

IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON

Appellant,

v.

THE STATE OF NEVADA

Respondent.

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Elizabeth A. Brown
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CASE NO. 77623

Appeal from the Denial of a Petition for Writ of Habeas Corpus
Second Judicial District Court, Washoe County
The Honorable Elliott A. Sattler, Department 10

APPELLANT'S APPENDIX

VOL. III

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CERTIFICATE OF SERVICE

I certify that I, Lyn E. Beggs, Esq., am counsel for the Appellant in this matter, and that on this date I electronically filed the foregoing Appellant's Appendix with the Clerk of the Court by using the ECF system which will send a notice of filing to all parties pursuant to the master list:

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DATED this 24th day of June, 2019.

/s/ LYN E. BEGGS
LYN E. BEGGS, ESQ.

1 cross-examination, Mr. Young.

2 REDIRECT EXAMINATION

3 BY MR. YOUNG:

4 Q Mr. Hylin went through a litany of questions
5 about coughing and sneezing and masks and the like;
6 correct?

7 A Correct.

8 Q Your handling of this evidence and your booking
9 the items into evidence of the secured unit at the
10 police station, was that all consistent with your
11 training and procedure?

12 A Yes, it was.

13 Q Okay. He asked about changing gloves. Do you
14 do that in -- you did not change gloves in this case?

15 A No.

16 Q Was that consistent with your training and
17 procedure?

18 A Yes.

19 Q Do you necessarily have to change gloves if you
20 touch a single item and the next item and the next
21 item?

22 A No, you don't.

23 Q Are you the one who booked the property that
24 we've been discussing here, including the red hat, into

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1 evidence at the police station?

2 A Yes.

3 Q And that's into a secure, as you described,
4 locker; correct?

5 A Yes.

6 Q And then there are safeguards and procedures in
7 place to make sure that it hasn't been tampered with?

8 A Yes.

9 Q Okay. Mr. Hylin asked you about swabbing
10 various items around the car, the steering wheel, the
11 gear shift, the other levers and knobs, if you will, in
12 the car. And you testified you did not do that, right?

13 A Yes.

14 Q Why didn't you do that?

15 A The DNA type that is being referred to is touch
16 DNA. It's skin cells. As compared to saliva DNA, it's
17 a different type of DNA. So any touch or anyone within
18 proximity of touching something could deposit touch
19 DNA. Someone walking by who happens to rub up against
20 it could also do the same thing. So you may have
21 multiple layers of touch DNA upon each other. There's
22 no way to definitively ascertain one specific DNA was
23 the only one present there.

24 So based on that, I didn't swap it because in my --

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1 based on my training and experience, there was too much
2 of a likelihood that it had already been
3 cross-contaminated. There would be multiple other
4 types of DNA that was possibly there that would be in
5 effect.

6 Q Are you aware that DNA might be obtained from
7 different sources? You just talked about touch DNA.

8 A Yes.

9 Q Are you aware that's different than, say, a
10 sample of biological?

11 A Yes.

12 Q And would a DNA analyst be able to better
13 discuss that --

14 A Yes.

15 Q -- than, say, you?

16 A Yes.

17 Q Mr. Hylin asked if the hat in the bag on the
18 front passenger seat doesn't tell you who was driving,
19 and you said yes; correct?

20 A Yes.

21 Q Did you collect this evidence, including the
22 red hat, and was that part of the totality of the
23 investigation?

24 A Yes, it was.

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1 Q You have to take the evidence that you collect
2 in the context with everything else; fair?

3 A Yes, I do.

4 Q Last area I want to discuss with you,
5 Detective, is Mr. Hylin brought up gunshot residue or
6 GSR. Do you recall him talking to you about that?

7 A Yes.

8 Q And he asked about swabbing -- as I understood
9 the question, swabbing the outside of the car. Is that
10 how you understood his question as well?

11 A Yes.

12 Q Okay. And did you do any swabs for GSR of the
13 car?

14 A No, we did not.

15 Q Okay. And did you in fact do any swabs of the
16 defendant for GSR?

17 A No, we didn't.

18 Q Can you explain why that was?

19 A Based on, as you mentioned, the totality of the
20 case, the timeframe from the time of the incident to up
21 until that point, there's too much -- there's too much
22 of a time lapse. And so given environmental factors,
23 rain, heat, sun, whatever the environmental factors
24 are, as well as if there was anyone else that may have

ROUGH DRAFT TRANSCRIPT

1 contacted the car prior to -- there's a less likelihood
2 as time goes on that GSR will be present, if any.

3 Q As you sit here today are you second guessing
4 your decision not to collect or try to collect GSR from
5 the vehicle?

6 A No, I'm not.

7 Q What about the defendant? Did you take any --
8 GSR is collected from an individual by disks or swabs;
9 correct?

10 A Yes.

11 Q Did you do that with or did anybody with the
12 Reno Police Department do that with Mr. Mason?

13 A Not to my knowledge.

14 Q Are you second guessing that as you sit here
15 today?

16 A No, I am not.

17 Q Why?

18 A As I mentioned, because he could have -- you
19 can wash your hands, you can touch other items, you can
20 come into contact with other people and it can be
21 transferred on to you or you transferring it on to
22 someone else. It's not conclusive enough.

23 All a GSR would show is that you were -- the person
24 was either in the area when a gun went off or may have

ROUGH DRAFT TRANSCRIPT

1 come into contact with someone that was in the area
2 when a gun went off. That's what it would show. But
3 there's nothing definitive enough that it would be only
4 that particular person.

5 Q It's similar to -- you were talking about as
6 time passes on, the likelihood reduces. Is that the
7 same for the disks you would use with a person?

8 A Yes.

9 Q That's all. Thank you.

10 THE COURT: Recross based on the redirect,
11 Mr. Hylin.

12 MR. HYLIN: Yes. Thank you, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. HYLIN:

15 Q When you're talking about timeframes, Detective
16 Blas, about the thing, the things that we were talking
17 about, the swabs, the evidence and whatnot -- okay. So
18 you picked up the items here. So why did you pick up
19 those items and think there might be DNA on those but
20 nowhere else?

21 A Based on the fact that it was contained within
22 a plastic bag that was contained within the vehicle, I
23 felt that based on, as I said, my training and
24 experience, that was a little more secure than, say,

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1 the exterior of the vehicle or something that had
2 direct exposure to the elements. So being that it was
3 in the bag.

4 Q Detective Blas, you keep talking about training
5 and experience, but they don't train you to make time
6 judgments. This is less than 24 hours after the
7 incident; correct?

8 A Yes.

9 Q All right. So what's going to happen to these
10 cars or these items inside the car within 24 hours
11 that's going to obliterate any DNA samples?

12 A I couldn't tell you, sir.

13 Q Right. And we'll never know because you didn't
14 collect them; correct? It's just like I was talking
15 about --

16 THE COURT: Mr. Hylin, you asked a question, but
17 you didn't let him answer the question. What's the
18 answer to the question?

19 THE WITNESS: It's possible.

20 THE COURT: Next question.

21 MR. HYLIN: Thank you.

22 BY MR. HYLIN:

23 Q Just like I mentioned the gunshot residue, I
24 mean, anywhere, it could -- you know, when you took

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1 Mr. Mason into custody, you could have actually bagged
2 his hands and done a GSR test there, but you didn't;
3 right?

4 A I was not -- I was not there to make that
5 determination when he was finally --

6 Q But you could have ordered it done and it would
7 have been done, though; right?

8 A I could have ordered it to be done?

9 Q Right.

10 A No, I could not.

11 Q Or could you have asked anybody else who was in
12 charge of that particular operation to bag his hands?

13 A I could have offered it up. I could have
14 offered a suggestion, but I couldn't order someone to
15 do it.

16 Q You could have offered it as a suggestion, but
17 you didn't?

18 A No, I did not.

19 Q Because you didn't think of it?

20 A I didn't think -- I did not think of it. I
21 didn't think it was pertinent.

22 Q And to your knowledge, nobody else did a
23 gunshot residue test either on the car or him?

24 A Yes.

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1 Q Those are pretty definitive tests, though,
2 aren't they?

3 A Definitive --

4 Q If you fire a gun, you know, and it leaves
5 residue on your hands and you do a GSR -- I'm sorry --
6 a gunshot residue test on the hands, it doesn't tell
7 you the make or model of the pistol or the firearm or
8 anything else, but it sure tells you that there's
9 gunshot residue there which makes it more likely that
10 they're the one who fired the gun?

11 A Not necessarily.

12 Q Or a gun.

13 A Not necessarily.

14 Q So --

15 A Not necessarily.

16 Q So you're saying that gunshot residue just
17 occurs naturally in nature?

18 A No, I'm not. What I'm saying, as I said
19 before, is gunshot -- when a firearm goes off, there's
20 a large cloud of gunshot residue. Anyone standing
21 within the vicinity who did not fire the gun could
22 possibly have gunshot residue on them.

23 Q How close?

24 A It's not definitive enough to tell me that a

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1 single person was the only person that fired that
2 weapon.

3 Q Well, if you find it on them but nobody else
4 was tested and you check their hands and they have
5 gunshot residue on their hands but nowhere else?

6 A It's still not definitive enough, counsel.

7 Q Okay. If you -- if I fired a pistol close to
8 the top of the roof of a car, you'd not only find
9 gunshot residue on there, you would probably find some
10 powder residue on there; correct?

11 A I couldn't speak to that. I'm not a firearms
12 experts.

13 Q Well, you're trained to swab and test crime
14 scenes; correct?

15 A Yes.

16 Q So in your training and experience in gunshot
17 residue would train you to do that, wouldn't it?

18 A Yes. Just for the presence, yes.

19 Q But that wasn't done either?

20 A No, it was not.

21 Q And within a 24-hour-time period it is really
22 unlikely that DNA would decay to the point where it was
23 undetectable?

24 THE COURT: Before he answers that question,

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1 Mr. Hylin, I don't believe that any foundation has been
2 laid that Detective Blas can answer that question.
3 That would call for expert testimony. So I'm going to
4 direct him not to answer.

5 BY MR. HYLIN:

6 Q All right. In your training and experience did
7 they ever give you any timeframes for DNA decay?

8 A In my training and experience they have given
9 us a general guideline as far as the time -- as far as
10 a timeframe of DNA. It could last for a very long
11 time; it could last for days, months and weeks.
12 However, you have to factor in the environmental
13 conditions and the circumstances, the contact of that
14 specific specimen or whatever item it is has come into
15 contact with.

16 Q All right. So we have the car.

17 A Yes.

18 Q It's being surveilled for hours during the
19 nighttime. There's no sun, no wind that was discussed.
20 There was no rain. There were no other environmental
21 factors other than just the calm atmosphere that
22 surrounded that vehicle while it was being surveilled.

23 MR. YOUNG: Your Honor, is this being asked as a
24 hypothetical question or is this --

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1 MR. HYLIN: No. It was already testified to, Your
2 Honor.

3 MR. YOUNG: I don't recall any testimony as to
4 weather.

5 THE COURT: Stop. Counsel, I don't need both of
6 you to argue at the same time.

7 Mr. Hylin, included in your hypothetical are a
8 number of things that there was no specific testimony
9 about. And, therefore, I'll direct you to rephrase the
10 question. The objection will be sustained. You can
11 rephrase the question, but you might want to exclude
12 some of the things that so far there's been no
13 testimony about.

14 MR. HYLIN: Well, I guess that's my point, Your
15 Honor. So let me ask it in that fashion.

16 BY MR. HYLIN:

17 Q If nobody testified that it rained or that
18 there was direct sunlight on the subject car, you would
19 probably assume that being at nighttime that they
20 surveilled, which was testified to, and they towed it
21 at nighttime and sealed the car in the nighttime, then
22 you could probably assume then that it was delivered in
23 the nighttime. And you were there in the daylight
24 hours of the next day to search it. Okay. That was

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1 testified to --

2 A Okay.

3 Q -- by you and the people that towed the car.
4 So what I'm saying is in that time period since it was
5 sealed --

6 MR. YOUNG: Your Honor, I would object again.
7 Again, it inputs facts that have not been in evidence.

8 THE COURT: Mr. Hylin, you can rephrase the
9 question. Go ahead.

10 BY MR. HYLIN:

11 Q All right. This car was sealed when you came
12 upon it?

13 A Yes.

14 Q And did you talk to the people that sealed it?

15 A No, I did not.

16 Q Did you know when it was sealed and towed to
17 the yard?

18 A Just the night prior or the night before that
19 it had been towed to the station.

20 Q All right. So how many hours elapsed do you
21 think from the time it was towed? Did you review any
22 of those records?

23 A I did not get a specific time on when it was
24 recovered or towed.

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1 Q You knew it was last night?

2 A I knew it was the night prior and I knew that
3 it was secured at the station.

4 Q All right. So when did you encounter the car
5 and search it?

6 A 11:30 on the morning of -- I believe it was
7 10th when we stopped Mr. Mason and then I was given the
8 assignment to conduct the search of the vehicle.

9 Q So it was sometime from the night before until
10 11:30, so maybe 12 hours elapsed?

11 A Possibly.

12 Q In the 12 hours that elapsed from there, your
13 training in DNA samples would not lead you to believe
14 that the DNA would have become worthless anywhere else
15 in the car; correct?

16 A As I mentioned, I made the decision based on
17 the fact that I did not know what had happened to the
18 car prior to the officers making contact with it,
19 surveilling it.

20 Q Listen to the question, Detective. The
21 question was, during that time period, that would not
22 allow the DNA to decay; correct?

23 A I couldn't tell you if it would.

24 Q Just the passage of time itself.

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1 A Just the passage of the time itself, okay, no.

2 Q Okay. Thank you.

3 MR. HYLIN: I have no further questions, Your
4 Honor.

5 THE COURT: Thank you for being here today,
6 Detective Blas.

7 Mr. Young, is Detective Blas excused from his
8 subpoena?

9 MR. YOUNG: Your Honor, I would like him subject to
10 recall.

11 THE COURT: On what issue? He's been here and he's
12 been subject to direct examination. He's your witness.
13 Why would he be subject to recall?

14 MR. YOUNG: Based on -- well, my next witness who
15 is prepared to testify based on what she says.

16 THE COURT: Who is your next witness?

17 MR. YOUNG: Eboni Spurlock.

18 THE COURT: That's fine. So it might be a rebuttal
19 testimony?

20 MR. YOUNG: It depends what Ms. Spurlock testifies
21 to.

22 THE COURT: Under those circumstances then,
23 Detective Blas, you may step down, but I would request
24 that you remain outside the courtroom.

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1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Thank you.

3 THE BAILIFF: Stand here and face the clerk.

4 THE CLERK: Raise your right hand.

5 (The oath was administered to the witness.)

6 THE CLERK: Just have a seat.

7 EBONI SPURLOCK,

8 having been called as a witness herein,
9 being first duly sworn, was examined
and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. YOUNG:

12 Q Good afternoon, ma'am.

13 A Hi.

14 Q Can you state your first and last name and
15 spell both for the reporter, please.

16 A Yes. Eboni Spurlock. E-b-o-n-i,
17 S-p-u-r-l-o-c-k.

18 Q Ma'am, do you know an individual by the name of
19 Quinzale Mason?

20 A Yes.

21 Q How do you know Mr. Mason?

22 A He's my kids' father.

23 Q He's your kids' father. Do you have -- you've
24 had an on-and-off-again dating relationship with

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1 Mr. Mason?

2 A Yes.

3 Q For how long?

4 A Six years.

5 Q Okay. Do you see Mr. Mason in the courtroom?

6 A Yes.

7 Q Can you point him out and describe what he's
8 wearing, please?

9 A A white shirt.

10 Q Okay. Is he wearing a neck tie as well?

11 A Yeah, and a neck tie.

12 MR. YOUNG: Your Honor, the record reflect
13 identification.

14 THE COURT: It will.

15 BY MR. YOUNG:

16 Q Ma'am, I'm going to go back to August of 2014.
17 Where were you living on that day?

18 A On Patton.

19 Q Do you remember the exact unit that you were
20 living in?

21 A 2366.

22 Q Okay. On Patton Drive?

23 A Yes.

24 Q And who did you live there with, again, going

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1 back to August of 2014?

2 A Me, Quinzale and our kids.

3 Q Okay. And is your apartment -- or was your
4 apartment one of a number of apartments in one
5 building?

6 A Right.

7 Q If that makes sense. Were you on the top or
8 the bottom floor?

9 A Top.

10 Q And there's a number of apartments closest to
11 Patton Drive and then it goes away; correct?

12 A Correct.

13 Q Which one were you?

14 A At the -- almost to the back, to the end.

15 Q Okay. Not closest to the street?

16 A Right.

17 Q Closest to Patton?

18 A Right, by Hug, behind the Hug side and by the
19 dead end.

20 Q Let me show you Exhibit 1, ma'am. Do you
21 recognize this overhead photo?

22 A Yeah.

23 Q Okay. And there's kind of a balloon arrow-type
24 item that points out 2366 Patton Drive; correct?

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1 A Yes.

2 Q And that was the building that you were in?

3 A Yes.

4 Q And you said top floor. And I'm not quite
5 sure. Were you closest to Patton Drive or --

6 A Yeah. We're the top -- at the corner, the
7 first --

8 Q So if you're kind of separating this down, kind
9 of the unit in that area; fair?

10 A Yes.

11 Q And in August of 2014 you lived with Mr. Mason?

12 A Yes.

13 Q Did you own a car?

14 A Yes.

15 Q Do you still own that car?

16 A Yes.

17 Q What is that car?

18 A It's a 2001 Hyundai.

19 Q Do you know what -- it's a Hyundai. Do you
20 know what --

21 A An Accent.

22 Q Is it a four-door vehicle?

23 A Yes.

24 Q Do you know what the license plate of that

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1 vehicle is?

2 A I don't.

3 Q Okay. If I show you a picture -- this is
4 Exhibit 13, ma'am. And there's some evidence tape and
5 the like. Does that appear to be your vehicle?

6 A Yes.

7 Q Now I'll show you Exhibit 16. Does that also
8 appear to be your vehicle?

9 A Yes.

10 Q And does that display the license plate of
11 432LTY?

12 A Yes.

13 Q So we're perfectly clear here, I'm going to
14 show you now Exhibit 24. This has been admitted as
15 some DMV records. Is that the registration records for
16 your vehicle that you've been testifying to?

17 A No.

18 Q No? What is that?

19 A I don't -- I've never had a car like that.

20 Q I'm sorry?

21 A The sedan?

22 Q Right.

23 A Yeah, that is mine. That's mine.

24 Q Okay.

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1 A Yeah. I was looking at it wrong.

2 Q I don't mean to trip you up.

3 So this is registration records for your Hyundai

4 Accent bearing the 432LTY license plate?

5 A Yes.

6 Q And your full name is Eboni Nicole Spurlock?

7 A Yes.

8 Q Now, while the car was registered to you, was

9 it your car?

10 A Yes.

11 Q Okay. I said "was." But is it still your car?

12 A Yes.

13 Q You have gotten it back?

14 A Yes.

15 Q Did Mr. Mason have an opportunity to drive that

16 vehicle around?

17 A Yes.

18 Q And did he drive that vehicle around?

19 A Yes.

20 Q Ma'am, are you currently employed?

21 A Yes.

22 Q Where?

23 A I work at Starbucks at the GSR.

24 Q Okay. Do you know an individual by the name of

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1 Anthony Holly?

2 A Yes.

3 Q And do you know his wife's name?

4 A Yes.

5 Q What's his wife's name?

6 A Mercedes.

7 Q Does she likewise work at Starbucks?

8 A Not anymore.

9 Q Back in August of 2014 did she work at
10 Starbucks?

11 A Yes.

12 Q And did you assist her in getting that job?

13 A Yes.

14 Q All right. I'm going to direct your attention
15 to a specific date being August 9th of 2014. Were you
16 working at the Starbucks at GSR on that day?

17 A Yes.

18 Q And what shift were you working at that time?

19 A I worked usually 4:00 to 12:00 in the morning.

20 Q 4:00 in the morning?

21 A Yes.

22 Q And was that the approximate time that you
23 worked on August 9th?

24 A Yes.

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1 Q How did you get to work that day?

2 A I got a ride from my coworker.

3 Q And why was that?

4 A Because my car wouldn't start. It wasn't
5 working.

6 Q Where was your car parked?

7 A At home on Patton.

8 Q Okay. What we're looking at here at 2366?

9 A Right.

10 Q Now, do you recall what time you got home from
11 work on August 9th?

12 A Around 11:00, 11:30.

13 Q And was your car there at that point?

14 A No.

15 Q Okay. When you got home around 11:00 or 11:30
16 do you recall anything that happened that caught your
17 attention?

18 A I heard gunshots.

19 Q Do you recall how many gunshots you heard?

20 A Two.

21 Q After you heard gunshots what did you see?

22 A Well, I was in the house. I came outside. I
23 seen Anthony running down the street and it looked like
24 he had blood on him. And I asked him what happened.

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1 He said, "Your baby daddy shot a kid." But I didn't
2 see it. I was in the house.

3 Q So when you heard the gunshots, you were
4 inside?

5 A Yes, I was inside. I just got home.

6 Q And who were you in the house with?

7 A Myself.

8 Q That's when you saw -- you came out and then
9 saw Anthony running?

10 A Yes.

11 Q And you said he had blood on his chest?

12 A Yes, on the side of his chest.

13 Q Okay. And he made that statement to you?

14 A Yes.

15 Q Okay. I believe you testified to this, but
16 Mr. Mason is the father of one of your children;
17 correct?

18 A Yes.

19 Q Do you know an individual by the name of
20 Delphine Martin?

21 A Yes.

22 Q Okay. And does she live in your neighborhood?

23 A Yes.

24 Q Where did she live?

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1 A Across the street from us.

2 Q All right. Again, going back to this map
3 that's up here, do you know specifically what building
4 she's in?

5 A I don't.

6 Q Just somewhere across the street?

7 A Right.

8 Q Okay. Do you know whether she has children?

9 A Yes.

10 Q Do you know their names by chance?

11 A I don't. One of her kids goes to school with
12 my daughter.

13 Q Okay. And do the kids socialize or play
14 together at all?

15 A Yeah.

16 Q And, again, I'm going back to August of 2014
17 and previous. Fair?

18 A Yes.

19 Q I'm going to ask you a question. I don't mean
20 to be disrespectful. But you see that Mr. Mason today
21 is sitting in a wheelchair; correct?

22 A Yes.

23 Q Back in August of 2014 was he in a wheelchair
24 then?

ROUGH DRAFT TRANSCRIPT

1 A No.

2 Q Now, later on August 9th -- strike that. On
3 August 10th of 2014 were you contacted by the Reno
4 Police Department and asked about them conducting a
5 search of your vehicle that we were just looking at?

6 A Yes.

7 Q All right. And did you agree to allow the
8 police department to search your vehicle?

9 A Yes.

10 Q Do you recall whether they provided you with
11 any document?

12 A They did. They just had me sign the paper to
13 search the car. That was it.

14 Q And that's what I'm getting at. Rather than
15 just talking to you over the phone --

16 A Yeah.

17 Q -- they met with you --

18 A Yes.

19 Q -- and presented you a piece of paper?

20 A Yes.

21 Q And on that paper did it explain kind of--

22 A It just said to search the vehicle.

23 Q Okay. And on there did it advise you that it
24 was kind of your call, you could say yes or no?

ROUGH DRAFT TRANSCRIPT

1 A Yeah.

2 Q And did you agree to allow it?

3 A Yes.

4 Q And did you in fact sign the consent to search
5 form?

6 A Yes.

7 Q And that was for your vehicle?

8 A Yes.

9 Q Okay. Other than yourself and Mr. Mason, who
10 was allowed to drive that car?

11 A That's it.

12 MR. YOUNG: I have no further questions, Your
13 Honor.

14 THE COURT: Cross-examination of Ms. Spurlock,
15 Mr. Hylin.

16 MR. HYLIN: Thank you, Your Honor.

17 If I might have just a second.

18 CROSS-EXAMINATION

19 BY MR. HYLIN:

20 Q You said you got home from work about -- excuse
21 me. Good afternoon.

22 What time did you say you got home from work?

23 A Like 11:00, 11:30.

24 Q 11:30 or so. And Mr. Mason wasn't there?

ROUGH DRAFT TRANSCRIPT

1 A No.

2 Q The car wasn't there?

3 A No.

4 Q You don't -- but you don't know exactly who had
5 the car?

6 A Right, I don't. The car wasn't there when I
7 got home.

8 Q All right. And nobody told you who had taken
9 it or you had no information about the car?

10 A No.

11 Q You said the kids play together?

12 A Yes.

13 Q So that's how you know Delphine?

14 A Correct.

15 Q But you don't really know her otherwise
16 socially?

17 A Correct. We never really spoke, only if I seen
18 her outside I would speak and then the kids and I would
19 leave.

20 Q Just say hi and collect the kids and go home?

21 A Correct.

22 Q There was a time when -- pardon me -- you were
23 making a trip to the airport?

24 A Yes.

ROUGH DRAFT TRANSCRIPT

1 Q And what were you doing that for?

2 A We were picking up with Quinzale's mother.

3 Q And that's Virginia Stewart?

4 A Valerie.

5 Q Excuse me. Valerie Stewart?

6 A Yes.

7 Q She's from Phoenix?

8 A Yes.

9 Q All right. And she came -- do you know why she
10 came up?

11 A She came up because of what he was being
12 accused of and she said that she needed to find out
13 what was going on before we took him to turn himself
14 in.

