

In the Supreme Court of the State of Nevada

Jemar Demon Matthews,

Appellant,

v.

The State of Nevada,

Respondent.

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Elizabeth A. Brown
Appeal from Judgment of Conviction
Clerk of Supreme Court
of Eighth Judicial District Court, Clark
County, in Case No.: 06C288460-2

**Appellant's Appendix
Volume 2**

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Appellant's Appendix
Volume 2 of 4, PP.0251 to 0500

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CERTIFICATE OF SERVICE

The undersigned, an employee of Leventhal and Associates, hereby certifies that she served the foregoing on the State by delivering a true and correct copy of it on July 29, 2019, to the following persons via electronic service through the Nevada Supreme Court electronic filing system.

Steven S. Owens
Chief Deputy District Attorney

Adam Paul Laxalt
Attorney General / Carson City

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Jemar Matthews
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/s/ Maribel Godinez
An Employee of Leventhal and Associates

1 directly from the weapon is onto the hands of someone who is in close
2 proximity. That's all that's required is that you're near the weapon when
3 the weapon is fired and that gunshot residue as it comes out of the
4 weapon, it deposits on you.

5 Q Okay. So fair to say that gunshot residue can really end up on
6 a particular surface particularly let's say someone's hands. If the likely
7 scenarios we're talking about would be this individual discharged a
8 firearm; is that one?

9 A Correct.

10 Q Okay. Handled the firearm?

11 A Correct.

12 Q Or was in close proximity to a discharged firearm?

13 A Correct.

14 Q Okay. So under those three likely scenarios, you would find
15 gunshot residue?

16 A Yes. Those are the most likely reasons that I would find
17 gunshot residue on a person's hands.

18 Q Okay. How about finding it on a -- on a piece of clothing?
19 Fair to say that the most likely scenarios at that point would have been
20 that that particular item may have come into contact with a discharged
21 firearm or was in close proximity to a discharged firearm?

22 A Correct.

23 Q Were you asked by the Las Vegas Metropolitan Police
24 Department or the crime lab here to conduct testing in this particular
25 case?

1 A Yes, I was.

2 Q Okay. Did you receive as you indicated a several kits and
3 also some gloves, a pair and then a piece of one glove to test?

4 A Yes, I did.

5 Q Okay. Can you tell us when it was received by your office?

6 A Can I refer to my report please?

7 MS. LEXIS: Permission, Your Honor?

8 THE COURT: You may.

9 MS. LEXIS: Thank you.

10 THE WITNESS: It was received into the laboratory on
11 January 11th of 2007.

12 BY MS. LEXIS:

13 Q How was it sent to your crime lab?

14 A It was sent my Federal Express.

15 Q And was there some sort of tracking device or something like
16 that associated with the Federal Express shipment?

17 A Yes.

18 Q Okay. How many different items did you receive?

19 A I received three different gunshot residue collection kits and
20 then I received three gloves.

21 Q Okay. Now earlier you mentioned that the Las Vegas
22 Metropolitan Police Department uses the four -- let me see if I can
23 remember -- four SEM stubs --

24 A Yes.

25 Q -- in their testing?

1 A Yes.

2 Q Okay. What does that mean again?

3 A Those are -- these are the SEM stubs. Stub is kind of a slang
4 word that we use in a gunshot residue community, but it's a sampling
5 device.

6 MS. LEXIS: Your Honor, may I approach the witness --

7 THE COURT: You may.

8 MS. LEXIS: -- with what has been -- do you need a pair of
9 gloves?

10 THE WITNESS: Yes.

11 MS. LEXIS: Yes.

12 May I approach the witness with what has been previously
13 marked and now admitted by way of stipulation as State's Exhibit
14 Number 14?

15 THE COURT: You may.

16 BY MS. LEXIS:

17 Q Ma'am, showing you what's been previously marked as
18 State's proposed Exhibit Number 14 or now admitted evidence, State's
19 Exhibit 14; do you recognize what's depicted here?

20 A Yes, I do.

21 Q And for the record it's a brown envelope with lots of stickers
22 and some red evidence stickers as well; correct?

23 A Yeah.

24 Q Okay. How is it that you recognize this?

25 A Every item of evidence that I examine I will write the criminal

1 investigation laboratory number that's assigned to the case, the date
2 that I examine it, the item number that I give it in the lab and my initials.
3 And I see that here.

4 Q Okay. Can you point that out to me?

5 A Sure.

6 Q Okay. So what was the Bexar County Lab number assigned
7 to this particular item?

8 A It was 07-00220.

9 Q Okay. And what -- what's that date, 1/29/07? What's that
10 mean?

11 A I examined this item on January 29th of 2007.

12 Q And what item number did you give it?

13 A I gave this brown paper bag item number one.

14 Q Okay. And drawing your attention to -- do you see -- drawing
15 your attention to the sticker towards the bottom of this brown envelope;
16 do you recognize this evidence sticker?

17 A Yes, I do.

18 Q What is it?

19 A Every case that I examine whenever I'm finished it, I tape seal
20 it closed and then I initial and date it. And that's what the pink seal is
21 along the bottom and it says Bexar County Crime Lab. And I see my
22 initials and the date on all three of those seals.

23 Q And when was it that you sealed this piece of evidence?

24 A February 6th of 2007.

25 Q Okay. Now there's a sticker at the front of this brown

1 envelope; is that right?

2 A Yes.

3 Q And does it in fact list that if you were to open this envelope, I
4 know it's open now, but if you were to open this envelope you would
5 expect to find three different GSR kits.

6 A Correct.

7 Q Okay. And when you opened it, did it in fact have three GSR
8 kits?

9 A Yes, it did.

10 Q Okay. So the label or the sticker appears to have been
11 accurate?

12 A Yes.

13 Q Okay. So when you opened it, first showing you what's been
14 now been marked and admitted as State's 14A; did you find this?

15 A Yes.

16 Q What is that?

17 A This is a gunshot residue kit that is labeled as being collected
18 from Pierre Joshlin.

19 Q Okay. Is that your label or did you write or was that someone
20 else?

21 A That would have been the person who collected the kits.

22 Q Okay. Do you see your markings with your Bexar County Lab
23 event number or lab number on this -- on this item?

24 A Yes, I do. Here.

25 Q Okay. Same lab number that we discussed using the

1 envelope; is that right?

2 A Yes.

3 Q Does it also have the same date of 1/29/07?

4 A Yes.

5 Q And did you put kit one of three?

6 A Yes.

7 Q And did you give it an item number 1A?

8 A Yes.

9 Q Okay. And Bexar County evidence sticker at the bottom?

10 A Yes.

11 Q Drawing your attention now what's been marked and admitted
12 as State's Exhibit 14B by way of stipulation; do you recognize this?

13 A Yes.

14 Q What is it, ma'am?

15 A This is a gunshot residue collection kit that is labeled as
16 having been collected from Trevon D. Jones.

17 Q Okay. And does it have the same lab event number and your
18 initials, date as we previously discussed in the two prior exhibits?

19 A Yes.

20 Q And does it indicate kit three of three?

21 A Yes.

22 Q Okay. Showing you what's been marked and admitted by way
23 of stipulation as State's Exhibit 14C; do you recognize what's depicted
24 here?

25 A Yes.

1 Q What is that?

2 A It is a gunshot residue collection kit that is labeled as coming
3 from Jemar Demon Matthews.

4 Q Okay. Does it have the same lab number, date and does it
5 indicate kit two of three with your initials?

6 A Yes.

7 Q And was this designated item 1B like boy?

8 A Yes.

9 Q And if I didn't say before, State's Exhibit 14B was designated
10 three of three; correct?

11 A Yes.

12 Q Okay.

13 Permission to just briefly publish, Your Honor.

14 THE COURT: You may.

15 MS. LEXIS: Okay. All right. So just for the record, this is
16 State's Exhibit 14; correct? This was the brown envelope that we
17 discussed up at the top or up at the witness stand?

18 THE WITNESS: Yes.

19 BY MS. LEXIS:

20 Q And it shows if you were open this the three GSR kits by --
21 from three different individuals; is that right?

22 A Yes.

23 Q And when we were talking about the lab number and your
24 initials and all that stuff, is that towards the right top right here where my
25 blue glove is pointing?

1 A Yes.

2 Q Perfect. And just publishing one of the State's Exhibit 14C; is
3 this the actual gunshot residue evidence collection kit taken from a
4 subject Jemar Demonte Matthews?

5 A Yes.

6 Q And as we talked about before, the lab number, your initials
7 and other pertinent information are at the top of this exhibit or envelope;
8 correct?

9 A Yes.

10 Q And located on the inside, you indicated that the Las Vegas
11 Metropolitan Police Department uses four of those SEM stubs. We
12 should find four of those little viles -- vile looking things that you showed
13 the jury --

14 A Yes.

15 Q -- in here? Okay. So when you received these three kits from
16 the Las Vegas Metropolitan Police Department, did you run it through
17 your SEM microscope?

18 A Yes, I did.

19 Q Okay. And talking about -- let's start with the results for the
20 testing of what's located in State's Exhibit 14B which has been marked
21 as the gunshot residue evidence collection kit concerning Trevon Jones;
22 what was or what were the results of the test?

23 A I found one particle containing lead barium and antimony on the
24 sample that was collected from the palm of the left hand of Trevon D.
25 Jones. And I did not find any particles that contained any combination of

1 led barium or antimony on the samples collected from the back of the
2 right hand, the palm of the left hand and the -- I mean sorry. The back
3 of the right hand, the back of the left -- I'm sorry.

4 Q No. That's okay. You want to start over?

5 A Yes.

6 Q Okay.

7 A I did not find any particles on the sample collected from the
8 back of the right hand, the palm of the right hand or on the back of the
9 left hand.

10 Q Okay. And that's as it pertained to item 1C as you labeled it,
11 State's Exhibit 14B; correct?

12 A Correct.

13 Q Moving onto State's Exhibit 14A, the gunshot residue
14 evidence collection kit from Pierre Joshlin which was marked by you as
15 kit one of three, item number 1A; did you conduct gunshot residue
16 testing on this particular kit?

17 A Yes, I did.

18 Q And what were the results of your analysis?

19 A I found three particles containing led, barium and antimony.
20 And one particle containing led and barium on the sample collected from
21 the palm of the right hand. I found two particles containing led, barium
22 and antimony. And one particle containing led and barium on the
23 sample from the back of the left hand. And I did not find any particles
24 containing any combination of led, barium or antimony on the samples
25 collected from the back of the right hand or the palm of the left hand of

1 Pierre Joshlin.

2 Q Finally as to this exhibit, State's admitted evidence 14C --

3 A Correct.

4 Q -- is this the gunshot residue evidence collection kit for Jemar
5 Matthews? I'm sorry. There we go.

6 A Yes.

7 Q Okay. Oh, there we go.

8 A Yes.

9 Q And was this labeled item 1B, like boy, by you?

10 A Yes.

11 Q Okay. And so did you conduct gunshot residue testing on the
12 four stubs located inside of this envelope?

13 A Yes, I did.

14 Q And what were the results of your gunshot residue analysis?

15 A I found one particle containing led, barium and antimony. And
16 two particles containing led and antimony on the sample from the palm
17 of the right hand. I found one particle containing led, barium and
18 antimony. And one particle containing barium and antimony on the
19 sample from the back of the left hand. I found one particle containing
20 led and antimony on the sample from the palm of the left hand. And I
21 did not find any particles containing any combination of led, barium or
22 antimony on the sample collected from the back of the right hand of
23 Jemar Matthews.

24 Q Okay. So just kind of as a synopsis, you were able to as you
25 named the combination of particles which would have allowed you to

1 say it was positive for gunshot residue. The samples or the stubs for
2 Jemar Matthews, you were able to locate gunshot residue on the palm
3 of his right hand?

4 A Yes.

5 Q And also on the back of his left hand?

6 A Yes.

7 Q And also the palm of his left hand?

8 A Correct.

9 Q Okay. And so as we indicated earlier, the three most likely
10 scenarios for having gunshot residue or detecting the presence of
11 gunshot residue on Mr. Matthews' hand would have been that he may
12 have discharged a firearm; is that right?

13 A Yes.

14 Q And also that he may have handled a discharged firearm; is
15 that right?

16 A Yes.

17 Q Or that he was in close proximity to a discharged firearm; is
18 that right?

19 A Yes.

20 Q Earlier we talked about receiving clothing or things like as
21 samples; do you remember that?

22 A Yes.

23 Q Did you receive clothing or items of clothing to test in this
24 particular case?

25 A Yes, I did.

1 Q And what were those items?

2 A I received one red knit glove and a pair of black gloves.

3 Q Okay. Let's discuss State's Exhibit Number -- admitted
4 Exhibit Number 7 and subsequently 7A and 7B.

5 May I approach, Your Honor?

6 THE COURT: You may.

7 MS. LEXIS: Thank you.

8 Ma'am, showing you kind of a grouping of envelopes on top of
9 envelopes; do you recognize first of all this big Ziploc bag on the
10 outside?

11 THE WITNESS: No.

12 BY MS. LEXIS:

13 Q Okay. That's not huge. So I'm removing those items. Let's
14 talk about 7A which has been admitted by way of stipulation, Your
15 Honor.

16 Do you recognize what's depicted in this envelope?

17 A Yes, I do.

18 Q What is it?

19 A This was a Manila envelope that was submitted to me that
20 was said to contain a red knit glove with a large hole.

21 Q Okay. And how do you know -- how do you know that?

22 A By the sticker that was applied from I guess the Metro PD.

23 Q Okay. Is that the same like description with a sticker or the
24 sticker with the description --

25 A Yes.

1 Q -- that we talked about in the other envelope?

2 A Yes.

3 Q And did you put your initial, the lab number and given an
4 exhibit number?

5 A Yes, I did.

6 Q And that's towards the top left?

7 A Yes.

8 Q Okay. Did you label it as Exhibit Number 2?

9 A Yes, I did.

10 Q And just looking at this envelope, do you know when it is that
11 you would have conducted the test on this red knit glove with the large
12 hole?

13 A I would have received it and opened it on January 29th of
14 2007.

15 Q Okay. And so when you opened this particular envelope
16 which for the record also has that pink Bexar County Crime Lab
17 evidence sticker; correct?

18 A Correct.

19 Q Okay. When you opened it, did you in fact find a red knit
20 glove with a large hole?

21 A Yes, I did.

22 Q And when you found that, is -- do you recognize what's now
23 depicted in State's Exhibit 7A admitted by way of stipulation?

24 A Yes.

25 Q Okay. Is that the red knit glove that you looked at or that you

1 received and you also analyzed?

2 A Yes, it is.

3 Q And is there in fact a red hole? I mean, is there in fact a large
4 hole?

5 A Yes.

6 Q Okay. Showing you what's now been marked and admitted by
7 way of stipulation as State's Exhibit 7B; what is this?

8 A This is the sampling device that I use to sample the glove in
9 the laboratory. And then I placed it into this envelope and repackaged it
10 with the glove whenever it was sent it back to the submitting agency.

11 Q Okay. This would contain -- and may I see this -- this would
12 have contained this vile with the sampling device that you talked to the
13 jury about earlier?

14 A Yes.

15 Q Okay. And how many of those would have been in here?

16 A There should just be one.

17 Q Okay. And so unlike the kits that you received where you
18 could just submit through the microscope for comparison almost
19 immediately, when you receive a piece of clothing, you actually have to
20 take the stub and dab it yourself?

21 A Yes.

22 Q Obtain that sample?

23 A Correct.

24 Q Okay.

25 Just permission to publish admitted State's 7A, Your Honor?

1 THE COURT: You may.

2 BY MS. LEXIS:

3 Q So is this the red knit glove?

4 A Yes, it is.

5 Q And I know you can't see it from the glare, but is there a hole
6 in -- in the glove?

7 A Yes, there is. The hole that I was referring to would be the
8 one on the outside palm area. Those smaller holes that have circles
9 around them it did not have those whenever it came to my laboratory.

10 Q Okay.

11 A That would have been subsequent testing.

12 Q Okay. And so when you obtained a sample -- so the sample
13 did you run that through the microscope?

14 A Yes, I did.

15 Q Okay. And what were the results of the analysis or the --
16 yeah, the analysis for gunshot residue on this red knit glove?

17 A I found six particles containing lead, barium and antimony. And
18 one particle containing barium and antimony on the one sampling device
19 that I collected from the red glove.

20 Q Okay. And as we discussed earlier, the presence of those
21 elements or the particles -- particle with those elements, combination of
22 two or more or three in that morphology that you talked about, is it safe
23 to say that you detected the presence or the microscope detected the
24 presence of gunshot residue on this particular glove?

25 A Yes.

1 Q Okay. And as we spoke about earlier, does that indicate that
2 this glove may have come into contact with a discharged firearm or was
3 in close proximity to a discharged firearm; is that fair to say?

4 A Yes.

5 Q That would have been the most likely scenario; correct?

6 A Correct.

7 Q You indicated you also were asked to perform analysis on two
8 black gloves?

9 A Yes.

10 Q Okay.

11 May I approach, Your Honor, with what's been previously
12 marked and admitted by way of stipulation as State's Exhibit 12, 12A,
13 12B and 12C?

14 THE COURT: You may.

15 MS. LEXIS: Thank you.

16 Ma'am, first showing you what's been marked and admitted as
17 State's Exhibit Number 12; do you recognize this envelope?

18 THE WITNESS: Yes, I do.

19 BY MS. LEXIS:

20 Q And is it the envelope that you received from the Las Vegas
21 Metropolitan Police Department which you have given the designation of
22 Exhibit Number 3 which you analyzed on January 29th, 2007 which
23 contained one pair of black Nike Louisville baseball gloves?

24 A Yes.

25 Q And the envelope did give that description of the pair of black

1 Nike Louisville baseball gloves; is that right?

2 A Yes.

3 Q So when you opened it, did it in fact contain what's depicted in
4 State's Exhibit -- admitted State's Exhibit 12A?

5 A Yes.

6 Q Okay. And so were both gloves in there together?

7 A Yes.

8 Q Okay. Upon receipt similar to the red knit glove, did you then
9 obtain samples from each of the gloves?

10 A Yes, I did.

11 Q And did you put them in these envelopes now admitted and
12 marked as State's Exhibits 12B for the left black glove area and State's
13 Exhibit 12C for the right black glove sample?

14 A Yes.

15 Q And similar to the red knit glove, did you perform analysis or
16 did you run this through your fancy SEM microscope for the presence or
17 to detect the presence of GSR?

18 A Yes, I did.

19 Q And what were the results of your analysis?

20 A I found ten particles containing lead, barium and antimony on
21 the sample collected from the back area of the right glove. And I found
22 10 particles containing lead, barium and antimony on the sampling device
23 collected from the palm area of the right hand glove.

24 Q Okay. So fair to say what you said in shorter terms State's
25 Exhibit 12A, a pair of black red gloves contain gunshot residue?

1 A Yes.

2 Q And the most likely scenario for explaining the presence of
3 gunshot residue on this particular exhibit would have been that these
4 gloves came into contact with a discharged firearm or that it was in close
5 proximity to a discharged firearm; is that fair to say?

6 A Yes.

7 MS. LEXIS: Your Honor, I have no more questions for this
8 witness.

9 THE COURT: Thank you. Cross examination.

10 MS. LEXIS: Thank you.

11 MR. TANASI: Thank you, Your Honor. Court's indulgence.

12 MS. LEXIS: I'll just place this back in the envelopes.

13 THE COURT: Do you want any of the evidence, Mr. Tanasi?

14 MR. TANASI: I don't, Your Honor.

15 THE COURT: Okay.

16 MS. LEXIS: I can do this at counsel table.

17 MR. TANASI: All set?

18 MS. LEXIS: Yes. Thank you.

19 MR. TANASI: Okay.

20 Good morning, ma'am.

21 THE WITNESS: Good morning.

22 MR. TANASI: Your Honor, may I proceed?

23 THE COURT: You may.

24 MR. TANASI: Thank you.

25 THE COURT: Thank you.

1 CROSS EXAMINATION

2 BY MR. TANASI:

3 Q I'm Rich Tanasi and I represent Mr. Matthews. I have a few
4 questions for you on cross, okay?

5 A Okay.

6 Q All right. So I want to make sure I understand this correctly,
7 you're a forensic scientist; correct?

8 A Correct.

9 Q All right. And when we're looking at trace evidence and
10 gunshot residue, we're looking for this kind of fusion of the three
11 scientific elements; right, barium, lead and antimony; fair?

12 A Yes.

13 Q All right. And when you have those three elements together
14 that's the strongest indication of gunshot residue; fair?

15 A Those three elements with the correct morphology, yes.

16 Q Okay. And again those three together that's the strongest
17 indication of gunshot residue; is that fair?

18 A Well the three elements or any two elements with the correct
19 morphology. They all carry the same weight.

20 Q Okay. Again, those elements together strongest indication?

21 A Yes, I think. I don't know how you want me to answer. But
22 yes the three elements together with the correct morphology.

23 Q Well I want you to answer, you know, truthfully.

24 A Okay.

25 Q And -- and would you agree with me that three elements

1 together is better than two elements in terms of the morphology you
2 need for the indication?

3 A No.

4 Q No. It's just one -- it can be two or it can be three; is that your
5 testimony?

6 A Yes.

7 Q All right. Again you have to have that fusion there at least
8 two?

9 A Yes.

10 Q Okay. Now you've testified here to the three different sources
11 of gunshot residue coming from a weapon that's fired or near a fired
12 firearm or the person handling the firearm, that's kind of three that
13 you've testified to today; correct?

14 A Yes. Those are the most likely reasons why someone would
15 have gunshot residue on their hands.

16 Q Okay. You've also testified though today to the concept of
17 transfer; fair?

18 A Yes.

19 Q Okay. You prepared a report in this case; right?

20 A Yes, I did.

21 Q All right. You have that with you in front of you; correct?

22 A Yes.

23 Q All right. And you prepared that report on February 6th, 2007;
24 fair?

25 A Yes.

1 Q All right. In that report you only discussed those three;
2 correct? Those three potential sources of gunshot residue on a person,
3 firing of a weapon or being a near a fired weapon or handling a fired
4 weapon; correct?

5 A Correct. I say that the -- the person may have done those
6 three things or that the gloves may have come in contact with a
7 discharged weapon or it was in close proximity to a discharging firearm.

