume this is a
13 normal size bedroom, 10 by 13, or thereabouts, and a gun is fired. Would you
14 expect, if you were to take a gunshot residue test soon in time without
15 anybody putting their hands in clothing, washing their hands, or an
16 appreciable lapse of time, would you expect all four people to test positive?

17 A It's very possible, yes.

18 Q And there's no gradation of the testing of gunshot residue. In other
19 words, you can't tell by the results of it that you're the shooter, you're three
20 feet, you're closer than person number two or three, or anybody else in the
21 room. Is that accurate?

22 A I don't know exactly how it measures. From what I understand, it's
23 just it's either present or it's not.

24 Q Okay. Are you --

25 THE COURT: And you said -- I'm sorry to interrupt. You said

1 gradiation.

2 MR. STANTON: I did.

3 THE COURT: Spell that for the record.

4 MR. STANTON: Okay. Thank you, Your Honor.

5 THE COURT: G-R-A --

6 BY MR. STANTON:

7 Q Do you know where --

8 THE COURT: It's the first time I ever heard it, so I wanted to make
9 sure I got it right.

10 BY MR. STANTON:

11 Q Are you familiar where gunshot residue testing is performed?

12 A It's sent off to a lab somewhere back east, I believe.

13 Q How about Bear County, Texas? Does that sound familiar?

14 A East of here.

15 Q Okay, but it's not by the way -- right, it's not by the crime lab?

16 A No, sir.

17 Q And, in fact, North Las Vegas, getting back to DNA and
18 fingerprints, doesn't have their own crime lab, you ship it to Metro. Is that --

19 A We do our own fingerprints.

20 Q But the DNA --

21 A But we -- DNA, we do not, it gets sent to Metro, the County Lab.

22 Q Okay. Thank you, ma'am.

23 MR. STANTON: Nothing further.

24 THE COURT: Re-cross?

25 MR. O'BRIEN: No, thank you.

1 THE COURT: Do any of the ladies and gentlemen of the jury have
2 any questions you wish the Court to ask the witness? There being no
3 questions, thank you very much for your testimony. You are excused. We're
4 going to take a restroom break after --

5 MR. O'BRIEN: Your Honor, may we approach?

6 THE COURT: Sure.

7 [Sidebar at 2:36 p.m.)

8 MR. STANTON: We're done for the day.

9 THE COURT: Really?

10 MR. STANTON: Yeah.

11 THE COURT: All right.

12 MR. STANTON: I only have one more witness.

13 THE COURT: Who is it?

14 MR. STANTON: Detective Wilson, who's unavailable today. She's
15 out of State on another case, and then we have the --

16 THE COURT: I could do the claims admonishment.

17 MR. O'BRIEN: Uh-huh.

18 THE COURT: Right.

19 MR. O'BRIEN: Sure.

20 MR. STANTON: And we have to settle the jury instructions. That
21 won't be too long according to our brief discussion outside your presence.

22 THE COURT: Okay. So, you're going to close this Friday, is that
23 what you're thinking?

24 MR. O'BRIEN: That's be plan, because Thursday being tomorrow, I
25 would expect the detective to be a couple hours, and my person would be five

1 minutes, from my perspective.

2 THE COURT: Okay. So, if I went ahead (indiscernible) it would be
3 2:20, I was asking to be excused.

4 MR. O'BRIEN: Okay.

5 THE COURT: We had a full discussion of whether he's the boss,
6 but I feel like he's possibly self-fulfilling.

7 MR. STANTON: So, whenever you want to, to tomorrow, and then
8 we'll argue your thing Friday morning.

9 MR. O'BRIEN: That seems to be the plan.

10 THE COURT: I have a hearing on an in capita without probability,
11 blah, blah, blah. I might just move it so that we can finish this on time.

12 MR. O'BRIEN: That would be great, Your Honor.

13 THE COURT: Okay. I have to move it. I have to move it. Thanks.
14 So, I'm going to give them this thrill about being done a little early today.

15 MR. STANTON: Right. And then I'll send -- I have two specials on
16 the other murder counts that I'll send over.

17 THE COURT: Okay.

18 MR. STANTON: Okay?

19 [Sidebar ends at 2:38 p.m.]

20 THE COURT: Well, ladies and gentlemen, the testimony that we
21 had anticipated would take the rest of the day is done, and so we're done a
22 little early. And so, we do our best to plan and schedule. We have some
23 witnesses that are out of State that are not available until tomorrow. So, you
24 are done for today.

25 So, we're going to break now. I have a Nevada Supreme Court

1 Commission that I am appointed to, with a particular Justice who would like
2 my attendance tomorrow. I'm being excused early from the Commission, but
3 we're not -- and the lawyers knew this in advance and there's at least one of
4 you that understands that when the Supreme Court speaks, those of us in the
5 business listen, including me. So, I have to do that, and we're not going to
6 start this trial until 2:30. So, we're just going to compress, 2:30 to 5. Okay?
7 And so, we'll take a break in there and we're going to -- the way things are
8 going along, we are still on time, no problem.

9 So, during this overnight recess until 2:30, you can work tomorrow,
10 you can go about your business as long as you're at the meeting place that my
11 Marshall designates to you at 2:30 tomorrow afternoon, okay? As long as you
12 don't talk about the case and you follow my admonishment. Okay. Just put it
13 out of your mind and come back at 2:30 tomorrow.

14 So, during this recess, you're admonished not to talk or converse
15 among yourselves or anyone else on any subject connected with the trial. You
16 are not to read, watch or listen to any report of or commentary on the trial by
17 any person connected with this case, or any media of information, including,
18 without limitation, newspaper, television, the internet or radio. You're not to
19 form or express any opinion on any subject connected with the trial until the
20 case is finally submitted to you. Tomorrow at 2:30.