15 Q Okay. So the purpose was -- you knew he was a
16 suspect?

17 A Right.

18 Q And so did everybody else in the car except
19 Valerie?

20 A Correct.

21 Q So then where did you go from the airport?

22 A We went out to go to Sun Valley to pick him up.

23 Q All right. Do you remember where in Sun
24 Valley?

ROUGH DRAFT TRANSCRIPT

1 A I don't. We just went up by -- towards the end
2 by -- going towards -- what is it? Going towards
3 Spanish Springs, the back way going into the valley.

4 Q Okay. Who was with you, by the way?

5 A Me, my mom and his mom.

6 Q And those are the three -- and so there was
7 only three people in the car?

8 A Right.

9 Q There were not four people in the car at the
10 airport?

11 A Oh, yeah. My cousin, we picked him up from the
12 airport. He just flew in from Colorado.

13 Q All right. So you had yourself, your mom,
14 Mr. Mason's mom, are your cousin?

15 A Yes.

16 Q Okay. So you picked two people up at the
17 airport?

18 A Correct.

19 Q All right. I get it.

20 When you left the Sun Valley place, who was in the
21 car then?

22 A Me, Quinzale, his mother and my mom.

23 Q All right. So there were four people at that
24 time also?

ROUGH DRAFT TRANSCRIPT

1 A Right.

2 Q And what happened on that trip?

3 A We just picked him up. And before he said he
4 was going to turn himself in to see what was going on,
5 he had to get something to eat, but we never got to
6 make -- to get him something to eat because they
7 stopped us, they stopped us before we could even take
8 him to the jail.

9 Q Do you know why he had to get something to eat?

10 A Because he's a diabetic.

11 Q And there was something wrong?

12 A His blood sugar was low.

13 Q So he has to eat when that happens?

14 A Right.

15 Q So after you were stopped by the police did you
16 explain to everyone where you were going?

17 A Yes.

18 Q So they knew where you were headed?

19 A Correct.

20 Q Did they question it?

21 A I don't know. They just apprehended him and
22 then they sent us on our way.

23 Q Okay. And so the morning of the 9th, you went
24 out to go to work. Do you usually drive your car to

ROUGH DRAFT TRANSCRIPT

1 work?

2 A Yes.

3 Q This morning it wouldn't start?

4 A Right.

5 Q Was it out of gas?

6 A It just wouldn't start. I don't know. Maybe
7 the battery, because the battery -- I had battery
8 problems. It just didn't work that morning. Like I
9 had been driving it all week.

10 Q Okay. All right. Was there anything wrong
11 with the outside of the car?

12 A The bumper was messed up.

13 MR. HYLIN: If I could have just a moment, Your
14 Honor.

15 THE COURT: Take your time.

16 BY MR. HYLIN:

17 Q You didn't see the cops search the car
18 apparently?

19 A No, I didn't. They already had the car.

20 Q All right.

21 MR. HYLIN: If I might have a second. I think
22 that's it, Your Honor. Thank you.

23 THE COURT: Redirect based on the
24 cross-examination.

ROUGH DRAFT TRANSCRIPT

1 MR. YOUNG: No questions, Your Honor.

2 THE COURT: You may be excused.

3 Is she free to go, Mr. Hylin?

4 MR. HYLIN: I believe so, Your Honor.

5 THE COURT: Mr. Young?

6 MR. YOUNG: Yes, Your Honor.

7 THE COURT: Ma'am, you're excused from your
8 subpoena. You're free to go.

9 Is Detective Blas also released, Mr. Young?

10 MR. YOUNG: Yes. Thank you.

11 THE COURT: Detective Blas is also released from
12 his subpoena and may go about his business.

13 Mr. Young, what's the next witness you're going to
14 call or who is the next witness?

15 MR. YOUNG: Detective Kassebaum.

16 THE COURT: All right. Well, we'll call Detective
17 Kassebaum.

18 Ladies and gentlemen, we've got about another 20 or
19 25 minutes before we take our noon recess, so if you
20 want to just stand up and just stretch your legs,
21 that's just fine. Circulate the blood a little bit.

22 Okay. Ladies and gentlemen, let's come back to
23 order. The detective is with us. And so, Mr. Young,
24 your next witness, please.

ROUGH DRAFT TRANSCRIPT

1 (The oath was administered to the witness.)

2 THE CLERK: Okay. Just have a seat.

3 DIMITRIUS KASSEBAUM,

4 having been called as a witness herein,
5 being first duly sworn, was examined
and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q Sir, good afternoon. Could you please state
9 and spell for the record your first and last name.

10 A Yes. My first name is Dimitrius. Last name is
11 Kassebaum. Spelling is D-i-m-i-t-r-i-u-s,
12 K-a-s-s-e-b-a-u-m.

13 Q Sir, with whom are you currently employed?

14 A The Reno Police Department.

15 Q And how long have you been with the Reno Police
16 Department?

17 A Eight and a half years.

18 Q Okay. And what is your current assignment?

19 A I am a financial crimes detective.

20 Q And when did you receive that promotion?

21 A January of this year.

22 Q Okay. Prior to just this last month of being
23 with the detectives what was your assignment with the
24 Reno Police Department?

ROUGH DRAFT TRANSCRIPT

1 A I was assigned to the patrol division.

2 Q For the balance of the -- would you say almost
3 nine years?

4 A No. During that balance I worked with the
5 Downtown Enforcement Team which is primarily assigned
6 to the downtown district. I did that for about three
7 years. And the rest of the time was to the patrol
8 division.

9 Q So approximately five and a half or six years
10 with general patrol?

11 A Yes.

12 Q Sir, I'm going to direct your attention to
13 August 9 of 2014. Did you respond over to 2397 Patton
14 Drive in response to a call?

15 A I did.

16 Q And do you recall the time that you
17 approximately arrived at Patton Drive?

18 A It was approximately 12:25 in the afternoon.

19 Q All right. Now, when you arrived on scene were
20 you made aware that there were some people that had
21 been taken to the hospital?

22 A Yes.

23 Q Had they already been transported upon your
24 arrival?

ROUGH DRAFT TRANSCRIPT

1 A That is correct.

2 Q Was there also an individual whose identity you
3 learned to be Anthony Holly?

4 A Yes.

5 Q Was Mr. Holly on scene when you arrived?

6 A No, he was not.

7 Q Can you explain what you did -- let me take
8 that back. Have you been assigned as the lead officer
9 to this case?

10 A Yes, I was assigned lead officer.

11 Q And were there other officers who arrived on
12 scene before you did?

13 A Yes.

14 Q Could you explain to the jury how it was that
15 you took the role of the lead officer?

16 A Yes. The Reno Police Department and most
17 agencies, we have certain beats, districts, which are
18 assigned to us. And that day I was assigned to the 48
19 beat which is in close proximity to where this crime
20 occurred which is the 46 beat. And as a result of me
21 being the closest beat officer to that designated
22 number, I took responsibility for the call for service
23 and the lead in this investigation to handle all the
24 followup required.

ROUGH DRAFT TRANSCRIPT

1 Q As the lead officer, if there was any followup
2 down the road, would those requests have been made to
3 you then?

4 A Yes.

5 Q Okay. Upon your arrival what did you do?

6 A On my arrival I began to canvass of the area.
7 And a canvass is, you know, knocking on doors to see if
8 anybody heard or saw anything in an attempt to identify
9 potential witnesses.

10 Q Were you -- did you make contact with several
11 individuals?

12 A I did, multiple individuals throughout this
13 neighborhood who stated that they heard anywhere from
14 two to three gunshots.

15 Q Was one of the individuals you made contact
16 with a Steve Maes?

17 A Yes.

18 Q I'm not going to have you get into content.
19 But did you have an opportunity to speak with Mr. Maze?

20 A I did have an opportunity.

21 Q Okay. Did you likewise have an opportunity to
22 observe the scene of what was alleged to have been the
23 shooting?

24 A I did.

ROUGH DRAFT TRANSCRIPT

1 Q Now, you're looking at the Exhibit No. 1 that's
2 on the screen that has been admitted. Do you recognize
3 that, sir?

4 A I do.

5 Q Okay. And that includes the Patton Drive area
6 that's been the subject of the investigation?

7 A Yes.

8 Q Okay. Now, was a -- I don't want you to tell
9 me specifically how, but was there a suspect that was
10 identified?

11 A Yes.

12 Q And what was that name?

13 A It was Quinzale Mason.

14 Q Now, was Mr. Mason on scene at the time you
15 arrived on August 9th?

16 A No, he was not.

17 Q Subsequent to that date did you have the
18 opportunity to have contact with Mr. Mason?

19 A Yes.

20 Q Do you see Mr. Mason in the courtroom today?

21 A I do.

22 Q Can you point him out to the judge and describe
23 what he's wearing, please.

24 A He's wearing the white shirt, blue tie with the

ROUGH DRAFT TRANSCRIPT

1 gray slacks.

2 MR. YOUNG: Your Honor, if the record could reflect
3 the identification, please.

4 THE COURT: So noted.

5 BY MR. YOUNG:

6 Q Just a couple other people that I'm curious if
7 you were able to identify. Were you able to identify a
8 possible girlfriend or a person who lived with Mason at
9 the Patton Drive residence?

10 A I don't recall if I was able to identify her
11 that day, but the following day I was able to identify
12 her.

13 Q Who was that person?

14 A Her name is Eboni Spurlock.

15 Q Okay. Now, getting back to the scene, if you
16 will, outside of 2397 Patton Drive, did you take steps
17 to confirm that was in the fact the scene?

18 A Yes, I did.

19 Q And how did you do that?

20 A Well, backing up, the officers who initially
21 responded took steps to identify the scene by
22 identifying shell casings and the area in which they
23 located the victims and they set up crime scene tape
24 around that area.

ROUGH DRAFT TRANSCRIPT

1 Q All right. And why is that done, crime scene
2 tape?

3 A Well, the condition of the victims are unknown,
4 not sure how many victims are outstanding or suspects
5 are outstanding. You need to lock down that scene to
6 ensure that, you know, people aren't coming into it
7 such as civilians and dropping things off or picking
8 things up, because there could be evidence that's very
9 important to solving these crimes.

10 Q I believe you stated that there were some
11 casings located?

12 A Yes.

13 Q What are casings?

14 A Casings, it's -- you know, shell casings,
15 they're generally, you know, the brass container which
16 the gun powder in bullets are contained in for the use
17 of firearms.

18 Q Okay. When a handgun is discharged is a casing
19 expended?

20 A Yes.

21 Q I'm going to show you what has been admitted as
22 Exhibit 7. It's a smaller picture, sir. But do you
23 recognize this?

24 A I do.

ROUGH DRAFT TRANSCRIPT

1 Q What is that?

2 A I recognize the scene in which the shooting
3 occurred. And then the little card that's folded in
4 half, that's marking one shell casing. And then about
5 halfway up the screen, there's another marker for an
6 additional shell casing.

7 Q When you say "marker," can you point that out
8 to the jury?

9 A Yes, a marker would be there and there.

10 Q Okay. Now --

11 A Kind of close.

12 Q Now, there are -- they are not sitting right
13 next to each other; correct?

14 A No, they are not.

15 Q Can you explain that?

16 A Yes. Generally when you fire a weapon,
17 especially when it ejects a shell, it's a semiautomatic
18 weapon, the timing of the gun is going to cause the
19 shell to extract. And where the shell extracts has --
20 there's a lot of variables. You know, wind conditions
21 can influence where it's going to land. The position
22 of the individual's hand when he fires the weapon is
23 going to change the trajectory of that.

24 Q What about when the casing is ejected, does

ROUGH DRAFT TRANSCRIPT

1 it -- might it be influenced by what it lands on?

2 A Yes. If it's a hard surface, it could bounce.
3 If it's a soft surface, it may just stop right where it
4 lands.

5 Q Did you learn in this case that there was a
6 vehicle that exited this parking lot after the
7 shooting?

8 A Yes.

9 Q Could that have any influence over the final
10 location of the casings?

11 A Absolutely.

12 Q And could you explain that?

13 A Several things can happen where the shell is
14 ejected where it could hit a surface of the vehicle or
15 it could be carried backwards, or if it goes underneath
16 the tire, it could get dug by the tire and then
17 deposited at another location.

18 Q Were you able to identify the casings as far as
19 what type of caliber those casings were?

20 A Yes. I was able to identify them as 9
21 millimeter casings due to 9 millimeter markings on the
22 casings.

23 Q And what did you do with those casings?

24 A I collected them and I booked them into the

ROUGH DRAFT TRANSCRIPT

1 Reno police evidence department.

2 Q Okay. Now, with a handgun where the casing, as
3 you've just described, is ejected, is there likewise a
4 bullet which is shot from the gun?

5 A Yes.

6 Q And the bullet is going to be different than
7 the casing; fair?

8 A Absolutely.

9 Q Were you able or were any of your fellow
10 officers able to identify or locate any bullets related
11 to this case?

12 A No, we were not.

13 Q Does that surprise you?

14 A No, it does not.

15 Q Could you explain that to the jury?

16 A Where the bullets end up, you know, you have
17 backdrop. In this case there is a vehicle, there are
18 buildings, there all sorts of surfaces which could
19 influence where that bullet actually goes. Oftentimes
20 it's very common that most of the bullets you buy over
21 the counter, they have a lead core with a copper
22 jacket. And, of course, when those hit a hard surface,
23 it's hard to predict exactly where that lead piece is
24 going to go versus where the actual copper jacket is

ROUGH DRAFT TRANSCRIPT

1 going to go. It's quite often that when we go to
2 scenes of shootings there is somebody that will say, "I
3 found a bullet hole inside of my -- there's a bullet
4 hole in my window." We find a shell inside. We'll
5 find the jacket separate from the actual bullet. And
6 in this case you can actually see--

7 Q For if record, I'm showing Exhibit 2.

8 A Okay. Sorry. But you can see that over on the
9 west side of this building complex there's a large
10 amount of dirt. And oftentimes when rounds go into
11 dirt, they can dissipate -- the energy gets dissipated
12 into the dirt itself and they could become buried and
13 very difficulty difficult to locate.

14 Q Does this dirt area track all this way along
15 that building unit?

16 A It does.

17 Q Now, was there any other items that you
18 initially collected or was provided to you on scene
19 that later you were able to return to anyone?

20 A Yes. There was one single shoe. And when we
21 located that shoe, we determined that possibly could
22 belong to the outstanding victim who had fled the area
23 which was Anthony Holly.

24 Q Now, did Mr. Holly ever return to the scene?

ROUGH DRAFT TRANSCRIPT

1 A He did. He returned several hours later. It
2 was about 3:30 in the afternoon. And he agreed to
3 speak with us about what happened.

4 Q Okay. And did you have an opportunity to in
5 fact conduct that interview of Mr. Holly?

6 A Yes, I did.

7 Q That single shoe that you had located or that
8 officers had located, were you able to determine whose
9 shoe that was?

10 A Yes. Anthony Holly stated that that was his
11 shoe. And I gave it back to him.

12 Q So you returned it to Mr. Holly?

13 A Yes, I did.

14 Q Now, you stated that there was an individual
15 who was identified as a suspect, being Quinzale Mason;
16 correct?

17 A That is correct.

18 Q Did you have any contact with Mr. Mason on
19 August 9th of 2014?

20 A No, I did not.

21 Q Okay. Was there a time that you did have
22 contact with Mr. Mason?

23 A Yes, there was.

24 Q How did that come about?

ROUGH DRAFT TRANSCRIPT

1 A It came about that we were actively looking for
2 him because we identified him and we determined there
3 was probable cause to arrest him and some of our
4 graveyard officers followed up on a tip where --

5 Q I'm not going to have you get too far astray.
6 Let me rein you in a little bit.

7 Did you learn and did the police department learn
8 of information that Mr. Mason's mother was flying into
9 Reno the following morning?

10 A Yes, we did.

11 Q That being August 10th?

12 A That is correct.

13 Q Once you learned that, what steps did you take
14 in conjunction with that information to locate
15 Mr. Mason?

16 A The steps that I took in conjunction with the
17 attempt to locate Mr. Mason was we knew -- or we had
18 information that his mom possibly was coming in. And
19 first off, we needed to confirm that information is in
20 the fact correct. Officer Jenkins, she provided me
21 with potential flight times in which aircraft was going
22 to be coming in to the Reno Tahoe Airport and possible
23 air carriers. I went to U.S. Airways and found out
24 that she had just checked in to a flight to come to

ROUGH DRAFT TRANSCRIPT

1 Reno on a one-way ticket and she was due to land at, I
2 believe, at 9:28 if my memory serves me correctly at
3 the Reno Tahoe Airport.

4 And gaining further confirmation that she had
5 actually boarded the aircraft -- and I don't recall the
6 exact flight time. And she was coming from Phoenix.
7 And I don't remember if they were on their daylight
8 savings track or not, so I don't want to butcher it up,
9 the time lapse. But essentially we found out she was
10 due to arrive at the 9:28 on time.

11 And I took steps through the airport police and
12 their communications center to identify which gate that
13 aircraft was going to -- they were going to -- they
14 were going to have their passengers deboard. And that
15 was gate C9.

16 And I was able to watch her on video surveillance.
17 I had the video surveillance technician set up cameras
18 throughout the airport. And then I also called in
19 robbery/homicide detectives to assist me with the
20 surveillance, because even though the camera systems
21 are great in airports, sometimes a human eye is better,
22 because, you know, there are spots where you will lose
23 sight of the person.

24 So essentially what we did is we verified she was

ROUGH DRAFT TRANSCRIPT

1 coming in at gate C9. I had a photo of her. It was
2 a-- his mother's name is Valerie Stewart. And the
3 photo that I had was off of the DMV driver's license.

4 And when she exited the aircraft, it was
5 approximately 9:40 in the morning. And she had a very
6 similar hair style and without a shadow of the doubt I
7 knew that was her because the camera systems in the
8 airport are very, very sophisticated.

9 We followed her through the secured area of the
10 airport on video surveillance. And I described her to
11 the detectives who were waiting downstairs at the
12 bottom of the escalators inside the Reno Tahoe
13 International Airport, at which point she came down the
14 escalators. I talked her on to Detective Allen who was
15 downstairs at which point he took over visually and
16 then we followed her to an address out in Sun Valley.

17 Q Now, are you aware of a vehicle that
18 Ms. Stewart got into at the airport and then drove to
19 the residence in Sun Valley?

20 A Yes. The vehicle was identified by the
21 detectives who were trailing her was a gold sedan with
22 a personalized plate. If I remember, it's Marsiya. It
23 was a gold four-door sedan.

24 Q Are you aware based on your investigation that

ROUGH DRAFT TRANSCRIPT

1 there was another gold four-door sedan that was towed
2 to the Reno Police Department and searched in
3 conjunction with this case?

4 A Yes.

5 Q Was -- I didn't mean to cut you off.

6 A The evening prior it was located and abandoned
7 and it was identified as Eboni Spurlock's vehicle and
8 it was towed to the Reno Police Department as evidence.

9 Q So just to be clear, the gold sedan that picked
10 up Ms. Stewart at the airport and drove to Sun Valley
11 is a different gold four-door sedan than what was
12 towed?

13 A Yes.

14 Q Now, were you part of the surveillance team at
15 the residence in Sun Valley?

16 A I was in a marked patrol vehicle and I was
17 parked quite a distance away so that way I did not burn
18 our operation.

19 Q When you say "marked unit," what do you mean by
20 "marked"?

21 A It was generally marked patrol car. I was in
22 full uniform, lights and sirens on top, and I was just
23 in the general vicinity of where detectives were
24 watching the vehicle.

ROUGH DRAFT TRANSCRIPT

1 Q Was there a later time that through the
2 surveillance Mr. Mason was identified as exiting the
3 residence in Sun Valley and getting into that same
4 vehicle with others and driving away?

5 A Yes, that is correct.

6 Q Okay. And was there a stop of that vehicle
7 effected at some point?

8 A Yes.

9 Q And did you participate in the traffic stop of
10 that vehicle?

11 A Yes. I was the initiating traffic officer to
12 stop the vehicle and I provided all the verbal commands
13 to have the passengers exit.

14 Q Where was -- before we get into that, where was
15 the stop actually effected?

16 A The stop was effected at McCarran and 395 on
17 McCarran itself.

18 Q And you stated you were in your marked unit.
19 So you were able to-- is that with overhead lights and
20 siren?

21 A Yes.

22 Q Now, we've had some testimony already as to the
23 mechanics of the traffic stop. But were all the
24 individuals removed from the vehicle?

ROUGH DRAFT TRANSCRIPT

1 A Yes, they were.

2 Q And did you identify all of the occupants of
3 that vehicle?

4 A Yes, I did.

5 Q And how many occupants were there?

6 A There were four occupants total.

7 Q And who did you identify those individuals as?

8 A The driver of the vehicle was Stephanie Neal
9 who was Eboni's Spurlock's mother. And Eboni Spurlock
10 was in the passenger seat. The driver's rear seat,
11 that was Valerie Stewart which is the defendant Mason's
12 mother. And then in the right passenger seat, that was
13 Quinzale Mason.

14 Q Do you know at that point what happened with
15 Mr. Mason as far as where was he put?

16 A Well, once we called all the people back,
17 detained them, determined that none of them had weapons
18 on them, we identified Mason as our suspect who we were
19 looking for. And he again explained he wasn't feeling
20 well because he hadn't eaten. We had knowledge that he
21 is diabetic. And he had mentioned to us that he wasn't
22 feeling well because of his blood sugar levels. And as
23 a result of -- you know, he's in custody, we know he
24 doesn't have any weapons on him, but we wanted to make

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1 sure he was okay. So we contacted REMSA paramedics to
2 respond. And they arrived shortly thereafter and they
3 checked his blood sugar which they said yes, he does
4 need to go to the hospital, at which point he was
5 transported to Renown Medical Center for treatment.

6 Q All right. And at Renown did you confirm that
7 Mr. Mason was feeling better?

8 A Yes. Once they -- I'm not sure exactly what
9 they gave him, but he did start to feel better and his
10 blood sugar was brought under control to where it was
11 no longer a life-or-death situation. And then he
12 stated he was feeling better. And then the doctor
13 released him so he could be transported up to 911 Parr
14 Boulevard.

15 Q And at that point is when you placed Mr. Mason
16 under arrest?

17 A Mr. Mason was placed under arrest at the scene,
18 but, yes, it continued there.

19 Q Now, are you familiar with an Officer Ryan
20 Koger, if I'm pronouncing that correctly?

21 A Yes.

22 Q Was Officer Koger part of the team that
23 effected the traffic stop?

24 A Yes, he was.

ROUGH DRAFT TRANSCRIPT

1 Q And were you present for any conversation that
2 Officer Koger might have had with the defendant?

3 A No, I was not.

4 Q Now, you mentioned that there was a separate
5 gold vehicle that was searched or towed and then
6 subsequently searched at the police department;
7 correct?

8 A That is correct.

9 Q All right. And I don't need you to give me a
10 full accounting of what you were told, but did you
11 learn of one of the items that was located and
12 collected in the car that caught your attention?

13 A Yes, I did.

14 Q What was that item?

15 A It was a red baseball hat.

16 Q Okay. And why was that important to you?

17 A The reason why that was important was I spoke
18 with a --

19 MR. HYLIN: Objection. Hearsay.

20 THE COURT: Mr. Young.

21 MR. YOUNG: I'll rephrase.

22 THE COURT: Sustained.

23 BY MR. YOUNG:

24 Q Again, I can't have you say what was told to

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1 you, so let me rephrase my question.

2 Based on the red hat, did you speak to somebody
3 else where that was -- again, a red hat -- important to
4 you?

5 A Yes.

6 Q Without telling us the content, who did you
7 speak with?

8 A Steve Maes.

9 Q Okay. So what did you do? What steps did you
10 take related to the red hat?

11 A I applied for a seizure order which I was
12 granted. And that seizure order was for obtaining a
13 reference sample of Mr. Mason's DNA, because in order
14 to -- there's a chain of custody issue. If somebody is
15 a convicted felon, their DNA will be in the system and
16 you could use that as reference, but in order to say --

17 MR. HYLIN: Objection, Your Honor. I think I need
18 to discuss something outside the presence of the jury.

19 THE COURT: I think now is a good time for us to
20 take our afternoon recess.

21 Ladies and gentlemen of the jury, I will request
22 that you go back to the jury room. It will be about 15
23 minutes. You are instructed not to discuss this case
24 among yourselves or with anyone else or to form any

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1 conclusions concerning the case until it is submitted
2 to you. You're not to read, look at or listen to any
3 news media accounts relating to this case should there
4 be any. You're not to form any opinion about the case
5 until it is finally submitted to you.