8 Q Okay. To you or there may; fair?

9 A Correct. Yes.

10 Q All right. Fair to say not conclusive; correct?

11 A Well it's conclusive that I found gunshot residue, but I am just
12 giving the most likely reasons why someone would have gunshot
13 residue on their hands. I don't have firsthand knowledge of -- of why
14 they have gunshot residue.

15 Q Sure. And nowhere in that report again did you mention
16 transfer or this different varying likelihood that you've talked about here
17 today; correct?

18 A Correct.

19 Q In other words you went to great lengths in your testimony
20 today to talk about how there's primary transfer -- primer transfer is the
21 most likely source of gunshot residue; fair?

22 A I did say that in my testimony today, yes.

23 Q And nowhere in your report did you say that; correct?

24 A Correct.

25 Q All right. And you've also testified that gunshot residue can

1 essentially be transferred like dust; correct?

2 A I said it's a very fine particle and it is possible to be
3 transferred.

4 Q Okay. Transferred like us; correct?

5 A I didn't say like dust, but it can be transferred, yes.

6 Q Okay. So I heard the word dust like; did I not hear that
7 properly?

8 A I don't believe I said it's a dust like particle.

9 Q Dust like particle. Therefore, dust can or gunshot residue can
10 transfer like a dust like particle; fair?

11 A I --

12 MS. LEXIS: Your Honor, I think that misstates her testimony.

13 THE COURT: Right.

14 MS. LEXIS: So I'm going to object.

15 THE COURT: I mean you got to let the witness testify.

16 MR. TANASI: Sure.

17 THE COURT: So the objection's sustained.

18 MS. LEXIS: Thank you.

19 BY MR. TANASI:

20 Q All right. Do you draw any comparison to gunshot residue and
21 dust?

22 A The only comparison that I would draw is that it can float on
23 air currents like dust can.

24 Q Okay. So again kind of just going back to your report and
25 having no reference in your report to the transfer discussion that we've

1 had. In between writing that report in today's testimony, did you have an
2 opportunity to meet with the District Attorney's Office?

3 A We spoke over the phone, yes.

4 Q Okay. And she prepared for today's testimony?

5 A We discussed my report and my testing, yes.

6 Q Okay. Now I want to touch on one of the examples that Ms. --
7 Ms. Lexis actually put forth and that's the actual, you know, transfer of
8 the gunshot residue when there's a fired weapon, okay. Let's assume
9 that Ms. Lexis fires a weapon, right. Okay. She now has gunshot
10 residue on her hands; fair?

11 A Yes.

12 Q Okay.

13 A She most likely would have gunshot residue on her hands.

14 Q All right. And if Mr. Giordani he also fires a weapon, he would
15 have gunshot residue on his hands too; correct?

16 A Most likely it won't almost a hundred percent of the time
17 deposit on hands, but mostly likely he would.

18 Q Okay. If Mr. Leventhal fired a weapon, he would have
19 gunshot residue on his hands; fair?

20 A Most likely yes.

21 Q Okay. Now if all three of those individuals touch me, say first
22 Ms. Lexis touches my hand. Now her gunshot residue is on my hand;
23 fair?

24 A It's possible.

25 Q Okay. If Mr. Giordani touches my hand, his gunshot residue is

1 now on my hand as well; correct?

2 A It's possible.

3 Q If Mr. Leventhal touches my hand, his gunshot residue is on
4 my hand as well; fair?

5 A It's possible.

6 Q Okay. And you'd agree with me that police officers that carry
7 weapons; fair?

8 A Yes.

9 Q Okay. They fire those weapons; fair?

10 A Yes.

11 Q Okay. And they also holster those weapons; fair?

12 A Yes.

13 Q Okay. And their vehicles -- police officers, their vehicles, that
14 can have gunshot residue; fair?

15 A Yes. That's possible.

16 Q Okay. Jail cells can have gunshot residue; fair?

17 A I haven't seen any studies about jail cells, so I don't know.

18 Q Okay. Uniforms and equipments on police officers, that can
19 have gunshot residue; fair?

20 A It's possible.

21 Q And so if I were to come in contact with a police officer and I
22 touched his uniform -- his gunshot residue on that uniform could transfer
23 onto me; fair?

24 A It's possible, but not likely because that would require at least
25 three transfers.

1 Q Okay. Why would it be three?

2 A Because it would have to transfer from his weapon to his
3 uniform and then from his uniform to your hands.

4 Q Okay. Understood. But the weapon is in close proximity to
5 him when he fires it; fair?

6 A The weapon is in close proximity to him when he fires it, yes.
7 He would be holding --

8 Q Okay.

9 A -- it when he fired it.

10 Q Right. So again, then in kind of the chain of transfer, if I were
11 to touch his uniform, his gunshot residue could wind up on my hand;
12 fair?

13 A So you're talking about an officer that recently fired his
14 weapon, you touch his uniform, yes, that would be -- that would take two
15 transfers obviously.

16 Q Thank you.

17 A Yes.

18 Q Okay. If I understand it correctly, you -- do you primarily work
19 for law enforcement?

20 A In our laboratory, only cases that are submitted by law
21 enforcement or accepted.

22 Q Okay.

23 A But I have testified for the defense in several Court cases.

24 Q Okay. How many times?

25 A I can count if you'd like for me to. I keep a list. But a handful

1 probably.

2 Q Handful. So how about on a percentage, can you -- can you
3 give us a percentage for defense testimony versus law enforcement
4 testimony?

5 A I can't without actually looking at my list and calculating it.

6 Q Okay. Would you mind taking a moment at it?

7 A Sure.

8 Q Thank you.

9 [Pause in proceedings]

10 A I have testified four times for the defense.

11 Q Okay.

12 A And then total as of this list I have testified 168 times.

13 Q Thank you. Going back to your job, it's a scientific job. You're
14 a scientist; fair to say?

15 A Yes.

16 Q Okay. And it's important that in science you follow certain
17 protocols; fair?

18 A Yes.

19 Q And you want to avoid contamination; fair?

20 A Yes.

21 Q Okay. And would you agree with me the best way to avoid
22 contamination on a subject's hand would be for law enforcement to get
23 the sample from the subject's hands first first thing when they come into
24 contact with law enforcement?

25 A I would say the best way to prevent contamination is to have

1 someone that doesn't have contact with the weapon collect the sample.

2 Q Okay. So ideally --

3 A Yes.

4 Q -- so I want to make sure I understand that. So you -- you're
5 saying ideally the person who first comes in contact with the subject or
6 the suspect take the sample should have not had any contact with the
7 weapon; is that what you're saying?

8 A That would be an ideal situation for me, yes.

9 Q Okay. And kind of top of that though in terms of chronology,
10 the first person who's taking the sample that first law enforcement
11 individual, you would agree with me should be law enforcement? That
12 first person who is going to take the sample should be law enforcement;
13 fair?

14 A I don't think I understand your question.

15 Q Sure. So again just going back to the contamination and
16 wanting to avoid contamination. Chronologically speaking, if a suspect
17 is apprehended by law enforcement, ideally before law enforcement
18 touches that person, ideally you would want --

19 A Mm-hmm.

20 Q -- the gunshot residue test to take place, the sample to be
21 taken before law enforcement touches that individual; correct?

22 A Yes.

23 Q Okay. Because essentially the more people who come in
24 contact with the suspect, the more opportunity for transfer; fair?

25 A Yes. Actually the issue is two-fold --

1 Q Okay.

2 A -- because it is possible the transfer can happen, but also the -
3 - the longer that we get out from the actual shooting event, the more
4 likely that the gunshot residue will be lost from the hands just through
5 regular motion. And just even the handcuffing of hands could remove
6 gunshot residue.

7 Q But handcuffing of hands could also add a gunshot residue;
8 fair?

9 A It's possible.

10 Q Okay. Would you agree that bagging or at least covering the
11 hands of the suspect would help prevent contamination?

12 A Actually bagging is not a suggested way of protecting the
13 evidence in gunshot residue because that bag can rub against the
14 hands and remove the GSR from the hands. So it's not really a
15 recommended practice as far as gunshot residue testing is concerned.

16 Q Okay. You've testified in a proceeding prior to today's;
17 correct?

18 A Yes.

19 Q Okay. Court's indulgence.

20 So I want to make sure I have your testimony clear, in terms
21 of bagging the hands or covering the hands, you're saying that's not
22 necessarily -- I'll have you just restate it. What is your opinion with
23 respect to bagging or covering the hands prior to obtaining a sample?

24 A That it is possible that it could prevent any contamination from
25 an officer or maybe a vehicle. But that it's not recommended because it

1 could also remove gunshot residue from someone's hands.

2 Q Okay. All right. And again in a prior testimony you testified
3 that bagging hands the way -- a way to prevent contaminated sources
4 from coming onto one person's hands, you would agree with the general
5 proposition, yes?

6 A Yes.

7 Q Okay.

8 A It would prevent contamination, yes.

9 Q It would prevent contamination?

10 A Yes.

11 Q Okay. Are you familiar with the FBI symposium from 2007?

12 A Yes, I am. Was it 2007? I thought it was 2005.

13 Q My understanding is 2007, but you would know it better than
14 me. 2005?

15 A Pretty sure it was 2005, yes.

16 Q Okay. And so with -- in 2005 then you're aware that the FBI
17 stopped doing GSR; correct?

18 A Yes, they did.

19 Q Okay. And they stopped it to focus their resources on
20 terrorism; right?

21 A Yes. They were only getting a handful of cases a year from
22 their agents for testing and they thought that the resources will be better
23 used in other areas instead of maintaining a 253 hundred thousand
24 dollar instrument for testing.

25 Q Okay. Again, law enforcement, the FBI, the nation's law

1 enforcement, Federal law enforcement agency, at one point they were
2 using GSR; correct?

3 A Yes. They still do.

4 Q Okay. In 2005 they decided to stop; correct?

5 A Well their lab stopped doing the testing, but they used local
6 laboratories. We even worked cases for the FBI in Texas.

7 Q But the FBI decided to divert its resources elsewhere instead
8 of using GSR testing; fair?

9 A The FBI -- the FBI laboratory quite doing gunshot residue
10 testing.

11 MR. TANASI: Thank you. Pass the witness.

12 THE COURT: Thank you. Any redirect?

13 REDIRECT EXAMINATION

14 BY MS. LEXIS:

15 Q They quite using -- they quit doing their own testing; is that
16 correct?

17 A Correct.

18 Q And so the lab that you work for actually now does the testing
19 for the Federal Bureau of Investigations, the nation's top law
20 enforcement agency?

21 A Yes, we do.

22 Q Okay. And the FBI after the symposium, did they actually
23 send you all an email explaining the reallocation of resources as being
24 the sole reason for them to stop conducting their own in-house testing?

25 A Yes. They issued a statement to the -- to the practitioners in

1 the field to let us know why they had stopped. And whenever they gave
2 a summary of the symposium on their website, they actually issued a
3 statement at that time saying basically the same thing that they still
4 supported the testing, but decided no longer to do it in their laboratory.

5 Q Okay. Thank you for clarifying that. Mr. Tanasi talked to you
6 about, you know, suspects being placed in handcuffs and how that can
7 result in secondary or, you know, transference three times over; do you
8 remember those questions?

9 A Yes.

10 Q And you also indicated that it could also result in the loss of
11 gunshot residue on a suspect's hand; can you explain how that could
12 also result in a loss of gunshot residue?

13 A Sure. The gunshot residue as I said before is only sitting on
14 the surface of the hands. So any movement, any rubbing of clothing or
15 touching of hands can remove that gunshot residue. And so just the act
16 of being handcuffed behind your back and having your hands rub
17 against the back of your clothing, can remove gunshot residue from your
18 hands and then it can't be collected.

19 Q How about -- you also indicated that time can also affect the
20 loss of gunshot residue from hands; correct?

21 A Correct.

22 Q Okay. So the longer the time elapses, the -- the -- the more --
23 that increases the likelihood of gunshot residue leaving that particular
24 surface?

25 A Correct. Studies have been conducted that show that gunshot

1 residue is loss through just general movement and about four to six
2 hours from the hands of someone who's fired a weapon. And -- and
3 that's someone who's just going about daily activities.

4 Q How about -- how it would be affect be of someone who is say
5 running for several minutes and sweating profusely?

6 A Well, sweat and the movement of the air over the hands would
7 obviously remove some -- some of the gunshot residue. Sweating
8 would also cause an issue whenever it comes to sampling because as
9 you saw that sampling device is just a tape. And you know whenever
10 you get tape wet it doesn't collect as well. So sweating can be an issue
11 with collection.

12 Q How about -- what effect would someone who had just
13 recently fired a firearm in the finding of gunshot residue on this person's
14 hands, if this person were to have jumped several walls. Talking high
15 walls, running, jumping over those walls; would that have any effect?

16 A It would just be additional movement of their hands, then
17 possibly running against clothing or, you know, I guess the surfaces that
18 they're trying to get around.

19 Q How about what effect would someone with, you know,
20 someone who had recently fired a firearm and finding of gunshot residue
21 on this person's hands, what effect would, I don't know, hiding in a
22 backyard in some mulch, grass and dirt, what if any effect would that
23 have on the presence of gunshot residue on a shooter's hands?

24 A I would think that there would probably be an attempt to
25 remove that dirt and mulch from the hands so that would be a brushing

1 of the hands and it could remove gunshot residue. Also if there is dirt on
2 the surface of the hands, I know from experience that that can affect my
3 ability to find the gunshot residue on the sampling device in my SEM
4 because the dirt often has metals in that will show in my scanning
5 electron microscope and sometimes mask those gunshot residue
6 particles that I'm looking for.

7 Q How about the presence of blood on hands? Say for instance
8 after having been bitten by a K9 police dog, what effect would that have
9 on, you know, being able to detect or find particles of gunshot residue on
10 a suspect or a shooter's hands?

11 A Well that's another situation that could cause a couple of
12 issues because first of all the blood could be -- could wash away the
13 gunshot residue or trying to remove the blood could remove gunshot
14 residue. And then also blood has a lot of iron in it so that can mask my
15 ability to be able to see these gunshot residue particles on the sampling
16 device and the SEM.

17 Q Okay. And so Mr. Tanasi talked to you a lot about
18 transference and you kept saying, you know, it's possible but unlikely;
19 do you stand by that position?

20 A Yes.

21 Q Okay. And you also indicated that -- well let me ask you, just
22 as it's unlikely to with each transfer it's also just -- it's also likely that with
23 each step taken, running, sweating, jumping through walls, hiding in
24 mulch and grass, being bit by a police dog, that also has an effect and
25 could result in the likely loss of gunshot residue on a suspect's hands;

1 would you agree with that?

2 A Yes.

3 Q Mr. Tanasi talked to you about this ideal situation being that
4 well you need to get a sample from a shooter before law enforcement
5 touches the suspect; do you remember that line of questioning?

6 A Yes.

7 Q And he kind of compared it to, you know, the lab environment;
8 do you remember that set of questions?

9 A Yes.

10 Q The lab sterile, everyone who touches a particular item of
11 evidence has gloves on, everything's being tracked in terms of who
12 touches in the lab; correct?

13 A Correct.

14 Q Mr. Tanasi also made the point that police officers carry
15 firearms, so they're the most likely people who could in the unlikely
16 situation transfer gunshot residue to a suspect; do you recall those
17 questions?

18 A Yes.

19 Q Okay. You would agree with me that while ideal that's not
20 really realistic or practical given the jobs of a law enforcement officer?

21 MR. TANASI: Objection. Speculation, Your Honor.

22 THE COURT: Yeah. Sustained.

23 MS. LEXIS: Okay.

24 THE COURT: You can probably rephrase it.

25 BY MS. LEXIS:

1 Q Police officers you would agree with me they carry guns
2 because they need to apprehend and locate suspects?

3 MR. TANASI: Objection. Speculation.

4 THE COURT: Right. I mean you can ask her to assume, but I
5 don't think she -- there's been no foundation for her to testify about what
6 their duties are.

7 BY MS. LEXIS:

8 Q Do you work with law enforcement in your job as a crime or as
9 a forensic scientist with the Bexar County Crime Lab?

10 A No. We are actually a completely separate entity. We don't
11 have law enforcement in the lab.

12 Q Okay. Would you agree with this statement, the lab
13 environment where the concern of contamination is of the utmost
14 important -- of the utmost importance, that's very, very different from the
15 outside realistic environment out in the real world?

16 A Yes, it is. And that's why we can't make any comparisons
17 between test that we do in the lab on things like transference and things
18 like what, you know, how far a gunshot residue can travel. We can't
19 make any comparisons from the lab to the outside world because -- is
20 because it is so different.

21 Q Okay. Mr. Tanasi asked you some questions about, you
22 know, why you didn't list transference on your report, the official report
23 that you published for this case; do you remember those questions?

24 A Yes.

25 Q Okay. Fair to say that when you completed your report, you

1 were simply stating the three most likely scenarios upon which gunshot
2 residue would be present on a suspect's hand, most likely scenarios;
3 would you agree with that?

4 MR. TANASI: Objection, Your Honor. Leading.

5 THE COURT: Pardon.

6 MR. TANASI: Leading.

7 THE COURT: Overruled. I'll allow you to answer.

8 MS. LEXIS: Thank you.

9 THE WITNESS: Yes. I would agree with that.

10 BY MS. LEXIS:

11 Q Okay. And again those three most likely scenarios when
12 gunshot residue is found on a suspect's hands is they may have
13 discharged the firearm, handled a firearm or was in close proximity to a
14 discharged firearm; is that right?

15 A Yes.

16 Q And as it pertains to items of clothing, you also only listed the
17 two most likely scenarios in your report; correct?

18 A Correct.

19 Q And those two most likely scenarios for GSR to be found on
20 an article of clothing would have been if -- if that item came into contact
21 with a discharged firearm or was in close proximity to a discharged
22 firearm; correct?

23 A Correct.

24 Q These scenarios are the most likely, transference is unlikely;
25 correct?

1 A It is possible, but less likely. Correct.

2 MS. LEXIS: I have no further questions. Thank you.

3 THE COURT: Any recross?

4 MR. TANASI: Briefly. Thank you, Your Honor.

5 RECROSS EXAMINATION

6 BY MR. TANASI:

7 Q Hello again, ma'am. So in terms of your report going back to
8 that, the word most likely, nowhere in it; fair?

9 A Correct.

10 Q There's no hierarchy that you list in your report from what is
11 the most likeliest scenario to what would be unlikeliest scenario; correct?

12 A Correct.

13 Q All right. You testified a little bit earlier on redirect to this
14 notion of more movement, more running, more rolling around, less
15 gunshot residue; right?

16 A It's possible that gunshot residue could be removed during
17 those actions, yes.

18 Q Right. So it's possible that the -- the more somebody is
19 running around or the more somebody is removed or someone is falling
20 or sweating as you're saying, that's more opportunity for a gunshot
21 residue to be falling; right?

22 A Right. To be lost or difficult to collect or for me to find in the
23 skin electron microscope.

24 Q So it'd be fair to say that if law enforcement found an
25 individual after doing all of those things, there would be no gunshot

1 residue on them?

2 A I don't think that's fair to say.

3 Q Well again going off of how you were testimony is today the
4 more movement, the more running, the more rolling around, the more
5 tussling all of that, the less gunshot residue that's going to be found on
6 an individual; right?

7 A I said it's possible, yes.

8 Q Thank you.

9 Pass the witness.

10 THE COURT: Anything else for this witness?

11 MS. LEXIS: Not from the State. Thank you.

12 THE COURT: Okay. All right. Looks like we may have a
13 question. Sure go ahead.

14 [Bench conference commenced]

15 MR. GIORDANI: Judge, can I get one more witness on before
16 we break?

17 THE COURT: Sure.

18 MR. GIORDANI: Okay.

19 THE COURT: Sure.

20 Okay. I don't think she can answer. I don't think she's
21 qualified to answer any of these.

22 MS. LEXIS: Actually she can answer number two.

23 THE COURT: She could answer --

24 MS. LEXIS: She can. And if --

25 THE COURT: -- number two?

1 MS. LEXIS: Yeah. And the number two question would be
2 she actually can't tell. She actually can't tell what [indiscernible] --
3 THE COURT: Okay. But she can answer that?
4 MS. LEXIS: She can answer it.
5 THE COURT: Okay.
6 MS. LEXIS: Was the little bullet recovered or tested, she can't
7 answer that.
8 MR. LEVENTHAL: She can.
9 MS. LEXIS: She cannot --
10 MR. LEVENTHAL: Okay. So that's question number one.
11 MS. LEXIS: -- on number one.
12 MR. LEVENTHAL: Okay.
13 MS. LEXIS: And then number three, where were the gloves
14 recovered, she can't answer that.
15 THE COURT: Right.
16 MS. LEXIS: So I think just number two.
17 THE COURT: But somebody else will answer.
18 MS. LEXIS: Correct. Just number two she can -- can be
19 asked that I think.
20 MR. LEVENTHAL: Which is the [indiscernible] --
21 MS. LEXIS: Does the residue tell you what bullet came up,
22 she's going to say no --
23 MR. LEVENTHAL: Oh [indiscernible] --
24 MS. LEXIS: -- based on my pretrial. I think it's [indiscernible]
25 --

1 [Bench conference concluded]

2 **QUESTIONS BY THE JURY**

3 THE COURT: Okay. The question I received it's marked as
4 Court's Exhibit Number 5. There's three question, number two, number
5 one, number three. The Court is going to ask number two; does the
6 residue tell you what bullet it came from?

7 THE WITNESS: The primer caps are used in all different
8 types of ammunition, so they're very few companies that actually
9 manufacturer the primer caps and then they're sold to the ammunition
10 manufacturers. So -- so the primer caps are used in -- in several types
11 of ammunition and you can't identify gunshot residue back to a specific
12 weapon, a specific type of ammunition or match it back to a bullet.

13 THE COURT: Okay. Any follow up from the State?

14 MS. LEXIS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. TANASI: No, Your Honor. Thank you.

17 THE COURT: Okay. Thank you very much for your testimony
18 here today. You may step down. You are excused from your subpoena.

19 THE CLERK: You have a question.

20 THE COURT: I'm sorry. Do you have a question?

21 UNKNOWN SPEAKER: Yes.

22 THE COURT: Okay. That's okay. It's for this witness?

23 UNKNOWN SPEAKER: [indiscernible]

24 THE COURT: Okay.

25 [Bench conference commenced]

1 MR. TANASI: That's fair.

2 THE COURT: That question makes -- that makes sense to

3 you all?