21 THE MARSHAL: All rise. The jury is exiting.

22 [Outside the presence of the jury.]

23 THE COURT: The record shall reflect we're outside the presence of
24 the jury. I would like to take a short restroom break, come back and admonish
25 your client, because I have to do that when the State rests, and I hear that

1 you're resting soon tomorrow, right?

2 MR. STANTON: Correct.

3 THE COURT: Shortly after we, you know, we have what, one more
4 witness?

5 MR. STANTON: One witness.

6 THE COURT: Okay. So, I'm going to do the client admonishment,
7 and I would like to look at the jury instructions, and at least have you flag for
8 me what you're objecting to. Are you prepared to do that or --

9 MR. STANTON: I think if we -- if you give us a little bit of time
10 through tonight, we can focus that to be more efficient.

11 THE COURT: Okay. And do you have any proposed that I --

12 MR. O'BRIEN: I emailed an entire packet. I think that Mr. Stanton
13 anticipated the possibility of self-defense, and so there's -- when he first put
14 his packet together, and so --

15 THE COURT: All right. Do this, do me a favor, send me a new one.

16 MR. STANTON: Okay.

17 THE COURT: Otherwise, I have everything woven in and I won't
18 have to pull it out and be in a different order. Just send me a new one unless
19 you accept their version of yours and theirs.

20 MR. STANTON: I think we can send you a new one, and also
21 highlight the ones that are contested.

22 MR. O'BRIEN: Correct. That's my plan for this evening, Your
23 Honor.

24 THE COURT: Okay, then that's fine. Give me just two minutes and
25 then I'll admonish your client, and you can all be about your day. Okay? Two

1 minutes.

2 MR. O'BRIEN: Very good.

3 [Recess at 2:42 p.m., recommencing at 2:45 p.m.]

4 THE COURT: Are you ready?

5 MR. O'BRIEN: We're ready, Your Honor. I believe Mr. Stanton has
6 left responsibility to Mr. Flinn.

7 [Outside the presence of the jury.]

8 THE COURT: Okay. We're back on the record in State v. Shawn
9 Glover outside the presence of the jury. Both Defense counsel are present, Mr.
10 Flinn for the State.

11 Mr. Glover, in every criminal trial, the Judge has to read an
12 admonishment that is important, and I read it verbatim to make sure I don't,
13 you know, screw it up. So, I'm going to read it to you verbatim here. If you
14 have any -- I usually read it at or around when the District Attorney is going to
15 rest, but since you're going to, at some point, start a case tomorrow, I'll read it
16 to you tonight so that you have been admonished, and you can certainly
17 discuss it to the extent you need to with your attorneys.

18 THE DEFENDANT: Okay.

19 THE COURT: So, under the Constitution of the United States and
20 under the Constitution of the State of Nevada, you cannot be compelled to
21 testify in this case. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You may, at your own request, give up this right and
24 take the witness stand and testify. If you do, you will be the subject to cross-
25 examination by one of the Deputy District Attorneys, and anything that you

1 may say, be it on direct or cross-examination, will be the subject of fair
2 comment when the Deputy District Attorneys speak to the jury in their final
3 arguments. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: If you choose not to testify, the Court will not permit
6 the Deputy District Attorneys, either of them, to make any comments to the
7 jury because you have not testified. Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

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

11 The law does not compel a Defendant in a criminal case to take the
12 stand and testify, and no presumption may be raised, and no inference of any
13 kind may be drawn from the failure of a Defendant to testify. Do you have any
14 questions about these rights?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You are further advised if you have a felony
17 conviction more than ten years that has not elapsed from the date that you
18 have been convicted or discharged from prison, parole, or probation,
19 whichever is later, and the Defense has not sought to preclude that coming
20 before the jury, and you take the stand and testify, the Deputy District
21 Attorneys, one of them, in the presence of the jury, would be permitted to ask
22 you the following: One, have you been convicted of a felony; two, what was
23 the felony; and, three, when did it happen? However, no other details could be
24 gone into. You discussed these rights with your client?

25 THE DEFENDANT: Yes, ma'am.

1 MR. O'BRIEN: Yes, ma'am.

2 THE COURT: And did you answer any questions he had, if he had
3 any?

4 MR. O'BRIEN: Absolutely.

5 THE COURT: Okay. And so, if there's nothing else, I'll see you
6 tomorrow at, what time did we say? I'm going to say 2:20, and then, you
7 know, sit in the back.

8 MR. O'BRIEN: If I have those instructions to you, say 9 or 9:30 in
9 the morning, that's plenty of time?

10 THE COURT: Yeah.

11 MR. O'BRIEN: Okay.

12 THE COURT: Well, I'm going to be sitting at that meeting with
13 time.

14 MR. O'BRIEN: Okay. So, I'll make sure you have them to fill your
15 time.

16 THE COURT: Thank you. You may understand that I'm -- my -- it's
17 not formal, but my ADHD requires me to do more than one thing. I can't do
18 one thing.

19 MR. O'BRIEN: I'm not very good at idle either, Your Honor.

20 THE COURT: So, I would be happy to be looking at the
21 instructions.

22 MR. O'BRIEN: I'll make sure you have them.

23 /////

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1 THE COURT: Thanks.

2 MR. O'BRIEN: Yep.

3 [Proceedings concluded at 2:49 p.m.]

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16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/visual proceedings in the above-entitled case to the
18 best of my ability.
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23 _____
24 Maukele Transcribers, LLC
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SHAWN GLOVER,) No. 77425
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Appellant,)
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v.)
)
THE STATE OF NEVADA,)
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Respondent.)
_____)

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17 day of April 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/Rachel Howard
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