6 Do not experiment or investigate. Do not visit the
7 scene. Do not refer to any outside sources for
8 instructions on the law. Rely only on the court for
9 legal instructions.

10 All rise for the jury.

11 (Outside the presence of the jury:)

12 THE COURT: Mr. Young, could you please move the
13 television screen.

14 The record will reflect that the jury has retired
15 to the jury room.

16 Prior to the issue that I'm pretty sure I'm
17 guessing that Mr. Hylin is about to raise, I want to
18 let the parties know that the Court was made aware of
19 the fact that Mr. Mason has ongoing medical issues,
20 including he needs to have some long-release insulin
21 provided to him. And so the nurse from the Washoe
22 County Jail is here to provide that to him. And I
23 would request that she simply -- we check, deputies,
24 and see if she can just come in and give it to him here

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1 in the courtroom. There's no reason that he has to be
2 taken to the holding cell in order to provide that care
3 to him unless there is some sort of privacy issue
4 that's associated with it that I can't think of. But I
5 assume it's just a -- it's a shot, Mr. Mason?

6 THE DEFENDANT: It's a shot.

7 THE COURT: Well, they're just going to come in and
8 give you the shot, if that's all right with you.

9 THE DEFENDANT: No problem.

10 THE COURT: Mr. Hylin, regarding the issue that you
11 might want to take up now outside the presence of the
12 jury.

13 MR. HYLIN: Well, you know, I guess the cat is out
14 of the bag now because Officer Kassebaum blurted it
15 out, that he's checking in the felony base. I assume
16 he's talking about CODIS. You know, this could have
17 been discussed without mentioning prior felonies and
18 other matters. I don't even know if, you know, the
19 CODIS is even relevant in this particular instance
20 since they got a seizure order on a swab. I think it's
21 a gratuitous mention by Officer Kassebaum that he's
22 checking the felon database. And, of course, the only
23 reason he would be doing that is he wants to infer my
24 client has a prior felony. And, of course, this is the

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1 entire basis for making a decision as to him testifying
2 or not testifying. So I'm inclined to move for a
3 mistrial and I am doing so.

4 THE COURT: Mr. Young.

5 MR. YOUNG: Your Honor, as I heard the testimony,
6 it was more in the general sense of basically sometimes
7 we can check the database if they're a convicted felon.
8 And I heard Detective Kassebaum then say in this case
9 he applied for a seizure order which, frankly, would
10 suggest that the defendant is not a convicted felon.
11 Otherwise they just would have used the sample in the
12 database.

13 So I think it's easily cured by having Detective
14 Kassebaum explain that in this case there was no
15 reference -- if Mr. Hylin wants to even go that far or
16 just breeze over it and say in this case he had to
17 apply for a seizure order which again suggests that
18 there isn't any anything on file.

19 THE COURT: Mr. Hylin.

20 MR. HYLIN: That just exacerbates the situation,
21 Your Honor. There's no reason to be talking about
22 CODIS if they didn't utilize it and didn't need it. So
23 now Detective Kassebaum has informed the jury that my
24 client has a felony. And it's clearly in derogation of

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1 all the court rules I've ever known for the 30 years
2 I've been practicing. So I -- you know, like I say,
3 the bell has been rung and the cat is out of the bag,
4 whatever term you want to use.

5 THE COURT: How many more metaphors shall we mix?

6 MR. HYLIN: I won't mix them.

7 THE COURT: One moment. The nurse is present.

8 Ma'am, Mr. Mason is here.

9 If she can just come over -- you can come over and
10 tend to Mr. Mason in the presence of everyone. He's
11 not concerned about any privacy issues associated with
12 your giving him the shot.

13 I would like to thank you for making yourself
14 available in coming down here today. Thank you for
15 that service.

16 Mr. Hylin, the Court has gone back and looked at
17 the comment that Detective Kassebaum made that has
18 caused you to object. And though it's a rough
19 transcript, the testimony is, quote, "I applied for a
20 seizure order which I was granted and that seizure
21 order was for obtaining a reference sample of
22 Mr. Mason's DNA, because in order to -- if there's a
23 chain of custody issue, if somebody is a convicted
24 felony, their DNA will be in the system and you could

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1 use that as a reference, but in order to say" --

2 And then at that point you objected. I understand
3 what your concern is, Mr. Hylin.

4 The Court finds, though, that Detective Kassebaum,
5 number one, did not intentionally make a reference
6 regarding Mr. Mason's prior criminal conviction.
7 Actually let me clarify that a little bit.

8 Detective Kassebaum, did you have conversations
9 with Mr. Young or with some other representative of the
10 District Attorney's Office, possibly including one of
11 the investigators, about the fact that you're not
12 supposed to testify about somebody's prior criminal
13 history?

14 THE WITNESS: Yes.

15 THE COURT: And with that in mind, were you
16 attempting to make a statement about Mr. Mason's prior
17 criminal history in front of the jury?

18 THE WITNESS: Absolutely not.

19 THE COURT: Why did you make the reference to the
20 database if somebody is a convicted felon?

21 THE WITNESS: I believe I was just trying to build
22 up the importance of getting a seizure order for the
23 chain of custody because information that could be
24 available -- actually I never ran his information

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1 through CODIS, but could be available we could not use
2 for chain of custody reasons and that's why it was
3 important to actually get a seizure order so that we
4 had a very clean sample of his DNA so there's no
5 confusion at all. That's essentially what I was trying
6 to convey to the jury.

7 THE COURT: The Court finds that the State has not
8 violated -- the State and specifically the Washoe
9 County District Attorney's Office hasn't violated their
10 responsibilities based on the testimony of Detective
11 Kassebaum that they did discuss with him not making a
12 statement about the defendant's prior criminal history.

13 Further, the Court finds that Detective Kassebaum
14 did not intentionally violate the defendant's rights
15 based on my observations of the testimony that was
16 provided and based on the testimony as I've read it.
17 It appears that Detective Kassebaum was attempting to
18 give an explanation of why he got a seizure order.

19 Mr. Hylin, I certainly understand the concern that
20 you've raised about the comment itself, but the Court
21 would note that not every comment about a defendant's
22 prior criminal history rises to the level of a
23 mistrial. Certainly this one does not.

24 The Court would note that Detective Kassebaum has

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1 actually not made a comment about the defendant's prior
2 criminal history. He made a comment about a general
3 reference to somebody -- or to if somebody was a
4 convicted felon they would be in the system. However,
5 under these circumstances, he's also saying that "We
6 are getting a seizure order." I think it's a
7 reasonable inference that could be drawn by the jury
8 that Mr. Mason was not a convicted felon based on the
9 fact that they were getting a seizure order, though I
10 also understand the argument that you're making, that
11 they might make that conclusion as well.

12 So while the Court is concerned that there was even
13 a mention of the words "convicted felon," the Court
14 would note that they weren't made directly about the
15 defendant, nor was the defendant's prior criminal
16 convictions for felonies referenced.

17 One of the things that the Court has to consider --
18 and I apologize for not having the case name off the
19 top of my head, Mr. Hylin -- is a curative instruction.
20 The Court certainly can give a curative instruction to
21 the jury. However, I also understand that defense
22 counsel often doesn't like curative instructions
23 because it simply draws the attention back to that
24 statement for which you're lodging your objection.

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1 So I will give you the opportunity. If you would
2 like me to offer a curative instruction or to direct
3 the jury to disregard that portion of Detective
4 Kassebaum's statement, I would be happy to do so. I
5 would leave it up to you at that point.

6 MR. HYLIN: Well, I don't know how to back the
7 camel's nose out from underneath the tent at this
8 point.

9 THE COURT: Now you are mixing metaphors,
10 Mr. Hylin.

11 I understand that. That, as the Nevada Supreme
12 Court and the United States Supreme Court have clearly
13 told us, is really one of two options. The one option
14 is a mistrial, which based on the nature of the
15 testimony and based on the rather passing and I would
16 suggest somewhat innocuous comment that was made and
17 the fact that it was not made directly about Mr. Mason,
18 I'm not inclined to grant -- I'm not going to give a
19 mistrial.

20 The other option is, do you want a curative
21 instruction? I would be happy to give one. But if you
22 don't want me to give one, I won't.

23 MR. HYLIN: I would rather you not draw attention
24 to it, Your Honor, if we're just going to go on, but I

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1 would like the witness instructed not to be talking
2 about felony databases. My understanding is they
3 didn't use that in this case. They didn't really glean
4 any information from it that was useful. They used the
5 seizure order sample so that the lab would be able to
6 have a DNA comparison.

7 THE COURT: My understanding -- go ahead,
8 Mr. Hylin.

9 MR. HYLIN: Well, my understanding is that's how
10 they matched the DNA with the item that they did.

11 THE COURT: It's my understanding based on past
12 experience in the Washoe County District Attorney's
13 Office that the Washoe County Crime Lab requires a
14 confirmatory DNA sample from the person. So while they
15 may use a reference sample contained in the National
16 Crime Information Center database in order to secure a
17 search warrant, once that -- or a seizure-- a search or
18 arrest warrant, once that person is arrested, then they
19 need a confirming sample from the person who is taken
20 into custody. So that initial sample from NCIC may be
21 used in order to establish probable cause, but they do
22 want the confirming sample later on.

23 Detective Kassebaum, I'll direct you not to
24 reference anybody's prior criminal history.

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1 When we come back and the jury comes back before
2 us, we will simply talk about the fact -- and Mr. Young
3 will ask you questions about the fact that you obtained
4 a search warrant and the results of -- and what you did
5 with that search warrant. And there's no reason to
6 reference any other database that the defendant or any
7 other person may be the. Do you understand that?

8 THE WITNESS: Yes, sir.

9 THE COURT: Court's in recess for approximately ten
10 minutes.

11 (A recess was taken.)

12 THE COURT: We'll go back on the record in
13 CR14-1830, the State of Nevada versus Quinzale Mason.
14 The record will reflect that Mr. Mason is present in
15 court with his attorney, Mr. Hylin. Mr. Young is here
16 on behalf of the State of Nevada. We're meeting
17 outside the presence of the jury.

18 The Court has provided counsel for the State and
19 counsel for the defendant the jury instructions in the
20 tentative order that I intend on using. So it will
21 give the parties the opportunity this evening to go
22 through those and see if there are any changes.

23 Mr. Young, I did take out a couple of jury
24 instructions that were duplicative of each other.

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1 Further, I took out a couple of other instructions that
2 we'll talk about when we settle jury instructions. It
3 may be that we add some instructions, but at this point
4 I just wasn't quite sure why certain instructions were
5 in the packet. And so I put them in a specific order.
6 And we'll go over them tomorrow.

7 The second thing I wanted to discuss very briefly
8 was as far as timing goes, Mr. Young, how many more
9 witnesses do you have?

10 MR. YOUNG: Your Honor, after Detective Kassebaum I
11 only have two. And they're both outside ready to go.
12 So I'm hopeful -- I keep looking at the broken clock.
13 I'm hopeful that absent something unexpected I could be
14 done with my case today, but they both realize if they
15 need to come back tomorrow, then that's the way it is.

16 THE COURT: As they say, a broken clock is right
17 twice a day, but it's never right when you want it to
18 be.

19 So we will bring the jury back in and we will
20 attempt to get as much testimony in today as possible.
21 It is now 3:30. So we will be using up the next hour
22 and a half. Mr. Young, you can use it in any way that
23 you see fit.

24 The Court will then reconvene tomorrow at 8:30. I

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1 actually have a telephonic hearing at 8:15. So, Deputy
2 Gray, we need to have Mr. Mason here at 8:30 in the
3 morning dressed and ready to go. I'll tell the jury
4 they need to be back here at 8:30 as well so we are
5 ready.

6 If we don't finish today, we will finish sometime
7 early tomorrow with the State's case in chief. I do
8 have a lunch appointment. As I informed the parties
9 last Friday, there's somewhere I have to be. It's just
10 downtown, but I have to be there at about 11:45
11 tomorrow morning.

12 I've also been informed that the nurse will be here
13 tomorrow to assist Mr. Mason with any needs he has
14 regarding his diabetes, so we've taken care of that as
15 well. So we'll just get through as much of it as we
16 can today. And then whatever we don't get through,
17 we'll get through tomorrow. After we do testimony
18 tomorrow, we may just settle jury instructions in the
19 morning and immediately go into closing arguments, but
20 we'll just see where we are at the close of business
21 today.

22 All rise for the jury.

23 (Within the presence of the jury:)

24 THE COURT: Will counsel stipulate to the presence

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1 of the jury? Mr. Hylin?

2 MR. HYLIN: Yes, Your Honor.

3 THE COURT: And Mr. Young?

4 MR. YOUNG: The State will, Your Honor.

5 THE COURT: Ladies and gentlemen, it is 3:30 right
6 now. And I anticipate we'll go right until 5 o'clock
7 today. The case is actually moving faster than we
8 thought it was going to. And so that's good news for
9 you. It looks like we will be finished -- if not
10 today, we might be finished early tomorrow. But I'll
11 give you some scheduling ideas after close of business
12 today.

13 Mr. Young, you may continue questioning Detective
14 Kassebaum.

15 And, Detective, you're still under oath.

16 MR. YOUNG: Thank you, Your Honor.

17 BY MR. YOUNG:

18 Q Detective, when we left off you were discussing
19 obtaining a seizure order for the defendant for
20 potential DNA testing; correct?

21 A That is correct.

22 Q And you did that by application to a court and
23 a judge's authorization of a seizure order?

24 A That is correct.

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1 Q Okay. And how do you collect a -- to effect
2 the seizure order, what did you do?

3 A To effect the seizure order, I went down with a
4 little DNA collection kit, because the seizure order
5 for was for DNA, and two Q-tips, little swabs. And you
6 run them inside between the gums and the cheek just to
7 get a lot of the cheek skin cells, saliva and skin
8 cells on those. And then you put them inside the box.
9 You do it, of course, with gloves on because you don't
10 want to cross-contaminate anything. And you seal it
11 and package it for testing.

12 Q And have you been trained in that process as
13 you've just testified to?

14 A Yes.

15 Q And is that what you did with Mr. Mason?

16 A Yes.

17 Q And was that back on September 19 of 2014 that
18 you obtained that sample?

19 A Yes.

20 Q Okay. Now, did you do so in order to have some
21 items that were collected from the vehicle in question
22 tested for DNA?

23 A Yes.

24 Q So how did you then get the items in question

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1 to be tested and the buccal swab or the DNA reference
2 sample from Mr. Mason? What do you do with those
3 items?

4 A Those items were booked into the Reno Police
5 Department in our evidence department. And I took the
6 DNA sample, attached it to that, and submitted it with
7 a lab request with a brief synopsis of what I wanted
8 tested.

9 Q And is that all, again, consistent with the
10 training and procedure that you've gone through?

11 A Yes.

12 Q Okay. Now, are there certain control numbers
13 that are listed on any items submitted to the crime lab
14 for tracking or chain of custody purposes?

15 A With the crime lab each lab request has a
16 control number and the control number is essentially
17 backup to a backup. We provide a case number they can
18 look up through reference, the items that we requested
19 be tested from our case number, or they can look it up
20 through their control number which is generally printed
21 on the lab request form.

22 Q I neglected to ask you earlier. Was there a
23 Reno Police Department case number assigned to this
24 specific investigation?

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1 A Yes.

2 Q And do you know that case number?

3 A I do. It's going to be a 14-15205.

4 Q Is the initial 14 based on the year, 2014?

5 A That is correct.

6 Q And then the balance of that, the 15205 is an
7 individual number for this case; correct?

8 A That is correct.

9 Q Now, as you sit here today do you specifically
10 -- strike that. Let me ask you a foundational
11 question. Did you submit the reference sample that you
12 obtained from Mr. Mason through the cheek swabs and
13 then certain items that you wanted tested for DNA to
14 the crime lab?

15 A I did.

16 Q What items for testing did you submit?

17 A The items that I tested to be submitted for DNA
18 was a red hat specifically within that bag.

19 Q And did you actually breach that bag at all?

20 A No, I did not.

21 Q So as it was packaged you provided that entire
22 bag to the crime lab?

23 A Yes.

24 Q Now, you mentioned that there are control

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1 numbers associated with any items submitted; correct?

2 A Yes.

3 Q Was there a control number for both the
4 reference sample from Mr. Mason as well as a separate
5 control number for the bag that you wanted tested?

6 A I believe that there's a separate lab request
7 filled out for both items, if I recall.

8 Q As you sit here now do you recall the specific
9 control number on both of those items?

10 A No, I do not.

11 MR. YOUNG: If I could approach, Your Honor.

12 THE COURT: You may.

13 BY MR. YOUNG:

14 Q I'm going to show you --

15 MR. HYLIN: I think there needs to be some
16 foundation for him to refresh his recollection.

17 THE COURT: I believe that he -- well, you can ask
18 the question again. I think he may have testified to
19 that a moment ago.

20 MR. HYLIN: That's fine. I don't want the sheets
21 named. That's all right, Your Honor. I'll withdraw
22 the --

23 THE COURT: So we don't have an objection.

24 Go ahead, Mr. Young.

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1 BY MR. YOUNG:

2 Q Sir, are those the two sheets that you filled
3 out and submitted along with the reference sample and
4 the item -- the evidentiary item to be tested?

5 A Yes.

6 Q And the handwriting on there is your
7 handwriting; correct?

8 A Yes, it is.

9 Q And does each sheet which coordinates with the
10 reference sample and the separate items to be tested
11 have a different control number?

12 A They do.

13 Q In the interests of accuracy, if you were to
14 try to look at that and memorize it, would it better
15 for you to actually read them off those sheets?

16 A Yes.

17 Q If you could, please, tell us the control
18 number as it referenced each one of the items
19 submitted.

20 A The control number for the swab from Defendant
21 Mason is 283517 and the control number for the bag of
22 evidence which contained the red hat is 283556.

23 Q And do both of those begin with the letter "W"?

24 A Yes, they do.

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1 Q Okay. Now, again, were you the one who booked
2 that bag, which included the red hat, into evidence?

3 A No, I was not.

4 Q Do you know who did?

5 A In my report I initially thought it was
6 Detective Allen, but I found out from the supplement
7 which was written it was Detective Blas who booked
8 those items.

9 Q And just to be clear, when you submitted the
10 bag of items, including that red hat to the crime lab,
11 you didn't breach that bag?

12 A No, I did not.

13 Q So you submitted the bag as it was booked into
14 evidence?

15 A Yes.

16 Q And were all of your submissions to the crime
17 lab, the two forms that you just discussed with the
18 control numbers and the corresponding reference sample
19 from Mr. Mason and the evidentiary items in the bag,
20 was that all done consistent with your training
21 procedure?

22 A Yes, sir.

23 Q Thank you, Detective.

24 MR. YOUNG: That's all the questions I have, Your

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1 Honor.

2 THE COURT: Cross-examination, Mr. Hylin.

3 MR. HYLIN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. HYLIN:

6 Q You only found -- good afternoon, by the way.

7 A Good afternoon.

8 Q You only found two shell casings?

9 A That is correct.

10 Q And you were not involved in the search of the
11 car?

12 A No, I was not.

13 Q Would it surprise you there was no shell
14 casings found in that car?

15 A No, it would not surprise me.

16 Q And there was no gun ever found?

17 A No.

18 Q So no ballistics tests could be run? No
19 bullets were found?

20 A That is correct.

21 Q And no bullet marks were found?

22 A That is correct.

23 Q Is that accurate?

24 We still have the 2397 overhead view on there. Do

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1 you recall what this gray line is that I just pointed
2 out with my pin?

3 A Can you do it one more time, please.

4 Q Sure. Along here.

5 A Yes, the wall.

6 Q And what kind of wall is that?

7 A It's a cinderblock.

8 Q How tall?

9 A It's probably ten feet in height.

10 MR. HYLIN: If I could have just a moment, Your
11 Honor.

12 BY MR. HYLIN:

13 Q What I'm showing you now is marked as Exhibit
14 7. You looked at this before, I believe, on direct
15 examination.

16 A That is correct.

17 Q So that's a view looking from the east side of
18 the property to the west side of the property?

19 A Yes.

20 Q And this wall that my pen is pointing to right
21 here right now is that gray line that I just pointed
22 out on Exhibit 2, is it not?

23 A It is.

24 Q So that's a pretty tall wall?

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1 A It is.

2 Q Probably, I don't know, 12 feet tall?

3 A It's hard to say with the vehicle and the
4 6incline and the height of the wall. Without getting
5 out there shooting angles, it's difficult to actually
6 estimate the height from the concrete or the height
7 from the top of the dirt to the wall. So it's just a
8 guesstimate of ten feet, sir.

9 Q Well, that's -- yeah, I know it's difficult.
10 You can't get a scale on this. But it's certainly
11 taller than most human beings?

12 A Absolutely.

13 Q And I'm presuming you checked that out?

14 A Yes, we did.

15 Q Found nothing?

16 A Nothing.

17 Q No impact marks?

18 A No.

19 Q You checked the building out?

20 A We did look at the building.

21 Q No impact marks?

22 A None that we saw.

23 Q And you checked the parking lot out?

24 A Yes.

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1 Q No impact marks?

2 A None that we saw.

3 Q Now, a 9 millimeter round, if it were to strike
4 one of these surfaces, would undoubtedly leave a mark?

5 A It would. And the difficulty that we have
6 often here is, as you can see, the cement which is --
7 it's not well maintained. So if there was like a
8 painted wall, just freshly painted, everything is
9 freshly groomed, brand-new concrete and cement, it
10 would be easy to see a score mark. But with a surface
11 like this that is not well maintained, it's very
12 difficult to discern that, hey, that is a mark from a
13 bullet or that is just a gouge from somebody's bicycle.
14 It's very difficult to say, yes, that is a bullet
15 strike mark.

16 Q Okay. You're talking about the retaining wall
17 back there now?

18 A I'm talking about just the entire scene.

19 Q All right. Okay. The pavement -- usually if a
20 human being was standing firing a firearm, particularly
21 a near horizontal position or a slightly lower
22 trajectory like I'm pointing -- let the record reflect
23 I'm pointing toward the floor at a low angle -- and it
24 hit the pavement, you would usually see an elongated

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1 scuff mark where the bullet glanced off the pavement?

2 A And, again, that depends on the actual angle in
3 which that bullet hits that, because if you have, say,
4 three degrees of an angle going down, it's not going to
5 be very steep, opposed to if you have 10 to 12 degrees.
6 So based on that, you are going to have either a
7 grazing strike or a deeper gouge, which is easily
8 discernable, yes, that's exactly where the round hit.
9 It's very hard to tell. Like I said, it's not a
10 well-maintained parking lot.

11 Q I think that photograph probably shows that not
12 in a great detail, but it's older pavement, it's older
13 asphalt, is that what it was?

14 A It is.

15 Q But nonetheless, if it was at a low angle, you
16 would see a glancing mark?

17 A Possibly.

18 Q Correct?

19 A Possibly.

20 Q And if it was a lower angle, you might see a
21 gouge or a hole?

22 A Yes.

23 Q And you found none of those?

24 A Nothing that we could say that that was a

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1 bullet strike mark.

2 Q All right. And you found nothing in the
3 retaining wall back there that would be -- that looked
4 like a fresh chip or a --

5 A No. And as you can see, the retaining wall --
6 that's a old Chevy S10 that's there. And that's
7 probably about six feet at the top. So below that,
8 that's all dirt. And, of course, that's the backdrop
9 in which kind of we were working with, but we did not
10 see anything in that concrete wall which indicated a
11 bullet strike.

12 Q Well, if somebody were pointing a gun up in the
13 air, you wouldn't see any of those, would you?

14 A No.

15 Q Now, as far as the -- where did you pick up the
16 bag of items that you took to the crime lab?

17 A Those were -- I didn't physically take them.
18 They were booked into the Reno police evidence
19 department at which point we submit lab requests to be
20 attached and then evidence technicians take those up to
21 the crime lab for chain of custody purposes.

22 Q Okay. So you don't -- you never did see what
23 condition the bag was in or what the chain of custody
24 endorsements were?

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1 A No, I don't recall.