4 MS. LEXIS: It does not.

5 THE COURT: Okay.

6 MR. TANASI: The first one does [indiscernible] one question.

7 The second one, or does the bare skin have to touch the [indiscernible]

8 that's what it says. I think it's [indiscernible] --

9 MS. LEXIS: Okay. Yeah.

10 THE COURT: So no objection?

11 MS. LEXIS: No. That's fine, Your Honor.

12 MR. TANASI: That's fair.

13 THE COURT: Okay.

14 MS. LEXIS: Presuming I can just ask some follow up.

15 THE COURT: Of course.

16 MS. LEXIS: Okay.

17 THE COURT: Of course.

18 MS. LEXIS: Thank you.

19 MR. LEVENTHAL: So then we can too?

20 THE COURT: Absolutely.

21 [Bench conference concluded]

22 THE COURT: Okay. The question has been marked as

23 Court's Exhibit Number 6. Can the GSR transfer through clothing?

24 THE WITNESS: Can it transfer through clothing, okay.

25 THE COURT: That's the question.

1 THE WITNESS: Okay. So I'm going to try and interpret what
2 through means.

3 THE COURT: Okay. No. If you don't understand the
4 question, then that's -- that's fine.

5 THE WITNESS: Can you read it again please?

6 THE COURT: Can the GSR transfer through clothing?

7 MS. LEXIS: Your Honor, if the defense has no objection,
8 maybe we can ask the two questions in conjunction with each other
9 because the second part of --

10 THE COURT: Okay.

11 MS. LEXIS: -- question may explain the first.

12 THE COURT: Maybe this -- can the GSR transfer through
13 clothing or does the bare skin have to been touched the clothing?

14 THE WITNESS: Okay. Okay. So I think I do understand
15 better.

16 THE COURT: Sorry about that.

17 THE WITNESS: That's okay. There are certain weaves of
18 fabric that would allow the gunshot residue to travel through the weave
19 of the clothing. And it maybe a situation where you have jersey -- a
20 sports jersey where it has all the holes in it, that would be an opportunity
21 for the gunshot residue to travel through.

22 In the case of the knit glove in this situation, it had a hole in it.
23 So it's possible that the gunshot residue could have been deposited on
24 the skin through that hole. But then also the weave of the fabric is so
25 large that there could be open spaces the gunshot residue could travel

1 through. We do know that the gunshot residue particles can work their
2 way down into the weave. So it would be very likely that it could travel
3 through the fabric on clothing where the -- the weave is very large.

4 THE COURT: Any follow up from the State?

5 MS. LEXIS: No, Your Honor. But I would just ask -- I don't
6 have a question, but since via the witness referred to the red knit gloves
7 having holes and the fabric and the weave, may I just kind of show this
8 to the jury?

9 THE COURT: If you want it published the jury, the Court
10 Marshal will publish it.

11 MS. LEXIS: Thank you.

12 THE COURT: Anything else from the defense?

13 MR. TANASI: Court's indulgence, Your Honor.

14 THE COURT: You bet. Ladies and gentlemen, you will have
15 all of the evidence when you go back into the jury deliberation room.

16 MR. TANASI: Briefly, Your Honor. Thank you.

17 THE COURT: You bet.

18 **FOLLOW-UP EXAMINATION BY DEFENSE**

19 BY MR. TANASI:

20 Q I just want to touch on the -- the difference between gunshot
21 residue being airborne, but then also being able to go through clothes. I
22 guess my question is very simple, which one is it or is it both or is there
23 a difference? Just if you can build on that a little. I'm not clear on.

24 A Well, the gunshot residue is airborne until it lands on the
25 clothes. And then whenever there is an item of fabric that has an open

1 weave to it if we're talking about a sweater that has a large knit to it or
2 like I said before a sports jersey that has all of those open areas where
3 the airs allow to go through, then that airborne particle can make its way
4 through the fabric onto the surface underneath. Or even if it lands on
5 the fabric through movement it could still work its way through the weave
6 on -- onto the surface underneath.

7 Q And how would it work its way through the weave?

8 A As someone's moving, the -- the weave of the fabric is moving
9 against each other, the fibers and the threads are moving in there. And I
10 note based on studies that these particles can get stuck in the weave of
11 the fabric. Clothes have even been shown that they can be washed and
12 the particles still can be found on the clothing. So they do get down into
13 the weave. So that would make sense that they could get down into the
14 weave of the fabric and make their way to the skin if the weave is large
15 enough.

16 Q Okay.

17 Court's indulgence. Pass the witness, Your Honor. Thank
18 you.

19 THE COURT: Okay. Thank you very much for your testimony
20 here today. You may step down. You are excused from your subpoena.
21 And you may call your next witness.

22 MR. GIORDANI: Thank you, Your Honor. The State would
23 call Brian Walter.

24 THE MARSHAL: And, sir, if you'll please step up into the
25 witness stand. Remain standing, raise your right hand and face the

1 Clerk please.

2 **BRIAN WALTER**

3 [having been called as a witness and being first duly sworn,
4 testified as follows:]

5 THE CLERK: Thank you. Please be seated.

6 THE WITNESS: Thank you.

7 THE CLERK: And could you please state and spell your
8 name for the record.

9 THE WITNESS: Brian Walter, B-R-I-A-N, W-A-L-T-E-R.

10 THE CLERK: Thank you, sir

11 THE COURT: You may.

12 **DIRECT EXAMINATION**

13 **BY MR. GIORDANI:**

14 Q Good morning, sir.

15 A Hello, sir.

16 Q What is it that you do for a living?

17 A I'm a police officer with the Las Vegas Metropolitan Police
18 Department.

19 Q How long have you been a police officer?

20 A Currently 15 years.

21 Q And with Metro the entire time?

22 A Yes, sir.

23 Q What is your specific job title or duties now as you sit here
24 today?

25 A I'm a detective.

1 Q How long have you been a detective, sir?

2 A One year in October.

3 Q I want to draw you back to 2006.

4 A Yes.

5 Q Were you on with Metro at that time?

6 A Yes, sir. I was.

7 Q And specifically September 30th of 2006?

8 A Yes. I was employed.

9 Q What capacity were you working back then?

10 A I was working at an area command. I was a police officer

11 assigned to the problem solving unit, PSU.

12 Q And is the problem solving unit a proactive unit where it's

13 basically plain clothes in the streets?

14 A Yes, it is.

15 Q You described your area command; can you give the jury a

16 little more detail as to what your area command encompassed?

17 A At that time it was Cheyenne south to -- for my specific area

18 was [indiscernible] area. It was Cheyenne South to the U.S. 95, Jones

19 east to the I15 basically. And the area mostly that I worked was Martin

20 Luther King Boulevard east to the 15.

21 Q If you could narrow it to say a number of blocks by blocks, can

22 you describe to the jury how -- how large or small your area, your most

23 focused area was?

24 A On an estimation --

25 Q Sure.

1 A -- only not counting with like map or Google or anything like
2 that --

3 Q Sure.

4 A -- I'd say it's probably 20 -- 15, 20, 25 blocks north, south and
5 then maybe half that 10, 15 blocks east, west.

6 Q All right. In the grand scheme of things, is that a relatively
7 small area?

8 A Yes, sir. It is.

9 Q In the -- with that, do you become familiar with several people
10 throughout the community in that area in your capacity?

11 A Yes. Mostly.

12 Q And is it common or was it common for you back then in your
13 PSU unit to hit the streets and basically hoof it and get out and interact
14 with people?

15 A Yes. We would spend I would most of our days, but a lot of
16 our time interacting with the community, making contact with
17 homeowners and apartment renters, find out who their trouble problems
18 in the area, if we had any concerns with the police department that we
19 could address. Just regular community policing type activities.

20 Q All right. I want to talk to you specifically about the night of
21 September 30th of 2006.

22 A Yes, sir.

23 Q Who were you working with if anyone on that night?

24 A I was partnered with Officer Bradley Cupp.

25 Q Okay. When you say you were partnered with him, can you

1 explain to this jury what means?

2 A Officer Cupp and I were riding in the same police vehicle
3 together.

4 Q So was that a marked vehicle like we think of black and white?

5 A No. It was a plain vehicle. It was a Chrysler Sebring 4-door.

6 Q Okay. Was that vehicle equipped with any of kind of
7 emergency lights or anything like that?

8 A It was had both red and blue lights and siren.

9 Q Because it's a plain unmarked vehicle, would those things be
10 basically inside the vehicle as opposed to on the top like a regular cop
11 car?

12 A Yes. Most people wouldn't be able to see them from the
13 outside. We had a flipped down visor over the passenger seat that had
14 red and blue flashing lights and then strobe lights in each of the corners
15 of the vehicle and then the siren tucked behind the I guess bumper I
16 guess would be a best way to describe it.

17 Q Okay. Likewise, when you say you're in plain clothes, what
18 does that mean for this particular night, September 30th, 2006?

19 A I can't remember exactly what I was wearing, but it would had
20 to have been just --

21 MR. LEVENTHAL: Objection. Speculation.

22 MR. GIORDANI: He was trying to --

23 THE COURT: Can you -- can you recall what you were
24 wearing?

25 THE WITNESS: I was not --

1 THE COURT: We don't want you to speculate.

2 THE WITNESS: -- I was not wearing a police uniform.

3 THE COURT: Okay.

4 THE WITNESS: I was wearing normal civilian clothes.

5 MR. GIORDANI: Okay.

6 THE COURT: Thank you.

7 BY MR. GIORDANI:

8 Q Do you also wear some form of ballistic vest?

9 A Yes. It's a called like a tactical vest. We keep our like body
10 armor, our bullet proof vest inside of it and we have police markings
11 front and back. I don't remember exactly what I had, radio, taser I think I
12 had on there.

13 Q Okay. So what I'm getting at here is although you're in plain
14 clothes and plain vehicle, your -- your -- your clothing, does that identify
15 you as a police officer to a normal person or not?

16 A Yes.

17 Q Okay. So the big police across your ballistic vest is showing?

18 A Yes.

19 Q Okay. You indicated you were with Brad Cupp in one vehicle;
20 were you aware of other vehicles that were in your general vicinity?

21 A Our squad was conducting its DPA, it's a direct patrol activity,
22 in the area of -- the area of the housing area that we're in is called
23 Vegas Heights. It's basically Lake Mead northbound to not Craig,
24 Carey. And then Martin Luther King east to Revere I think is as far as it
25 goes.

1 THE COURT: Okay. Just to a minute. Will you ask the
2 question again please?

3 BY MR. GIORDANI:

4 Q Just the specific question. Were there other units in the area
5 the evening that we're talking about?

6 A Yes.

7 Q Okay.

8 THE COURT: Thank you.

9 BY MR. GIORDANI:

10 Q And I want to show you State's 26; does this aerial map depict
11 the general area you were in on the evening of September 30th, 2006?

12 A Yes, sir. It does.

13 Q And unfortunately for us we have a new system in here with a
14 mouse. So if you want to mark on it, you won't be able to touch the
15 screen.

16 A Okay.

17 Q You'll have to do that with the mouse and I'll show you if you
18 need to mark.

19 A Okay.

20 Q You know why you're here today, right?

21 A Yes, sir.

22 Q What is it that drew your attention or caused you concern or
23 brings you here to testify today initially? What drew your attention
24 initially?

25 A We heard gunshots.

1 Q Okay. Where were you when you heard those gunshots?

2 A Can I use?

3 Q Yes. And can I approach?

4 A Yes.

5 THE COURT: You may.

6 BY MR. GIORDANI:

7 Q Okay. So down at the bottom there --

8 A Okay.

9 Q -- if you need to write, you go to this -- red crayon.

10 A Okay.

11 Q And then you click and hold it down if you're going to make a
12 line.

13 A Okay.

14 Q Once you release it, it'll stop writing.

15 A Thank you.

16 Q And the question was where were you and Officer Cupp when
17 you first heard these gunshots?

18 A On Bartlett Avenue which would be I guess the top portion
19 where the cursor is now on the screen.

20 Q Okay. And that's at the very top of the map?

21 A Yes, sir.

22 Q And from what direction did these gunshots come?

23 A It would -- north would be the top, so it'd be to our south.

24 Q All right. Were you in your vehicle or on foot or do you recall?

25 A We were in our vehicle.

1 Q And when you heard these gunshots, did you proceed to the
2 south?

3 A Yes. We --

4 Q Is it not writing for you, sir?

5 A No. I was just going to click it back to a cursor because it was
6 --

7 Q Okay.

8 A -- it's a little easier for people to -- we're on Bartlett Avenue.
9 So Officer Cupp was driving. I was the passenger, front passenger seat.
10 We were on Bartlett so we came through this park here. We call it circle
11 park. So we went south and then came around. We didn't know exactly
12 where the shots had come from, the gunshots that we heard, so just we
13 just turned up the first street that we -- we came to which was Balzar
14 Avenue.

15 Q Okay. Balzar would be the east, west street that your mouse
16 is on now?

17 A Yes, sir.

18 Q All right. Where did you turn specifically?

19 A We turned --

20 Q I know. It's not very responsive, so do your best. And if you
21 need to get down, I'm sure the Judge will give you permission to point to
22 the map off the screen.

23 A It's okay. I think I can -- there it is. We turned -- we took circle
24 park around and then went westbound on Balzar Avenue.

25 Q Okay. Did you then make another turn?

1 A Yes. On Lawry. We went up Balzar. There wasn't a lot of
2 people out. We -- there was nobody screaming for help. There was no
3 like motion or anything. So we just came up to Lawry which is this -- I'm
4 sorry, Lexington. Came up to Lexington which is the north, south street
5 here where the cursor currently is frozen.

6 Q All right. Did you turn down --

7 A Yes.

8 Q -- Lexington?

9 A We made a southbound turn which would be a left hand turn
10 in a vehicle down in Lexington.

11 Q All right. Now let me ask you this, sir. You see 1271 Balzar
12 marked on that map?

13 A Yes, sir. I do.

14 Q Did you ultimately learn that the homicide had occurred at that
15 residence?

16 A Yes.

17 Q When you drove by that residence after hearing the gunshots,
18 was there any indication to you at the scene that a homicide had just
19 occurred?

20 A No. There was not. There were -- like I said before there
21 were -- there was nobody out. There was no frantic activity which is
22 normally -- there was no frantic activity. There was nobody screaming
23 for help or we didn't see anybody laying down that would indicate there
24 was anything going on at that residence.

25 Q I can presume you didn't see Mersy Williams lying in the yard?

1 A No. No, sir. I did not.

2 Q As a result of that, did you drive on past 1271 Balzar?

3 A Yes.

4 Q Where did you head?

5 A We proceeded to the next intersection which is Lawry and
6 stopped at that intersection 'cause we heard some commotion I guess
7 would be the best way to describe it to our -- it'd be to the east, so it'd be
8 on our left hand side as we're facing down the street.

9 Q Okay.

10 A We'd come down here and we'd stop about right here.

11 Q All right. I'm going to show you a couple of photographs, sir,
12 and get away from this map for a moment. Showing you 261; is this
13 1284 Lawry here?

14 A I believe it is. Yes, sir.

15 Q And would 1271 Balzar be up in this direction, sir?

16 A Yes. Just north of it, yes.

17 Q So just so the jury is very clear on this, this photograph would
18 be looking at the direction from which you came?

19 A Correct. This would be looking northbound towards Carey, if
20 you're familiar with the area.

21 Q Okay. And you were heading southbound on this street?

22 A Yes, sir.

23 Q Towards the camera man in this photo?

24 A Correct.

25 Q What is it that drew your attention and where was your

1 attention drawn to?

2 A It was -- it would be to our left which would be the east. And
3 we heard like commotion like arguing I guess would be the best way.
4 But it wasn't a loud like attention getting argument. It was like voices
5 talking back and forth and you could hear like a, I don't want to say
6 group, but some voices talking and then some more voices talking.

7 Q Okay. Describe the lighting as you remember it at that time in
8 that area.

9 A That -- at that intersection it was bad. It was pitch black. We
10 couldn't see anybody. We couldn't see faces, figures, male, females,
11 anything.

12 Q Okay. If you can and if you can't it's okay, but can you see
13 the area on this photograph where those people were arguing?

14 A No, sir. I -- it'd been hard to tell. It would had have to been
15 either inside the -- the fence area of the picture or outside on the
16 sidewalk, but it was -- it was dark. I could not tell.

17 Q Okay. Did you also see a vehicle?

18 A Yes.

19 Q Tell the jury what happened then.

20 A The voices continued like arguing. Then we heard nothing.
21 We heard some car doors open. Car doors closed. And then a vehicle
22 take off westbound up Lawry. It was a silver Lincoln Continental 4-door.

23 Q Okay. Showing you now State's 263. A bit of a different
24 angle here. Before I go on, can you tell where we are now?

25 A Yes. We are on Lawry east of Lexington. The address of the

1 Lawry house would be on our right hand side, so over here.

2 Q Okay. So 1284, is this home?

3 A Correct, sir.

4 Q And how this is Lexington Street here?

5 A Yes.

6 Q Can you see in this photograph where you and Officer Cupp
7 were as you observed this commotion?

8 A We were on Lexington just -- I'm sorry -- north of the
9 intersection. So I can't say specifically where we were.

10 Q Okay. But fair to say you were still coming south, you haven't
11 passed through the intersection at -- at Lawry yet?

12 A No. We have not.

13 Q Okay. You indicated you heard some car doors open, car
14 doors closed and the car took off; can you see in this photo now which
15 direction the car took off?

16 A Yes. It'd be west, so it would be going towards the people
17 that are standing in the street. So this area.

18 Q Okay.

19 A And just to back up, we had stopped and -- on Lexington and
20 we're kind of -- we're trying to figure out if this had anything to do with
21 the gunshots that we heard or if it was just people having an argument,
22 nothing going on and we were just going go. But we sat there for a
23 second, listened and then the car took off.

24 Q Okay. Now before I move on, you've described being up in
25 that circle park area --

1 A Yes.

2 Q -- hearing the gunshots, proceeding down driving past what
3 you learned ultimately is the homicide scene --

4 A Yes.

5 Q -- and coming to this location.

6 A Yes.

7 Q Can you estimate how much time has passed between the
8 initial gunshots to when we get here?

9 A On an estimation only, not concrete hard facts, we were
10 probably up Balzar --

11 MR. LEVENTHAL: Judge, I'm going to object to speculation.

12 THE COURT: Yeah. I don't want the officer -- the detective to
13 speculate.

14 MR. GIORDANI: Okay.

15 THE COURT: So maybe you can ask another question.

16 BY MR. GIORDANI:

17 Q Can you give an estimation, not a speculation, but an
18 estimation of how much time passed?

19 A Less than a minute I would say.

20 Q Okay. So less than a minute between gunshots and you see
21 this car take off?

22 A Yes. I think that'd be accurate.

23 Q Okay. I want to go back to the map. Actually -- excuse me --
24 I'm going to switch to 21. Can you get the jury oriented on this map, sir,
25 before we move on?

1 A So are -- our -- I'm sorry -- our location, this is Lexington
2 where the cursor is now. The 1284 Lawry is the house we were on, so
3 we were at this street. Let me see if I can draw a line. So -- so right
4 there.

5 Q Okay. So tell us what happens when you see that vehicle
6 speed off?

7 A So the vehicle leaves westbound -- westbound from the
8 residence through the intersection right in front of myself and Officer
9 Cupp, sorry, and continues westbound to Martin Luther King Boulevard
10 which is this next major street here.

11 Q Go on, sir.

12 A The vehicle -- we call it like a California stop, it's a rolling stop
13 kind of just looks -- I can't say what they did -- it doesn't come to a
14 complete stop for the stop sign. The vehicle then turns southbound
15 down Martin Luther King Boulevard and continues southbound.

16 Q All right. Before we move on, I'm going to zoom in just a little
17 bit here, sir. At this point in time once you're on Martin Luther King are
18 you pursuing this vehicle and describe the rate of speed?

19 A The vehicle takes off from the Lawry address really -- very
20 quickly. So we were thinking maybe this has something to do with it. So
21 we turned behind it and it's driving faster than what I believe a normal
22 person would drive on that street 'cause I've worked this area for a
23 while. People don't drive fast in this area.

24 Q Did that raise a red flag with you?

25 A Yes, sir. It did.

1 Q And --

2 A It drew our attention.

3 Q Okay. As a result -- and let me -- may I approach?

4 THE COURT: You may.

5 BY MR. GIORDANI:

6 Q Let me just move this microphone up a little bit so it catches
7 you.

8 A I kind of move around. I'm sorry.

9 Q That's okay. As a result, did you and Officer Cupp pursue that
10 vehicle?

11 A Yes. When the vehicle turned southbound during -- on Martin
12 Luther King Boulevard, we saw it commit a traffic violation, so now we
13 had the ability to stop the vehicle. As soon as it hit Martin King, it started
14 picking up speed. So we activated our emergency lights, our lights and
15 siren.

16 Q And that would be what we've all heard before, a typical lights
17 and sirens?

18 A Yes, it would.

19 Q Heard and seen I should say.

20 A Yes.

21 Q What did that vehicle do as a result of you turning on your
22 lights and sirens?

23 A Still continued southbound on Martin Luther King at a high
24 rate of speed. When it reached the intersection of Lake Mead, it was a
25 red light for southbound traffic and it just blew right through the red light.

1 It didn't -- I don't remember it pausing or slowing down or anything.

2 Q All right. Before we move on now, are you and Cupp
3 equipped with radios?

4 A Yes. There's a police radio in the vehicle and then each of us
5 have our pack sets is what they're called.

6 Q Your what?

7 A Personal radios.

8 Q Okay.

9 A Hand held radios I guess we would say.

10 Q Are you listening to the radio as this is all going on?

11 A Yes.

12 Q Are you broadcasting over the radios as this is all going on?

13 A At this point I think other officers or dispatched had been
14 receiving calls about something that happened at 1271 Balzar.

15 Q Okay.

16 A So the radio was kind of occupied at this point.

17 Q All right. Did you hear or know through radio that officers
18 were already responding up to the homicide scene when you're going
19 through the intersections and all that?

20 A Yes. A call had come out 4-15A at -- I'm sorry -- which is a
21 assault battery with a deadly weapon firearm code. It came out at the
22 1271 Balzar address.

23 Q Okay.

24 A And then so we knew something had happened there.

25 Q Okay. So fair to -- fair to say officers are responding to the

1 homicide scene while you're going away from the homicide scene?

2 A Yes.

3 Q Okay. Describe now what goes on once you get to Lake
4 Mead and beyond.

5 A So the vehicle continues to the red light at Lake Mead and
6 continues southbound and turns east on Jimmy Avenue.

7 Q All right. And let me get us situated here. Once on Jimmy
8 Avenue, what does that vehicle do?

9 A It continue -- it goes east on Jimmy Avenue. The vehicle turns
10 east on Jimmy and then south on Lexington.

11 Q And on this map you see a 1915 Lexington Street; is that
12 marking a church?

13 A Yes, it is.

14 Q All right. Tell us what happens as you pursue this vehicle
15 toward the church.

16 A The vehicle slows down to make the turn onto Jimmy. And
17 then it slows down a little bit more to make the southbound turn onto
18 Lexing [sic] to the point to where it's really slow. It's -- it looked like the
19 occupants were getting ready to jump out of the vehicle is what it looked
20 like. The front driver's door --

21 MR. LEVENTHAL: Objection. Speculation.

22 THE COURT: No. You can testify about your observations.

23 MR. GIORDANI: Thank you.

24 THE COURT: Go ahead.

25 THE WITNESS: Based on my training and experience when

1 a vehicle slows down when police officers are behind it to a point to
2 where it looked like the occupations were going to exit the vehicle and
3 run on foot.

4 BY MR. GIORDANI:

5 Q Okay. What did you observe, start from there?

6 A The driver's door opened and a -- is it okay if I kind of sit like
7 the driver?

8 Q Sure.

9 A So the driver door opens and then the driver's looking over the
10 back. He has a I guess a short rifle I guess would be the best way to
11 describe it. In his right hand he's got the door kind of propped open with
12 his left foot and his left hand. He's looking back at us like this.

13 Q That's the driver of the vehicle?

14 A Yes, sir.

15 Q Is the car still coasting?

16 A It's coasting I would say -- moving it is.

17 Q Okay. What happens then?

18 A The driver falls out or jumps out I don't know which, but he
19 comes out of the vehicle and hits the ground. Like rolls maybe, hits the
20 ground, gets back up and then he -- so now he's kind of running towards
21 us I guess would be the best way to say. We're going towards him and
22 he's moving towards us.

23 Q Okay. Now I'm going to show you a couple of photographs,
24 269 first; do you recognize this?

25 A This is Lexington looking southbound. The Lincoln that I

1 mentioned before is on the right and this is the church, this brightly lit
2 sign there.

3 Q Big brightly lit sign right there that's -- that's where the vehicle
4 comes to rest basically?

5 A Yes.

6 Q Okay. Now you've just described the vehicle -- I'm sorry -- the
7 driver's already outside the vehicle. And how far were you away from
8 that person as he approached you?

9 A He comes out of the vehicle and then stands up and starts
10 moving as we're moving towards him. So closer than you and I are at
11 this point.

12 Q Okay.

13 A And then he -- our car and him made contact. He's on the
14 front right quarter panel which would be the passenger side quarter
15 panel where the right front tire would be. So he's now closer than you
16 are even the Judge is to me.

17 Q Okay. Now, you've described this person as the driver so far.

18 A Yes, sir.

19 Q And you've described how he's approached you and come
20 upon your hood?

21 A Yes.

22 Q I want you to look around the courtroom and tell me if you see
23 that person you described as the driver here in Court today.

24 A Yes, sir. I do.

25 Q Can you please point to that person and describe an article of

1 clothing he's wearing in Court today?

2 A Blue and white checkered or design shirt and a, is red tie with
3 stripes on it?

4 MR. GIORDANI: Will the record reflect identification, Your
5 Honor?

6 THE COURT: So reflected.

7 BY MR. GIORDANI:

8 Q You've identified a person in Court here today. Is that time
9 when he's coming at you with a rifle the first time you ever interacted
10 with that person?

11 A No. I had seen him before just through walking around
12 neighborhoods, talking with -- with people.

13 Q Okay. So when you saw him having just come out of this
14 vehicle, did you recognize him as that person you knew?

15 A I'm -- I recognized him, yes, as somebody oh hey I know that
16 person, but I could not place his name.

17 Q Okay. Now you were about to say or you did say that he and
18 your collided or meaning your car actually hit him.

19 A Yes, sir.

20 Q How close would you say was your face to his face when he
21 actually -- when you actually came into contact?

22 A I would be sitting in the front passenger seat of the vehicle
23 here, so the front of the car would be right here. Can I stand?

24 MR. GIORDANI: Judge, may he stand.

25 THE COURT RECORDER: You do need a microphone.

1 THE COURT: Do you need to stand?
2 THE WITNESS: Is that better?
3 THE COURT RECORDER: Yes.
4 MR. GIORDANI: He asked if he could stand, Your Honor.
5 THE COURT: Do you need to stand?
6 THE WITNESS: I can describe it, ma'am.
7 THE COURT: Okay.
8 THE WITNESS: So he would be just a little bit past where my
9 hand could reach, so we were close in front of me.
10 BY MR. GIORDANI:
11 Q Was he facing you?
12 A Yes.
13 Q So you were face to face with this person?
14 A Yes.
15 Q I estimate and they can correct me if I'm wrong, three to four
16 feet away?
17 A Yes, sir.
18 Q Okay. At this point in time are you still fully inside your
19 vehicle?
20 A Yes, I am.
21 Q Is Officer Cupp fully inside his -- the vehicle?
22 A Yes. Our vehicles are still moving or our vehicle is still
23 moving.
24 Q Have you at this point unbuckled your seatbelt or taken out
25 your weapon or anything like that?

1 A Taken out my weapon, no. Seatbelt was unbuckled. As soon
2 as we saw the vehicle slowing down, I took off my seatbelt.

3 Q Okay. Weapon is still holstered?

4 A Yes, sir.

5 Q Did the Defendant Mr. Matthews have that long gun when he
6 jumped out of the vehicle or got out of the vehicle?

7 A When he exited the vehicle, the initial exit, yes. When he hit --
8 made contact with our vehicle, no. I don't believe he did.

9 Q Okay.

10 A So some time during the first time he fell and our contact, the
11 weapon wasn't there.

12 Q Okay. When he still had the weapon in his hand and he's
13 coming towards you, you're going towards him, did you fear for your life?

14 A Yes. It was a very scary, sir.

15 Q Okay. As a result of that contact between Mr. Matthews and
16 the front of the vehicle, what did you do if anything?

17 A As Mr. Matthews came down my driver or passenger side
18 door, I opened my door. Officer Cupp had slowed down enough now to
19 allow me to get out, so I got out and started chasing Mr. Matthews.

20 Q When you say I got out and started chasing, you mean on foot
21 obviously?

22 A Correct. Yes.

23 Q Can you describe kind of I guess the path or direction that he
24 took in this photo or would you like another photograph?

25 A The aerial photograph would be better, sir.

1 Q Going back now 21 and let me try to zoom in. Can you
2 describe his path -- well first so we don't get the jury confused here.
3 Show us where that Cadillac or that vehicle came to rest against the --

4 A It would had to have been in this area right here --

5 Q Okay.

6 A -- where my cursor is.

7 Q Okay. And you indicated that you chased on foot; what path
8 did you chase Mr. Matthews on foot?

9 A When I got out of my vehicle he was running northbound, this
10 is still Lexington here where the cursor is, still northbound on Lexington
11 and then made a right turn on the street is Eleanor.

12 Q Okay. And you indicated -- well I'm sorry. Let me go back
13 real quick to 268. I want to make this very clear now. You -- you were
14 behind this vehicle when you hit Mr. Matthews or he hit your car or
15 whatever you want to call it; right?

16 A Yes.

17 Q Were you behind it directly or behind it and to the right of you?

18 A We were offset to the left. So where --

19 Q I'm sorry.

20 A -- I can just use this to kind of illustrate --

21 Q Okay.

22 A -- where the vehicle -- the rear of the vehicle is our patrol car
23 would have been offset to the left.

24 Q Okay.

25 A So when Mr. Matthews exited the vehicle, he fell, he would

1 have been like kind of between his car and our car, but we were, you
2 know, we were back a little ways. There was a little distance between
3 us.

4 Q Okay. And what -- I want to understand here, sir, is when he
5 ran, once the actual foot pursuit ensued, did he go up in this direction on
6 this side of the road as --

7 A Yeah. We were --

8 Q -- opposed to the other side?

9 A -- the town car was hugging or favoring the right hand side of
10 the street, so yes he went basically -- I don't -- I'm not -- I don't know if
11 he was on the sidewalk or on the street, but near the sidewalk. Yes, sir.

12 Q Okay. Going back to the map now, sir. I keep forgetting, 21.
13 The map is now up. Can you show us the direction -- well actually I'm
14 sorry. Let me stop for a moment. Did you observe any other occupants
15 exit that vehicle?

16 A No. I did not.

17 Q Do you know where your partner went when you went after
18 Mr. Matthews?

19 A No.

20 Q Okay. So now go ahead and describe the path that you
21 pursued him on foot.

22 A So as we're running, Mr. Matthews kind of looks back at me
23 over -- it would have been over his right shoulder to see if there's
24 anybody from our car chasing him which I was. So he continued north
25 on Lexington and then east on Eleanor which is right here.

1 Q All right. And you've had several opportunities up to this point
2 to view Mr. Matthews not only his face, but also his clothing. Can you
3 describe the clothing he was wearing that evening to the jury?

4 A Black shirt and blue jean shorts.

5 Q Was there anything else that he was wearing on his person?

6 A He had a red glove.

7 Q A red glove.

8 A A red glove on his hand, yes.

9 Q Okay. Where do you pursue him once he gets onto Eleanor?

10 A He turns left which would be north, so he turns this direction
11 and runs through -- jumps a chain-linked fence that's in front of
12 somebody's house, jumps that fence into the yard.

13 Q Okay. At this time, sir, when he jumps his first fence, do you
14 decide to go ahead and pursue him?

15 A Yes. There was a black and white fully marked patrolled
16 vehicle coming southbound on Lexington. They saw me chasing Mr.
17 Matthews and then turned basically east kind of between Mr. Matthews
18 and I.

19 Q Okay.

20 A So there was a black and white now in between us. So -- but I
21 still had clear view of torso. I couldn't see legs or anything like that
22 when I saw him jump into the yard.

23 Q Did you go after him?

24 A Yes.

25 Q And do tell us what happened from there.

1 A Jumped the fence. Mr. Matthews jumped the fence. I jumped
2 the fence. Ran straight. There was a fence into the backyard. I don't
3 know what address it was on Eleanor that he ran into. Fence leading to
4 the backyard. Jumped through the fence to the backyard. And then he
5 was going over the back fence which would put him on into the next
6 houses to the north when I heard three gunshots.

7 Q What direction did you hear those three gunshots from?

8 A They would have been to my south in the area where I had left
9 my partner.

10 Q So to be very clear, it'd be fair to Mr. Matthews, you're not
11 saying you heard the gunshots coming from where he was?

12 A No.

13 Q You were still chasing him and you were in back?

14 A It would be to -- yeah to my back. To the south of where I had
15 just came from from the vehicle is what it sounded like.

16 Q Okay. As a result of hearing those three gunshots, what did
17 you think and what did you?

18 A With the other patrol officers there, they had gotten out. I
19 thought that Officer Cupp had been in a shooting. I didn't -- I didn't know
20 how many other people were in the car. I didn't know what happened
21 after I had got out of the vehicle. I didn't hear, you know, radio traffic or
22 anything from -- from him. I was giving out information over the radio on
23 Mr. Matthews' description, so I don't know if I, you know, talked over
24 him. I didn't know he'd been in a shooting, he was -- the people from
25 the car was shooting him, if he had shot somebody. I was worried about

1 him.

2 Q Okay. So you're worried about your partner.

3 A Yes, sir.

4 Q What do you do at that point?

5 A I stopped pursuing Mr. Matthews and I then start running back
6 towards the area where I had last seen Officer Cupp.

7 Q Okay. If you recall, where was it generally that you terminated
8 your pursuit of Mr. Matthews and what direction was Mr. Matthews
9 heading in when you terminated that pursuit?

10 A Mr. Matthews was still northbound. I stopped in the not the
11 original we went in, but the -- the next house to the north which would
12 have been on this side of the streets, so actually Jimmy address is what
13 it would have had. I stopped there. I don't remember if I jumped to the
14 next yard or jumped over the fence to the next yard, but I had to
15 backtrack.

16 Q Okay. So you backtracked back through the -- the residences
17 while Mr. Matthews continued towards Jimmy Avenue?

18 A Yes.

19 Q All right. Where did you go from there?

20 A I ran -- basically chased my route. I turned west on Jimmy
21 and then south on Lexington to where I saw the Lincoln Town or Lincoln
22 Continental just stopped where it was in the picture.

23 Q Although you terminated your pursuit of Mr. Matthews, did you
24 get out to other units via radio his -- what he was wearing and all that?

25 A Another patrol officer had come by and radio -- the radio was

1 busy at this time. I was out of breath to be quite honest with you. And
2 so I was giving the description to the officer I seen, described his
3 clothing a little better I guess would be the best way to say, and then
4 started going over to the car and asked him to help me come over to the
5 car.

6 Q Okay. At this point you're worried about your partner, but do
7 you learn as you head back that I mean he's okay or --

8 A Officer Cupp had got on the radio and said that he had -- he --
9 shots fired is the term that we use and he was Code 4 or okay.

10 Q Okay. And normal speak?

11 A Code 4 means okay, I'm all right.

12 Q All right. So he said he was he had fired rounds himself.

13 A Yes.

14 Q He wasn't shot.

15 A Yes.

16 Q And that he was okay.

17 A Yes.

18 Q As a result of that did you go look for him or did you go back
19 to the original scene of the wreck?

20 A Since the town car was not secured, there was no other
21 officers or anything around, I stayed there with the car to secure that
22 scene.

23 Q Actually when you arrived back, I'm going to show you State's
24 276; was there anyone at or around this vehicle?

25 A No. There was -- I had -- I couldn't see because the window

1 tint. I didn't know if there was anybody else still in the vehicle hiding or
2 anything, so I cleared the vehicle and the door was as you see it there.

3 Q Still open?

4 A Yes.

5 Q And when you say the door, just for the record, you're talking
6 about the driver's door?

7 A Yes.

8 Q When you see clear vehicle, what does that mean?

9 A Taking my hand gun, approach it tactically and kind of look
10 through the windows to make sure that there's nobody hiding the back
11 seats.

12 Q Okay. Obviously no one in the back seats; right?

13 A No. There was nobody in the -- in the vehicle.

14 Q Did you look inside the front seats as well?

15 A I did.

16 Q Showing you 287; is that how the front seat appeared when
17 you arrived back at the vehicle?

18 A Yes.

19 Q Did you notice anything of note in the front passenger seat?

20 A Front passenger floor board was a firearm -- handgun.

21 Q Showing you 290; can you see the firearm in that photo?

22 A Yes. Yes. Right here.

23 Q I'm showing you now 291; is that better?

24 A That is much better, yes.

25 Q All right. And 29 -- well before I get to that, State's 300; was

1 the vehicle still running with the keys in the ignition?

2 A Yes, it was.

3 Q I want to ask you just a couple of questions about 299 here;
4 for -- for members of the jury who may not be too familiar with firearms,
5 tell us kind of what we're looking at and why the gun looks the way it
6 does?

7 A This style of gun is called a 1911. It is a 45 caliber handgun.
8 The magazine which is this part portion of the firearm is sticking out of
9 the grip and the slide is locked back to the rear.

10 Q Do you have experience with firearms, sir?

11 A Yes.

12 Q Obviously you're a detective?

13 A Yes.

14 Q Been on with Metro for quite a while?

15 A Yes.

16 Q Extensive firearms training?

17 A Yes.

18 Q Can you tell what's going on with this gun or why it's in the
19 position that it is?

20 A It appeared that it had some sort of malfunction from being
21 fired. I don't remember exactly what the malfunction was, but that's not
22 how they're supposed to look.

23 Q Okay. Did you -- in addition to looking inside this vehicle,
24 secure the general scene or the area around the vehicle?

25 A The entire area to include the intersection, so Jimmy south all

1 the way to the next street south.

2 Q All right. Showing you now 292; did you walk up past that real
3 bright light and then into the yard of the church?

4 A I did.

5 Q And is there a grassy area there?

6 A Yes.

7 Q 292; is that the grass and would the sign be just outside the
8 photo to the left?

9 A Yes.

10 Q Showing you now 294; what are we looking at here?

11 A This is the firearm that I saw in Mr. Matthews' hands when he
12 was exiting the Lincoln from the driver's seat.

13 Q Showing you 295; is that a close up of that --

14 A Yes.

15 Q -- firearm --

16 A Yes.

17 Q -- Mr. Matthews himself possessed?

18 A Yes.

19 Q Can you describe being familiar with firearms what we're
20 looking at?

21 A This is a shortened version of a Ruger 1022, 22 caliber rifle.

22 Q Showing you 297; when you say it's a shortened version, what
23 do you mean, sir?

24 A There is no stock to the rifle. There should be a stock which
25 would be extending here. It's a considered a rifle.

1 Q And --

2 A Stock it and removed. So it's just now like a pistol, handgun
3 firearm.

4 Q What is this large banana shape item?

5 A This is the magazine which would hold the ammunition to
6 supply the firearm.

7 Q Okay.

8 A It's called a banana clip.

9 Q Banana clip?

10 A Yes, sir.

11 Q Okay. And when you came back to the scene after this foot
12 pursuit and you heard your partner was okay, was that sitting as we've
13 seen it here now in the photographs in the grass?

14 A Yes.

15 Q Did you also or let me ask -- back up a moment here. At this
16 point in time can you do your best to describe the size of this scene and
17 the dynamics going on?

18 A There would be -- the scene at my location at the church on
19 Lexington, the major scene over at 1271 Balzar where the shooting
20 occurred, and then another perimeter being set up where I lost visual or
21 where I had left the foot pursuit with Mr. Matthews. So three large
22 scenes.

23 Q Three large scenes?

24 A Yes, sir.

25 Q Fair to say there were dozens if not hundreds of Metro

1 personnel around?

2 A Yes. There were a lot of officers there.

3 Q We're in a very sterile environment obviously 12 years later.

4 A Yes.

5 Q Was there, I don't know, a lot going on?

6 A Yes. It was -- the radio was busy. People talking on the
7 radio. There was a lot of stuff to be done. I was -- we needed more
8 units at my location to help set up tape and keep everybody out. The
9 same thing at the other locations.

10 Q Okay. And had units already been dispatched or had you at
11 least asked for a perimeter around the area in which you last left Mr.
12 Matthews?

13 A The perimeter was set up, but not by me. By other officers
14 that were in the area.

15 Q Once this is relatively secure, do you walk back up to the path
16 in which you chase Mr. Matthews?

17 A Walk back to the church, yes, sir.

18 Q No. No. I'm sorry. Once you been at the church, this is all
19 secured at the church?

20 A Yes.

21 Q Do you eventually walk back to the path where you had
22 chased Mr. Matthews?

23 A Yes. Yes.

24 Q And I want to show you now State's 332; did you walk to the
25 area of 1200 Eleanor?

1 A Yes.

2 Q State's 333; does that look familiar to you?

3 A Yes. The skid or the scuff marks that are on the sidewalk or
4 curb area are from the patrol car that had saw me and then was also I
5 guess chasing Mr. Matthews.

6 Q Okay. So the skid marks that are in the foreground, did those
7 give you a good indicator of where Mr. Matthews had run and where he
8 turned and went through the yards?

9 A Yes. So he would be I guess turning left. So he would be
10 running this direction.

11 Q Okay. And is that the direction where you followed him --

12 A Yes.

13 Q -- and you previously described you went over a gate and then
14 backyard, etcetera?

15 A Yes, sir.

16 Q And what is marked here by this cone?

17 A Those are red gloves.

18 Q 334; is that a close up version of the red glove that you
19 eventually saw later that -- that evening?

20 A Yes.

21 Q Did you -- when you observed the red glove, did you drop the
22 cone or has -- did somebody observe that before you had it marked off
23 or did you just find it?

24 A No. The cone was there when I had --

25 Q Okay.

1 A -- got back to where the fence was.

2 Q Understood. And 335, that's just a close up of that same red
3 glove?

4 A Yes.

5 Q Now, you've described generally the scene. Ultimately, sir, do
6 you discover or find out that Mr. Matthews has been taken into custody?

7 A Yes.

8 Q And did you observe him and confirm that that was indeed Mr.
9 Matthews who you knew from before and also who had -- you had saw
10 exit the vehicle?

11 A Yes. K9 had responded. When we set up a perimeter around
12 an area, we try to contain the person running from us. Our goal or our
13 objective is is try to get them to stop running and lay down. So when K9
14 gets there -- K9 police dogs get there they can start trying to track the
15 person who ran from us. So I was notified that there was a suspect or a
16 person in custody and they were bringing him to my location so I can
17 see. Police talk I guess one on one. I look at him to see if he's the
18 person I was chasing.

19 Q Okay. And was he in fact transported to your location?

20 A Yes.

21 Q And did you observe him?

22 A Yes. He got out. We -- officers took him out of the back of the
23 patrol vehicle and I got to look at him.

24 Q And who was that person that you looked at?

25 A Mr. Matthews a hundred percent that the person that I was

1 chasing was the person that we had in custody.

2 Q Okay. Showing you State's 336; is that how Mr. Matthews
3 appeared the time you looked at him and identified him after you had
4 chased him?

5 A Yes. Yes, it was.

6 Q Did he have -- I mean was he this disheveled with his pockets
7 sticking out and all the grass in his hair and stuff or not when you had
8 chased him?

9 A No. He had no grass in his hair. His pockets were not
10 sticking out. Same -- looked the same except without the dirt. I guess
11 grass would be the best way to say it.

12 Q State's 337; is that just a side view of Mr. Matthews that
13 evening?

14 A Yes.

15 Q And I want to zoom in a little bit. Same question. I know it
16 sounds obvious, but I have to ask; did he have these big grips and the
17 bloody marks on his shoulder when you were chasing him?

18 A No, he did not.

19 Q Okay. How would you describe Mr. Matthews' hair in this
20 photograph?

21 A The hairstyle is a corn -- cornrows I believe.

22 Q And is that in fact the words you used when you dispatched
23 his -- his description over the radio?

24 A Yes.

25 Q And last one, 338, same question, did he appear with all this

1 stuff on him when you were chasing him or is that how he appeared
2 when you identified him moments later?

3 A This is how he appeared when I identified him. When I was
4 chasing him he didn't have any of the grass or the rip or his pants
5 weren't sagging that low where his boxers were visible.