2 Q So all you did is fill out the request and
3 that's it?

4 A Yes.

5 Q And that was the control numbers that you
6 recited?

7 A Yes.

8 Q All right. So that was the extent of it? You
9 never saw it afterwards either?

10 A No.

11 Q You haven't seen it since?

12 A No, I have not.

13 Q You didn't even see the contents?

14 A No.

15 Q So you don't even know what was in the bag
16 except through word of mouth?

17 A Yes, except for what was booked in by Detective
18 Blas.

19 MR. HYLIN: If I could have just a moment, Your
20 Honor.

21 THE COURT: Take your time.

22 THE WITNESS: And that was Detective Blas. I
23 misspoke and I said "deputy." I apologize.

24
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1 BY MR. HYLIN:

2 Q I see. Okay. Yeah, he's a detective.

3 A Yes.

4 Q And the casings themselves render really no
5 forensic information other than the presence
6 themselves?

7 A Yes.

8 Q So without a -- you never did find the gun?

9 A No, we did not.

10 Q You can't do ballistics tests. Can you do
11 fingerprint analysis on shell casings?

12 A From what I understand, it's very difficult to
13 obtain fingerprints off of those, but we did not.

14 Q Did you inquire about doing fingerprint
15 analysis on the shell casings?

16 A No, I did not.

17 Q So that wouldn't yield any identification
18 information, would it?

19 A It possible could.

20 Q But you didn't do the test?

21 A No, I did not.

22 MR. HYLIN: I have no further questions, Your
23 Honor.

24 THE COURT: Redirect based on the

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1 cross-examination.

2 MR. YOUNG: No questions, Your Honor.

3 THE COURT: Thank you, Detective Kassebaum. You're
4 free to go.

5 Is he released from his subpoena?

6 MR. YOUNG: Yes, Your Honor. Thank you.

7 THE COURT: Mr. Hylin?

8 Hold on a second, Detective.

9 Mr. Hylin, is the detective released from his
10 subpoena?

11 MR. HYLIN: Yes. I'm sorry.

12 THE COURT: Now you're free to go. Thank you.

13 The State can call its next witness.

14 MR. YOUNG: The State calls Steve Gresko.

15 THE CLERK: Sir, raise your right hand.

16 (The oath was administered to the witness.)

17 THE WITNESS: I do.

18 THE CLERK: Okay. Have a seat.

19 STEPHEN GRESKO,

20 having been called as a witness herein,
21 being first duly sworn, was examined
and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q Good afternoon, sir.

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1 A Good afternoon.

2 Q Could you please state your first and last name
3 for the record and spell both for the reporter.

4 A My name is Stephen Gresko. First name is
5 S-t-e-p-h-e-n. Last name is GRESKO.

6 Q Sir, with whom are you currently employed?

7 A I'm a senior criminalist in the DNA section
8 with the Washoe County Sheriff's Office.

9 Q And how long have you held that position?

10 A A little over five years.

11 Q Okay. And as a senior criminalist in the DNA
12 division, what do you do?

13 A My primary job is the CODIS administrator. I
14 manage the DNA database, but I also split time doing
15 case work.

16 Q And when you say "case work," what is that?

17 A That's receiving items from law enforcement
18 agencies they've submitted that they believe have
19 biological staining on them that they're looking to get
20 a DNA profile off of to help their cases.

21 Q Okay. And could you tell the jury a little bit
22 about your education and other training and background
23 which led you to your position as a senior criminalist.

24 A Yes. I have a degree, a bachelor's degree, in

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1 zoology from Brigham Young University. I worked first
2 as a DNA analyst for the Armed Forces DNA laboratory,
3 also known as AFDIL. We did identifications for the
4 military. I took a job with a private laboratory doing
5 criminal casework. I also worked at the Las Vegas
6 Crime Lab for a short time before coming to the Washoe
7 County Crime Lab.

8 Q And did you attend any sort of trainings or
9 seminars or otherwise in the field of DNA and DNA
10 analysis which assists you with your profession?

11 A Yes. In our profession we're required to do
12 training before we start work. I had an extensive
13 training program everywhere I worked, AFDIL, the
14 private labs, Las Vegas and Washoe County.

15 In addition to that, as part of our quality
16 assurance standards we're required to do eight hours of
17 continuing education every year. In our laboratory we
18 review current scientific journals monthly and stay
19 abreast of current topics in our field.

20 Q Have you testified as an expert previously in
21 any courts in the state of Nevada or otherwise as an
22 expert in the field of DNA analysis?

23 A Yes. I've qualified as an expert in DNA
24 analysis in the state of Montana, Oklahoma and in

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1 Nevada.

2 Q Now, you mentioned the phrase "quality
3 assurance." What's that?

4 A Early on in the field of forensic science,
5 especially DNA, they determined that it would be --
6 "they," I mean, the FBI -- determined it would be a
7 very good thing if there were certain standards that a
8 DNA laboratory was held to make sure that the work that
9 was coming out of the laboratory was good quality work,
10 to prevent junk science from ending up in court. And
11 so there was a long process, but at the end of it all
12 the FBI came out with a set of standards that any
13 laboratory that said they were doing good forensic work
14 would have to adhere to. And they're called the DNA
15 Quality Assurance Standards.

16 Q And the Washoe County Crime Lab that you work
17 for, are they compliant with those standards?

18 A We are compliant with the FBI's quality
19 assurance standards and also with another accreditation
20 board that looks at the laboratory as a whole.

21 Q What's that other accreditation board?

22 A The other one that we do is called ASCLD, the
23 American Society of Crime Lab Directors, Laboratory
24 Accreditation Board. It's the gold standard that the

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1 crime labs in the United States use for accreditation
2 purposes.

3 Q And are there either annual or otherwise
4 reviews of the Washoe County Crime Lab to maintain
5 those accreditations and certifications?

6 A There are. We are audited yearly. We have
7 outside experts come in and audit it us to the ASCLD
8 requirements and the federal FBI QAS standards. That's
9 externally every other year. Internally we do an
10 internal audit every year.

11 Q Now, when there are items submitted to -- and
12 I'm speaking generally for the time being -- submitted
13 to the crime lab for yourself to analyze, what sort of
14 steps or safeguards are taken to make sure that the
15 items being submitted to you for analysis, their
16 integrity is maintained?

17 A Items that are submitted for analysis to the
18 laboratory have to be submitted in a sealed package
19 with a completed chain of custody. They're submitted
20 to our evidence section. And before we ever see them,
21 they are maintained in a secured locked evidence area.

22 Q Okay. And is that again consistent with the
23 accreditation that you were just referring to?

24 A It is. It is a requirement of both ASCLD lab

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1 and the FBI QAS.

2 Q You just stated that when an item is submitted
3 it has to be packaged?

4 A That is correct.

5 Q Okay. And are there any requirements for the
6 type of packaging upon submission to the crime lab?

7 A There are requirements. It depends on the type
8 of evidence that's being submitted. For biological
9 evidence we require that it be dried before its
10 submitted and the container doesn't really matter. A
11 manila envelope is sufficient for smaller items like
12 cigarette butts, swabs of things. If you have large
13 items like bedding, it can be submitted in cardboard
14 boxes or a large paper bag, but the key component to
15 submission is that when it is submitted to us it is
16 sealed by the agency that is submitting it.

17 Q Okay. And when you say "sealed," meaning no
18 entry areas, if you will?

19 A When I say "sealed," I mean that it's been
20 packaged up in a way that if anyone opened that package
21 it would be apparent that someone had opened it.

22 Q If you received an item that was -- again
23 hypothetically that was apparent that it had been
24 opened, what would you do with that item if it was

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1 being requested to do DNA analysis?

2 A If we receive items that aren't properly
3 sealed, we return them to originating agency and
4 request that they be properly sealed before we receive
5 them.

6 Q In your capacity as a senior criminalist, your
7 current occupation, were you asked to conduct DNA
8 testing related to Reno Police Department Case No.
9 14-15205?

10 A I was.

11 Q And in your analysis do you separately assign a
12 Washoe County Crime Laboratory number to your work?

13 A We do assign our own laboratory number.

14 Q And did you prepare a Power Point presentation
15 sir, which you feel will assist you in describing to
16 the jury both in a general sense DNA analysis, how you
17 do that, and then the results of this specific case?

18 A I do have a presentation.

19 THE COURT: Mr. Hylin, do you have any objection to
20 the witness testifying in a narrative form regarding
21 the DNA testing?

22 MR. HYLIN: No. You mean the --

23 THE COURT: Power Point.

24 MR. HYLIN: No, I don't.

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1 THE COURT: Ladies and gentlemen, generally what
2 happens is, as you've seen, the attorneys ask questions
3 and they have to be limited questions and direct
4 questions. But on occasion when it's of assistance to
5 the jury, I allow people to testify in a narrative
6 form. And that's what Mr. Gresko will do now. He will
7 discuss with you -- basically he'll give of a little
8 background on DNA analysis and how they do it at the
9 Washoe County Crime Lab. And he'll do that by going
10 through the Power Point presentation that you're about
11 to see.

12 And, Deputy Gray, just if we can make sure --

13 Can everybody see the screen all right? Mr.
14 Arecolino, can you see it okay?

15 A little bit to your right Deputy Gray.

16 I apologize Mr. Arecoline. I put an O on the end
17 of your name. I said Mr. Arecolino.

18 MR. YOUNG: Your Honor, for purposes of the record,
19 this for demonstrative purposes is Exhibit 26.

20 THE COURT: And Exhibit 26 has been marked for
21 demonstrative purposes. What that means, ladies and
22 gentlemen, is that it's not going to back to the jury
23 room with you for you to look at at some later time.
24 It just helps you understand the testimony of

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1 Mr. Gresko.

2 BY MR. YOUNG:

3 Q Sir, I gave you a clicker. Feel free to use
4 that as you wish. Please, sir.

5 A Do I need to speak into this? I guess I can
6 just look at my screen.

7 THE COURT: I think we can hear you all right,
8 Mr. Gresko. I just turned up the microphone a little
9 bit. Just speak up.

10 THE WITNESS: Okay. So I'm going to give you a
11 little background on our testing. The basic foundation
12 of where DNA testing starts is with the cells. Cells
13 comprise the building blocks for all life, whether
14 you're talking about plants, animals or human beings.
15 Everything breaks down to a basic building block of a
16 cell.

17 If you take a closer look inside each cell, you'll
18 find that there's a control center that's similar
19 inside there. It kind of looks like the yolk of an
20 egg. And within that yolk is what we call the nucleus.
21 And that's where the DNA is found.

22 The DNA is very long molecule, billions of base
23 pairs long. Your body packs that tightly wound up into
24 what we call chromosomes. Inheritance works in that

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1 you get half of your chromosomes from your mom and half
2 of your chromosomes from your dad. That's why we can
3 use DNA to track paternity, because half of it is from
4 mom and half of it is from dad.

5 99.9 percent of the DNA is the same. .1 percent of
6 that DNA differs between individuals.

7 There are many sources of biological evidence that
8 we can use for DNA testing. Common things that are
9 submitted to the laboratory are blood, semen, saliva,
10 urine, hair, teeth, bone, tissue, sweat. We can get
11 DNA from all of these things.

12 The important thing to remember is that it doesn't
13 matter which area I test; I'm going to get the same DNA
14 profile. So DNA from muscle is going to be same as the
15 DNA from sperm, blood, teeth or sweat.

16 These are very common items that we see at the
17 crime lab: blood stains, semen stains, licked areas,
18 handled items, cigarette butts, bottles and cans,
19 chewing gum and food.

20 When I get an item in front of me, I'm going to
21 take it into the laboratory; I'm going to take a small
22 cutting of the area that I'm interested in analyzing.
23 So hair, blood, saliva, sweat or tissue, I'm going to
24 take that little cutting and put it into a tube.

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1 I'll add a series of chemicals that will break open
2 all the cells. So if you think of that cell again like
3 an egg, we're going to crack all the eggs open, break
4 the yolks and we're going to release the DNA into that
5 solution and then we're going to use a chemical process
6 to remove all of the other stuff and just leave behind
7 the DNA in the cell. We call this the extraction
8 process.

9 After we've extracted that DNA and isolated it, we
10 want to analyze very specific regions of the gene.
11 We're not looking at the entire genome. We're going to
12 look at some very specific regions that we call STRs or
13 short tandem repeats.

14 And to give you an idea of what a short tandem
15 repeat is, we blow up what that DNA molecule looks
16 like. It's got a backbone which is represented by the
17 blue and the red bands. And in between you'll see a
18 series of letters. Those are the basic building blocks
19 of a DNA molecule. There's only four of them, A, T, G
20 and C. And it's the sequence of those bases that
21 determines your physical characteristics. And so A, T,
22 G and C are the only four possibilities. A always
23 binds with T and G always binds with C.

24 So to explain what a short tandem repeat is, if you

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1 go into certain portions of your genome, you'll find
2 areas where the sequence repeats itself over and over
3 again. So in the example we have here, you can see
4 there's two As followed by a T and a G. So A, A, T and
5 G. And that's repeated three times.

6 So when we're doing short tandem repeat analysis,
7 this is what we're looking at. The STR, short tandem
8 repeat, is this region where the sequence repeats
9 itself over and over again.

10 Everyone has the same repeating units at those
11 specific locations on their DNA. What's different is
12 the number of times that that repeat occurs from one
13 individual to the next. So everyone in the room will
14 have an STR region at a certain spot on their DNA, but
15 the number of times that that repeat is there is going
16 to be different from one person to the next.

17 So STR analysis is looking at the number of
18 repeating units at multiple locations on the DNA to
19 obtain a DNA profile. When we say "DNA profile," we're
20 talking about the number of repeats.

21 So if we look at Jack, we can see that he has four
22 repeats on the chromosome that he got from his mom and
23 he has one, two, three, four, five, six repeats on the
24 chromosome that he got from his dad. So his DNA

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1 profile at this specific location would be a 4-6.

2 If we look at Jill and we look at the exact same
3 spot on this chromosome, we can see that she has two
4 repeats on the chromosome from mom and three repeats on
5 the chromosome from dad. So her DNA profile at this
6 exact location would be 2-3.

7 So the STR analysis that we do is looking at
8 several different areas across the entire genome. You
9 have 23 pairs of chromosomes, so 46 total, half from
10 mom, half from dad. And then there's two
11 sex-determining chromosomes, the X and the Y. Females
12 have two Xs; men have an X and a Y.

13 Very often the amount of DNA isolated can be very
14 small, for instance, somebody touching something. We
15 can swab an area where they touched, but they left very
16 little DNA behind for us to analyze. So we have a
17 process in which we can take tiny amounts of DNA and
18 make copies of it to analyze. And that chemical
19 process is called the polymerase chain reaction or PCR.

20 To explain the polymerase chain reaction, we're
21 going to take our DNA that we isolated in the
22 beginning; we're going to use a chemical process to
23 make copies, just like the body would make a copy when
24 it wants to make a new cell. We're going to mimic that

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1 process in the lab and copy those very short STR
2 regions. And we do it over several cycles. So what
3 started out as your genomic DNA over 32 cycles becomes
4 billion of copies of those short tandem repeat regions
5 that we're interested in analyzing.

6 This is a picture of a genetic analyzer. It's too
7 small for you guys to see over there. I can barely see
8 it from there. But there's little capillary in there.
9 And those short tandem repeats will run along those
10 capillaries. It's filled with gel. The small ones
11 will run through that gel a lot faster than the big
12 ones. And by this technique we're able to separate our
13 fragments by size.

14 And so you can see this is what the readout looks
15 like when we're done. This is an actual what we call
16 electropherogram. The gray bars at the top are
17 different genetic locations where we have found STR
18 regions.

19 So the very first one is chromosome number 19 at
20 position 433. And we know there's an STR here. And
21 this person's DNA profile is a 12 and a 15.

22 If you move to the next location, there's an STR
23 here. We only see one peak that says 17. That means
24 that this person inherited a 17 from mom and a 17 from

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1 dad. That's why you only see the one peak, because mom
2 and dad had the same number of repeats.

3 And so we go along our electropherogram to look at
4 all of these different STRs and we are going to take
5 these repeat units and put them into a table.

6 So if we had an evidence sample, this is the DNA
7 profile that we would enter for our evidence profile.
8 This doesn't tell us a whole lot without having a
9 reference sample to compare it to. Having an
10 evidentiary DNA profile does not tell us a name. It
11 doesn't give us a name. So we need to compare
12 reference standards, DNA profiles from known people and
13 then compare them to our evidence DNA profile.

14 And so in our example we have two reference
15 standards. We typed the reference standard for number
16 1 and we can see that the profiles do not match. So
17 this person would be excluded as potentially matching
18 the evidence.

19 When we type reference standard number 2, we can
20 see that at every location the DNA profiles are
21 identical. This is what we would call a match.

22 So what does that mean? I have an evidence profile
23 that matches a reference profile. They're the same.

24 I like to kind of think of it as -- there's lots of

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1 different examples we could use, but we want to know
2 how significant does this match. Right? So if I know
3 that I'm looking for someone with blond hair, that's
4 going to narrow down my search from all of humanity to
5 just the people on the planet who have blond hair.

6 If I know a second piece of evidence, like they
7 have blue eyes, that will further narrow down my search
8 and make that match more significant.

9 And so with DNA each one of those STRs is going to
10 work as an independent event, an independent match. So
11 if you think of blond hair, maybe blond hair is one in
12 ten people. If I know that blue eyes is also one in
13 ten people, statistically I can multiply one in ten
14 times one in ten and I know that the significance of my
15 match is one in a hundred people.

16 So if we use our DNA profile and compare it to a
17 population database that does the same thing, we can go
18 in and determine exactly how significant this match is.
19 A population database just says how common is it to see
20 15 at this STR and how common is it in the general
21 population to see a 16 at that STR.

22 And we know through many studies that these
23 population databases are highly accurate. And so we're
24 going to go through and say having a 15-16 at this

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1 locus is one in ten. Having a 16-17 at this locus is
2 one in 20. And we'll go along and we'll multiply those
3 results together and that's how end up with these
4 gigantic numbers of statistics for match rarity.

5 And all that's telling you is how often would I
6 expect to see this profile in the population or, in
7 other words, if I tell you that I have a profile that
8 is rarer than one in five hundred billion people, that
9 means that I would expect to have to randomly type 500
10 billion people before I saw that profile again
11 randomly.

12 So here's some typical results. This is a full DNA
13 profile. It's from one person. I know it's from one
14 person, because I don't see any more than the two peaks
15 at any one of my STR locuses. If the profile is rarer
16 than one in five hundred billion -- this is actually an
17 old slide. I apologize. We have raised our threshold.
18 It's not rarer in one in eight trillion. If a profile
19 is rarer than one in eight trillion, then we will feel
20 comfortable saying that we believe that the reference
21 sample is the source of the evidence profile. If it's
22 more common than one in eight trillion, then we're not
23 going to feel comfortable saying that and we'll just
24 tell you what the frequency is.

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1 So other typical results. We don't get full
2 profiles. This happens when we don't have enough DNA
3 in our beginning mix or it's been degraded. So if we
4 don't have enough DNA or it's degraded, we'll get
5 partial profiles where some of the larger locuses have
6 dropped out.

7 Sometimes we'll get mixtures of DNA. More than one
8 person touched an item or more than one person -- more
9 than one person's DNA was present on the item that I
10 tested. And so you can see in this first example
11 there's four peaks there. So there's at least two
12 people that have contributed DNA to this profile.

13 Sometimes they'll be at equal levels. And there's
14 not much we can say about a mixed DNA profile. Other
15 times we'll see mixed patterns with a dominant
16 contributor and a minor contributor.

17 So if you look at our first locus, you can see that
18 the 30 and the 32.2 are much higher than the 31.2 and
19 the 33.2. And if you go to the second locus, 57, you
20 can see that the 10 is much higher than the 11 and the
21 12.

22 So we can pull out a dominant contributor, the
23 person who has the most DNA present, and separate them
24 from a minor contributor who had a little bit of DNA in

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1 the sample.

2 As I mentioned before, we can do relationship
3 testing. Due to low levels of DNA, the results can't
4 be interpreted. That's also a possibility due to low
5 levels of DNA. No conclusions can be offered is also a
6 possibility. And there are times when we don't get any
7 DNA results at all.

8 BY MR. YOUNG:

9 Q Let me start with what you just finished with.
10 Sometimes you won't get any DNA results at all. Why
11 might that be?

12 A There are a variety of reasons. Number one,
13 there was no DNA there to begin with. Another reason
14 would be that the DNA was destroyed. Heat,
15 environmental factors, there's lots of reasons why DNA
16 could have been present on a sample but it was
17 destroyed.

18 Q You talked about different items of evidence
19 which might be submitted for DNA. One was biological.
20 You had a list of a number of things. One of them was
21 touch DNA. What's the difference -- there are many
22 others than that; correct?

23 A Yes.

24 Q What is touch DNA?

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1 A Touch DNA is a term used in the DNA analysis
2 community to refer to swabbing an item that someone
3 touched. So you might think of if I pick up a bottle
4 and I'm and I set that bottle down, there's going to be
5 fingerprints on the bottle that could be of evidentiary
6 value. But we also leave DNA behind when we touch
7 things. So we would want to swab that bottle and that
8 swab would be a swab of the touched DNA, DNA left
9 behind from somebody touching something.

10 Q To use your example of someone grabbing a
11 bottle and drinking out of it, is there a -- between
12 touch DNA and then biological DNA, say, when you drink
13 from a bottle, your saliva being left on the lid of the
14 bottle -- fair?

15 A Very fair.

16 Q Is there a difference with respect to the
17 likelihood of you obtaining DNA results from touch DNA
18 and biological?

19 A Yes. It all comes back to how much -- how many
20 cells are being left behind. In my example of drinking
21 from the bottle, saliva contains a lot more cells per
22 square inch than just the oils from my hand in touching
23 something. And different people will leave behind
24 different amounts of DNA when they touch something.

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1 But we're all going to leave behind relatively the same
2 amount of saliva from drinking something. Every DNA
3 analyst on the planet would swab the mouth of a bottle
4 before they would start looking for touch DNA.

5 Q So there's differences -- not all DNA is the
6 same? Biological is certainly different than touch is
7 different than some other form?

8 A It is. You can think of it this way. What
9 would you expect to find more cells in, blood or
10 something that I just touched briefly? You would
11 expect to find more cells in liquid blood.

12 Q Now, you mentioned one of slides listed five
13 hundred billion and you said your threshold has changed
14 to eight trillion.

15 A Yes.

16 Q And what threshold or who sets that threshold?

17 A We set it internally at the laboratory. Each
18 lab is free to set their threshold wherever they think
19 is appropriate. The FBI's threshold I believe is not
20 as stringent as ours. We thought at our laboratory
21 that we would take the world population, we rounded up
22 to approximately 8 billion and then we applied a
23 99 percent confidence interval to that which basically
24 says that when I tell you my number, I'm 99 percent

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1 confident that the actual number is higher than the
2 number I'm reporting.

3 Q You said you round up. So the world population
4 is approximately 8 billion?

5 A I think we're under that, but 7 point
6 something. So we rounded up to 8 and then applied a
7 confidence interval to that number.

8 Q So for your analysis to come back as a source
9 DNA match at that figure has to be substantially
10 greater than even the world population?

11 A That's correct.

12 Q Now, did you -- there's a couple more slides on
13 your presentation as to your analysis specific to this
14 case; is that correct?

15 A That is correct.

16 Q Before we get into that, did you also prepare a
17 report based on your analysis in this case?

18 A I did.

19 Q And did that report include a lot of
20 identifiers related to the case, the people involved,
21 and the like?

22 A It does.

23 Q Okay. Do you recall as you sit here the agency
24 and the case number for which the submitted items

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1 originated from?

2 A I don't recall the specific numbers offhand.

3 Q Is that something that's on your report?

4 A It is on my report.

5 Q Unless objection, would you please take a look
6 at your report and advise the jury of the agency and
7 the case number associated with your report.

8 A Your Honor, may I refer to my report?

9 THE COURT: You may.

10 BY MR. YOUNG:

11 Q And you have a copy in front of you?

12 A I do.

13 Q Please.

14 A The agency is Reno Police Department. Our lab
15 number was L2671-14. And the Reno Police Department
16 case number was 14-15205.

17 Q Now, does it list the person requesting on
18 there as well?

19 A Yes. The person requesting was Kassebaum.

20 Q Okay. And it lists three other names right
21 above Kassebaum. Do those names include Quinzale
22 Mason?

23 A Yes. The suspect was listed as Quinzale Mason.

24 Q Okay. And then there are two other names. Is

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1 it Delphine Martin and Cecelia listed on there?

2 A Yes, they are.

3 Q Now, you stated that if items come to you and
4 are unsealed or breached in any way, you'll return them
5 to the agency?

6 A That is correct.

7 Q In this case, and consistent with your report,
8 did you receive two items to analyze against one
9 another effectively?