6 Q Okay. All right. Thank you very much, sir.

7 I'll pass the witness, Your Honor.

8 THE COURT: Thank you. Are you doing cross?

9 MR. LEVENTHAL: Yes.

10 THE COURT: I just wanted to get an idea of -- you think it'll
11 be --

12 MR. LEVENTHAL: It's going to be awhile --

13 THE COURT: -- it's going to be extensive?

14 MR. LEVENTHAL: -- so if we can take a break.

15 THE COURT: Okay.

16 MR. LEVENTHAL: Yes.

17 THE COURT: So we're going to recess for lunch. During this
18 recess you're admonished not to talk or converse amongst yourselves or
19 with anyone else on any subject connected with this trial or read, watch
20 or listen to any report of or commentary on the trial or any person
21 connected with this trial by any medium of information, including without
22 limitation newspapers, television, the Internet or radio; form or express
23 any opinion on any subject connected with this trial 'til the case is finally
24 submitted to you.

25 We'll be in recess 'til 2:30. Thank you very much.

1 THE MARSHAL: All rise for the exiting jury.

2 [Recess taken from 1:30 p.m. to 2:35 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: Are you ready?

5 MR. LEVENTHAL: Yes.

6 THE COURT: Okay.

7 [Inside the presence of the jury]

8 THE COURT: Does the State stipulate to the presence of the
9 jury pane?

10 MR. GIORDANI: Yes, Your Honor.

11 THE COURT: The defense?

12 MR. LEVENTHAL: Yes, Your Honor.

13 THE COURT: Okay. Thank you very much, Detective, for
14 coming back. And you may begin your cross examination.

15 CROSS EXAMINATION

16 BY MR. LEVENTHAL:

17 Q Good afternoon. It's detective, right?

18 A Yes. Now it is. Thank you.

19 Q Let me start with the obvious. We're going to go back 2006;
20 right?

21 A Yes, sir.

22 Q Okay. That was 12 years ago; correct?

23 A Yes.

24 Q Okay. At the time you indicated you have now I think you said
25 15 years on the -- in Metro?

1 A Now yes.

2 Q Okay. So at the time in 2006 you had three years; right?

3 A Yes.

4 Q Okay. And you were on this as you called it this problem
5 solving unit team, this PSU team for approximately what three months?

6 A Yes.

7 Q Okay.

8 A I think that'd be --

9 Q So you had just been on this unit for three months; right?

10 A Yes.

11 Q Okay. So when you were asked questions from the District
12 Attorney regarding your familiarity with the area and the people, you had
13 only been there for three months on this unit; right?

14 A No.

15 Q Okay. No? You just said yes.

16 A I've been at the area command for three years. I've been with
17 the unit, the problem solving unit, for about three months.

18 Q Okay. You were on for three months; right? Which is -- a
19 different role than you were playing as an officer; correct?

20 A Could you repeat or could you repeat the question?

21 Q Problem solving unit -- you're playing a different role than as
22 an officer; yes or no? It's a different role? It's a different -- it's a different
23 department; correct?

24 A No.

25 Q No. I'm not using the right words. When you get on to the

1 problem solving unit, you have different duties than a regular street
2 patrol officer?

3 A Yes.

4 Q Okay. And you indicated that in 2006 you were in plain
5 clothes?

6 A Yes.

7 Q And this was September 30th; correct?

8 A Yes.

9 Q Okay. And your plain -- were you -- and you said you had
10 other members of your unit in the area as well on this September 30th?

11 A Yes.

12 Q And were they all sort of in plain clothes?

13 A We all were, yes.

14 Q Okay. And I assume that you're not running around in suits
15 and ties like you're sitting here today; right?

16 A No.

17 Q Okay. You're probably in blue jeans?

18 A Yes.

19 Q T-shirts?

20 A Maybe in a t-shirt, yes.

21 Q Okay. Tennis shoes?

22 A Oh most definitely.

23 Q Most definitely. Okay. You all have the -- as the District -- as
24 John -- Mr. Giordani said a tactical vest?

25 A Yes.

1 Q It says police on it?

2 A Yes.

3 Q Okay. And all -- how many were there, six of you in that area?

4 A Yes. I think there was six on my squad at the time with my

5 sergeant.

6 Q Okay.

7 A So seven total.

8 Q Seven total?

9 A Yes.

10 Q All right. Let's take you back to 12 -- I believe it's 1271 Balzar.

11 That's where you initially saw I think you said commotion?

12 A No. We didn't see anything at 1271 Balzar.

13 Q No. Okay. Where did you first see the commotion?

14 A The address on Lawry.

15 Q Lawry, okay. So you drove past Balzar and saw nothing?

16 A Correct.

17 Q Okay. You kept going I think, then did you turn left on Lawry;

18 is that where you went? I could show you a map again. I'm just trying to

19 figure out where you went. Do you remember if you went left on Lawry

20 then?

21 A No.

22 Q No. You went straight?

23 A No.

24 Q No. You don't remember or no, you didn't go left?

25 A I'm just answering the questions that you're asking.

1 Q No. I understand. But -- and maybe I'm not clear. No, you
2 didn't turn left or no you didn't go straight?

3 A I did not turn left on Lawry and I did not go straight on
4 Lexington.

5 Q Okay. At some point you got to where the commotion is at;
6 right?

7 A Yes.

8 Q Okay. And you indicated that it was very dark outside?

9 A It was.

10 Q And so you couldn't see anything other than make out I
11 assume silhouettes or some people?

12 A Yes.

13 Q You didn't know what race they were; did you?

14 A No.

15 Q Okay. You couldn't tell what color -- what clothing they had
16 on?

17 A No.

18 Q Okay. And you just heard -- did you hear a female's voice
19 yelling? I think you've testified before that you heard a female's voice
20 yelling.

21 A I don't remember, sir.

22 Q You don't remember?

23 A No.

24 Q Okay. Fair enough. It was 12 years ago; right?

25 A Yes.

1 Q Okay. And you've had a number of opportunities to testify in
2 different capacities in this case; correct? For example the night of
3 September 30th you gave a report to homicide detectives; correct?

4 A Yes.

5 Q Okay. Then another point you testified under oath at a
6 preliminary hearing; correct?

7 A Yes.

8 Q And then there was another point where you testified under
9 oath at a different hearing; correct?

10 A Yes.

11 Q Okay. Now you didn't indicate today how many people you
12 saw get in that vehicle when you heard the commotion; did you?

13 A No.

14 Q No. You remember giving testimony before where you said it
15 was three or four people that got into the vehicle?

16 A If it's in the record, then yes.

17 Q Okay.

18 A I did give that testimony.

19 Q So you were able to see three or four people in the vehicle,
20 then they took off at a high rate of speed I think is what --

21 A No. I've never said that.

22 Q Oh, what did you say?

23 A If I could --

24 THE COURT: Well, when? Today or when?

25 MR. LEVENTHAL: Sorry. You're right. I apologize.

1 THE COURT: I'm just wondering.

2 BY MR. LEVENTHAL:

3 Q Earlier today when you testified --

4 A Yes.

5 Q -- you didn't testify how many people got into the vehicle?

6 A No.

7 Q Okay. But you did in prior testimony you did say three or four
8 people and you agree with me that it could have been?

9 A I believe I said in prior testimony I heard doors close or open,
10 three or four doors. It was a multi-door car.

11 Q All right. And then earlier today when you were asked the
12 question what brought your attention was that the car or the vehicle
13 drove off in a high rate of speed?

14 A After the door was reclosed, yes.

15 Q Right. Okay. So we're back to here and I apologize for
16 confusing the situation.

17 A Thank you.

18 Q And so then you gave chase to that or you followed that
19 vehicle?

20 A Yes.

21 Q Okay. And you had known at this time that there was
22 probably more than one person in that vehicle 'cause you heard as you
23 call it doors plural close?

24 A Yes.

25 Q Right. So you anticipated there's going to be more than just

1 one or two people in there. You heard more than that; right?

2 A Yes.

3 Q Okay. And at some point then you were driving down and you
4 were following and you were able to broadcast the plates, the license,
5 the information of the vehicle that you were following; correct?

6 A Yes. I believe we were.

7 Q Okay. So you were able to broadcast that not knowing what
8 else was going on at the time; right?

9 A As we're -- can I ask what part of the time we're behind the
10 car you're speaking of?

11 Q Okay. I think it was on Martin Luther King. When you hit
12 Martin Luther King Boulevard --

13 A Yes.

14 Q -- that's when you -- the car then blew through a red -- red
15 light; right, or stop sign?

16 A Correct. Yes.

17 Q Okay. That's when you then or Officer Cupp then -- Detective
18 Cupp, I don't know what he is today -- put on his sirens and his lights;
19 right?

20 A Yes.

21 Q Okay. So it was at that point that you got on the radio and you
22 were able to put out the plates, the license and all the information that --

23 A Sometime during the time we were behind the vehicle that
24 information was put out, yes.

25 Q Okay. Was that before or after you had heard about the

1 homicide that just occurred?

2 A I don't remember, sir.

3 Q You don't remember if you --

4 A If it was before or after. There was a lot of -- I'm going to have
5 to say after because there was a lot of traffic on the radio, so it was
6 difficult for us to get on and broadcast the information about the car.

7 Q Okay. But you don't remember whether or not you put out the
8 information on the vehicle before or after you knew about the homicide
9 that had occurred?

10 A I'm going to say it was probably after.

11 Q But you don't -- as you sit here today, you're not a hundred
12 percent certain?

13 A I cannot be certain.

14 Q Okay. Fair enough. Now you follow that vehicle and it turned
15 I believe you indicated it slowed down and it turned left on Lawry or --
16 yeah, left on Jimmy --

17 A Yes.

18 Q -- from Martin Luther King; right?

19 A Yes.

20 Q And then right on Lawry?

21 A No. Lexington.

22 Q Lexington. And when it turned right on Lexington, you
23 indicated the car or the vehicle slowed down; right --

24 A It was slowing down.

25 Q -- to make the turn? Okay. And were the churches in relation

1 to that right turn, how far would you consider that to be, I mean a
2 hundred feet?

3 A Do you have an aerial photograph?

4 Q I think we do.

5 A The --

6 Q I've got something here.

7 A -- or if you could borrow one.

8 Q A little better.

9 A Thank you.

10 MR. LEVENTHAL: May I approach?

11 THE COURT: Yes. Yes.

12 MR. LEVENTHAL: Thank you.

13 THE COURT: Thank you.

14 THE WITNESS: That is not the correct overview.

15 BY MR. LEVENTHAL:

16 Q Is that not it?

17 A No.

18 THE COURT: Do you need the aerial photo in order to judge
19 the distance?

20 MR. LEVENTHAL: I would. Do you need the aerial photo to
21 judge distance?

22 THE WITNESS: For an accurate representation, yes.

23 THE COURT: Okay.

24 MR. LEVENTHAL: Okay.

25 [Pause in the proceedings]

1 BY MR. LEVENTHAL:

2 Q I'm sorry.

3 A No worries.

4 Q So, can you see that?

5 A Yes.

6 Q All right. Very good. So does that help you estimate? So
7 here we've got Martin Luther King Boulevard. My pen is pointing to
8 Martin Luther King --

9 A Yes.

10 Q -- correct?

11 A Yes.

12 Q And then the vehicle that you were following then turned left
13 on Jimmy, following my pen; correct?

14 A Yes.

15 Q And they had to slow down there; correct?

16 A Yes.

17 Q Okay. And then came to Lexington and then turned right;
18 correct?

19 A That is correct.

20 Q Okay. And so right there at 1950 where the -- that little dot is,
21 that's the church; correct?

22 A Yes.

23 Q Okay. So does that help you show some kind of distance?

24 A Yes.

25 Q Okay. 'Cause it looks like it's in half -- half way in the block;

1 right, between Wyatt and Jimmy? It's even less 'cause Doolittle would
2 be sort of half way; correct?

3 A Yes.

4 Q Doolittle would run half way into between these two?

5 A If it ran -- if Doolittle ran right straight through, yes, sir, I would
6 agree half.

7 Q Okay. All right. And so as you're following this vehicle, it
8 makes a right turn and it starts to slow down; right?

9 A It slowed down on Jimmy before it made the right hand turn
10 onto Lexington.

11 Q It slowed down as it turned left onto Jimmy?

12 A Yes. So the car --

13 Q But it never sped up; right?

14 A After it turned onto Jimmy?

15 Q Yes.

16 A No. I don't believe so, sir.

17 Q Okay. And you had your lights and sirens going?

18 A Yes.

19 Q Okay. And then so even slowing down even more as it turned
20 right onto Lexington; right?

21 A Yes.

22 Q Okay. And there's not a lot of distance between Jimmy -- I
23 mean what do you think that is, 75, 100 feet the turn there to the
24 church?

25 A From the turn to the church?

1 Q Yes.

2 A We go under a hundred -- under a hundred feet.

3 Q Okay. Fair enough. All right. Now you indicated that the

4 person that you saw was -- was holding the door open; correct?

5 A Yes.

6 Q With his left hand?

7 A Yes.

8 Q Right, with his left hand; correct?

9 A Yes.

10 Q And you indicated that his leg was holding the door as well or

11 the leg was out?

12 A His leg could have been out or holding the door. I'm not sure.

13 But his leg -- his left leg was not inside the vehicle.

14 Q Okay. If I -- if I told you you've testified would you have any

15 doubt that you said that the left leg was also holding the door?

16 A It would probably be true.

17 Q It would be true, okay. So you've got a person there who's

18 now going forward in a vehicle going about approximately 15 miles an

19 hour; would you agree at this point after the right turn?

20 A No more than 15. Slower possibly.

21 Q Okay. All right. Between 10 to 15 let's just say.

22 A Okay.

23 Q All right. Left hand's on the door; correct?

24 A It would have been the left on the door.

25 Q Right. This is my left.

1 A Which direction is the car --
2 Q Well I'm --
3 A -- how are you sitting?
4 Q -- let's I'm the driver.
5 A Yes.
6 Q Left hand on the door opening the door --
7 A Correct.
8 Q -- right? And I'm showing my left hand opening the door?
9 A Yes.
10 Q Left foot's on the door too; right?
11 A Yes.
12 Q Okay. A gun in the right hand; is that what your testimony is
13 that you saw a gun in the right hand?
14 A Yes.
15 Q Okay.
16 A It's probably easier to do if you were sitting --
17 Q Well --
18 A -- if you want to demonstrate it.
19 Q -- it really would, but I can do that if you want because I want
20 to see.
21 May I, Your Honor? May I just --
22 THE COURT: What are we doing?
23 MR. LEVENTHAL: I'm just going to sit down and see if I
24 understand what it is that this Detective is testifying to and I understand
25 how this all worked and how he saw this. So I'd like to sit down and he

1 can walk me through then I can see if I can also -- I mean he gave a sort
2 of a description.

3 THE WITNESS: I can demonstrate how he was if that's
4 easier.

5 MR. LEVENTHAL: No. No.

6 THE COURT: You can demonstrate how somebody was in a
7 vehicle with a chair? Okay.

8 MR. LEVENTHAL: All right.

9 Meanwhile, let's just forget that. But meanwhile you've got
10 this person doing this and you guys are still behind the vehicle; right?

11 THE WITNESS: Yes.

12 BY MR. LEVENTHAL:

13 Q Okay. And you indicated that there was dark tinted windows?

14 A Yes.

15 Q Okay. So and you're -- and you never get in front of the
16 vehicle do you?

17 A No. Not in any way.

18 Q You stay behind it and I think you said to Officer Cupp, and I
19 don't know if he's a detective, stayed to the left; right?

20 A Yes. Offset to the left.

21 Q Offset to the left, okay.

22 A Yes.

23 Q And you were able to see this gun. You were able to see a
24 left foot, a left hand and somebody trying to turn around and look at
25 you?

1 A Yes.

2 Q Okay. Now, you indicated earlier today that you immediately
3 recognized him?

4 A After he made contact with our vehicles. So it was some time
5 during first initial seeing him --

6 Q Mm-hmm.

7 A -- the contact with the vehicle or when he turned around and
8 looked at me when I was chasing him. Yes. I recognize him.

9 Q You said you've seen him before?

10 A Yes.

11 Q Okay. And at some point you said that you guys came face to
12 face with each other; right? I think you said you were very close with
13 him; right?

14 A Yes.

15 Q Now during those -- during the interview that you gave with
16 the homicide detectives, you didn't mention any of that did you?

17 A No.

18 Q Okay. And that would have been at say well 1 o'clock in the
19 morning on September 30th or -- yeah, 9:30, 2006?

20 A If that's the time on the report, yes.

21 Q And you remember doing that with Detective Wilson?

22 A I remember doing the statement. I don't remember who --

23 Q Okay.

24 A -- you know, Detective Wilson is.

25 Q But you never indicated to Detective Wilson that evening that

1 you had known him or seen him or recognized him?

2 A No. No.

3 Q Okay. You never indicated to Detective Wilson that you came
4 face to face with him did you?

5 A No.

6 Q As a matter of fact all you said to Detective Wilson was you
7 just got a glimpse of him; right?

8 A Yes. If that's what it said, yes.

9 Q Okay. But now 12 years later as you sit here today you
10 remember face to face, knowing him and following him; right?

11 A Twelve years for this courtroom testimony.

12 Q As you sit here today --

13 A For this testimony.

14 Q -- you remember it vividly?

15 A Yes.

16 Q Okay. You -- during this time you talked about radio traffic.
17 You had a radio of some sort on you?

18 A Yes.

19 Q Okay. Was that an in-ear radio or was it --

20 A No.

21 Q -- something that you would carry like here on your shoulder?

22 A I didn't -- definitely did not have an in-ear radio. The -- I think I
23 did.

24 Q If I told you you testified earlier you had a prior -- that you had
25 an in-ear, would you have --

1 A Okay. Did I --

2 Q -- any reason to doubt me?

3 A -- then okay that would be accurate.

4 Q Okay. So you had an in-ear radio?

5 A Yes.

6 Q Okay. By the way, coming here today did you -- how did you
7 prepare to come today? Did you review any documents?

8 A Yes.

9 Q What did you review?

10 A The prior court record I guess. Is that the best way to --

11 Q Transcripts?

12 A Yes.

13 Q Transcripts --

14 A Yes.

15 Q -- from all [indiscernible] okay. And you met with the District
16 Attorney's Office?

17 A Yes.

18 Q Okay. Did you feel like you needed to review those records or
19 did you have independent recollection of this event? I mean it's been 12
20 years. No one's going to fault you for it.

21 A There were small -- or shouldn't say small. There were details
22 that I needed to remember --

23 Q Okay.

24 A -- about the incident. But there's other stuff that's vivid in my
25 mind still to this day.

1 Q Okay. Is it fair to say that you made hundreds of arrests since
2 then, 12 years -- past 12 years?

3 A Okay. I would say that.

4 Q Fair to say?

5 A Yes.

6 Q Okay. Come across a lot of -- a lot of different crimes; right?

7 A Yes.

8 Q Okay. So back to the radio, you got the earplug in your -- in
9 your ear, how do you communicate with dispatch? You have the
10 microphone on your shoulder then?

11 A Yes.

12 Q Okay. So as you're running down the street, you're able to
13 hear what's going on with your fellow officers; correct?

14 A I don't remember if I heard anything.

15 Q Okay. Well you testified at a different that you were able to
16 hear that shots were fired and so that's sort of what stopped you from
17 the running or chase; do you remember that?

18 A Yes. But you kind of jumped forward a little bit.

19 Q And I -- well --

20 A I'm confused about where we are in this situation.

21 Q I understand. You're chasing now this person that got out of
22 the vehicle?

23 A Yes.

24 Q Right? You've -- and I apologize. I just was trying to refresh
25 your recollection on what exactly you had and your radio; right?

1 A In my ear?

2 Q In your ear.

3 A Yes.

4 Q Okay.

5 A Okay.

6 Q And you indicated that this person -- let's go back to -- I don't
7 want to jump forward, let's go back to the car, they slowed -- the car
8 slowed down?

9 A Yes.

10 Q Okay. And then I -- we demonstrated what you thought. And
11 then the person got out of the vehicle?

12 A Yes.

13 Q And you indicated that they either fell out or somehow jumped
14 out. You're not sure how it happened, but you saw them come out;
15 right? And you indicated at a prior hearing that that person came almost
16 in line with Detective -- your partner?

17 A Yes.

18 Q The driver?

19 A 'Cause we were offset to the left, yes.

20 Q Right. Okay. And then the car then bumped into this person;
21 correct?

22 A Yes.

23 Q Sort of on the right passenger side where you were?

24 A Yes.

25 Q Okay. And you hadn't had your gun out?

1 A No.

2 Q Okay. And you indicated that you were getting your seatbelt
3 off?

4 A The seatbelt was off before then.

5 Q Before then?

6 A Yes. As soon as we turned onto Jimmy and the car made the
7 right hand turn on Lexington, my seatbelt was off.

8 Q Okay.

9 A 'Cause it was slowing down to the point to where --

10 Q Okay. And then you indicated when you spoke to the
11 detectives that night that this person then ran away -- just started
12 running?

13 A Out of the vehicle, yes.

14 Q Right. Okay. And then you -- then you chase this person?

15 A Yes.

16 Q Okay. Now as you were running you were able to again talk
17 to dispatch about who you're chasing; right?

18 A Description, yes.

19 Q Okay. And your description was a black male adult wearing a
20 black t-shirt; correct?

21 A Unless I look at the CAD printout I believe that's what I said,
22 but unless I can see something.

23 MR. LEVENTHAL: Judge, may I approach?

24 THE COURT: You may.

25 MR. LEVENTHAL: Thank you.

1 I'm going to show you the CAD report. Just -- just for the
2 record, your P number was?

3 THE WITNESS: 8080 or wait. Can I see this?

4 BY MR. LEVENTHAL:

5 Q So your --

6 A That's our -- no. That's our call sign.

7 Q Call sign. So this is your call sign?

8 A Yes. Eight, William 73.

9 Q Okay. Look at that and see if that refreshes your recollection
10 on the description that you gave while you were chasing this person that
11 you were chasing. Does that refresh your recollection?

12 A Yes.

13 Q Okay. So you indicated that or as you're chasing this person
14 at 21:55 in the evening, suspect southbound, black male, juvenile with
15 black shirt; correct? Blue jeans. That was your description; right?

16 A Yes.

17 Q Okay. Now fair -- is it fair to say that all of this happened very
18 quickly?

19 A From beginning to end or --

20 Q From the time that you initially chase the person or figured out
21 that this vehicle was -- when the lights went on and you guys decide to
22 pull it over?