10 A I actually received three items all in one bag.
11 The bag was taped sealed. I noted that in my notes.

12 Q And what were the items that were submitted to
13 you?

14 A There was a red and gold 49ers baseball hat,
15 there was a black tank top and two white socks.

16 Q And was there a control number assigned to that
17 bag that was submitted to you?

18 A There was.

19 Q Okay. What was that control number?

20 A That control number was W283556.

21 Q Now, when an agency requests that you conduct
22 DNA analysis such as was done here, do you also require
23 a reference sample to be submitted?

24 A We do.

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1 Q And was a reference sample provided to you in
2 this case as well?

3 A A reference sample was provided.

4 Q And what was the control number for that
5 reference sample?

6 A The control number for the reference sample was
7 W283517.

8 Q And that was a reference sample from who, sir?

9 A Reference sample from Quinzale Mason.

10 Q Now, if you will, if you prefer, and you can
11 use the balance of your slides, could you explain to
12 the jury your findings or test results based on your
13 DNA analysis done in this case.

14 A Yes. So there were three items submitted under
15 W283556. I swabbed the interior of the hat and I
16 swabbed the armpit areas and the neck of the tank top.
17 I extracted those swabs. I got a mixture of DNA
18 profiles from at least two sources from both items. I
19 was able to determine a dominant DNA profile. Quinzale
20 Mason was the source of the dominant DNA profile
21 determined from each of those mixtures.

22 Estimated frequency of the profile is approximately
23 1 in 45.31 quadrillion individuals. That would be
24 source, as I stated earlier. And due to a low level of

ROUGH DRAFT TRANSCRIPT

1 DNA, no conclusions can be offered for minor results
2 from those two items.

3 Q Can you explain to the jury -- you say you took
4 a swab from the interior of the hat and a swab, if I
5 understand you, from the neck and armpit area of the
6 tank top?

7 A That is correct.

8 Q Could you explain to the jury why you took
9 swabs from those locations?

10 A When I examine an item of clothing, if we're
11 looking for blood that's on an item, then I'll just
12 take a cutting or swab of the blood spot. But in this
13 days we were asked to determine who had worn those
14 items and so I was looking for areas that would have
15 been in the frequent contact with a person wearing
16 them. So the brim of the hat is going to collect sweat
17 from the person wearing the hat and it's also going to
18 be in contact with their skin. The same basic
19 principle applied to the tank top. The neck and the
20 armpit areas seemed like a good area to collect sweat
21 and skin cells.

22 Q And so from both items, as I understand your
23 testimony, you were able to obtain a DNA profile from
24 both the hat and the tank top?

ROUGH DRAFT TRANSCRIPT

1 A I was.

2 Q And determine that the dominant source or
3 dominant profile -- the source of that profile was
4 Quinzale Mason?

5 A That is correct.

6 Q Okay. Do you have one additional slide as
7 well?

8 A I do.

9 Q Or is there anything else on this slide that
10 you wish to discuss?

11 A No.

12 Q Okay. Please.

13 A I extracted a cutting from the socks. They
14 were very soiled. I didn't really see a good place or
15 area to swab, so I took a cutting from like the ball of
16 the foot area, too small cuttings. It was a mixture of
17 DNA profiles from at least two sources, but it was very
18 low level and I couldn't make any conclusions about it.

19 Q And all three items, the socks, the tank top
20 and the hat, all came to you in the same evidence bag?

21 A That's correct, commingled.

22 Q Was there -- based on your background and your
23 training and experience, how you received the
24 evidentiary bag with these three items as well as your

ROUGH DRAFT TRANSCRIPT

1 receipt of the reference sample from Quinzale Mason,
2 was there any concern to you as to the integrity of the
3 tests you conducted or your ultimate results?

4 A No. All the seals were intact; the packaging
5 was in good condition.

6 MR. YOUNG: I have no further questions, Your
7 Honor?

8 THE COURT: Cross-examination, Mr. Hylin.

9 MR. HYLIN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. HYLIN:

12 Q Whose name was on the bag, do you recall?

13 A What do you mean by "on the bag"?

14 Q On the evidence bag.

15 A On the evidence bag. I don't know that there
16 was a name on the bag.

17 Q Well, you're familiar with RPD and WCSO
18 evidence bags, they all -- it's a paper bag?

19 A A tag number, yes.

20 Q And did you check the chain of custody on it?

21 A I did check the chain of custody.

22 Q All right. Did you see that it had been
23 breached?

24 A I did not see that it had been breached.

ROUGH DRAFT TRANSCRIPT

1 Q Okay. But you didn't check the names on it?

2 A No. Typically when I get an item from
3 evidence, I am checking to see that the seals are
4 intact. And sometimes we'll receive bags that have
5 nothing written on the outside of them. As long as
6 they're sealed and intact, they'll have a control
7 number and detectives will generally fill out a
8 submission sheet and attach it to the bag. So there's
9 varying degrees of what a detective or submitting
10 agency will write on the actual bag.

11 What I'm concerned with is what they wrote down on
12 their submission sheet and the control number and to
13 make sure that those all are consistent and that the
14 bag is intact and the seals are intact.

15 Q Okay. Well, I guess what I'm getting at is if
16 somebody opened it and closed it ten times, you would
17 be concerned about cross-contamination or other issues
18 being exposed where it shouldn't be exposed to other
19 DNA; fair to say?

20 A If it was not in a controlled environment, that
21 would be a concern. I wouldn't be concerned about that
22 happening in our laboratory.

23 Q No, I'm not necessarily referring to your
24 laboratory, but I'm talking about the evidence room or

ROUGH DRAFT TRANSCRIPT

1 how it was handled from the get-go.

2 A Sure.

3 Q All right. So as for DNA transfer, it's going
4 to occur, like I say, if somebody touches a table?

5 A Correct.

6 Q If somebody touches a gear shift knob?

7 A Yes.

8 Q Somebody touches a turn blinker?

9 A Yes.

10 Q Somebody touches a door handle?

11 A Yes.

12 Q Particularly the steering wheel?

13 A Yes.

14 Q Because that's someplace that the hands had to
15 be all the time?

16 A That's correct.

17 Q And you can successfully extract DNA from those
18 items as well?

19 A Absolutely.

20 Q And there was -- if there was a pop bottle or
21 like in this case there was a Starbucks cup -- you
22 would love to have a Starbucks cup, right?

23 A Very good evidence.

24 Q Because that has saliva on it?

ROUGH DRAFT TRANSCRIPT

1 A That's correct.

2 Q It's a little more rich in cells. And that
3 would probably be a mistake overlooking that as
4 evidence?

5 A I wouldn't know if it was supposed to be
6 submitted or not. I can tell that you it's a good
7 source of DNA, but whether or not it would have been
8 good to submit, I have no knowledge about whether it
9 would have been good to submit or not.

10 Q I know. I'm not asking you to go beyond
11 your --

12 A Sure.

13 Q But it's a DNA rich source?

14 A It is.

15 Q As a matter of fact, they have solved crimes
16 off of five-year-old cigarette butts?

17 A That is correct.

18 Q And you've been a party to that?

19 A I have.

20 Q Where you analyzed -- and DNA can last years?

21 A Thirty- to 40-year-old cigarette butts.

22 Q All right. So you expect DNA in a car that was
23 commonly placed there by touch, wheels, gear shift
24 knobs, to last quite a while?

ROUGH DRAFT TRANSCRIPT

1 A Potentially, yes, with the caveat that the most
2 recent toucher is going to be expected to be -- to
3 swamp out people who had touched it previously.

4 Q Thank you. I was coming to that. So actually
5 the last person to touch it would be what you would
6 call the dominant?

7 A You would expect the last person to have
8 touched something to be the dominant presence on there.

9 Q So if they didn't swab any of those items in
10 the car, we'll never know, will we? They didn't give
11 you anything to analyze that came from the steering
12 wheel, the gear shift knob, the car door handle or
13 anything?

14 A None of those items were submitted for
15 examination.

16 Q But I think you're indicating then that those
17 would be fertile grounds for DNA transfer and in fact
18 the last person that operated that car would probably
19 be the dominant DNA?

20 A It's quite possible, yes.

21 Q And the person who drank from that Starbucks
22 cup could be analyzed easily?

23 A Yes.

24 Q Okay. Speaking of the evidence that you did

ROUGH DRAFT TRANSCRIPT

1 receive, would it be proper protocol to handle each
2 item individually with different gloves?

3 A Again, it depends on the circumstances. If all
4 of the items were deposited commingled, then it would
5 make sense to submit them commingled. If they were all
6 separate, it would make sense to submit them separate.

7 Q Okay. If somebody had one pair of gloves on,
8 they never changed gloves and they searched the car and
9 they're looking in the seats -- I don't know if you've
10 ever watched a search of a car, but they rub their
11 hands on the seats and they go in the glove box, they
12 look underneath the seats, they look everywhere, with
13 one pair of gloves. And then they start grabbing items
14 that they want analyzed. There could possibly be a DNA
15 transfer there, too?

16 A Transfer is possible.

17 Q So if it's negligently handled by the person
18 who is collecting the evidence and didn't change gloves
19 after rubbing their hands over everything in the car,
20 there's a likelihood that that DNA could be transferred
21 to the items that you analyzed?

22 A Yes.

23 Q However, the DNA samples can't tell you when
24 that item was placed where it was when it was found?

ROUGH DRAFT TRANSCRIPT

1 A No. We don't know when the DNA got there.

2 Q And some of these may be intuitive. I'm not
3 trying to sound insulting.

4 A That's fine.

5 Q Okay. You can't tell the time that these
6 things were placed there?

7 A That is correct.

8 Q It could be months before?

9 A That is possibly, yes.

10 Q It certainly doesn't tell you the date that it
11 was left? You can't tell the time, correct?

12 A Correct.

13 Q And you can't tell whether it was deposited
14 consensually or otherwise? It's just -- it's a
15 scientific fact that this stuff is present basically is
16 all you can tell people?

17 A We can't tell you how or why it's there; we can
18 just tell you who it came from.

19 Q And you can't tell if it was transferred from
20 somewhere else?

21 A That's correct.

22 Q Okay. So an item could be contaminated but
23 your examination is only going to pick up the dominant
24 one and that may be a transferred DNA?

ROUGH DRAFT TRANSCRIPT

1 A Well, in this particular instance it would be
2 highly unlikely that you would have -- if I just
3 touched a hat briefly to place it in the bag, that I
4 would be the dominant contributor, particularly if I
5 was wearing a pair of gloves to swap out all of the DNA
6 that had been deposited on the inside of a hat from who
7 knows how much sweating. If the hat was brand new,
8 then it would be possible. But this hat was in very
9 used condition, as was the shirt.

10 Q Okay. But there was a minor DNA there also?

11 A There was.

12 Q And it is a fact that some people shed skin and
13 other DNA-bearing biological evidence a lot more easily
14 than other human beings?

15 A That's true.

16 Q So if you had some sort of scalp condition or
17 something going on, even dandruff perhaps; correct?

18 A That's correct.

19 Q So somebody could wear that hat once and
20 transfer DNA that would be dominant because of
21 dandruff?

22 A That is possible.

23 Q Or other skin flakes that would come off of
24 their scalp?

ROUGH DRAFT TRANSCRIPT

1 A Yes.

2 Q And it wouldn't necessarily be a hat that was
3 their primary hat? You can't tell that --

4 A True.

5 Q -- when there's a dominant and a minor DNA?

6 A That's true.

7 MR. HYLIN: I don't think I have any other
8 questions, Your Honor.

9 THE COURT: Redirect based on the
10 cross-examination, Mr. Young.

11 MR. YOUNG: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. YOUNG:

14 Q When Mr. Hylin asked you if you checked the
15 chain of custody and you responded, "I did not see it
16 was breached" -- do you recall testifying to that?

17 A Yes. He asked me if I remembered the name that
18 was on the bag. And I don't look for a name on the
19 bag. I look at the control number to make sure it's
20 the right control number and I check the seals to make
21 sure they're intact.

22 Q And did you that in this case?

23 A I did.

24 Q So when you said, "I did not see it was

ROUGH DRAFT TRANSCRIPT

1 breached," that could be interpreted as, "No, it wasn't
2 breached," or, "I didn't see if it was breached." Did
3 you check in this instance?

4 A Your Honor, may I refer to my notes?

5 THE COURT: You may.

6 THE WITNESS: In my notes I wrote down that I
7 received one tape sealed -- typically in forensic
8 science when you seal something, you put your initials
9 and the date that you sealed it on the bag. The
10 initials that had been scribbled onto this seal were
11 illegible. No date was added, but it was an intact,
12 tape sealed, brown paper bag, just the one seal. So it
13 had only been gone into -- not even gone into. It
14 had -- items placed into it, tape sealed and I received
15 it.

16 BY MR. YOUNG:

17 Q So it had not been -- the hypothetical
18 Mr. Hylin said about if someone goes into it ten times,
19 that wasn't this case?

20 A What happened to it before it came to me I
21 couldn't say, but when it was submitted to the
22 laboratory, one seal.

23 Q Okay. And when you say "one seal," it means
24 that when the items at least were put in the bag and

ROUGH DRAFT TRANSCRIPT

1 sealed up, that was the one seal?

2 A Correct.

3 Q And the evidence tape, you're familiar with
4 that tape based on your background; right?

5 A I am.

6 Q Is that tape that if it is breached in some way
7 it will be obvious to you?

8 A Yes. It's impossible to breach it and put it
9 back together without it being obvious.

10 Q All right. And Mr. Hylin went through a number
11 of items as far as the things in the car, the Starbucks
12 and whatnot. One other item I wanted to discuss with
13 you is shell casings, expended shell casings. Is that
14 something that you would test for?

15 A If it was a serious case and it was the last
16 thing, only hope that we would test it, but you have
17 little to no chance of getting DNA off of a spent shell
18 casing. The heat that comes off when the bullet is
19 fired cooks the DNA and destroys it 99.9 percent of the
20 time.

21 Q Okay. Now, you were asked about transfer, a
22 couple questions along that line. And you said that
23 transfer was possible.

24 A Yes, it is.

ROUGH DRAFT TRANSCRIPT

1 Q And based on your results on the previous slide
2 that you had up there as far as Quinzale Mason being
3 the source of DNA for the hat and the shirt, is that a
4 major concern to you in this case?

5 A It is not.

6 MR. YOUNG: The Court's indulgence.

7 Thank you, sir.

8 That's all, Your Honor.

9 THE COURT: Recross based on the redirect,
10 Mr. Hylin.

11 MR. HYLIN: Nothing, Your Honor. Thank you.

12 THE COURT: Is Mr. Gresko free to go, Mr. Hylin?

13 MR. HYLIN: Yes, Your Honor.

14 THE COURT: Mr. Young?

15 MR. YOUNG: Yes.

16 THE COURT: Mr. Gresko, thank you for being here
17 today. You're excused from your subpoena.

18 Ladies and gentlemen, it's about 4:30, so I'm
19 informed that the State has one additional witness to
20 call, and so we'll go through that today.

21 MR. YOUNG: Officer Koger.

22 THE BAILIFF: Stand here and be sworn.

23 (The oath was administered to the witness.)

24 THE WITNESS: I do.

ROUGH DRAFT TRANSCRIPT

1 THE CLERK: Just have a seat.
2 THE COURT: Mr. Young.
3 MR. YOUNG: If I can confer with your clerk for one
4 moment, Your Honor.

5 THE COURT: You may.

6 RYAN KOGER,
7 having been called as a witness herein,
8 being first duly sworn, was examined
and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. YOUNG:

11 Q Sir, good afternoon.

12 A Good afternoon.

13 Q Would you please state and spell for the record
14 your first and last name.

15 A Ryan Koger, K-o-g-e-r.

16 Q With whom are you currently employed?

17 A The Reno Police Department.

18 Q And how long have you been so employed?

19 A About eight and a half years.

20 Q Okay. And in what capacity have you been
21 employed with the Reno Police Department?

22 A Patrol division.

23 Q Sir, I'm going to direct your attention to
24 August 9th of 2014. Did you respond over to a

ROUGH DRAFT TRANSCRIPT

1 residence at Patton Drive related to a case?

2 A I did.

3 Q Do you recall what time you responded?

4 A I don't know the exact time, but it was midday,
5 probably around noon.

6 Q Okay. And were you the first officer on scene
7 or --

8 A No.

9 Q -- were there a couple there as well?

10 A There were other officers.

11 Q Okay. And what did you observe upon your
12 arrival?

13 A From what I remember, there were numerous
14 officers there doing various tasks, but there were a
15 couple officers tending to an adult female victim in
16 the parking lot.

17 Q And was there also a young girl being treated
18 as well?

19 A Not when I got there.

20 Q Not when you got there. And what did you do
21 upon arrival?

22 A I met with other officers and sergeants on
23 scene and I was tasked with taking some photographs.

24 Q Okay. And did you take photographs of the

ROUGH DRAFT TRANSCRIPT

1 scene?

2 A I did.

3 Q I'm going to show you what has been admitted --
4 I'm not going to go through all of these, but I'll
5 start with Exhibit 5. This has already been admitted
6 and testified to. Is this one of the photographs you
7 took?

8 A Yes.

9 Q Okay. And, again, I'm not going to show all of
10 them to you, but just to make sure. That's Exhibit 7.
11 Again, one that you took?

12 A Yes.

13 Q And there's a series that were admitted. All
14 those scene photographs you yourself took; correct?

15 A Yes.

16 Q All right. I'm going to fast forward, Officer,
17 to August 10th of 2014, so the following day. On
18 August 9th did you have any contact with an individual
19 identified as Quinzale Mason?

20 A No.

21 Q On August 10th of 2014 did you have an
22 opportunity to have contact with an individual
23 identified as Quinzale Mason?

24 A Yes.

ROUGH DRAFT TRANSCRIPT

1 Q Do you see Mr. Mason in the courtroom today?

2 A I do.

3 Q Can you point him out and describe to the jury
4 what he's wearing, please?

5 A He's seated in a wheelchair with gray pants and
6 a white shirt and dark tie.

7 MR. YOUNG: Your Honor, the record reflect
8 identification, please.

9 THE COURT: It will.

10 MR. YOUNG: Thank you.

11 BY MR. YOUNG:

12 Q And what was the basis for your contact with
13 Mr. Mason on August 10th?

14 A I heard officers on the radio advise that they
15 were following a suspect in the shooting from the
16 previous day.

17 Q And were you in the area?

18 A I was.

19 Q On an unrelated call?

20 A Correct.

21 Q So did you respond then?

22 A I did.

23 Q And where did you go?

24 A I responded to the area of North McCarran and

ROUGH DRAFT TRANSCRIPT

1 395 or 580. I'm not sure which it's referred to at
2 that area.

3 Q All right. Kind of the overpass over the
4 freeway there?

5 A Correct.

6 Q And what role did you take in effecting that
7 stop?

8 A I assisted in detaining the passengers, the
9 occupants of the vehicle.

10 Q Okay. Was there any in particular that you
11 assisted with?

12 A Yes.

13 Q Who was that?

14 A There was a young female and Quinzale.

15 Q Okay. As far as your involvement with
16 Mr. Mason goes, what did you specifically do with
17 respect to Mr. Mason?

18 A Assisted with getting him handcuffed.

19 Q And was there any conversation or statements
20 made by Mr. Mason during that process?

21 A There wasn't conversation but there were
22 statements, yes.

23 Q There was not conversation?

24 A No.

ROUGH DRAFT TRANSCRIPT

1 Q What do you mean by that?

2 A The only comments that we were making as police
3 officers were verbal commands to get him into custody.

4 Q Okay. The defendant made statements to you
5 while placing him in handcuffs?

6 A Correct.

7 Q What were those statements?

8 A They may not have been directly to me, but he
9 said them out loud.

10 Q You heard them?

11 A Yes.

12 Q Okay.

13 A He said something to the effect of "I was just
14 going" --

15 MR. HYLIN: Well, I'm going to object to "something
16 to the effect of," Your Honor.

17 MR. YOUNG: Fair enough.

18 THE COURT: Well, hold on. I'll rule on the
19 evidentiary objection. You can rephrase the question.

20 Officer Koger, to the best of your ability you need
21 to testify as to what was said, not to paraphrase. So
22 if you have a recollection of what Mr. Mason said, then
23 you may testify to that.

24 Rephrase the question, Mr. Young.

ROUGH DRAFT TRANSCRIPT

1 MR. YOUNG: I will.

2 BY MR. YOUNG:

3 Q Did you draft a police report in this case?

4 A I did.

5 Q Okay. And in fact in that police report did
6 you put very specific quotes that Mr. Mason said in
7 your contact with him?

8 A I did.

9 Q And in that report did you actually put the
10 statements he made in quotation marks?

11 A I did.

12 Q When you put something in your report with
13 quotation marks, why do you do that?

14 A It would be a verbatim quote.

15 Q Okay. Do you recall as you sit here now
16 testifying today the verbatim quotes that Mr. Mason
17 made?

18 A I don't know that I would be able to say it
19 verbatim. If I looked at my report I could read what I
20 have in my report.

21 Q Would that help you with accuracy purposes?

22 A Yes.

23 THE COURT: Once you've refreshed your
24 recollection -- Officer Koger, you can't read from your

ROUGH DRAFT TRANSCRIPT

1 report, but you may review your report in order to
2 refresh your recollection and then Mr. Young can ask
3 you the question again.

4 MR. HYLIN: And, Your Honor, prior to his answer I
5 would like to take him on voir dire briefly.

6 THE COURT: Okay. Before you refresh your
7 recollection, Mr. Hylin, go ahead.

8 MR. HYLIN: Thank you.

9 VOIR DIRE EXAMINATION

10 BY MR. HYLIN:

11 Q At what point did you place Mr. Mason in your
12 patrol vehicle?

13 A After he was handcuffed.

14 Q All right. And he was handcuffed and he was
15 clearly in custody?

16 A Correct.

17 Q He was being arrested?

18 A Correct.

19 Q So you placed him in the back of your patrol
20 unit, correct?

21 A Correct.

22 Q And there were matters being discussed between
23 you and him?

24 A No.

ROUGH DRAFT TRANSCRIPT

1 Q Were there commands from you or other police
2 officers regarding --

3 A Neither. Once he was placed in my patrol
4 vehicle, there was neither.

5 Q Okay. Were you standing outside the police
6 vehicle when these statements were made?

7 A No. I was seated in the driver's seat.

8 Q Had you already left for the station?

9 A We were never at the station.

10 Q Well, I mean, did you leave for 911 Parr?

11 A No.

12 Q Okay. He was -- you were in the police unit,
13 you were in the driver's seat, he was in the back?

14 A Correct. We were at the location of the
15 traffic stop.

16 Q You were at the location of the traffic stop.
17 Had you read him his Miranda admonition?

18 A No.

19 Q Did you ask him any questions?

20 A I did not.

21 MR. HYLIN: I have no further questions, Your
22 Honor.

23 THE COURT: Now you can refresh your recollection,
24 Officer Koger.

ROUGH DRAFT TRANSCRIPT

1 THE WITNESS: Okay.

2 THE COURT: Have you refreshed your recollection?

3 THE WITNESS: Yes.

4 THE COURT: Then Mr. Young will take back the
5 report and ask you the question again.

6 DIRECT EXAMINATION (Resumed)

7 BY MR. YOUNG:

8 Q During the handcuffing process of Mr. Mason,
9 again, based on refreshing your recollection from your
10 report, what did he say?

11 A He said, "I was going to the station to turn
12 myself in."

13 Q Okay. Did he say anything else at that time?

14 A Yes.

15 Q What?

16 A He said -- I'm sorry. I'm drawing a blank.

17 Q Do you want to review your report again?

18 A Yeah, please. I apologize.

19 Q No need to apologize. Just let me know if that
20 refreshes your recollection.

21 A Yes.

22 Q And, again, you're reading parts that are
23 placed in quotations; correct?

24 A Correct.

ROUGH DRAFT TRANSCRIPT

1 Q I'll get that back from you.

2 Again, during the handcuffing process, what did
3 Mr. Mason say?

4 A He said, "This has been messing me up."

5 Q Okay. Now, as counsel was kind of getting into
6 a little bit, after he was -- Mr. Mason was handcuffed
7 and made those initial statements, did you ask him any
8 questions prompting those statements at all?

9 A No.

10 Q Did any other officers that you heard ask him
11 any questions prompting those statements?

12 A No.

13 Q Now, as I understand the brief questioning that
14 Mr. Hylin did of you, Mr. Mason was placed in the
15 backseat of your patrol car?

16 A Yes.

17 Q And then you sat in the front seat in the
18 driver's seat of your patrol car?

19 A Yes.

20 Q At that point did you ask Mr. Mason any
21 questions whatsoever?

22 A No.

23 Q Was it your intention to question him at all?

24 A No.

ROUGH DRAFT TRANSCRIPT

1 Q Mr. Hylin brought up Miranda. Are you familiar
2 with Miranda?

3 A I am.

4 Q And the Miranda rights?

5 A Yes.

6 Q Do you advise an individual of that prior to
7 any questioning?

8 A No.

9 Q So how did the statements -- or did he make
10 statements, "he" being Mr. Mason, while sitting in the
11 back of your patrol car?