23 A Yes.

24 Q It was very quick; right?

25 A Yes, sir. It was.

1 Q And you had heard shots being fired before?

2 A Yes.

3 Q So that was in the back of your mind. Maybe we're dealing

4 with somebody that's armed.

5 A Yes.

6 Q Okay. The adrenaline is rushing at this point; right?

7 A Yes.

8 Q Okay. And now you're giving chase to somebody who you

9 believe was just involved in a homicide; right?

10 A Yes.

11 Q Okay. Now you indicated that the person then was running

12 down the street. They didn't have a weapon him --

13 A No.

14 Q -- right?

15 A Correct.

16 Q You're behind him?

17 A Yes.

18 Q Okay. And as they're running you indicated that they turn

19 around and look at you?

20 A He looked over his shoulder, yes.

21 Q He looked over his shoulder like just a quick glance like that or

22 fully like over the shoulder where he turned his whole torso, his whole

23 head?

24 A If I can, it was like this.

25 Q Okay. And you were able then to get another glimpse of that

1 person?

2 A We were probably this distance away, so yes, I can see your
3 face.

4 Q Okay. And then at some he jumped -- turned left and jumped
5 over a fence?

6 A No. He turned right.

7 Q He turned right?

8 A Yes. We were running northbound --

9 Q Right.

10 A -- on Lexington. He turns right on Eleanor --

11 Q Okay.

12 A -- and then turns left and jump a fence.

13 Q So you -- okay, that's right. He did turn left to jump a fence;
14 right?

15 A Yes.

16 Q And -- and another police car was actually involved at this
17 point; right?

18 A Yes. It was kind of between him and I 'cause he was just a lot
19 faster than I was to be honest.

20 Q The other officer?

21 A No. The -- Mr. Matthews.

22 Q Okay. The person that you were chasing?

23 A Yes.

24 Q Okay. He was faster than you?

25 A Yes.

1 Q Now I'm not sure, but you indicated that a police car then got
2 between you and the person you were chasing?

3 A At this time a little bit distance had developed between Mr.
4 Matthews and myself -- and I.

5 Q Okay. At this time, when you indicated that he turned around
6 you said --

7 A I said that we were about this close.

8 Q -- this close.

9 A I can see your face just fine, yes. But then --

10 Q And then he was --

11 A -- by the time -- but that was immediately after I got out of the
12 car I started chasing him, so there had been some distance traveled and
13 his distance was traveled a lot faster than my distance was traveled.

14 Q Okay. And then he turned right and turned left into -- and
15 went over a gate?

16 A Yes.

17 Q Okay. And how -- how tall was that gate?

18 A Waist high I believe.

19 Q Waist high, okay.

20 A Yes, sir.

21 Q Not too hard to get over?

22 A No.

23 Q You got over it?

24 A Oh, yes, sir.

25 Q Was there still some distance between the two of you at this

1 point?

2 A Yes.

3 Q Then he jumped over -- this person jumped over another gate
4 in the backyard?

5 A Yes.

6 Q And then you followed that too as well?

7 A Yes.

8 Q Okay. The officers that were in the car, the vehicle that got
9 between you and the person you were following, did they ever get out of
10 the vehicle and start chasing too if you know?

11 A I don't know.

12 Q You don't know. At what point did you decide then after you
13 jumped over the second gate did you stop and say wait, I heard shots
14 fired and go back?

15 A Well as soon as I heard the shots fired I went --

16 Q Then you stopped.

17 A -- I stopped and then went back towards where my partner is.

18 Q And then you ran back?

19 A Yes.

20 Q Okay. Now you were able to identify Mr. -- as Mr. Matthews --
21 you indicated that you identified him because you saw -- one, you knew
22 him; right? Or knew of him; right?

23 A That's a way better way to say it.

24 Q Okay. And you had -- you indicated that he had -- the
25 description he had cornrows or you knew he was -- that was him 'cause

1 you called him cornrows earlier when the District Attorney --

2 A Cornrows, yes.

3 Q Cornrows.

4 A Yes. Cornrows, R-O-W-S.

5 Q Okay. And what's a cornrow?

6 A Just this style of hair -- I don't know if it's a braid or if it's -- I
7 don't know how they do it -- how they -- for that hairstyle, but it's just
8 basically rows of --

9 Q Okay. And you also indicated that you saw this person with a
10 red glove; right?

11 A Yes.

12 Q Okay. Now when you gave the voluntary statement, you gave
13 it after you had already -- after they had already apprehended Mr.
14 Matthews; right?

15 A Yes.

16 Q So you were contacted by K9; correct?

17 A I don't remember who I was contacted by.

18 Q Okay. They brought Mr. Matthews over to you?

19 A Yes. Yes.

20 Q And he was in handcuffs?

21 A Yes.

22 Q And he was in the back of a patrol vehicle?

23 A Yes.

24 Q And then you gave a voluntary statement about an hour after
25 that; right? Maybe two hours after that?

1 A I don't know what time. I did the positive one on one with Mr.
2 Matthews.

3 Q Okay.

4 A And I don't know how long after the homicide detective was.

5 Q Okay. And in that -- prior to that you never told anybody that
6 the person you were chasing had these cornrows; did you?

7 A I told another officer. He broadcast it.

8 Q Okay. This is the -- where -- can you tell me where you've
9 testified to this before where you told another officer that you were
10 chasing someone with corn rows?

11 A This was in last --

12 Q At the last hearing?

13 A Yes.

14 Q Okay.

15 Judge, may I approach?

16 THE COURT: Sure.

17 MR. LEVENTHAL: Thank you.

18 I'm going to show you a transcript from the last hearing. If you
19 could, show me where you indicated that you had identified this person -
20 -

21 THE COURT: Okay. I just want to -- you want him to read
22 that entire transcript?

23 MR. LEVENTHAL: If he --

24 THE COURT: If you want him to do that, I'm not going to
25 have a jury sit here.

1 MR. LEVENTHAL: No. I understand. Do you think you know
2 where it is --

3 THE WITNESS: Yes.

4 MR. LEVENTHAL: -- or do you want -- okay. Go ahead.

5 THE COURT: Okay.

6 THE WITNESS: I apologize.

7 [Pause in the proceedings]

8 THE WITNESS: This is -- this does not have the cross
9 examination by -- it has -- oh wait recross. Mr. Bunin, is that the
10 Prosecution or defense?

11 THE COURT: Okay.

12 MR. LEVENTHAL: Yeah.

13 THE COURT: I mean I don't want you to --

14 MR. LEVENTHAL: I understand.

15 THE COURT: -- I mean it's not appropriate for you to start
16 asking the attorney questions, so.

17 THE WITNESS: I'm sorry.

18 THE COURT: I mean I don't know if you want to take a break,
19 have him read it. If you want him to come back tomorrow after having
20 an opportunity to review his transcript. It looks like it's kind of lengthy.

21 MR. LEVENTHAL: It is, Your Honor. And that's going to be
22 the problem with a lot of -- when we have prior sworn testimony --

23 THE COURT: Okay. So --

24 MR. LEVENTHAL: -- it's always an issue, so.

25 THE COURT: If you want him to review that, I'm going to ask

1 him to do it when we're not in Court.

2 MR. LEVENTHAL: Okay.

3 THE COURT: And then I can bring him back.

4 MR. LEVENTHAL: Very good. And I'll just continue on or --

5 MR. GIORDANI: I would object to that, Judge. If he wants to
6 impeach him on a statement, he should have it ready. If he --

7 THE COURT: I agree. But counsel has said --

8 MR. LEVENTHAL: Hold on.

9 THE COURT: -- he wants him to read the entire transcript. I
10 don't think that that's appropriate. I mean if it was short, I'd say sure.
11 But that doesn't look --

12 MR. LEVENTHAL: I'm not impeaching him on a statement.
13 I'm impeaching on a lack thereof.

14 THE COURT: I understand what you're trying --

15 MR. LEVENTHAL: So that it becomes --

16 THE COURT: -- to do.

17 MR. LEVENTHAL: -- hard to point out where he didn't say
18 something.

19 THE COURT: I understand what you're attempting to do. So
20 what I'm going to ask you to do, Officer, is I'm going to continue with the
21 examination. Mr. Leventhal wants you to do that. I'll have you do it
22 when we're not in Court.

23 THE WITNESS: Okay. So I stop doing --

24 THE COURT: Please.

25 THE WITNESS: Okay.

1 THE COURT: Thank you.

2 MR. LEVENTHAL: May I approach?

3 THE COURT: You may.

4 BY MR. LEVENTHAL:

5 Q So the identification of the cornrows never came up in the
6 CAD report; correct? You never put that up -- broadcast to that?

7 A I did not broadcast it, no. It was --

8 Q And it was never talked about in your voluntary statement until
9 after you had seen Mr. Matthews when you identified him; right?

10 A Well I saw him when I was chasing him.

11 Q No. I understand. But you -- you saw somebody while you
12 were chasing him, but then you -- you were later for the first time you
13 mentioned cornrows after you already had seen him; right?

14 A Can you repeat the question, sir?

15 Q When the K9 brought him over --

16 A Yes.

17 Q -- for the one on one?

18 A Yes.

19 Q That was the first time you mentioned that he had cornrows?

20 A That I mentioned?

21 Q Yes.

22 A Seen, no.

23 Q Yeah. Well, Officer -- I mean, Detective, I mean don't you
24 think it's important that you're chasing somebody and you get the best
25 description possible that you can while you're chasing them?

1 A It's difficult at times to do that when you're out of breath and
2 breathing heavy and there's other radio traffic, but yes --

3 Q And I appreciate that.

4 A -- I did -- I did my best. Yes, sir.

5 Q That's all we can ask.

6 A Yes, sir

7 Q But I guess my question is is Mr. Matthews was not
8 apprehended for another hour and a half; right?

9 A I think that's the timeframe.

10 Q During that time there was a search for somebody that ran
11 from you; correct?

12 A Yes.

13 Q Okay. And as a matter of fact, you went back over to the
14 vehicles which you said during -- during your direct examination you
15 went back to the vehicle where they, I think it's a Cadillac, where -- over
16 the church; right?

17 A Yes. Yes, sir.

18 Q And you were able to walk around and you were able -- no
19 one was there; right?

20 A When I got there, no.

21 Q Yeah. Nobody's there. Just the vehicle; right?

22 A Yes.

23 Q You didn't have your gun out did you?

24 A When I cleared the vehicle I took my gun out, yes.

25 Q Okay. You put it back in; correct?

1 A Yes.

2 Q Okay. You could have given a description of the person at
3 that point; right? The cornrows. You didn't mention anything.

4 A I previously mentioned it to another officer.

5 Q I understand that --

6 A We can't -- sorry.

7 Q -- but -- but you -- and again while you're reviewing prior
8 transcripts, I'd like for you to also keep that one 'cause I don't see where
9 you ever had said that. And I'm not going to argue with you, but when
10 you come back after you the transcripts then you can point to where you
11 previously said you told another officer that the person you were running
12 after had cornrows.

13 A Okay.

14 Q Okay. You realize there are three different ways to do
15 eyewitnesses; right?

16 A Yes.

17 THE COURT: Hawkes, someone's phone is going off.

18 THE MARSHAL: Sorry.

19 THE COURT: What was it, your phone? Someone's phone
20 was going off.

21 THE MARSHAL: It's probably my ear piece. They're yelling
22 in my ear.

23 THE COURT: Sorry.

24 BY MR. LEVENTHAL:

25 Q Three different ways to do eyewitness identities; right? You

1 got sort of the one on one which is what you did --

2 A Yes.

3 Q -- that night; right?

4 A Yes.

5 Q That's where you take an individual, you put him in the
6 vehicle, one person and then take him back to or show him to the -- a
7 victim or whoever can ID him, that's one way, it's called one on one;
8 right?

9 A Yes.

10 Q Okay. And you would agree that it's highly suggestive; right?

11 A It can be, yes.

12 Q It's probably one of the most unreliable -- would you agree
13 that it's one of the most unreliable forms of eyewitness identification out
14 of all three?

15 MR. GIORDANI: Objection. That would call for speculation
16 and expert opinion and a whole lot of other things.

17 THE COURT: I agree. Maybe you can -- if you want to ask
18 the question a different way.

19 BY MR. LEVENTHAL:

20 Q You've had -- you're a detective now. You've had training in
21 eyewitness?

22 A Say that again.

23 Q Eyewitness -- have you had training in -- or any education in --
24 in the forms or techniques of eyewitness identity?

25 A Like -- I don't -- have I been trained how to do like one on

1 ones, photo lineups or any of the ways that I've been trained?

2 Q Yes.

3 A I would not say formal training, but --

4 Q Okay. But in your -- in your capacity as a detective, you've -- I
5 assume that you've been through each one of those at some point --

6 A Yes, sir.

7 Q -- right? So you've got the one on one. You've got -- that's
8 called a show up; right? That's what --

9 A Yes. Yes, sir.

10 Q -- when a person shows up.

11 A Yes.

12 Q Okay. And there's only one person there; right?

13 A Yes.

14 Q Okay. Then you've got a second form of identification or
15 eyewitness that would be a live sort of lineup where you put people in a -
16 - different people in a -- in a room and then the person picks them out;
17 right?

18 A Yes.

19 Q Okay. And -- and -- so then -- now you've got to make a
20 decision between people; right?

21 A Yes.

22 Q And then there's a third way which I guess you guys call a six-
23 pack where you have a photo lineup; right?

24 A Yes, sir.

25 Q Okay. And you know what a double blind photo lineup is?

1 A I do, sir.

2 Q Okay. That's where the person who is giving the test or giving
3 -- showing the photo doesn't know who that person is; right?

4 A Yes.

5 Q And that's so it's not suggestive in any way, shape or form;
6 correct?

7 A Yes.

8 Q Okay. Because the last thing we want to do is misidentify
9 somebody; right?

10 A Yes.

11 Q Okay. We want to get the guy that did whatever crime was --
12 was being accused of; right?

13 A Yes.

14 Q Obviously; right?

15 A Yes. Yes.

16 Q And we want to be as sure as possible; right?

17 A A hundred percent sure.

18 Q A hundred percent; right?

19 A Yes.

20 Q Okay. What officer did you give this description of -- of the
21 person you were running -- do you remember the officer's name?

22 A Not a hundred percent sure. No, sir.

23 Q Okay. So all we have at this point -- at this point now is prior
24 to you seeing, and I understand, prior to you seeing Mr. Matthews in the
25 one on one show up, you never mentioned the word cornrows to

1 anybody other than some other officer; right?

2 A Yes.

3 Q Okay. Now let's talk about the red glove real quick. Did you
4 actually see the red glove on the person you were chasing?

5 A The driver of the vehicle, yes. He had it on his hand when he
6 was -- had the rifle in it or the short rifle.

7 Q Okay. So it would have been on his right hand then?

8 A Yes.

9 Q Okay. So as he was holding the door open you didn't see this
10 glove; right? Did he have two gloves or one glove?

11 A I think it was two gloves, but --

12 Q You think it was two gloves?

13 A I think it was two gloves. Yes, sir.

14 Q Okay. So as he was holding the door open, you could
15 obviously see the glove; right?

16 A Yes.

17 Q Okay. And as he was exiting that vehicle with his red glove,
18 you saw the weapon; right?

19 A Yes.

20 Q And you're trained as an officer not to watch exactly facial --
21 not to see people, but when you see a weapon, isn't it true that you're
22 trained to follow more of the weapon than the actual person?

23 A No. That's tunnel vision, sir. You don't want tunnel vision.

24 Q Okay. When you say tunnel vision, what does that mean?

25 A When you can only focus on one particular object or thing,

1 anything and you don't see anything else around you.

2 Q Okay. So you want to take in everything?

3 A Yes.

4 Q So you see a gun, you don't want to focus on that gun, you
5 want to watch everything; is that what you're -- you're saying?

6 A Yes.

7 Q Okay.

8 A You pay --

9 Q I'm sorry. That's your training is that you don't focus on a
10 weapon?

11 A Well no. You look at the weapon. You're aware of the
12 weapon, but you try to focus on -- you try to see everything else.

13 Q Okay. So as you were chasing this person he had two gloves
14 on; right?

15 A I think so, two gloves.

16 Q Okay.

17 A It could have been one glove.

18 Q Do you know whether or not they were able to track down the
19 other glove?

20 A I don't know.

21 Q You don't know?

22 A No.

23 Q When you -- were you taken off this case because your officer
24 -- your partner shot -- because he was taken off the case; right?

25 Meaning he was --

1 MR. GIORDANI: Objection.

2 THE COURT: Correct. Yeah. Yeah. The objection is
3 sustained.

4 MR. LEVENTHAL: I get the point. I'll ask it another way.

5 Did you continue the investigation even after -- through the
6 night that evening?

7 THE WITNESS: Detectives handled the investigation. I was
8 just a police officer, so no, I didn't do -- detectives handled all that.

9 BY MR. LEVENTHAL:

10 Q Okay. And what time did you start your shift that day?

11 A 2:30 p.m.

12 Q 2:30.

13 A Afternoon, 14:30. Yes, sir.

14 Q Okay. And -- and your interview was at I think 1 o'clock, 1:15
15 around there with the homicide detectives?

16 A If that's what it reads, yes, sir.

17 Q Okay. And then afterwards you went home or do you
18 remember what you did? Did you continue with the -- like I said, you
19 weren't the detective, so you didn't have anything else to do with the
20 investigation?

21 A I don't remember, sir.

22 Q You don't remember what you did?

23 A No.

24 Q Could you be a little bit -- I want to go back to how you
25 recognized this person; could you be a little bit more specific where you

1 recognized him at?

2 A I can't place an exact date, time, location or anything like that.
3 We do activities in the neighborhoods. We make contact with folks both
4 police related, non-police related. Talk to people and we're familiar with
5 --

6 MR. GIORDANI: Judge, I'm going to ask just approach
7 briefly.

8 THE COURT: Sure.

9 [Bench conference commenced]

10 THE COURT: [indiscernible]

11 MR. LEVENTHAL: No. Not at all. I'm asking like does he
12 know where he lives. I mean how much --

13 THE COURT: [indiscernible] could you maybe ask leading
14 questions --

15 MR. LEVENTHAL: Okay.

16 THE COURT: -- because I'm afraid he's going to say --

17 MR. LEVENTHAL: Yeah. Yeah. Yeah. I didn't --

18 THE COURT: -- [indiscernible] bad and you keep asking him -
19 -

20 MR. LEVENTHAL: I know.

21 THE COURT: -- and he's sitting here not knowing how to
22 respond.

23 MR. GIORDANI: Exactly. Judge, this is recorded, right?

24 THE COURT: Yeah.

25 MR. GIORDANI: This is Giordani. I forgot to say this

1 beforehand, but he was thoroughly admonished this witness to stay
2 away from all the things we previously discussed, so.

3 MS. LEXIS: That's why he has that deer in headlights.

4 THE COURT: But he seems to be --

5 MR. GIORDANI: Yeah.

6 THE COURT: -- hesitating.

7 MS. LEXIS: He is.

8 MR. GIORDANI: And that's why --

9 THE COURT: I just want -- you can ask leading questions.
10 Just get into --

11 MR. LEVENTHAL: No. No. I know.

12 THE COURT: Did you know [indiscernible] --

13 MR. LEVENTHAL: And in my -- in my mind I'm thinking more
14 about because I don't -- this is the first time he's ever said it, so I went
15 through [indiscernible] he's never told anybody that he recognized it was
16 the first time [indiscernible] so --

17 MR. GIORDANI: Oh.

18 MR. LEVENTHAL: -- not in his first interview and not at the
19 prelim [indiscernible] --

20 THE COURT: Okay.

21 [Bench conference concluded]

22 THE COURT: All right. You may proceed.

23 MR. LEVENTHAL: Thank you.

24 You didn't recognize Mr. -- the person that you were chasing
25 as a -- like a certain place that they lived at did you?

1 THE WITNESS: Certain area they lived in.

2 BY MR. LEVENTHAL:

3 Q Certain area they lived?

4 A Yes.

5 Q Okay. And you had -- you had come in contact with this
6 person before you indicated?

7 A Yes.

8 Q Okay. Actually spoke to this person before?

9 A Yes.

10 Q Okay. And do you consider that something valuable in turns
11 of information that you should be giving to other detectives while they're
12 looking or searching for this person?

13 A He was in custody when I did the interview with homicide
14 detectives.

15 Q I understand. But prior to that, you were at the vehicle?

16 A Yes.

17 Q Okay. And you never got on the radio and said cornrows.
18 We've already established that. You never got on the radio and said I
19 know this person or I know of this person.

20 A No.

21 Q Nothing like that; right?

22 A No. Correct, sir.

23 Q Okay. But all this is very valuable information to confirm that
24 in fact when he shows up that that's the person that coincides with who
25 you thought it was; right?

1 A Could you reask the question?

2 Q It's important information that you get as best a description out
3 there?

4 A Right. Yes. Well the person that I saw run out of the car was
5 the person that was shown to me in the one on one and is the person
6 that I identified as being the person who ran from me.

7 Q I understand that, Detective. And that's not my issue. My
8 issue is the communication that you did not give out of all of these -- all
9 of these descriptions you're giving after the fact, after you see him. You
10 don't give them before he's caught; right?

11 A You're talking about information over the radio; is that --

12 Q Yeah. To anybody. You said -- you said -- I gave -- I told one
13 -- one officer that night.

14 A I gave a description during the initial foot pursuit, yes.

15 Q Okay. But the description during the initial pursuit was black
16 subject, black shirt, blue jeans.

17 A Yes.

18 Q That's your description; right?

19 A At that time, yes.

20 Q That was 95 percent of the people who lived in that area at
21 that time; correct?

22 A I didn't see anybody else.

23 Q No. I understand. But that area is predominantly African-
24 American; correct?

25 A It is. Yes, sir.

1 Q Okay. Upwards of 99 percent were -- in 2006 when you were
2 there; right?

3 A Generally close to that I would say so.

4 Q Okay. So that description, this -- sort of this vanilla description
5 fit a number of people in that area; correct? Who live there, shop there,
6 work there, did whatever there; right?

7 A At that time, I didn't see anybody else with that description.

8 Q No. I understand that. But it's not what you knew. It's what
9 you -- you were -- you guys were searching for a person, a suspect;
10 right?

11 A Yes.

12 Q Okay. And isn't it important for everybody to know who
13 they're looking for?

14 A Yes.

15 Q Okay. And part of that would have been that you get on the
16 radio and say listen, he's got cornrows. He's got -- I know him. He's got
17 a red glove. You didn't do any of that did you?