12 A Yes.

13 Q And, again, was that in response or prompted by
14 any questioning by you or any other officer?

15 A No.

16 Q What did -- if you recall, what did Mr. Mason
17 say while sitting in the back of your patrol car?

18 A He said, "I want to thank you guys for not
19 shooting me."

20 Q How did you respond to that?

21 A I said, "We only shoot people if they give us a
22 reason to."

23 Q And do you recall if Mr. Mason then responded
24 to that statement?

ROUGH DRAFT TRANSCRIPT

1 A Yes.

2 Q What was that?

3 A He said, "Well, what I did was violent and you
4 guys might have thought that I was going to be violent
5 with you."

6 Q Did you have any interaction with Mr. Mason
7 beyond what you've testified to here today?

8 A No.

9 Q Sir, you reviewed your report just now on the
10 stand as part of your testimony; correct?

11 A Yes.

12 Q And do you recall when it was in relation to
13 your contact on August 10th that you wrote your report?

14 A I don't recall. It was likely the same day,
15 but I can't say that for certain.

16 Q Okay. The comments that are in your report,
17 the statements in your report that you used to refresh
18 your recollection, all accurate?

19 A Yes.

20 MR. YOUNG: No further questions, Your Honor.

21 THE COURT: Cross-examination, Mr. Hylin.

22 MR. HYLIN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24
ROUGH DRAFT TRANSCRIPT

1 BY MR. HYLIN:

2 Q Did you have one of those little pocket
3 recording devices on that day?

4 A No.

5 Q What are your general orders as far as carrying
6 them?

7 A To carry some sort of device.

8 Q You're supposed to carry that?

9 A Correct.

10 Q But you weren't that day?

11 A I had a device but not a specific pocket
12 recorder.

13 Q All right. So you had a recording device?

14 A Correct.

15 Q But you didn't -- did you record this?

16 A No. I didn't have a chance to.

17 Q Well, doesn't the general order say that when
18 you're dealing with arrestees and other situations in
19 the field you're supposed to have it on so it's
20 recording?

21 A No.

22 Q All right. But you didn't have it on to record
23 it at this time?

24 A I did not.

ROUGH DRAFT TRANSCRIPT

1 MR. HYLIN: I have no further questions, Your
2 Honor.

3 THE COURT: Redirect based on the
4 cross-examination.

5 REDIRECT EXAMINATION

6 BY MR. YOUNG:

7 Q You said that you did not record -- in your
8 words you did not have a chance to?

9 A Correct.

10 Q What did you mean by that?

11 A It happened so fast that I didn't have a chance
12 to initiate a recording device.

13 Q If you were to intend on interviewing an
14 individual, would it be common for you to activate your
15 recorder?

16 A Yes.

17 Q And in this case you had no intention of asking
18 Mr. Mason any questions at all?

19 A No.

20 MR. YOUNG: That's all. Thank you.

21 THE COURT: Recross.

22 MR. HYLIN: Nothing further.

23 THE COURT: Is Officer Koger to go?

24 MR. YOUNG: Thank you, Your Honor.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Mr. Hylin?

2 MR. HYLIN: Yes, Your Honor.

3 THE COURT: Officer Koger, you're released from
4 your subpoena. You're free to go about your business
5 today. Thank you being here today.

6 Does the State have any other witnesses to call?

7 MR. YOUNG: Your Honor, for the State's case in
8 chief, the State rests. Thank you.

9 THE COURT: Ladies and gentlemen, what the State is
10 indicating is that they have no other evidence that
11 they wish to present in their case in chief and so that
12 means that they're case in chief is over. It is 10
13 minutes to 4:00, and so we will break for the
14 afternoon, but I'm going to stay here and work with the
15 attorneys a little bit longer. I'm going to let you
16 go, though.

17 We will come back tomorrow. And what I anticipate
18 happening tomorrow is that we will begin with the
19 reading of jury instructions. So I want you to come
20 back at 9:30 tomorrow, not 8:30. I want you to be here
21 at 9:30 in the morning. And then the case will resume
22 at 9:30 a.m.

23 The admonition applies, so I'm going to read it to
24 you one more time today. You are instructed not to

ROUGH DRAFT TRANSCRIPT

1 discuss this case among yourselves or with anyone else
2 or to form any conclusions concerning the case until it
3 is submitted to you. You're not to read, look at or
4 listen to any news media accounts relating to this case
5 should there be any. You're not to form any opinion
6 about the case until it is finally submitted to you.

7 Do not experiment or investigate. Do not visit the
8 scene. Do not refer to any outside sources for
9 instructions on the law. Rely only on the court for
10 legal instructions.

11 All rise for the jury.

12 (Outside the presence of the jury:)

13 THE COURT: Everyone may be seated.

14 The record will reflect that the jury has retired
15 to the jury room.

16 Mr. Mason, pursuant to a Nevada Supreme Court case
17 by the name of Phillips versus State, I am strongly
18 advised that I should talk to you about your right to
19 testify or not testify in these proceedings, and so
20 I'll do that now.

21 The Nevada Supreme Court instructs district courts
22 that we should do that the at or near the closing of
23 the State's case. And so what has happened is that the
24 State has indicated to me they're not going to present

ROUGH DRAFT TRANSCRIPT

1 any additional evidence in their case in chief, and so
2 now is a good time for me to discuss this with you.

3 Mr. Mason, are you aware that you have a
4 constitutional right not to be compelled to testify in
5 your own case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you discussed with Mr. Hylin?

8 THE DEFENDANT: Yes.

9 THE COURT: You need to speak a little louder for
10 me.

11 THE DEFENDANT: Yes.

12 THE COURT: Are you also aware that the decision
13 whether or not you testify or not -- whether or not you
14 choose to testify or not is solely up to you and no one
15 else. That's a decision that you alone have to make.
16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: But you make that with the advice of
19 your attorney. Mr. Hylin is a very experienced
20 attorney. And so the decision in the end is yours to
21 make, but you make that after talking to your attorney
22 and getting his advice on those issues. Do you
23 understand that?

24 THE DEFENDANT: Yes.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: And have you -- without telling me what
2 your decision is, have you had those discussions with
3 Mr. Hylin so far?

4 THE DEFENDANT: Not really, no.

5 THE COURT: Okay.

6 MR. HYLIN: Well, Your Honor, we have had some
7 discussions, but there's just been no decision yet.

8 THE COURT: I understand that. I don't expect you
9 to tell me right now, "I have decided to testify or not
10 testify." But the State is finished with their case,
11 and so you need to make that decision, because the next
12 thing that happens in the case is you have to put on a
13 case in chief if you choose to do so. And that would
14 be when you testify.

15 Do you understand that, Mr. Mason?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, if you do testify, you will be
18 subject to cross-examination by Mr. Young. And based
19 on one of the charges in the Amended Information, I'm
20 aware that you're an ex-felon. And so your prior
21 criminal conviction if it meets with certain statutory
22 requirements would be the subject of cross-examination.
23 Do you understand that?

24 THE DEFENDANT: Yes.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: They wouldn't be able to get into the
2 facts of it, but the fact that you're a convicted
3 felon, when that felony occurred, and what the felony
4 was would be the subject of impeachment. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Now, is there anything
8 about your constitutional right to testify that you
9 want to ask me about? I can't give you legal advice,
10 but I can clarify any of those specific issues with
11 you.

12 THE DEFENDANT: As far as they bringing up my prior
13 felony, will I be able to explain the situation?

14 THE COURT: The State will not be allowed to
15 inquire as to the underlying circumstances of your
16 prior criminal conviction, because that would be other
17 act evidence under NRS 48.035 and, therefore, they
18 cannot do that. Whether or not you would be allowed to
19 start talking about that prior criminal conviction is
20 something entirely different. I'm not quite sure that
21 you would want to do that.

22 It's my understanding that -- well, at least, as I
23 understand it, your prior criminal conviction, at least
24 one of them, is for a homicide. And so I'm not sure

ROUGH DRAFT TRANSCRIPT

1 that you want to get into what the nature of that
2 offense was or what happened. That would be something
3 Mr. Hylin and you would talk about. But I'll leave
4 that up to you and Mr. Hylin. I can't give you legal
5 advice about that. But I can tell you that the State
6 would not be allowed to start questioning you about
7 your prior criminal conviction beyond the fact that it
8 exists, when it was, and what the nature of the offense
9 was.

10 THE DEFENDANT: Will I be able to explain the
11 outcome of that situation as far as like --

12 THE COURT: You'll have to talk to Mr. Hylin about
13 that. I'm not going to give you legal advice. That's
14 Mr. Hylin's job. But I just want you to know that
15 that's something that they will be allowed to talk
16 about. So if you take the stand, that prior is put in
17 front of jury, just like Mr. Holly's three prior felony
18 convictions were placed in front of the jury as well.
19 Do you understand that?

20 THE DEFENDANT: Yes, I understand.

21 THE COURT: So the next time I see you, Mr. Mason,
22 I expect that you will have discussed those facts with
23 Mr. Hylin and you'll have the decision whether or not
24 you choose to testify. If you just indicate that

ROUGH DRAFT TRANSCRIPT

1 you're not going to put on a case in chief, then I'll
2 assume that you're waiving your right to testify. Do
3 you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: So do you have any questions about that
6 beyond what we've discussed?

7 THE DEFENDANT: No, sir.

8 THE COURT: Counsel, other than Mr. Mason's
9 testimony, is it anticipated as you sit here at this
10 moment that there will be any additional witnesses that
11 the defense intends to call in its case in chief?

12 MR. HYLIN: Not for us, Your Honor. All we -- if
13 Mr. Mason decides to testify, that would be our only
14 witness.

15 THE COURT: Then what I would like to do is we will
16 meet with counsel in my chambers at 8:30 in the
17 morning. As I stated, I do have an 8:15 conference
18 call on a civil matter. So that should only take 15
19 minutes. So we'll meet at 8:30 in the morning to
20 finalize jury instructions. If the counsel could just
21 go through those. They're in the order that I intend
22 on offering them. Then we'll number them and we will
23 have the final conference pursuant to local criminal
24 rule 7 and NRS 175.161 at 8:30 in the morning. It

ROUGH DRAFT TRANSCRIPT

1 should not take us very long to put them on the record.

2 Mr. Hylin, do you have any other instructions
3 you --

4 MR. HYLIN: I have one to offer if he decides to
5 testify, and that was it.

6 THE COURT: All right. And the one issue -- one of
7 the issues that I wanted to talk about, just so you
8 know, Mr. Hylin, is you'll see absent from the packet
9 is the jury instruction regarding the defendant's
10 testifying or not testifying. Mr. Young offered that.
11 But pursuant to NRS 175.185, I believe it is, the State
12 should not offer that jury instruction. That is an
13 instruction that is only offered by the defendant. And
14 so I took that out. It is not part of the packet.

15 If you want to offer it, you can either propose
16 your own instruction or I do have the one that
17 Mr. Young provided, but it was taken out of the jury
18 packet.

19 MR. HYLIN: Well, if he does not testify, I will
20 offer that one. I was satisfied with the language in
21 it.

22 THE COURT: Okay. It's just one of those things
23 that the State should never offer that jury
24 instruction. I don't know why it's even in the State's

ROUGH DRAFT TRANSCRIPT

1 database.

2 Mr. Barb, an old prosecutor, actually got into an
3 argument once with a judge that I saw because the judge
4 told him to prepare it and he refused to even draft it
5 or to give it. But Mr. Barb was somewhat of a stickler
6 on the rules and, therefore, he just said, "I'm not
7 going to do it, Judge. If you want to get it, you can
8 do it yourself."

9 And I think we can all imagine Mr. Barb saying just
10 that.

11 So with that, we will be in recess until 8:30 in
12 the morning. Court's in recess.

13 (The proceedings were adjourned at 4:57 p.m.)

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ROUGH DRAFT TRANSCRIPT

1 ACKNOWLEDGMENT

2 I, LORI URMSTON, Certified Court Reporter, in and
3 for the State of Nevada, do hereby acknowledge:

4 That the foregoing proceedings were taken by me
5 at the time and place therein set forth; that the
6 proceedings were recorded stenographically by me and
7 thereafter transcribed via computer under my
8 supervision; that the foregoing is a true ROUGH DRAFT
9 transcription of the proceedings to the best
10 of my knowledge, skill and ability and has not been
11 proofread, corrected or certified.

12 I further certify that I am not a relative nor an
13 employee of any attorney or any of the parties, nor am
14 I financially or otherwise interested in this action.

15 I declare under penalty of perjury under the laws
16 of the State of Nevada that the foregoing statements
17 are true and correct.

18 DATED: At Reno, Nevada, this 6th day of
19 May, 2015.

20
21
22 LORI URMSTON, CCR #51

23 -----
24 LORI URMSTON, CCR #51

ROUGH DRAFT TRANSCRIPT

CASE NO. CR14-1830

STATE OF NEVADA VS. QUINZALE MASON

PAGE 1

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/10/15

ONGOING JURY TRIAL

HONORABLE

8:33 a.m. – Court reconvened outside the presence of the jury.

ELLIOTT A.

Deputy District Attorney Zach Young was present on behalf of the State.

SATTLER

Defendant was present with counsel, Chief Deputy Public Defender Carl Hylin.

DEPT. NO. 10

Defense counsel advised the Court that when the Defendant returned to the jail yesterday, his blood sugar was very high, and he suggested that the Defendant be provided with an insulin shot before lunch so his blood sugar does not spike again today.

M. White

Discussion ensued between the Court and Defense counsel regarding this issue.

(Clerk)

COURT directed Deputy Gray to contact the Washoe County Jail and find out if it would be possible to provide the Defendant with an insulin shot at approximately 11:45 a.m. today. Jury brought into the courtroom.

L. Urmston

State's counsel called **Officer Robert Stockwell** who was sworn and direct examined.

(Reporter)

State's counsel offered Exhibits 11 & 12; no objection; ordered ADMITTED into evidence.

Witness further direct examined; cross examined; and excused.

State's counsel called **Dr. Scott Cinelli** who was sworn and direct examined.

State's counsel offered Exhibits 22 & 23; no objection; ordered ADMITTED into evidence.

Witness further direct examined; cross examined; re-direct examined; and excused.

State's counsel called **Wilma Gray** who was sworn and direct examined; identified the Defendant; further direct examined; cross examined; re-direct examined; and excused.

COURT admonished and excused the jury.

COURT advised respective counsel that Deputy Gray has informed him that someone from the Washoe County Jail will be coming down at the lunch hour to provide the Defendant with insulin.

9:55 a.m. – Court stood in recess.

10:15 a.m. – Court reconvened. Court, respective counsel, Defendant and jury present.

State's counsel called **Detective Allison Jenkins** who was sworn and direct examined; cross examined; re-direct examined; and excused, subject to recall.

State's counsel called **Delphine Martin** who was sworn and direct examined; identified the Defendant; further direct examined; cross examined; re-direct examined; and excused.

State's counsel called **Stephen Maes** who was sworn and direct examined; cross examined; re-direct examined; and excused.

State's counsel called **Officer Brian Kleidosty** who was sworn and direct examined.

State's counsel offered Exhibits 3 & 4; no objection; ordered ADMITTED into evidence.

Witness further direct examined.

State's counsel offered Exhibit 17; Defense counsel objected. State's counsel withdrew his request to offer Exhibit 17.

Witness further direct examined; and excused.

State's counsel called **Detective Patrick Blas** who was sworn and direct examined.

PAGE 2

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/10/15

HONORABLE

ELLIOTT A.

SATTLER

DEPT. NO. 10

M. White

(Clerk)

L. Urmston

(Reporter)

ONGOING JURY TRIAL**COURT** admonished and excused the jury.**COURT** noted that nurse from the jail is here, and the Defendant will be given his insulin shot during the lunch hour.

11:57 a.m. – Court stood in recess for lunch.

1:23 p.m. – Court reconvened. Court, respective counsel, Defendant and jury present.

Witness further direct examined; identified the Defendant; further direct examined.

State's counsel offered Exhibits 13 thru 21; Defense counsel objected; objection overruled, and Exhibits 13 thru 21 shall be ADMITTED into evidence.**State's counsel offered Exhibit 24; no objection; ordered ADMITTED into evidence.**

Witness further direct examined; cross examined; re-direct examined; re-cross examined; and excused, subject to recall.

State's counsel called **Eboni Spurlock** who was sworn and direct examined; identified the Defendant; further direct examined; cross examined; and excused.State's counsel called **Detective Dimitrius Kasselbaum** who was sworn and direct examined; identified the Defendant; further direct examined.

Defense counsel requested a hearing outside the presence of the jury.

COURT admonished and excused the jury.

Defense counsel noted that the witness just testified regarding the felony database, which would imply that the Defendant is a felon; and he further moved for a mistrial.

State's counsel responded; and he further stated that this issue could be remedied with a curative instruction.

Defense counsel replied; and he further argued for a mistrial.

Upon questioning by the Court, Detective Kasselbaum indicated that he did not intentionally make that statement, and he was just trying to point out the importance of seizure orders and chains of custody; and he further stated that State's counsel did advise him not to discuss the Defendant's criminal history.

COURT found that the State has not violated their responsibilities as the witness was advised prior to testifying that he was not to discuss the Defendant's prior criminal history, the witness did not intentionally make the statement, and it was not directly about the Defendant; and he further found that this issue does not rise to the level of a mistrial.**COURT ORDERED:** Defense counsel's motion for a mistrial is DENIED.

Upon questioning by the Court, Defense counsel stated that he does not wish to draw more attention to this issue by giving the jury a curative instruction; and he further requested that the witness be instructed not to discuss felony databases, etc.

COURT directed Detective Kasselbaum not to offer any testimony regarding the Defendant's criminal history, felony databases, etc.*Clerk's note: During this hearing outside the presence of the jury, the jail nurse was in the courtroom, administering an insulin shot to the Defendant.*

3:16 p.m. – Court stood in recess.

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/10/15

HONORABLE

ELLIOTT A.

SATTLER

DEPT. NO. 10

M. White

(Clerk)

L. Urmston

(Reporter)

ONGOING JURY TRIAL

3:28 p.m. – Court reconvened outside the presence of the jury. Court, respective counsel and Defendant present.

COURT noted that a packet of jury instructions, arranged in the order he intends to give them, were provided to respective counsel at the recess.

State's counsel advised the Court that he intends to call two more witnesses after Detective Kasselbaum, and he hopes to be done by the end of the day.

Jury brought into the courtroom.

Witness further direct examined; cross examined; and excused.

State's counsel called **Stephen Gresko** who was sworn and direct examined.

State's counsel requested to play Exhibit 26 (DNA power-point presentation) for the jury, and that Mr. Gresko be allowed to testify in a narrative fashion during the presentation; no objection; **SO ORDERED.**

COURT noted that Exhibit 26 was marked for demonstrative purposes only, and it will not be admitted into evidence.

Witness testified in a narrative fashion while Exhibit 26 was played for the jury; further direct examined; cross examined; re-direct examined; and excused.

State's counsel called **Officer Ryan Koger** who was sworn and direct examined; identified the Defendant; further direct examined; voir dire by Defense counsel; further direct examined; cross examined; re-direct examined; and excused.

State rested.

COURT admonished and excused the jury for the evening; and he further advised them to return tomorrow, February 11, 2015, at 9:30 a.m.

COURT canvassed the Defendant regarding his rights against self-incrimination.

Defense counsel advised the Court that he will not have any other witnesses except the Defendant, should he choose to testify.

Discussion ensued between the Court and respective counsel regarding the jury instructions.

COURT ORDERED: Respective counsel shall meet in chambers tomorrow, February 11, 2015, at 8:30 a.m. to settle jury instructions.

4:57 p.m. – Court stood in recess for the evening.

CODE: 4185
LORI URMSTON, CCR #51
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

STATE OF NEVADA,

Plaintiff,

Case No. CR14-1830

vs.

Dept. No. 10

QUINZALE MASON,

Defendant.

-----/

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 3

FEBRUARY 11, 2015; WEDNESDAY

RENO, NEVADA

Reported by: LORI URMSTON, CCR #51

ROUGH DRAFT TRANSCRIPT

1 APPEARANCES:

2 For the Plaintiff: ZACH YOUNG
3 Deputy District Attorney
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7 Reno, Nevada 89520

8 For the Defendant: CARL F. HYLIN
9 Deputy Public Defender
10 350 S. Center Street
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ROUGH DRAFT TRANSCRIPT

1 RENO, NEVADA; WEDNESDAY, FEBRUARY 11, 2015; 9:00 A.M.

2 --oOo--

3 (Outside the presence of the jury:)

4 THE COURT: Okay. We'll go on the record in
5 CR14-1830, the State of Nevada versus Quinzale Mason.
6 The record will reflect that we are meeting in the
7 courtroom outside the presence of the jury. Mr. Mason
8 is present with his attorney, Mr. Hylin. Mr. Young is
9 here on behalf of the State of Nevada. We are here to
10 finalize the jury instructions.

11 The Court has met with counsel this morning and
12 tentatively established the order and number of jury
13 instructions that will be given. We did that pursuant
14 to NRS 175.161 and Washoe County Rule of Criminal
15 Procedure 7. So now we are just going to put on the
16 record and number the jury instructions.

17 Counsel, as we go through the instructions, if you
18 have any objections, please make the objection as we
19 get to the instruction and then we will create a record
20 regarding that. Failure to make an objection at this
21 point, I will assume, means that you're waiving any
22 objection to the instruction.

23 So with that, Instruction No. 1 is ladies and
24 gentlemen of the jury.

ROUGH DRAFT TRANSCRIPT

1 Instruction No. 2, if in these instructions.

2 Instruction No. 3, if during this trial.

3 Instruction No. 4 is 2 pages and it is the Amended
4 Information instruction alleging just Count I and Count
5 II.

6 Instruction No. 5 an, Amended Information.

7 Instruction No. 6, the penalty provided by law.

8 Instruction No. 7, there are two kinds of evidence,
9 direct and circumstantial.

10 Instruction No. 8, nothing that counsel say.

11 Instruction No. 9, it is the duty of the attorneys.

12 Instruction No. 10, neither side is required.

13 Instruction No. 11, to the jury alone belongs the
14 duty.

15 Instruction No. 12, the fact that a witness has
16 been convicted of a felony.

17 MR. HYLIN: Your Honor, I'll be objecting to the --
18 and requesting the removal of the second sentence in
19 that which states "The fact of such a conviction does
20 not necessarily destroy or impair the witness's
21 credibility."

22 I think that essentially says, okay, you can
23 consider the -- you can consider the credibility of the
24 witness if he's been convicted of a felony, but, ah, it

ROUGH DRAFT TRANSCRIPT

1 really doesn't matter anyway.

2 THE COURT: Mr. Young.

3 MR. HYLIN: That's what that second sentence says.

4 MR. YOUNG: Your Honor, I would submit is a correct
5 statement of the law. It doesn't make any statement
6 that the jury must disregard it. It just simply says
7 that they -- taken in the totality they may consider
8 and give whatever weight the jury chooses to a felony
9 conviction. In conjunction with the balance of the
10 instructions, it's an accurate statement of the law.

11 THE COURT: The Court finds that Instruction No. 12
12 as written is an accurate statement of the law.
13 Further, the Court finds that the sentence that follows
14 the sentence Mr. Hylin is complaining about does
15 clarify and provide additional context to what the jury
16 should consider in weighing a felony conviction. And,
17 therefore, the Court will give the instruction as
18 written over Mr. Hylin's objection.

19 The next instruction is inconsistencies or
20 discrepancies. And that will be number 13.

21 MR. HYLIN: And I will object to that.

22 THE COURT: And what's the objection to that one,
23 Mr. Hylin?

24 MR. HYLIN: Well, it's already covered in a

ROUGH DRAFT TRANSCRIPT

1 previous instruction that states to the jury alone
2 belongs the duty of weighing the evidence and
3 determining the credibility of witnesses. I can read
4 the whole thing if you'd like. It's Instruction No.
5 11 --

6 THE COURT: No, that's all right.

7 MR. HYLIN: -- the one I'm referring to. And it
8 gives a fairly thorough treatise there of what they're
9 to be considering as far as the witnesses are
10 concerned. And I realize that now they speak of
11 inconsistencies on the proposed number 13. I assume
12 you --

13 THE COURT: Right, that's number 13.

14 MR. HYLIN: Number 13 where it says inconsistencies
15 or discrepancies in the testimony of a witness. Again,
16 what that essentially does is it minimizes the -- and
17 molds the way the jury is supposed to consider people.
18 Well, that's why we have juries, is to use their common
19 sense in conjunction with Instruction No. 11 to gauge
20 the trustworthiness of the testimony of the jurors --
21 excuse me -- of the witnesses.

22 So this is, you know, a state-generated instruction
23 that essentially says, "Look, if there's
24 inconsistencies in the testimony, who cares. No big

ROUGH DRAFT TRANSCRIPT

1 deal. Don't pay any attention to it."

2 THE COURT: Well, Mr. Young, if you'd like to
3 respond to that.

4 MR. YOUNG: I guess briefly. It's, again, an
5 accurate statement of the law taken in conjunction with
6 the balance of the instructions. It tells the jury
7 that they are the deciders of the facts, that they can
8 consider the credibility, including inconsistencies or
9 discrepancies. And taking this specific instruction 13
10 as a whole, I think it doesn't mandate that they rule
11 one way or the other, decide one way or another. It
12 says you can consider it and give it whatever weight
13 you feel is appropriate, particularly that last
14 sentence.

15 THE COURT: The Court will give the instruction as
16 noted over the objection of Mr. Hylin. Instruction No.
17 2 discusses the fact that juries are to consider all of
18 the instructions as a whole and not to single out one
19 sentence or phrase to the exclusion of others.

20 And so when the jury -- or if the jury were to
21 consider possibly the testimony of witnesses and
22 balance that against the reasonable doubt instruction
23 that we know statutorily the Court must give, the Court
24 believes that it's appropriate to give them some way to

ROUGH DRAFT TRANSCRIPT

1 balance or weigh the credibility of the witnesses. And
2 it is important for the jury to know that just because
3 there may be one inconsistency city or some
4 inconsistencies, they need to weigh those things and
5 not automatically and just come to some specific
6 conclusion. Instruction No. 13 gives them the ability
7 to weigh that.

8 Further, Instruction No. 13 does inform the jury
9 that it's up to them to decide what weight to give
10 inconsistencies or discrepancies. They may choose to
11 discredit all of the testimony if that is what their
12 final conclusion is. And so the Court will give
13 Instruction No. 13 as written.

14 Instruction No. 14 is the testimony of one witness.

15 Instruction No. 15, a statement made by a
16 defendant.

17 Number 16 is the expert witness instruction.

18 17, every person charged.

19 Instruction No. 18 is the defendant not testifying
20 instruction. As I stated yesterday, NRS 175.181 -- and
21 I think yesterday I said .185, but it's .181 -- directs
22 that only the defendant can proffer this instruction.

23 Mr. Hylin, on behalf of Mr. Mason is it his desire
24 to have this instruction given to the jury?

ROUGH DRAFT TRANSCRIPT

1 MR. HYLIN: That is accurate, Your Honor, and the
2 language that exists in the instruction.

3 THE COURT: So Instruction No. 18 will read to the
4 jury as written.

5 Instruction No. 19, in every crime.

6 Instruction 20 is the intent instruction.

7 21 is the statutory reasonable doubt instruction.

8 22, every count charges a separate and distinct
9 offense.

10 23 is the elements of Count No. I.

11 24 is the elements of Count No. II 2.

12 25 is the statutory definition of a deadly weapon.

13 26 is the instruction that the State is not require
14 to have recovered the deadly weapon. Mr. Hylin, you
15 had indicated you wanted to object to this instruction.

16 MR. HYLIN: That is accurate, Your Honor. I'm
17 objecting to this instruction which would be numbered
18 number 26.

19 THE COURT: Yes.

20 MR. HYLIN: That is already covered by Instruction
21 No. 10 which states "Neither side is required to call
22 as witnesses all persons who may have been present at
23 any of the events disclosed by the evidence or who may
24 appear to have some knowledge of the events." And this

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1 is the salient language, "or to produce all objects or
2 documents mentioned or suggested by the evidence."

3 So, in other words, Instruction No. 26 really isn't
4 needed. And I also think that it also relieves the
5 State again of some of their burden of proof simply
6 because they don't have a certain piece of evidence.
7 As I mentioned before we were on the record, the State
8 could probably offer a dozen instructions that kind of
9 aid them in proving their case, for instance, you know,
10 don't pay any attention to Detective Blas, because
11 Detective Blas isn't required under the law to gather
12 every little piece of evidence that is deemed
13 appropriate by the defense or, you know, the State
14 isn't required to swab the car, the State isn't
15 required to do this, the State isn't required to do
16 that.

17 And I think this is an old instruction that's been
18 covered. I've looked up some of the case law on it, at
19 least in California. And I don't -- you know, I know
20 it's an instruction that's commonly given, but that
21 doesn't mean just because through tradition that is
22 correct.

23 So in my opinion, and I think under the tenets of
24 due process and the requirements in the Constitution

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1 that require the State to prove every element beyond a
2 reasonable doubt, adding instructions which relieve
3 them of that burden or lightens the burden in any way
4 are objectionable.

5 THE COURT: Mr. Young, what's the citation? I
6 think it was to Harris or Harrison versus State.

7 MR. YOUNG: Harrison v. State, H-a-r-r-i-s-o-n, 96
8 Nevada 347. It's a 1980 case. The pinpoint page is
9 350 to 351.

10 MR. HYLIN: I am in receipt of that case. And
11 actually the Supreme Court at that time gave the
12 argument pretty short shrift as you can see from the
13 opinion. They simply stated that the argument has no
14 merit. You know, it might be nice to have some case
15 law from this millennia. It might be appropriate.

16 THE COURT: Well, one moment. As a point of
17 interest, I actually --

18 How about something from 2008, Mr. Hylin? In
19 Newman versus State, N-e-w-m-a-n versus the State of
20 Nevada, 124 Nevada 1496, 238 Pacific 3d, 842, the issue
21 specifically was raised.

22 I'm looking for a page number. One moment. For
23 some reason my computer is not providing me with page
24 numbers. But I can tell you that the Nevada Supreme

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1 Court actually did address this issue.

2 Specifically in Newman versus State, it says,
3 quote, "Fifth, we reject Newman's contention that her
4 appellate counsel was ineffective for failing to argue
5 on appeal that the jury was improperly instructed. The
6 State was not required to have recovered a deadly
7 weapon or produced a deadly weapon in court in order to
8 prove the use of a deadly weapon in the commission of a
9 crime. The State is not required to produce the actual
10 weapon at trial in order to enhance the defendant's
11 sentence for the use of a deadly weapon," close quote.

12 And it's -- then it has Footnote 17. Footnote 17
13 is a citation to Harrison versus State, 96 Nevada 347.
14 So the Nevada Supreme Court in 2008 addressed this very
15 issue.

16 The Court will give the instruction as indicated.

17 Instruction No. 27 is the term willfully. So it's
18 the definition of willfully.

19 Instruction 28 is the motive instruction.

20 29 is the--

21 MR. HYLIN: I was going to object to the motive
22 instruction also, Your Honor.

23 THE COURT: Okay. Instruction 28 then. We'll go
24 back. Your objection, Mr. Hylin.

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1 MR. HYLIN: Well, even though motive -- well,
2 here's my premise. Motive is not an element of the
3 offense, so why are we instructing people, the jury, on
4 where the motive fits in? First of all, it's a common
5 sense concept with the jury. I don't think that the
6 Court needs to be, you know, again, making a lighter
7 burden on the State by saying, "Well, yeah, you know,
8 you can consider motive."

9 And I know what some of the response is going to
10 be. It also states in there that the absence of motive
11 may tend to establish innocence. And I did read that
12 in another California opinion. This is Cal J 2.51, if
13 I recall. But nonetheless, you know, the motive is not
14 an element of the offense. And I think in the jurors'
15 minds it elevates motive to an element of the offense.
16 And if there's evidence of motive, which the State is
17 going to argue in this particular case, then they
18 essentially say, "Okay. Here's your green light.
19 We've proven our case, because this fellow has the
20 motive to do it."

21 So I'm going to object on those due process grounds
22 where it relieves the State of part of its burden of
23 proof.

24 THE COURT: Prior to Mr. Young responding to the

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1 argument, I would like to note that I did something
2 that I advise attorneys not to do on a regular basis;
3 that is, when I cited to Newman versus State, 124
4 Nevada 1496, the reason that there were no page numbers
5 associated with it is that it's an unpublished
6 disposition of the Nevada Supreme Court.

7 Supreme Court Rule 253 says that the parties shall
8 not cite to unpublished opinions. And it is one of my
9 personal pet peeves when attorneys do. And, therefore,
10 I violated my own pet peeve by citing to that. It was
11 inadvertent on my part, because I pulled it up on
12 Westlaw and just clicked on the case and it took me
13 directly to the page citation -- or excuse me --
14 directly to the citation of Harrison versus State. But
15 then when I just went back and looked at it again, the
16 reason that there were no page numbers associated with
17 it is that it was an unpublished opinion.

18 The Court would note that it's not the only
19 unpublished opinion that addressed that issue. Rather
20 than citing to the other unpublished opinion regarding
21 Harrison versus State, the Court will simply note that
22 the Nevada Supreme Court in its recent unpublished
23 decisions has not shown any indication that it intends
24 on modifying or updating the law. And, therefore, the

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1 Court's reasoning regarding that previous objection
2 Mr. Hylin made will remain.

3 Regarding the motive instruction, Mr. Young.

4 MR. YOUNG: Your Honor, it's an accurate statement
5 of the law. And the very first sentence instructs that
6 motive is not an element. So there's no confusion
7 there. Again, in conjunction with the balance of the
8 instructions and this instruction in its entirety,
9 particularly the last sentence, it advises the jury
10 that they can give the presence or absence whatever
11 weight they feel is entitled to be given to that
12 evidence. And there was evidence of motive here.

13 So there's plenty of instructions in this packet
14 that don't address the elements as Mr. Hylin cited.
15 The majority of them in fact don't. It's a proper
16 statement of the law and I would suggest should be
17 given. It certainly does not reduce any burden upon
18 the State.

19 THE COURT: The Court will give the instruction as
20 noted. The purpose of the jury instructions is to
21 advise laypeople on the law that they are to apply in
22 coming to their decision. And so the Court does have
23 to take into consideration the fact that they may not
24 be aware of the fact that motive, that is, the why a

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1 crime was committed, is not a specific element.

2 And so the Court believes that it is appropriate to
3 give the instruction as noted and the Court will
4 provide the jury instruction over objection. And it
5 will be numbered 28.

6 One moment.

7 I had to go back and check. The Supreme Court rule
8 that prohibits the citation of unpublished opinions is
9 Rule No. 123, not 253. So I mistake there.

10 So we'll go back to numbering the instructions.

11 28, again, is the motive instruction. It will be
12 given over objection.

13 29 is the transferred intent instruction.

14 Mr. Hylin.

15 MR. HYLIN: Yes, I've reviewed this, Your Honor.
16 Frankly, I looked high and low to find a defense
17 instruction that throws a stick in Mr. Young's spokes,
18 but Nevada is different than probably the majority of
19 the jurisdictions. It has a very, very broad -- a very
20 broad interpretation of this common law doctrine. So I
21 don't have an objection or a countervailing--

22 THE COURT: No stick to throw in his spoke.

23 MR. HYLIN: No stick to put in the spoke.

24 THE COURT: Instruction No. 30, you are to consider

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1 only the evidence.

2 31, it is your duty as jurors.

3 And 32 is the upon retiring.

4 And I will sign the district court judge line.

5 And then there will be verdict forms for Count I,
6 not guilty and guilty, and Count II, not guilty and
7 guilty.

8 The Court has been provided an additional
9 instruction by the State. And the additional
10 instruction by the State reads, "If you find the
11 defendant attempted to suppress evidence against
12 himself in any manner, such as by concealing evidence,
13 such attempt may be considered by you as circumstances
14 tending to show a consciousness of guilt; however, such
15 conduct is not sufficient by itself to prove guilt and
16 its weight and significance, if any, are matters for
17 your consideration.

18 Mr. Young, I indicated to you when we were
19 informally settling the jury instructions that the
20 Court would not be inclined to give the instruction.

21 MR. YOUNG: And I understand that, Your Honor. I
22 offered this instruction and will still offer the
23 instruction. It's Cal J 2.06. It related to the
24 evidence of the gold four-door Hyundai vehicle that's

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1 registered to Eboni Spurlock.

2 The State's basis is that there is both direct and
3 circumstantial evidence showing and supporting that it
4 was the defendant who drove the vehicle to the area
5 based on witnesses placing him on the scene, leaving in
6 the vehicle, Ms. Spurlock testifying that the vehicle
7 was there in the morning but not there when she
8 returned from work shortly before the shooting. And
9 the defendant was located in a house just a few blocks
10 away from the vehicle. So I would offer it and
11 understand the Court's position.

12 THE COURT: As previously noted, the Court -- or
13 excuse me -- as previously noted in the informal
14 settlement of jury instructions, the Court is very
15 concerned about the inference of consciousness of guilt
16 regarding the location of the vehicle in this case.
17 Certainly the instruction itself is an accurate
18 statement of the law. However, the Court will not give
19 the instruction.

20 The Court finds that while the argument that
21 Mr. Young makes may be appropriate in front of a jury,
22 the Court also doesn't -- the Court does not find that
23 it should be -- let me say it again. The Court does
24 not find that that argument should be buttressed by the

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1 jury instruction. It would draw too large a conclusion
2 in the Court's mind. Further, there has been no
3 testimony, direct testimony, that Mr. Mason himself was
4 the person who placed the vehicle there.

5 I'm trying to think of the name of the officer. It
6 wasn't Officer Lancaster. Was it officer Kleidosty who
7 was observing the vehicle, Mr. Young?

8 MR. YOUNG: Yes.

9 THE COURT: Officer Kleidosty did testify that he
10 observed the vehicle. The Court would also note that
11 the vehicle was in close proximity, a block or two
12 away, from where the defendant was eventually seen
13 immediately prior to being taken in custody, but
14 there's absolutely no evidence that he, the defendant,
15 was the person who placed the vehicle there. And,
16 therefore, the Court will mark this jury instruction as
17 refused pursuant to Local Rule of Criminal Practice 8E.

18 MR. YOUNG: Thank you, Your Honor.

19 THE COURT: Mr. Young, do you have any additional
20 jury instructions that you wish to offer?

21 MR. YOUNG: No. Thank you, Your Honor.

22 THE COURT: Do you have any objection to the jury
23 instructions 1 through 32 as numbered?

24 MR. YOUNG: None. Thank you.

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1 THE COURT: Mr. Hylin, do you have any additional
2 jury instructions to proffer?

3 MR. HYLIN: No, I do not, Your Honor.

4 THE COURT: And do you have any objections to the
5 jury instructions 1 through 32 other than the
6 objections that you have already made and the Court has
7 ruled upon?

8 MR. HYLIN: Not other than the objections I've
9 already placed on the record, Your Honor.

10 THE COURT: Then those objections have been
11 preserved for the record and the Court will give the
12 jury instructions as noted. And so I will go have my
13 staff prepare packets of jury instructions for each --

14 Let me just do this before we do that.

15 Mr. Mason, you don't need to stand. But now that
16 we are formally on the record, yesterday at the close
17 of the court's day I did discuss with you the fact that
18 you have a right to testify or not to testify and that
19 you needed to discuss that with Mr. Hylin. It's my
20 understanding that you have done that and it's your
21 decision not to testify. Is that correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. So, Mr. Hylin, will the
24 defense be putting on a case this morning?

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1 MR. HYLIN: No, Your Honor. When the jury
2 convenes, I'll rest on the record.

3 THE COURT: Well, I don't even know if you need to
4 do that. It's up to you if when the jury comes in --

5 MR. HYLIN: Well, that's okay. If you don't think
6 it's required, that's fine.

7 THE COURT: It's up to you. Sometimes I know that
8 the counsel are uncomfortable drawing attention to the
9 fact that you're not doing anything. I'm not
10 suggesting you're not doing anything. You understand
11 that's --

12 MR. HYLIN: No, I understand. I appreciate that,
13 though.

14 THE COURT: If you don't want me to say anything
15 about it, the State has rested, and so then the next
16 thing that we'll do is when the jury comes in -- I have
17 the jury instructions, one packet for each juror, on
18 their chairs when they enter the room. Then I read the
19 jury instructions and then I have all the jurors pass
20 the jury instructions back down to the bailiff so
21 they're not looking through the jury instructions while
22 counsel is making closing argument. I want them to be
23 able to focus solely on you and what you're talking
24 about. And oftentimes if they have packets of paper,

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1 then they're just kind of flipping through those.

2 So they will have the instructions when they get
3 back into the jury room and they'll have their copies
4 when I'm reading them to them, but while you're making
5 your argument, then they're not looking at them. So
6 it's up to you to use the overhead if you'd like to and
7 draw any attention to specific instructions you want.

8 MR. HYLIN: Thank you.

9 THE COURT: Ms. Bailiff, where did Deputy Gray go?

10 THE BAILIFF: He's in dealing with the jury.

11 THE COURT: If you could let Deputy -- well, I
12 understand that you probably need to be out here with
13 Mr. Mason, but if you could let Deputy Gray know we're
14 going to be photocopying the jury instructions and then
15 we'll be ready to go.

16 Court's in recess.

17 (A recess was taken.)

18 (Within the presence of the jury:)

19 THE COURT: We'll go back on the record in
20 CR14-1830, the State of Nevada versus Quinzale Mason.
21 Mr. Mason is present in court with his attorney,
22 Mr. Hylin. Mr. Young is here on behalf of the State of
23 Nevada.

24 Counsel, will you acknowledge the presence of the

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1 jury?

2 MR. YOUNG: The State will, Your Honor.

3 MR. HYLIN: Yes, Your Honor.

4 THE COURT: The jury is all present.

5 Good morning, ladies and gentlemen. I need to
6 offer you an apology. We are starting a little bit
7 late this morning. It's not the fault of the
8 attorneys. It's my fault. I had some other issues
9 that I was attending to. So you were here waiting
10 longer than I wanted you to be waiting, but I
11 appreciate the fact you were all here on time. It was
12 completely my fault that we didn't start promptly at
13 9:30 this morning. So I do offer you my apologies.

14 As we discussed yesterday -- I guess we didn't
15 discuss it. As I told you yesterday, the attorneys and
16 I had to get together and settle the jury instructions.
17 That's the law that you use in deciding the facts in
18 the case. If you remember, I told you you're the
19 judges of the facts; I provide the law to you; and then
20 with the facts and the law you come to a conclusion.
21 We have done that. And each of you has a packet of
22 jury instructions there on your chair with you.

23 It is required that I read the jury instructions to
24 you. It's not because I don't think you know how to

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1 read. It's because the courts want to make sure that
2 all the jury instructions are thoroughly explained to
3 you. But I wanted you to have a copy of them so you
4 can review them as I go through them as well.

5 Now, at the conclusion of the jury instructions, at
6 the conclusion of my reading the jury instructions to
7 you, what I'll have you all do is pass them down to
8 Deputy Gray so you're not looking at them while the
9 attorneys are making their closing arguments.

10 I read the jury instructions to you and then the
11 attorneys get to argue now the case to you. And then
12 you go back and you take as much time as you need to
13 come to whatever conclusion you come to in this case.

14 So with that, I will read the jury instructions to
15 you.

16 (The jury instructions were read.)

17 THE COURT: And I have signed the jury packet. And
18 then associated with it will be not guilty and guilty
19 forms or Count No. I, battery with a deadly weapon, and
20 not guilty and guilty forms for Count No. II, assault
21 with a deadly weapon.

22 Now, ladies and gentlemen, I would ask that you
23 pass the packets down to your right and Deputy Gray
24 will collect those.

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1 On behalf of the State, Mr. Young, would you like
2 to make your closing argument?

3 MR. YOUNG: Yes, please, Your Honor. Thank you.
4 If I could use the podium again.

5 THE COURT: You may.

6 MR. YOUNG: Ladies and gentlemen, this case began
7 with losing money. As simple and innocuous as that
8 sounds, Quinzale Mason just couldn't let that go and so
9 he grabbed a gun and he got into Eboni Spurlock his
10 girlfriend or on-again/off-again girlfriend and
11 cohabitant's vehicle and went looking for Anthony
12 Holly. And when he found Mr. Holly in the front area
13 of the parking lot of Delphine Martin's apartment unit,
14 he pulled into the apartment complex, he got out of his
15 vehicle, and he shot at least two times at Anthony
16 Holly. And in doing that, he struck four-year-old
17 Cecelia. That was August 9th of 2014.

18 And that leads us -- those actions, those
19 completely irresponsible and driven-by-anger actions,
20 lead us to this courtroom this week and ultimately
21 today.

22 For his actions he was charged with battery with a
23 deadly weapon for striking Cecelia and assault with a
24 deadly weapon for the assault he committed on Anthony

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1 Holly. And, ladies and gentlemen, the evidence you've
2 heard the last two days and what we'll discuss a little
3 bit this morning shows how the evidence is convincing,
4 it's overwhelming, and it's clear that Mr. Mason
5 committed those acts.

6 Now, there's a few jury instructions -- the judge
7 just read you the entire packet. There's a handful of
8 instructions I want to highlight right now. And rather
9 them putting them up on the board since the screen is
10 back there -- again, you'll have a copy of these in the
11 room when you're deliberating.

12 But what jury instruction 17 says is "The
13 defendant" -- and, again, this is something that
14 everybody is used to hearing. In a criminal case, a
15 defendant -- in this case, Mr. Mason -- is presumed
16 innocent until and unless I establish his guilt beyond
17 a reasonable doubt. So that's a burden on me
18 representing the State of Nevada.

19 I asked you in voir dire if you would hold me to
20 that burden. I'm asking you again now. Hold me to my
21 burden that the law requires for me to prove the
22 charges against Mr. Mason beyond a reasonable doubt.

23 Now, Instruction No. 21 tells you -- it's a
24 definition of what reasonable doubt means. And it's

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1 important -- I want to talk about this very briefly,
2 because it doesn't mean that I am required to prove the
3 defendant's guilt beyond all doubt. It's beyond a
4 reasonable doubt.

5 And jury instruction 21 tells you what that means.
6 And what it says, among other things, on this paragraph
7 is after you consider all the evidence, if you feel an
8 abiding conviction of the truth of the charge, or in
9 this case charges, if you feel an abiding conviction of
10 the truth of that charge, then I've satisfied my
11 burden. That is proof beyond a reasonable doubt.

12 So consider that, ladies and gentlemen, when you're
13 deliberating in the jury room and considering and
14 holding me to the burden that the law requires.

15 Now, the two offenses as charged in this case,
16 battery with a deadly weapon -- again, Instruction No.
17 23 outlines the specific elements. And what
18 instruction 23 does is say these are the three elements
19 that the State must prove beyond a reasonable doubt in
20 order for you to return a guilty verdict against
21 Mr. Mason for battery with a deadly weapon.

22 And instruction 24 does the same thing for Count
23 II. Instruction 24 outlines -- I'm not going to go
24 over the specific elements. You'll have them in the

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1 room. But 24 outlines the two elements, again, that I
2 must prove beyond a reasonable doubt to rebut that
3 initial presumption of innocence that is afforded to
4 Mr. Mason.

5 One thing I want to discuss with respect to 24.
6 You will see on element one there's an A and a B
7 option, if you will. I would submit in this case both
8 A and B have been proven beyond a reasonable doubt, but
9 you only need to find one, in other words, the
10 defendant did either unlawfully attempt to use physical
11 force against Anthony Holly or the defendant did
12 intentionally place Anthony Holly in reasonable
13 apprehension of immediate bodily harm. Either A or B
14 or, of course, both if you find satisfies element 1.

15 So they're alternative, if you will, to one
16 another. I would suggest that both have been
17 satisfied, but either one of those works.

18 Then obviously element 2 talks about the deadly
19 weapon which I would submit, frankly, is not an issue
20 in this case.

21 Now, I do want to take a moment with respect to
22 instruction 29. That is what is referred to as the
23 transferred intent instruction. And it's the
24 two-paragraph instruction which starts "If an illegal

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1 and unintended act results from the intent to commit a
2 crime," and it goes on.

3 And how it ends is -- at least that first
4 paragraph, "The doctrine applies in any case where
5 there is intent to commit a criminal act and the only
6 difference between the actual result and the
7 contemplated result is the nature of the personal
8 injury sustained."

9 What that effectively means, folks, is this. The
10 State is -- battery with a deadly weapon as charged is
11 against Cecelia. This instruction tells you that the
12 State is not required to prove that the defendant had
13 any intent to strike Cecelia. The evidence certainly
14 shows that Cecelia just happened to be in the wrong
15 place at the wrong time. I'm not required to prove
16 that he had any intent against Cecelia.

17 If you find that the defendant had the intent
18 against Mr. Holly, that intent transfers to Cecelia.
19 So please don't misinterpret that it's my burden to
20 prove that he had any intention to use force against
21 Cecelia. That's what instruction 29 tells you.