18 A Well the fact of me knowing him would not have assisted any
19 other officers in locating --

20 Q Okay.

21 A -- him.

22 Q What about the other facts? What about the cornrow? You
23 never mentioned that to anybody except one officer that you're telling
24 me now.

25 A I did not broadcast that information. No, sir.

1 Q Okay.
2 Court' indulgence. Judge, I'll pass the witness. Thank you.
3 Detective.

4 THE COURT: Thank you. Any redirect?

5 MR. GIORDANI: Yes.

6 REDIRECT EXAMINATION

7 BY MR. GIORDANI:

8 Q I want to clarify a few things, Detective.

9 A Yes, sir.

10 Q When you chased Jemar Matthews from that vehicle, you
11 chase him for a couple of blocks --

12 A Yes.

13 Q -- and you hear gunshots from the direction that your partner
14 is in; correct?

15 A Yes, sir.

16 Q Can I presume, sir, that you were concerned about your
17 partner?

18 A Absolutely.

19 Q Can this jury presume that your top priority was getting back
20 to your partner if he was shot?

21 A Yes, sir.

22 Q Okay. You've indicated numerous times that you conveyed
23 this cornrow information to a fellow officer?

24 A Correct.

25 Q Is that common especially in a dynamic situation such as this

1 to rely on your fellow officers to broadcast information?

2 A Yes, sir.

3 Q Is it surprising to you that Mr. Leventhal is trying to find this
4 cornrow information in the CAD log and it's not there?

5 A No. It's not there.

6 Q Okay. Now I want to clarify some timeline things, okay. First,
7 with this regard to this specific night. Have you had a chance to look at
8 the CAD at all?

9 A No. I have not, sir.

10 Q Okay. Would the CAD -- what is a CAD first off?

11 A Computer Aided Dispatch.

12 Q Okay.

13 A It is basically printout of everything that's -- I shouldn't say
14 everything -- things that are said over the radio or put in detail. If a
15 citizen calls, it's put in details so the patrol officer knows what's going
16 on.

17 Q All right. So that is maintained or managed by the dispatch.
18 Like if someone calls 9-1-1, that's dispatch; right?

19 A Yes, sir.

20 Q And dispatch maintains a log of what's going on on radio
21 traffic for officers as well?

22 A Yes.

23 Q And although it's not perfect, not everything gets into CAD,
24 that should have a general timeline of incidents if they're entered into
25 CAD?

1 A If there's a lot of stuff going on on a radio, they will --
2 dispatchers will generally put it in under the same like -- same time. Like
3 if there's a bunch of radio traffic -- for example, this situation, this
4 incident had three separate scenes. So if at whatever time it was, three
5 different officers from three different scenes called in information, the
6 dispatcher would put all of that information into one paragraph or one
7 line or whatever it was. So it's -- it's easier for them to do.

8 Q Okay. Now do you know exactly when the initial call for
9 service to the homicide scene came out?

10 A No, sir.

11 Q Would looking at the CAD refresh your recollection?

12 A Yes, sir.

13 MR. GIORDANI: Can I approach?

14 THE COURT: You may.

15 BY MR. GIORDANI:

16 Q Go ahead and look at that. Look up at me when you're done.
17 I'm asking you about the initial call for service to the homicide.

18 A Okay. I'm sorry. I apologize it's taking so long.

19 Q That's okay. I want to direct your attention to -- okay.

20 We're on page one, counsel.

21 MR. TANASI: Thank you.

22 MR. GIORDANI: Sorry.

23 THE WITNESS: Okay.

24 BY MR. GIORDANI:

25 Q Does that refresh your memory?

1 A Yes. I think it -- it helps, but it's the way that's it written is kind
2 of confusing.

3 Q Understood. Can you give the jury a timeline of when the
4 initial call came out?

5 A When we heard the shots, was 21:53 hours.

6 Q 21:53; in layman's terms what time is that?

7 A I'm sorry, 9:53 p.m.

8 Q Okay. Now you have indicated numerous times as well that
9 this -- you were very close by when you hear the shots, they're --
10 seconds have passed, by the time you're there you see the carjacking
11 and there's a minute maybe two of this pursuit --

12 A Yes.

13 Q -- is that fair?

14 A Yes, sir.

15 Q And then your foot pursuit is a couple of blocks. So let's add
16 another say 30 -- well probably a minute for you 'cause you're pretty
17 slow apparently.

18 A Thank you, sir. Yes, sir.

19 Q So we're talking about a very quick timeframe from shots fired
20 to Jemar Matthews running from you and you pursuing him?

21 A Yes.

22 Q Okay. Now I want to back out a minute and get away from
23 that timeline. I want to talk about timing of identifications. The night of
24 the murder on September 30th, 2006, you identified Jemar Matthews 100
25 percent as the person who you chased from that vehicle who had the

1 long barrel weapon?

2 A Yes.

3 Q During a show up identification as Mr. Leventhal put it?

4 A Yes.

5 Q Was there any doubt in your mind at that point that Jemar
6 Matthews was the guy?

7 MR. LEVENTHAL: I'm going to object as to bolstering at this
8 point.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: There was -- I was a hundred percent sure
11 that was him.

12 BY MR. GIORDANI:

13 Q Okay. You then testified under oath I presume at a
14 preliminary hearing on November 30th, 2006?

15 A Yes.

16 Q Okay. At that point in time was Jemar Matthews sitting in the
17 room like he is now?

18 A Yes.

19 Q And did you identify him at that time in Court?

20 A Yes.

21 Q And you -- you understand you were under oath at that time?

22 A Of course.

23 MR. GIORDANI: And, Your Honor, I would ask you to take
24 judicial notice that Mr. Matthews was present for the preliminary hearing
25 on November 30th, 2006. I don't think the defense would object to that.

1 MR. LEVENTHAL: No objection.

2 THE COURT: Okay.

3 BY MR. LEVENTHAL:

4 Q Then at a subsequent proceeding on May 8th of 2007, you
5 identified Jemar Matthews as the guy again?

6 A Yes.

7 Q And you were under oath then?

8 A Yes.

9 Q And you -- were you certain? Was there any doubt in your
10 mind that Jemar Matthews was the guy when you identified him on May
11 8th, 2006?

12 A There was no doubt.

13 Q Now today September 27th, 2018, you've identified Jemar
14 Matthews in Court?

15 A Yes.

16 Q You understand you're under oath?

17 A I do.

18 Q Is there any doubt in your mind that Jemar Matthews is the
19 guy?

20 A No, sir. There is none.

21 Q There was a lot of reference to the trial -- or the -- I'm sorry,
22 the prior transcript. I can't speak anymore. On May 8th, 2007, you were
23 going to go through it --

24 A Yes.

25 Q -- and then you had some issues. And you indicated you had

1 testified previously as to cornrows?

2 A Yes.

3 Q I went ahead and looked through that and I'm showing --
4 going to page 263. Can I approach and show you page 263 now?

5 THE COURT: Sure.

6 Q Save some time. Go ahead and take your time to and review
7 this line of questioning on page 263 of the prior testimony.

8 A Yes. I remember.

9 Q So you have testified cornrows before?

10 A Yes.

11 Q Okay. And again you -- you conveyed the information of blue
12 jean shorts, black shirt, cornrows, red glove or gloves to a fellow officer
13 when all this was going?

14 A Yes.

15 Q Okay. Mr. Leventhal asked you during the interview, this is
16 the interview with homicide, hours -- an hour or two after the actual
17 shooting -- during the interview you didn't mention you knew him or saw
18 him or recognized him and your response was something to the effect of
19 that wouldn't have helped anybody else.

20 A Correct.

21 Q What do you mean by that so the jury understands why you
22 wouldn't say, hey, guys, go look for Jemar Matthews?

23 A Some people may not know who Jemar Matthews is or know
24 what he looks like.

25 Q So as an officer, a trained officer, you're broadcasting

1 descriptors to the best of your ability so other people can find him or
2 recognize him?

3 A Yes, sir.

4 MR. GIORDANI: Court's brief indulgence.

5 What you were -- you were able to broadcast something that
6 night as to his description or do you recall?

7 THE WITNESS: The black shirt and blue jeans.

8 BY MR. GIORDANI:

9 Q Right. So -- so you broadcasted that yourself?

10 A Yes.

11 Q Okay. Was there another descriptor in there as well?

12 A I can't recall, sir.

13 Q Okay. Would looking at the CAD --

14 A Yes.

15 Q -- refresh you? Showing you page -- page 1 about three
16 quarters of the way down at 21:59.

17 A Yes, sir.

18 Q Does that refresh your memory?

19 A Yes, sir.

20 Q What was the broadcast that you put out so your fellow
21 officers could find Jemar Matthews?

22 A Black shirt, blue jeans and red gloves.

23 Q All right. Oh and when you said --

24 MR. LEVENTHAL: Where --

25 MR. GIORDANI: -- blue jean, did you say blue jeans long or

1 blue jeans short?

2 THE WITNESS: Blue jean shorts. Blue jean shorts.

3 MR. GIORDANI: All right. Thank you, sir.

4 I'll pass the witness.

5 THE COURT: Any recross?

6 MR. LEVENTHAL: Yes, Judge.

7 RECROSS EXAMINATION

8 BY MR. LEVENTHAL:

9 Q Mr. Giordani just showed you where you broadcasted and
10 again you were 8W73; correct?

11 A Yes. That's my call sign.

12 Q Suspect SB, southbound.

13 A I'd have to look at it.

14 Q You'd have to look at it?

15 A Yes.

16 Q Okay.

17 A To see SB is related to.

18 Q Okay.

19 May I approach?

20 THE COURT: You may.

21 THE WITNESS: Where, sir? Yes, sir. In this instance, SB
22 does mean southbound.

23 BY MR. LEVENTHAL:

24 Q Okay. Thank you. So you -- your broadcast was southbound
25 EMJ, black male, juvenile?

1 A I didn't look at that --

2 Q Oh, I'm sorry.

3 A -- whole thing. It was my transmission earlier.

4 Q May I approach so you could look at that -- it's just a small
5 sentence?

6 THE COURT: You may.

7 BY MR. LEVENTHAL:

8 Q And you look at the whole thing.

9 A Sorry. I didn't know that was the next question. Oh, this
10 would be my partner 'cause he's talking about J and Doolittle.

11 Q Is that you there? I apologize.

12 A We share -- my partner and I share the same call sign so I'm 8
13 William 73 and also Officer Cupp is 8 William 73. So when he -- we're
14 separated -- so he transmits 8 William 73 and I transmit.

15 Q 8 William 73 as well?

16 A Yes.

17 Q So you -- through this CAD report I wouldn't be able to tell
18 who's talking between you and your partner? You both have the same
19 call sign number?

20 A Yes. 'Cause we're both -- we're assigned together.

21 Q Oh I see. Okay.

22 A I know it's confusing without audio --

23 Q That's okay.

24 A -- I guess without audio.

25 Q I don't want to berate this. I understand that you -- you -- you

1 may have testified to a description of who you saw at a previous
2 hearing. But my question was tell me where you told somebody other
3 than today where you're telling us now that you told someone about a
4 deeper description between the time that you stopped chasing the
5 person you were chasing and an hour and half later when you had this
6 show up; that's what I was asking. Maybe I wasn't clear. Where in the
7 transcript would you find that?

8 A I'm going to have to -- give me time and I can find it.

9 Q Okay. Okay. So that's -- you understand my question?

10 A Yes, sir.

11 Q Where did you broadcast red gloves, cornrows --

12 A I didn't broadcast.

13 Q You didn't. You never did.

14 A Another officer. I did not.

15 Q I understand. Okay. So another officer. You just told another
16 officer?

17 A Correct.

18 Q Okay. All right. Thank you.

19 A Yes.

20 THE COURT: Anything else?

21 MR. GIORDANI: No, Your Honor.

22 THE COURT: Okay. Thank you very much for your testimony
23 here today.

24 THE WITNESS: You're welcome.

25 THE COURT: You may step down. You're excused from

1 your subpoena. You may call your next witness.

2 MR. GIORDANI: Cord Overson.

3 THE MARSHAL: If you please step up to the witness stand,
4 remain standing and raise your right hand and wait for the Clerk please.

5 **CORD OVERSON**

6 [having been called as a witness and being first duly sworn,
7 testified as follows:]

8 THE CLERK: Thank you. Please be seated. And could you
9 please state and spell your name for the record.

10 THE WITNESS: Cord Overson, C-O-R-D, O-V-E-R-S-O-N.

11 THE CLERK: Thank you, sir.

12 **DIRECT EXAMINATION**

13 **BY MR. GIORDANI:**

14 Q What do you do for a living, sir?

15 A I am a sergeant with the Las Vegas Metropolitan Police
16 Department.

17 Q How long have you been with Metro?

18 A Over 20 years.

19 Q How long have you been a sergeant?

20 A A year and a half.

21 Q And prior to promoting to sergeant, what did you do?

22 A I was a K9 handler with the Las Vegas Metropolitan Police
23 Department.

24 Q How long were you a K9 handler, sir?

25 A Not quite 13 years.

1 Q During the course of your tenure as a K9 handler, how many
2 K9's did you -- did you have?

3 A I handled two patrol dogs and one narcotics detection dog.

4 Q Okay. Tell the ladies and gentlemen of the jury kind of what
5 goes into being a K9 handler.

6 A So to -- once you are selected to be a K9 handler you go
7 through some intensive training to work -- to handle a patrol dog. The
8 patrol dog is the dog that is trained to find suspects that are hiding in
9 buildings or backyards or area searches, things of that manner.

10 You go through an initial three month training period with the
11 dog and that is every night for ten hours a night, 40 hours a week for 40
12 hours. I said that. Forty hours a week for three months. At the end of
13 three months if you and the dog are -- are doing well and both of you
14 can pass the certification, then you are certified to be a K9 team.

15 You continue to go on with training every night usually about
16 30 minutes to a couple hours a night when you're working to continue
17 with your training. And over the years you -- you get hours and hours
18 and hundreds of hours of training.

19 Q I want to draw your attention back to September 30th of 2006;
20 were you a K9 officer then?

21 A I was.

22 Q And who was your dog at that time?

23 A Lasco.

24 Q L-A-S-C-O?

25 A L-A-S-C-O.

1 Q In the evening hours, were you notified that there was a
2 potential homicide or an officer involved shooting down by Jimmy and
3 Lexington?

4 A I was.

5 Q When was it if you recall that you were notified or became
6 aware of what was going on?

7 A It was in the evening hours. I don't recall exactly what I was
8 doing prior to, but I was notified by dispatch that the shooting had
9 occurred OIS. Officer involved shooting had occurred and I was
10 dispatched to respond onto that area.

11 Q Okay. Now you just defined OIS for us. I appreciate that. I
12 want to ask you have you been on several OIS calls throughout the
13 course of your career?

14 A I have.

15 Q Are OIS calls, I don't want to say priority, but did they draw a
16 lot of attention, a lot of personnel to that area?

17 A Yes, they do.

18 Q Do homicide calls similarly draw a lot of personnel?

19 A Yes, they do.

20 Q So here this evening we had both the homicide and the OIS
21 all within about what a square mile of each other. Fairly big scene?

22 A Yes.

23 Q Fairly saturated scene?

24 A Yes. There were lots of officers there. There was a large
25 perimeter that was set up around the area.

1 Q Okay. When you say a perimeter, just briefly what does that
2 mean for the jury?

3 A So that is when officers -- when -- when someone typically --
4 we set up a perimeter when somebody is running from the officers. And
5 that just means that officers will set up at intersections around that
6 neighborhood to try and contain whoever is running from the police.
7 Once we set up containment, then we go in and start looking for the
8 person.

9 Q Okay. When you say then we go in, you mean K9 then gets
10 involved once a perimeter --

11 A Officers and K9. But that is what K9 does is once a perimeter
12 is set up, then that's K9 specialty is going into that area and trying to
13 figure out where this person ran to and try to locate them within the
14 perimeter.

15 Q Okay. And we've talked about the night of September 30th.
16 Obviously the homicide, the OIS scenes; where is it that you actually
17 respond to when you're called out to that location?

18 A So I responded to the vehicle that was left behind by the
19 suspects --

20 Q Okay.

21 A -- with the other K9 officers. We spoke to the officers that
22 were involved in the incident, the OIS, the officers that were still on
23 scene. They showed us the vehicle and -- and what directions the
24 suspects had fled on foot.

25 Q Okay. I'm going to show you now --

1 Your Honor, this is State's 458. It was proposed. This hasn't
2 previously been admitted, but the defense is going to stipulate.

3 THE COURT: So no objection?

4 MR. LEVENTHAL: No objection.

5 [State's Exhibit Number 458, admitted]

6 MR. GIORDANI: Thank you.

7 THE COURT: You may publish.

8 MR. GIORDANI: Thank you.

9 So I'm showing you 458. This is -- appear to be a clean aerial
10 map of the general area to which you responded?

11 THE WITNESS: Yes.

12 BY MR. GIORDANI:

13 Q Where was it if you can see on this map that the vehicle wreck
14 was that you responded to?

15 A That was in the area of Eleanor and Lexington here.

16 Q Okay. You see the church parking lot down here on the left?

17 A Yes.

18 Q When you responded, did you go straight to that parking lot
19 that you had just circled or did you go exactly where the wreck was?

20 A Where the wreck was. Where the vehicle was.

21 Q And by the time you got there, had the perimeter been set up?

22 A Yes.

23 Q A very large perimeter?

24 A A very large perimeter had been established around the
25 neighborhood.

1 Q Okay. And you described talking to fellow officers and getting
2 briefed on directions and such?

3 A Correct. So what we'll -- what we'll do is we'll respond to the
4 area where the suspect or suspects were last seen. We'll talk to the
5 officers or citizens that last saw the suspect and get their direction of
6 travel, what their demeanor was, if they had weapons, what they were
7 wearing, things of that nature.

8 Q Okay.

9 A Before we begin our search 'cause that tells us where to
10 search and -- and by their demeanor we can kind of tell sometimes how
11 far they might have ran or what direction they might run after the officers
12 lost sight.

13 Q Okay. When you're briefed by the other officers on the
14 directions, what is it that you decide to do -- begin to do?

15 A So I was -- I was there with other K9 handlers and what we'll
16 do is we'll take a neighborhood and we'll section it off and say, okay,
17 you're going to take this area and you're going to take this area based
18 upon the information we get from the officers that last saw the suspect.

19 Q Let me stop you. I apologize. I should have asked that. How
20 many other K9 officers were involved?

21 A I don't know precisely.

22 Q Okay.

23 A I know there was a handful of us. I would -- I would venture to
24 guess about three -- three to five of us --

25 Q Okay.

1 A -- that had responded to the scene, but I'm not sure exactly.

2 Q All right. And with that fair to assume that you all would have
3 gone to different areas to search, not the same exact?

4 A Correct.

5 Q Okay.

6 A So we -- we would have taken a north side of the street and
7 south side of the street.

8 Q Each?

9 A Each of us would get a different side of the street depending
10 on how big it is again of the perimeter. Since this was fairly large, I was
11 assigned just the north side of Jimmy.

12 Q Okay. And north side of Jimmy would be depicted on this
13 map where?

14 A Right here. So I began my search right here with this house.
15 The information I was given is that the suspect was last seen
16 northbound on Lexington and then turning eastbound on Jimmy.

17 Q Go up a little bit. Eastbound on Jimmy or eastbound on
18 Eleanor?

19 A On Jimmy.

20 Q Okay. So you're looking for -- you're looking at only the north
21 side of the street. You're not dealing with --

22 A Correct.

23 Q -- the south side?

24 A Another K9 officer would have been assigned to search the
25 south side of Jimmy and another K9 officer would have been assigned

1 to search the north side of Eleanor just depending on the information we
2 have and the amount of K9 handlers that we have there.

3 Q Okay. And when you said you were pointing at this corner
4 house?

5 A Correct.

6 Q Tell the members of the jury specifically how you would go
7 about starting with that house what you would do?

8 A So I would -- I would start with the first house and then since
9 I'm assigned to the north side of Jimmy, I would work my way eastbound
10 going house by house down the street. Systematically clearing each
11 house, front yard and then back yard and then moving to the next
12 house, front yard and then back yard.

13 Q When you say systematically, I mean can you --

14 A So I -- I wouldn't -- I wouldn't skip around. What I would is --
15 is I would go to the -- I would clear the front yard first and then -- for
16 instance this house looks like the gate would probably be on this side if
17 there's one at all for this house. And then I would -- I would do all four
18 corners of the back yard.

19 Q Okay.

20 A Going along the back wall first and then I would come back
21 along the -- the front of the house there. And my purpose in doing that
22 is trying to take advantage of the wind, one, depending on which way
23 the wind is coming. But I'm trying to get my dog in a position to where
24 he's downwind of wherever a suspect maybe hiding so that he can alert
25 me that -- that there's a suspect nearby.

1 So for instance, a suspect could be hiding yard or two yards
2 over or even further sometimes depending on the conditions outside.
3 And the dog could alert me at that point that hey, there's -- there's
4 somebody this direction that you need to be careful about. So then I
5 would call in additional resources and say, I've got -- I think I've got
6 something here. I would direct the -- the air unit, the police helicopter for
7 instance, hey, I need you to concentrate on this area because my dog's
8 alerting me to something here.

9 Q Okay. And when -- you've referenced alerting; what do you
10 mean by your dog is alerting? What do they actually do?

11 A So that is -- an alert is a change in behavior, in the dog's
12 behavior is what we call it. And each dog is different. It's like each
13 person is different. Each dog will act a little bit differently when he --
14 when he alerts you to tell you that he smells something.

15 So the dogs typically will get excited. Sometimes they'll get
16 aggressive. Tails will wag often times. It kind of just depends on the
17 dog.

18 Q But you're -- are you tuned into your particular dog Lasco --

19 A Yes.

20 Q -- so you know what his alert is?

21 A Yes. So Lasco -- our dogs only work with us. We don't leave
22 the dogs at a station or somewhere and another officer would pick him
23 up when we're off. The dogs go home with us, almost like a member of
24 our family. They only work with us. So I am -- it takes quite some time
25 probably about a year of training with the dog before you really in tune

1 with them. And you can kind of tell that hey when he flicks his ear that
2 way or he moves his tail this way or does something a certain way, I
3 know he's smelling a suspect.

4 There were times when I can tell whether my dog was
5 smelling a cat or smelling a suspect or even there was times when I can
6 tell he's smelling a person, but not necessarily a suspect all by the way
7 that he reacted.