22 And then the last instruction I briefly want to
23 discuss is instruction 7 which talks about two kinds of
24 evidence being direct and circumstantial. And it talks

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1 about what direct evidence is, what circumstantial
2 evidence is. And I like to use an analogy. And please
3 understand this analogy has nothing to do with this
4 case, but it will help you understand the difference
5 between those two concepts.

6 Assume just for a moment that what I am trying to
7 prove is that an individual crossed a snowy meadow.
8 Again, nothing to do with the case. I'm not trying to
9 minimize by using this -- the facts of the case. But
10 in order to prove that an individual crossed the snowy
11 meadow, direct evidence might be a witness saying, "I
12 saw subject A start on the east side of the meadow,
13 walk across the meadow and end on the west side of the
14 meadow."

15 That would be direct evidence of somebody saying,
16 if the jury were to believe that witness, direct
17 evidence, that that subject crossed the snowy meadow.

18 Circumstantial is a little bit different. And,
19 again, to prove that same premise of crossing a snowy
20 meadow, you might have a witness say, "At 9 o'clock I
21 saw the person on the east side of the meadow."

22 You might have another witness say, "15 minutes
23 later I saw that same individual on the west side of
24 the meadow."

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1 And then the third person say, "Later when I went
2 out there, there were some foot tracks across that
3 meadow that weren't there before 9 o'clock."

4 Now, if the jury were to believe all of those
5 components, that likewise would prove that the subject
6 crossed the snowy meadow even though there's no one to
7 come in and say, "I actually saw that."

8 And the reason I bring that up is because there's
9 some evidence in this case that you heard, mainly from
10 Mr. Stanley and Mr. Holly, as far as not actually
11 seeing the gun being fired by the defendant, but
12 circumstantially it's proveable. We'll talk about
13 that. But, again, that's the difference between direct
14 and circumstantial.

15 What this instruction tells you, number 7, is
16 either or both direct and circumstantial evidence can
17 be used by you. You're not limited to one or the
18 other. You can consider all of the evidence in
19 totality in reaching your verdict.

20 Okay. So August 9 -- let's get into what the
21 evidence proves and shows in this case. During the
22 morning Mr. Holly was playing craps, dice, on the
23 street with a group of individuals, including the
24 defendant. And Mr. Holly started winning money and he

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1 started winning Mr. Mason's money and an argument
2 ensued. And if you recall the testimony from
3 Mr. Holly, someone said, "Hey, he has some physical
4 issues."

5 Mr. Holly said, "That triggered with me, because my
6 aunt had the same thing, so I stopped. I backed off.
7 I went to my place. I got out of there."

8 His testimony was he got a snack. He then went out
9 in the parking lot and started playing with the dog.

10 It was over. It was not over, of course, to Mr. Mason.

11 Mr. Holly testified while he was in the grass
12 area -- if you recall, Exhibit 2 -- if you recall, kind
13 of there's this -- it's kind of covered by the trees,
14 but there's this grass area to the front of the complex
15 closest to Patton Drive. And this obviously is the
16 apartment unit or the building that Delphine and
17 Stanley Huey's apartments are in. And he's up here in
18 this grass area playing with the dog. No issue. He's
19 moved on. And he sees the defendant driving up the
20 street in his gold car, what was registered to Eboni
21 Spurlock.

22 He pulls into the parking lot. Mr. Holly testified
23 that the defendant was the sole occupant of the car.
24 Kind of through the window he sees something. He

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1 hears, as he described, a click clack which he
2 testified based on his background knows to be the
3 cocking of a gun. He starts running away.

4 Now, this is some of the evidence going to support
5 the assault with a deadly weapon charge. Reasonable
6 apprehension of immediate bodily harm. He's running
7 away from an individual who's upset at him from that
8 morning and driving up with a firearm.

9 He testifies that he kind of trips and falls near
10 the stairway as it comes down. Shots are fired. And
11 he peels and runs around the back of this unit hopping
12 some fences. His testimony was he had some scratches
13 on his chest. He runs out of his shoe. He testified
14 he was scared for his life. He's getting shot at.

15 Again, factors that you can consider in support of
16 Count -- I'm going in reverse order a little bit -- but
17 Count II, the assault with a deadly weapon charge.

18 And you recall Eboni Spurlock's testimony. As he
19 runs past her, what's he say? "Your baby daddy just
20 shot a kid." Immediately. Immediately. He knows who
21 was shooting at him. He didn't see the gun when it was
22 being fired at him, but he knows.

23 He testified that after he got away he gets into
24 his house, he gets some clothes, he runs into a friend

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1 of an uncle or an uncle's friend, asks for a ride to
2 Grand Sierra Resort where he felt there was safety
3 where his wife was working.

4 Now, you heard testimony he is a three-time
5 convicted felon. As the instructions tell you, you can
6 certainly consider that in judging Mr. Holly's
7 credibility. You can consider the fact he's a
8 three-time felon. Let's weigh that in believing or
9 disbelieving what he testifies to.

10 The State did not hide the fact that he's a
11 three-time felon. But just because he's a three-time
12 felon doesn't automatically mean that he is prohibited
13 from being in fear for his life as he testified.

14 And we know he's in fear because of running,
15 because of running out of his shoe, because of scraping
16 himself up while jumping over fences, leaving the scene
17 and getting away, which he later returns to speak with
18 officers. That's how we know he's in fear.

19 He's a three-time felon. Yes, he is. But on
20 August 9th he was put in fear by Mr. Mason pulling and
21 shooting at him.

22 Now, also when considering his past, his criminal
23 history, his three felonies that he testified to,
24 consider his testimony. Don't consider it in isolation

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1 but consider it in context with everything else. Is
2 his testimony supported or rejected by the balance of
3 the evidence?

4 And the reason I ask you to do that, aside from the
5 law allowing you to do that, is because if he were to
6 take the stand, "he" being Mr. Holly, and say something
7 that was so farfetched and so off from all the other
8 evidence, then those three felonies would carry a
9 little more weight. But consider how his testimony is
10 supported by the others that you heard.

11 Now, during the shooting Cecelia was struck, as
12 you heard by Dr. Cinelli, by metallic fragments which
13 he opined being a ricocheted bullet. You recall his
14 testimony. And there was some discussion about
15 assumptions. His final opinion was a ricocheted
16 bullet.

17 Now, how do we know that it was a ricocheted
18 bullet? It's based on the same evidence that we heard
19 throughout the course of the trial. It was a fresh
20 injury; it was a penetrating wound injury. He
21 testified that there was no rock or wood detected in
22 the entry wound of her leg. The metallic fragment, he
23 said -- his words, not mine, metal inserted into her
24 leg by a high-energy mechanism.

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1 What could that be, folks? It's the bullet, the
2 ricocheted bullet, while Mr. Mason was shooting at
3 Mr. Holly. And, again, that transferred intent. The
4 State doesn't need to prove that Mr. Mason intended to
5 shoot Cecelia. It all comes back to the person who was
6 taking Mr. Mason's money, that being Mr. Holly.

7 We have photos of the injuries. I'm not going to
8 show them to you right now. You'll have them. But
9 you'll recall that the penetrating wound photo, the
10 x-ray.

11 Is there really any question of what that is that's
12 in her leg? No. There's not.

13 Now, Delphine Martin, does she give a story that is
14 completely off base from what Anthony Holly testified
15 to or is it very similar to the accounting of
16 Mr. Holly?

17 And when we go -- when I go through now Delphine's
18 testimony and then a little bit of Huey Stanley's
19 testimony, consider the timing of when they gave their
20 statements and the places that they gave their
21 statements. Were they all huddled up in the same room
22 talking about, "Well, here's what we're going to say,"
23 and, "Let's get all of our statements the same," as the
24 police showed up? No.

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1 Anthony Holly, as soon as the shots ring out, he's
2 gone. He doesn't give his statement, as you heard from
3 Officer Kassebaum, until about three hours later when
4 he returned.

5 Do Huey Stanley and Delphine Martin converse and
6 talk about what their stories are going to be? No.
7 Because we know Huey Stanley is on 911 immediately and
8 we know that Delphine Martin is so hysterical on scene
9 that they're not really able to have any substantial
10 conversation with her. She's transported to the
11 hospital.

12 So all three of these individuals who gave
13 amazingly similar accounts of what happened give their
14 statements at different times and different locations.

15 So Delphine Martin sees Holly in front of her
16 apartment, which, again, going back to Exhibit 2 would
17 put Mr. Holly up in this area, which, again -- now
18 we're going to verge into Mr. Stanley. He said, "Yeah,
19 I remember Mr. Holly being up here," consistent with
20 that.

21 Now, Mr. Stanley, he's outside, there's nothing
22 going on. So it's reasonable to believe that when he
23 recalls the shooting happening when Mr. Holly is back
24 here, he just didn't watch him walk up and back.

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1 That's reasonable, but there's nothing going on at that
2 time.

3 But Delphine Martin says the same thing that
4 Anthony Holly said. Walked my dog up to the grass
5 area; Mr. Mason pulls into the parking lot, same area;
6 gets out of the vehicle. And what does Delphine say?
7 She actually sees the defendant with a gun shooting at
8 Anthony Holly. Now, that, folks, is direct evidence
9 supporting the charges.

10 She says that Anthony Holly when the vehicle pulls
11 in here by Mr. Mason is up near the car. Exactly what
12 Anthony Holly told you.

13 She also said that the defendant was the sole
14 occupant of the vehicle. She also tells you that near
15 the stairs Anthony Holly fell and he runs around and
16 leaves the scene. Again, all -- I don't want to say
17 identical, but very, very similar to Anthony Holly's
18 testimony.

19 The last question that I asked her: "Is there any
20 doubt that you saw the subject shooting?"

21 She said, "No."

22 "Is there any doubt that it was Quinzale Mason who
23 was the shooter?"

24 And she said, "No."

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1 And while she doesn't know Mr. Mason on a social
2 level, she's seen him in the area. Mr. Holly has seen
3 him in the area. Huey Stanley has seen the defendant
4 in the area. They know who he is. So it's not a
5 random person coming up who they've never seen and
6 trying to figure out who this is. They know who the
7 shooter was.

8 Delphine Martin had no issues with the defendant.
9 She had none. She's positive it was the defendant who
10 was shooting.

11 Now, Huey Stanley, again, I don't need to go
12 through all of his testimony, but is it similar or is
13 it completely different than what you've already heard?
14 He recalls Anthony Holly being up -- excuse me -- up in
15 front of Delphine's residence, which we know happened,
16 the defendant pulling in in the gold four-door vehicle.
17 We know it happened. The evidence supports it.
18 Mr. Mason being the one to exit the car. He sees
19 something in his right hand, doesn't know what it is.
20 Again, this is now getting into circumstantial
21 evidence. He's not able to say it's a gun, but the
22 evidence is pretty clear what that something that he
23 had in his hand is.

24 He gets out of view and shots are fired. And then

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1 Mr. Mason gets back in his car and drives southbound on
2 Patton. And you heard the 911 call immediately. "I
3 know who it is." He describes the car; he describes
4 the direction of travel. You hear kind of the
5 pandemonium going on in the background.

6 When Mr. Mason got out of his vehicle -- and I say
7 "his vehicle." Technically Eboni Spurlock's registered
8 vehicle. But when he gets out of that vehicle that
9 both he and Eboni used, Mr. Stanley had an unobstructed
10 view. He couldn't see the shooting, but he sees
11 Mr. Mason get out with something in his right hand,
12 comes out of view, immediately shots are fired, and
13 Mr. Mason leaves.

14 Mr. Stanley immediately upon officers' arrival
15 points out where the shooter lives. Right across the
16 street, one unit down, the top unit closest to the
17 street.

18 This is Exhibit 1. I apologize for walking up, but
19 it's just easier than pulling the screen up.

20 This is the building that Delphine Martin and Huey
21 Stanley live in. This one right above is the one that
22 Anthony Holly lived in. Well, one building over and
23 down, the top unit closest to the street is 2366
24 Patton. Huey Stanley pointed this out immediately to

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1 officers. And we know from the evidence who lived in
2 that unit, Eboni Spurlock and the defendant.

3 The testimony of those three individuals who all
4 put the defendant on scene and either directly or
5 circumstantially shooting that gun is supported by
6 Steve Maes. Now, Mr. Maes, what's he doing on Patton
7 Drive? He is helping somebody move in. Zero
8 association with the area, zero association with
9 anybody involved in this case, zero association with
10 Mr. Mason. None whatsoever.

11 His testimony, exact same vehicle description.

12 He pulls into -- if you recall, he did it on the
13 overhead -- this parking lot where Mr. Maes is working
14 and the unit just to the south of 2366 helping his
15 friend move in. He pulls in, circles around, stops
16 just in front of, amazingly, 2366 Patton and yells out
17 looking for someone.

18 He doesn't know who the driver is, but black male,
19 beard, gold car, all consistent. And the evidence
20 shows who that actually was, the sole occupant.

21 he drives northbound out of the parking lot, loses
22 site, but his testimony, within 12 seconds, 12 seconds,
23 of exiting that parking lot shots are fired and then
24 that same vehicle leaving the scene southbound on

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1 Patton.

2 So does he -- is he able to identify the driver?
3 Does he know the driver? No. But taken in collection
4 with the balance of the evidence, it's clear who he
5 saw. And again, recall what his connection to that
6 area and this case is. There's none.

7 And what he also sees is the red hat that the
8 driver is wearing, which, of course, launches us into
9 the DNA evidence that you heard, because when the car
10 is later searched, in the bag is a red 49ers hat.

11 Now, he said, "Well, Phillies or Reds," but the
12 color scheme is the same.

13 And you heard evidence from Mr. Gresko that
14 Mr. Mason is the source, the source, of the dominant
15 DNA profile from the shirt as well as the hat. And to
16 acquire a source is 1 in 8 trillion, substantially
17 greater than the world population.

18 Now, I'm not asking you, ladies and gentlemen, to
19 base your verdict and your decision on simply the red
20 hat, just like I'm not asking you to base your decision
21 simply on what Huey Stanley said in isolation or what
22 Delphine Martin said in isolation or Anthony Holly said
23 in isolation, but consider the information that
24 Mr. Maes provided through his testimony in conjunction

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1 with everything.

2 He sees this vehicle leaving that parking lot
3 driving to the area of the shooting scene, shots fired
4 and leaves, and then the red hat is located in the
5 vehicle. And we're going to get to the vehicle here
6 shortly. But you're able to consider that in
7 conjunction with everything. It's one more layer
8 connecting Mr. Mason to the car that was abandoned in
9 Sun Valley after fleeing the shooting scene on Patton
10 Drive.

11 So let's talk about the car. How do we know it was
12 Eboni Spurlock's car at the shooting scene? Because as
13 you heard from the testimony, nobody was able to obtain
14 a license plate. Right? So how do we know it was the
15 license plate 432LTY that was registered -- that
16 there's registration records and Eboni Spurlock said,
17 "Yeah, that's my vehicle."

18 Well, three people, all of whom know -- again, not
19 know personally, socially, but know who he is,
20 identified Mr. Mason as the one getting out of that
21 vehicle.

22 The vehicle had been seen at 2366 Patton Drive.
23 The vehicle matches -- or the description matches Eboni
24 Spurlock's car. It is supported by Steve Maes's

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1 testimony. Recall Eboni Spurlock's testimony. When
2 she left for work in the morning -- I think she says
3 she works 4:00 to 11:00. If your memory is different
4 than that, your memory controls. But somewhere in that
5 range in the morning.

6 And when she left, her car wasn't working. That's
7 why she got a ride from a coworker. So the car is on
8 Patton. When she gets home, she says at 11:00 or
9 11:30, the car is no longer there. And who are the two
10 people that drive her vehicle? Herself, one, and the
11 defendant. Those are the two people that have access
12 to her Hyundai.

13 Now, this gold vehicle which was there in the
14 morning and is now gone immediately after the shooting,
15 which matches the description of that vehicle and three
16 witnesses say the defendant got out of, most
17 importantly later on August 9th is located in Sun
18 Valley. And you recall the testimony that it appeared
19 abandoned, there was nobody there.

20 This is Exhibit 16 -- this is just so we all get
21 our bearings -- the vehicle in question, Eboni
22 Spurlock's vehicle. But you recall the testimony by
23 Officer Kleidosty that the windows were down or
24 partially down. Well, this is Exhibit 19. And you'll

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1 get a closer look at this in the jury room. But if you
2 look at the door once it's opened up for searching the
3 car, you can actually see, yeah, the window is down, at
4 least this front passenger window is down.

5 So this vehicle which is at Patton Drive on the
6 morning of August 9th now appears to be abandoned in
7 Sun Valley with the windows down, off of a dirt road
8 access or a dirt access road, out of view of any paved
9 street.

10 You recall the testimony that Fifth and Tornado,
11 where that is, you can't see the vehicle because it's
12 up this road that has an elevation and behind a fence.

13 Instruction 3 -- not instruction -- Exhibit 3 shows
14 you the distance. The lower left area is Patton Drive.
15 The upper right, the areas that's highlighted, is
16 effectively where the vehicle was found.

17 What it's doing up there is that the defendant
18 after the shooting fled the scene and ditched it in an
19 area that he thought wouldn't be found. Now,
20 amazingly -- this is Exhibit 4. You recall here's
21 Fifth and Tornado, that intersection.

22 I hope everyone can see this. I apologize if I'm
23 cutting anybody off.

24 Here's that dirt access road that comes -- kind of

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1 parallels Trapper and Sun Mesa. And there's this fence
2 line that runs there. The vehicle was parked just
3 around this turn around this fence back in this area
4 that has nothing to the east of it.

5 And where is the defendant located the next day
6 within, what, 12 hours of the car being located when
7 he's finally -- the surveillance from the airport?
8 He's located at 619 Lone Cedar Lane. So we're
9 talking -- I'll let you do the math -- a handful of
10 blocks from where this vehicle is apparently abandoned.

11 that's how we know that's the vehicle, all those
12 factors. Again, I ask you respectfully, don't take one
13 factor in isolation, consider them all in totality.

14 All of that conclusively shows that it was Eboni
15 Spurlock's car leaving the scene of the shooting and it
16 was Eboni Spurlock's car that was abandoned off of
17 Fifth and Tornado close to the house that Mr. Mason was
18 located in within 24 hours of the shooting.

19 Finally, you have evidence of statements by
20 Mr. Mason that were made in the course of this
21 investigation. Now, there's an instruction, a jury
22 instruction, which talks to you about admission and
23 confession testimony.

24 Wilma Gray and Officer Koger. Now, let me start

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1 with Ms. Gray. She loves her grandson. It was
2 uncomfortable for her to take the stand and testify to
3 what happened. And, again, in judging credibility of
4 what witnesses say, consider, as the instruction tells
5 you, any bias and interest that she might have in the
6 case.

7 Now, she did testify that in her conversations with
8 Mr. Mason he admitted to her to possessing a gun. I
9 believe her exact words is because he said, "I'm a
10 little man and I need protection," or something along
11 those lines.

12 So she does testify that he admitted to her he has
13 a gun. And that corresponds certainly to the other
14 evidence that he was seen shooting a gun. But the
15 testimony that she provided as to her conversation with
16 him is that she talked to Mr. Mason on the 8th, being
17 her birthday, and then again on the 10th.

18 Now, we know that all the statements that I was
19 asking her about and then ultimately Detective Jenkins
20 testified to didn't happen on the 8th, because the
21 alleged crime, the BBD, the ADB, didn't happen until
22 the 9th. So we know that that conversation didn't
23 occur on the 8th. But taking her testimony and
24 Detective Jenkins' testimony in conjunction, she told,

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1 according to Detective Jenkins, that Mr. Mason called
2 her on the 9th sometime after noon which would be spot
3 on consistent with the date and timing of the shooting
4 itself, as police were dispatched at about 12:15 on the
5 9th.

6 When Officer -- or excuse me -- Detective Jenkins
7 said, "Hey, we're looking for your grandson,
8 Quinzale" -- I understand she explains this away, being
9 Ms. Gray, but what Detective Jenkins testified that she
10 responded is "I know, because he shot a kid."

11 And when Detective Jenkins asked, "How do you know
12 that?" she said, "Because Quinzale told me."

13 Now, Ms. Gray said she didn't even know that it had
14 anything to do with a kid, she didn't have that
15 information. And so that information had to come from
16 somebody with knowledge. And that person would be, of
17 course, the defendant.

18 Again, while she denied it when she testified,
19 Detective Jenkins testified that in speaking with
20 Quinzale Mason sometime on the afternoon of the 9th,
21 Mr. Mason said, "I'm looking for a way out of Reno."

22 And the one time that Detective Jenkins spoke with
23 Ms. Gray was at 3 o'clock in the morning on
24 August 10th. So, again, 15 hours or thereabout after

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1 the shooting. You recall at one point Ms. Gray kind of
2 slipped up a little bit and said, "Well, I told Officer
3 Jenkins and I told Quinzale to turn himself in."

4 Well, if that's the case, then we know she had
5 already talked to him which would put us on the
6 9th sometime in the afternoon. And she kind of
7 corrected herself and said, "Well, it could have been
8 the other officer," but we know from the timing of how
9 this all played out.

10 Folks, Ms. Gray is the defendant's grandmother. I
11 get it. But the evidence supports the timeline that
12 she actually spoke to the defendant on August 9th in
13 the afternoon and it was the defendant who said, "I
14 shot a kid."

15 Now, Officer Koger, you heard that he didn't even
16 have time to activate his recorder it happened so fast.
17 Upon handcuffing the defendant, he says, "I was going
18 to the station to turn myself in. This has been
19 messing me up."

20 Well, what's he referring to? Of course he's
21 referring to what happened the day before. He's messed
22 up, to use his words, because he shot a four-year-old
23 girl. That in itself further supports Officer Jenkins'
24 timing of the call that Ms. Gray had with the defendant

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1 rather than how Ms. Gray testified in court.

2 And in the backseat, of course, of Officer Koger's
3 car he says, "Thank you for not shooting me."

4 And when the officer said, "Well, you know, we
5 won't do that unless you give us a reason," what's his
6 response?

7 "What I did was violent and so you may have thought
8 I would be violent with you, too."

9 Again, I don't mean to be facetious, but what
10 violence is the defendant speaking about? The shooting
11 from less than 24 hours before.

12 So, folks, like I've mentioned a couple times, I
13 ask that you -- respectfully I ask that you consider
14 all the evidence in totality. We had two days of trial
15 which is relatively quick. You did hear from a number
16 of witnesses. But consider how all of the witnesses
17 and all of the testimony they provided fits and how
18 there's really nothing that was testified to that is so
19 outlandish that you can just discard as being trivial
20 or unsubstantiated.

21 If you consider everything, the three people who,
22 again, don't have any issues with the defendant, know
23 who he is, identify him as the shooter, either from
24 directly seeing it, as Delphine did, or

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1 circumstantially putting him there, immediately shots
2 and leaving, if you consider that with Mr. Maes, if you
3 consider that with the information about Eboni
4 Spurlock's car, the location it was later located, and
5 that location in relation to where the defendant was
6 located, and the statements that he made, and
7 everything else that we've discussed -- and, again,
8 that presumption of innocence that the defendant is
9 certainly entitled to is destroyed and the presumption
10 of innocence has been rebutted and the State has
11 proved -- I would submit respectfully to you has proved
12 both charges beyond a reasonable doubt.

13 Mr. Mason shot a handgun; it struck Cecelia -- a
14 bullet struck Cecelia or at least a ricochet. The
15 transferred intent shows that you can find him guilty
16 of battery with a deadly weapon.

17 And in shooting at, towards, or brandishing a gun
18 and discharging it when Mr. Holly is running away, you
19 can find him guilty of Count II, assault with a deadly
20 weapon as well.

21 I would ask that you consider all the evidence in
22 sum. I would ask that you return guilty verdicts as to
23 both Count I and Count II. Thank you.

24 THE COURT: Thank you, Mr. Young.

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1 Mr. Hylin, your closing argument on behalf of
2 Mr. Mason.

3 MR. HYLIN: Yes. Thank you.

4 Good morning. That's a nice neat little package,
5 but there's a lot of flaws here in not only the
6 testimony but inconsistencies in the facts themselves
7 that create reasonable doubt in this case.

8 I don't know how many of you have seen the movie My
9 Cousin Vinny where two cars virtually alike are
10 involved in this case and the first car that's the
11 subject of this movie is a green small Buick. It's an
12 older movie. But the kids are charged with robbing
13 this store. And they were in this green car and
14 essentially the evidence all surrounds the appearance
15 of this car.

16 And toward the end of the movie they figure out
17 through evidence that's gathered by the sheriff that
18 there is another green car exactly like it that was
19 found in the possession of the people that had the gun
20 that shot the clerk. It's not an impossible story.

21 So even though the District Attorney -- the Deputy
22 District Attorney, Mr. Young, would have you believe
23 that these cars are the same, there's some very, very
24 remarkable differences here. And I'll get into those

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