8 Q Okay. So you were describing kind of -- you gave an
9 example that corner house how you systematically clear a residence;
10 can we presume you cleared each and every residence until you got to
11 1116 Jimmy?

12 A That's correct.

13 Q All right. Let's start with or let's get into 1116 Jimmy. First off
14 let me know you State's 326; does that look like the home?

15 A It does.

16 Q Okay. Tell us how you cleared that particular residence and
17 let me just zoom in.

18 A So I recall the gate was to the back yard was on the east side
19 of the house here in this area. I went through the gate and then I
20 hugged up against the fence on this east side to working all the way
21 back to this corner. And again if my recollection is the wind was out of
22 the west blowing east. And again I'm trying to take advantage of that
23 wind. So if there was a suspect say hiding on this side of the yard, by
24 hugging this east wall taking advantage of that wind, my dog would be
25 able to be down wind and alert me to the presence of that suspect

1 before I'm right on top of him.

2 Q Okay.

3 A In this instance, I encountered the suspect hiding deep in this
4 corner in some brush. And I was hugging up against this wall as we got
5 to the far corner, my dog immediately spun and dove into the brush that
6 was there and bit a suspect on the shoulder --

7 Q Okay.

8 A -- that was hiding in the brush.

9 Q And just for the record when you say you found him in the
10 brush, for the record you pointed to the northeast far corner of the 1116
11 Jimmy?

12 A Correct. The northeast corner of 1116 Jimmy.

13 Q Now you kind of lifted your eyes and you say my dog
14 immediately dove in and bit him; was that what you were expecting?

15 A Yes. So I -- I expect my dog to bite a suspect if he can get to
16 him. That's my responsibility to try and limit him 'cause he's on leash
17 when I do this search. It's my responsibility to limit the depth that my
18 dog get go into the brush. But because of the -- the proximity of the
19 brush to the corner where I was standing and the way the wind was
20 blowing, my dog didn't alert until he was immediately next to the
21 suspect.

22 Q Okay. Let me show you 327; do you recognize this?

23 A Yes.

24 Q What are we looking at there?

25 A So this is -- this is the northeast corner of that yard. And the

1 suspect was hiding in this area here in this brush and we walked down
2 this all the side of these hedges here. And when we got back to this
3 corner, that's when my dog leaped into this brush area and bit the
4 suspect.

5 Q All right. And showing you 328; is that a close up view of
6 where the suspect was?

7 A That's correct.

8 Q What is this stuff down here?

9 A I believe it was some kind of mulch or something that they had
10 laid down.

11 Q All right. Showing you State's 340; is that the suspect?

12 A That's correct.

13 Q The tear to his right shoulder, was that as a result of -- of
14 Lasco's bite?

15 A That's correct.

16 Q All right. So you've described your dog diving in and going
17 after him. What happened when he dove in and went after the suspect?

18 A So once he bit the suspect and I could recognize that he was
19 on -- on the bite with the suspect, I directed the suspect to show me his
20 hands. I wanted to make sure he no longer had a firearm in his hand
21 before I released my dog from the bite. And then once he did that, I
22 immediately released my dog from the bite.

23 Q Do you recall the suspect yelling something out?

24 A Yes. He yelled out to me okay, I give up, don't let him bite me
25 again.

1 Q Okay.

2 A Something like --

3 Q I give up.

4 A -- something to that effect, yes.

5 Q Okay. Once your dog bit him and he yelled, okay, I give up;
6 did you say you pulled the dog off?

7 A Yes. I told the dog to release from biting the suspect.

8 Q Did he?

9 A He released and then I pulled him back, so he wasn't close
10 enough to bite him anymore.

11 Q Okay. And I should have asked you this before, did you have
12 a companion officer with you while you did this?

13 A I did not.

14 Q Oh okay. What happens when the dog comes off? Is the
15 suspect just laying there or what?

16 A Yes. So he's -- he's laying there. Obviously I'm not going to
17 approach and try and handcuff him myself 'cause that would put the dog
18 back in proximity with the suspect and another dog bite would occur
19 which we don't want to do at this point because he's being compliant
20 and he had showed me his hands. So I backed up far enough to where
21 if the suspect tried to flee, I could deploy my dog again on him. Lit him
22 up with my flashlight and I called for a back-up officer to come in and --
23 and let the helicopter know that I had a suspect in the back yard. So the
24 helicopter directed his attention to us and the helicopter actually directed
25 a back-up unit to come into the back yard. And a second officer came in

1 and handcuffed the suspect.

2 Q And you just referenced a helicopter; was there one
3 helicopter? More than one helicopter?

4 A Just one.

5 Q Did that helicopter have large spotlight like --

6 A Yes.

7 Q -- when you think of -- when you thinking of police helicopter?

8 A Yes.

9 Q All right.

10 Court's brief indulgence.

11 [State's counsel conferring]

12 BY MR. GIORDANI:

13 Q Had that helicopter been part of the search that you and all
14 the other officers and K9s were part of?

15 A Absolutely.

16 Q Okay.

17 A He had been -- so the helicopter will -- will conduct a search
18 from the air as we're conducting a search on the ground.

19 Q Okay.

20 A He was doing so with his -- with his lights and often times our -
21 - our helicopters equipped with flairs as well which is a system that looks
22 for heat signatures on the ground.

23 Q Okay.

24 A So they will conduct that search simultaneously as we're
25 doing our search.

1 Q And when you say heat signatures, are you talking like
2 infrared?

3 A Yes. Infrared where they can see -- they can see heat
4 emitting from a body or anything really --

5 Q Okay.

6 A -- coming from the ground and they'll direct us to say, hey, I've
7 got a hot spot. Meaning I've got a heat, something that's hot in a back
8 yard and we need to go check it out.

9 Q Okay. And I failed to ask you this earlier. When you're --
10 when you're talking about your dog alerting, are they trained to alert on
11 just any person or --

12 A So when we initially train the dogs, we -- we train them with
13 just other officers that are coming in to help us. So they learn to find
14 other humans. So they're trained through time to find other humans. It's
15 when we certify them, we get them out on the street and they start to
16 find suspects that they learn to differentiate through time that suspects
17 actually smell a little bit differently from humans.

18 Q What do you mean by that?

19 A So a suspect will or anybody I should say that has had some
20 sort of a traumatic experience or -- or have a what -- I'll say they're
21 running from the police or anybody that's had a dump of adrenaline will
22 emit a chemical in their -- in their odor called apocrine.

23 Q What is it?

24 A Apocrine.

25 Q Okay. So that the dogs learn through time on the street that a

1 suspect is emitting this apocrine, smells different than a regular human.
2 And obviously that's very difficult to -- to replicate that kind of a smell
3 and training, so we can't teach them that in our nightly training. It's not
4 until they get on the street and they actually start to find suspects that
5 they learn that.

6 But over time you can differentiate with the dog that you've
7 been working for -- for some time. Based on their alert you can tell if
8 their smelling a suspect, if somebody's got their window and they're
9 smelling somebody that's -- that's inside their house. And like I said a
10 cat, different odors and things, just by the way that the dog responds.

11 Q Okay. You indicated that you had called out -- did the
12 helicopter spotlight him?

13 A Before we get to that, can I add one more thing?

14 Q Please.

15 A The apocrine will also often times cause a dog to act more
16 aggressively. So if they smell a regular suspect -- a regular human, a lot
17 of times they'll be more investigatory when they come into with them.
18 But when they smell that apocrine, they learn through time that hey that
19 is the suspect that I'm looking for and they feel like they have the green
20 light to go ahead and bite. So that will often time cause them to react
21 even more aggressively.

22 Q Okay. Sorry. Kind of lost my train of thought. You were
23 indicating that you backed up far enough where your dog was off him,
24 but he was complying showing his hands and said I give up, so you
25 called out to another officer?

1 A Yes.

2 Q Did another officer arrive and then place him into custody?

3 A Yes. Another officer actually placed the suspect in handcuffs
4 and took him into custody.

5 Q Okay. Just a couple more questions for you, sir. When
6 you've described that photo that's already up as depicting one of the
7 bites, was there some bites or apparent injuries to the suspect's hands?

8 A Yes. He also had a bite to his I believe his right hand.

9 Q All right. And I'm just going to scoot this up 'cause I don't
10 have the exhibit ready. Can you see that?

11 A It looks like it's his left palm there.

12 Q Okay. Once the suspect was taken into custody, showing you
13 343, did you observe his person and basically his demeanor?

14 A Yes.

15 Q Do you see the white chapped or kind of cotton mouth type
16 things around his mouth there?

17 A Yes.

18 Q Is that how he appeared once you had him secured and in
19 custody?

20 A Yes.

21 MR. GIORDANI: Court's brief indulgence.

22 All right. Thank you very much, sir. I'll pass the witness, Your
23 Honor.

24 THE COURT: Thank you. Cross examination.

25 CROSS EXAMINATION

1 BY MR. LEVENTHAL:

2 Q Good afternoon, sir.

3 A Hello.

4 Q My name is Todd Leventhal. I represent Mr. Matthews today.
5 How are you?

6 A Fine. How are you?

7 Q Good. Couple of questions. Isn't it true that this apocrine
8 that's emitted from people that doesn't differentiate what type of crime
9 they're committing; correct?

10 A Correct.

11 Q Right. So someone who is in violation of a TPO could be
12 emitting apocrine if you knew that police were around; correct?

13 A If he was running -- actively running from the police, then yes.

14 Q So it's running. So if the detective that was just here --
15 Walters -- Detective Walters that was just here; if he was in a foot chase
16 with a person and then got back to the car, would your dog alert to that?

17 A If he was hiding in a back yard, yes.

18 Q Okay. That's not my question because -- so -- so apocrine is
19 emitted when you're hiding or is apocrine emitted when you're running?

20 A No. I associate it with an adrenaline dump. There are
21 different times when it -- when it could be emitted. But most often in my
22 -- in my experience it's from an adrenaline dump.

23 Q Okay. A dump meaning like you just went through something
24 traumatic --

25 A Something, yes.

1 Q -- experience? Okay. It's not something that you're going
2 through right now then is what you're saying?

3 A No.

4 Q No. You're over it; right? It's over?

5 A Say that again.

6 Q It's over. You're dumping the adrenaline.

7 A You have -- you know, you can have adrenaline I would
8 assume. I'm not an expert on adrenaline, but an ongoing adrenaline
9 saying if you're still running from the police or whatnot.

10 Q Okay. You indicated that your dog can smell apocrine from an
11 open window?

12 A No.

13 Q No. Okay. Does apocrine stay on the body for a long time?

14 A It's an odor.

15 Q It's --

16 A It -- it drifts with -- with the wind or whatever odor does.

17 Q So if somebody is running through an area say across the
18 street through Jimmy, is your dog going to alert if they smell the
19 apocrine without a person being there?

20 A If the -- if the odor is still there, then it's possible, yes.

21 Q Okay. So a person can be running through an area and emit
22 this apocrine, your dog then will then give you some alert; correct?

23 A Yes. It's possible.

24 Q All right. Now then --

25 A Then it's my job to differentiate why he's doing that in that

1 area.

2 Q I understand. Thank you. From the time that you arrested my
3 client, Mr. Matthews, did you keep an eye on him that entire time? Did
4 you have in your control and custody the whole time before other
5 officers got there?

6 A He was brought out placed in a police car right in front of me.

7 Q Okay.

8 A So I didn't physically have control of him, but he was placed in
9 a police car right next to where I was standing.

10 Q Okay. And so you were in direct contact -- eye contact with
11 him from the time that Lasco bit him from the time that he was handed
12 over to another officer; correct?

13 A Well I wasn't standing there staring at him, but he was placed
14 in a patrol car in my immediate vicinity.

15 Q Okay. Were you there when this picture was taken?

16 A Yes, I was there.

17 Q You were?

18 A When the photos were taken of him.

19 Q Okay. So you were there when that photo was taken?

20 A I don't recall this photo specifically, but I remember the officer
21 coming and taking photos of him.

22 Q Okay. Understood. And during that time he never -- he never
23 sort of lost your sight. I know you weren't staring at him, but he never --
24 he never left your sight. He was still --

25 A He was in my vicinity the entire time.

1 Q He was in your vicinity?

2 A Correct.

3 Q And you weren't actually the person that put him into cuffs;
4 were you?

5 A No.

6 Q So you held Lasco on until the other officers got to him to then
7 put him in cuffs?

8 A Yes.

9 Q Okay. And then you exited from that and you walked out onto
10 Jimmy Street where this picture was taken?

11 A I walked out behind him. He was placed in a patrol car where
12 we waited for an officer to come with the camera to take photos of him.

13 Q Okay. And did you find a red glove on him?

14 A I don't recall finding a red glove on him.

15 Q Now you indicated earlier that it's important to have an
16 accurate description, correct, of the person you're looking for?

17 A Yes.

18 Q Okay. And that accurate description because had you had
19 some general description of a black male that could have been anyone
20 in that area around that time; correct?

21 A It could have been and sometimes that happens when we're
22 looking for someone that we have no more than just a vague clothing
23 description and sometimes a race, sometimes we don't even have race.

24 Q But if -- if other officers in that area had that information, you
25 would hope that they give that to you to help in your search; right?

1 A Yes. We always want as much information as we can get.

2 MR. LEVENTHAL: Thank you. I appreciate that. I have
3 nothing further. Thank you.

4 THE COURT: Any redirect?

5 MR. GIORDANI: No, Your Honor. Thank you.

6 THE COURT: Okay. Thank you very much for your testimony
7 here today. You may step down.

8 THE WITNESS: Thank you.

9 THE COURT: You are excused. This time we're going to
10 take a short recess. During this recess you're admonished not to talk or
11 converse amongst yourselves or with anyone else on any subject
12 connected with this trial or read, watch or listen to any report of or
13 commentary on the trial or any person connected with this trial by any
14 medium of information, including without limitation newspapers,
15 television, the Internet or radio; form or express any opinion on any
16 subject connected with this trial 'til the case is finally submitted to you.

17 We'll be in recess for 15 minutes.

18 THE MARSHAL: Thank you. All rise for the exiting jury.

19 [Recess taken from 4:06 p.m. to 4:16 p.m.]

20 [Inside the presence of the jury]

21 THE COURT: Does the State stipulate to the presence of the
22 jury panel?

23 MR. GIORDANI: Yes, Your Honor.

24 THE COURT: The defense?

25 MR. TANASI: Yes, Your Honor.

1 MR. LEVENTHAL: Yes, Your Honor. Thank you.
2 THE COURT: Thank you. You may call your next witness.
3 MS. LEXIS: The State calls Michael Kalarco.

4 **MICHAEL KALARCO**

5 [having been called as a witness and being first duly sworn,
6 testified as follows:]

7 THE CLERK: Thank you. Please be seated. Would you
8 please state and spell your name for the record?

9 THE WITNESS: Sure. My name is Michael Kalarco, M-I-C-H-
10 A-E-L. Last name is Kalarco, K-A-L-A-R-C-O.

11 THE CLERK: Thank you, Officer.

12 **DIRECT EXAMINATION**

13 **BY MS. LEXIS:**

14 Q Sir, how are you employed?

15 A Right now I'm a sergeant with the police department.

16 Q Okay. The Las Vegas Metropolitan Police Department?

17 A That's correct.

18 Q Okay. How long have you worked for Metro?

19 A For approximately 15 years now, just a little shy of.

20 Q Okay. I'd like to turn your attention to September 30th of 2006;
21 were you employed with Metro at -- at that time?

22 A Yes, I was.

23 Q Were you a sergeant?

24 A No.

25 Q How long have you been a sergeant?

1 A Approximately three years now.

2 Q Okay. So back in 2006, were you a patrol officer?

3 A I was.

4 Q Were you assigned to the Bolden Area Command?

5 A Yes.

6 Q Okay. Did something occur on September 30th of 2006 which

7 caused you to have to testify in Court today?

8 A Yes, ma'am.

9 Q Okay. Actually let me back up. Were you working on

10 September 30th, 2006 leading into October 1st of 2006?

11 A Yes, I was.

12 Q Okay. Were you working alone or with a partner?

13 A I was working with a partner. Officer Chad Baker and I were

14 riding together.

15 Q Okay. Were you in a marked patrol vehicle?

16 A Yes. I believe so.

17 Q Okay. A black and white?

18 A Yes.

19 Q All right. Were you in a uniform?

20 A We were both wearing uniform.

21 Q Okay. I notice you're wearing your uniform today; was it a

22 similar uniform to what you're wearing today?

23 A Yes, ma'am.

24 Q Okay. So at some point during the night, did you and Officer

25 Baker get dispatched or assigned yourself to a call?

1 A We did. We assigned ourselves to a call.

2 Q Okay. I'm thinking around 10 p.m. or shortly before 10 p.m.?

3 A That's correct.

4 Q Okay. Were you led to a particular area of town or a particular

5 area of Bolden Area Command to assist in an investigation?

6 A We were.

7 Q Okay. What area of town?

8 A It was in Bolden Area Command. It was roughly in the area of

9 about Martin Luther King, Lake Mead-ish.

10 Q Okay. And so who was driving; do you recall?

11 A I believe it was Officer Baker driving, but I couldn't be a

12 hundred percent sure.

13 Q Okay. And so once you were in that are, what do you do?

14 Where do you go?

15 A So the -- do you want the initial call and my [indiscernible] --

16 Q Yes.

17 A Okay.

18 Q Yes.

19 A So the initial call we heard officers saying they heard some

20 gun shots in the area of Balzar, Martin Luther King area, so we started

21 kind of going in that area. As we were going there, a very short time

22 after that we heard another officer saying that they possibly had a

23 vehicle that was leaving at a high rate of speed. So we kind of started

24 going the direction that they were giving.

25 Eventually the vehicle we heard the officers give updates over

1 the radio that said that the vehicle had crashed. A short time after that
2 they were giving a suspect description and then all of a sudden there
3 was -- one of the officers said that there were shots fired.

4 Q Okay. And so due to all of this that was going on the radio,
5 things being broadcasted over dispatch; did you and your partner get led
6 to a certain apartment complex?

7 A We did. The last radio traffic that we heard was that the
8 suspects were fleeing the vehicle. The vehicle crashed right in the area
9 of J Street and Jimmy. One of the suspects was going towards 1701,
10 1801 apartment complex, J Street, which is a combined -- 1801 is on the
11 north side, 1701 is on the south side. But the suspect was last seen
12 running in that direction.

13 Q Okay. I'll get you a map in just a second, Officer. But let me
14 just publish what's been marked and admitted as State's Exhibit 3 --
15 377; what is this?

16 A That's the front entrance sign of the apartment complex, 1701
17 and 1801 J Street.

18 Q Okay. So it is fair to say it's a same apartment complex, but it
19 just depends on which side?

20 A There is a driveway that kind of separates the two apartment
21 complexes.

22 Q Okay. And so tell us what happens once you approach, you
23 know, the driveway and the entrance of that apartment complex?

24 A So we were -- we came into the area there was another
25 vehicle that was already there. I believe it was a minivan with a couple

1 of PSU officers that were in there. There's a front gate that you have to
2 wait for it to open up. It was opening up. We pulled in right behind it. I
3 think they were the ones that were giving out the radio traffic that the
4 suspect was last seen running in there into 1701 J Street.

5 We pulled in right behind. Once the gate opened up, we
6 pulled right into the -- into the apartment complex and kind of went over
7 towards 1701. And I guess he was turning towards the south which
8 would be 1701. And so then --

9 Q When you say he was turning, who are you talking about?

10 A The suspect. And this -- and this is information I'm being
11 given over the radio.

12 Q Okay.

13 A I had not seen him up to that point.

14 Q Okay. And I'm going to publish what's been admitted at
15 State's Exhibit 381; do you recognize what's depicted here?

16 A I do. I'm very familiar with it.

17 Q Okay.

18 A That is --

19 Q What is it?

20 A -- that is going to be the front entrance of the apartment
21 complex.

22 Q Okay. And now publishing State's Exhibit 379; what's this?

23 A That is -- looks like a view from east to west kind of pointing
24 towards the front of the complex.

25 Q Okay. State's Exhibit 380; what's this?

1 A It's the kind of the same camera spot. Just the angle is turned
2 a little bit to the south is what it looks like.

3 Q Okay. At some point --

4 A Towards 1701.

5 Q -- upon arrival to this apartment complex, do you, Officer
6 Baker and the individuals or the officers in the van that you referenced,
7 do you get out of your vehicles?

8 A We did. We did. Right after we got in there, we both turned
9 kind of to the south. We immediately got out of our car obviously 'cause
10 there's possible suspect that was running in that direction. Officer Baker
11 went with, I want to say it was Officer Kahn [phonetic] -- Todd Kahn
12 [phonetic] was in the vehicle -- in the van. I went with Officer Kenny
13 Rios. The other two officers kind of headed towards the south which
14 would be the middle of the -- the complex. And we kind of skirted a little
15 bit along those buildings that you could see. We ran south -- do you
16 want me to just keep going?

17 Q Yeah.

18 A Okay. So as we were running south, there's a couple of
19 dumpsters that were sitting right there next to the building.

20 Q Okay. So now I'm going to stop you.

21 A Sure. Absolutely.

22 Q State's Exhibit 378; do you see those dumpsters that you
23 were referencing?

24 A Yes, ma'am.

25 Q Okay.

1 A It's right in the center of the photograph.

2 Q Okay. Perfect. Actually a better photo, 383; is that a little
3 more lit up?

4 A Much clearer.

5 Q Okay.

6 A Still in the middle.

7 Q And how about 384?

8 A Closer to you, yeah. There they are.

9 Q Towards the right?

10 A Towards the right side, yes. Towards the right side there's a
11 maroon car right in front of those.

12 Q Okay. So as you and Officer Ken Rios are approaching the
13 dumpsters, what if anything happens?

14 A So as we're approaching it, Officer Rios was in front of me.
15 He's two, three inches taller than me. We're running past the
16 dumpsters. We ran past the first one. Didn't see anything. As we're
17 going past, I believe it was the second dumpster, Officer Rios yells out
18 and movement in the dumpster. So as we -- obviously concerning for
19 us. The suspect might have jumped at the dumpster. We draw down
20 into, with our firearms, into the dumpster. As I look down, I remember
21 seeing some trash, some papers, and I saw what looked like a black t-
22 shirt and I almost immediately could see it was someone -- there was
23 someone there. It wasn't just a black t-shirt laying there.

24 Q So when you say you're drawing and you said a weapon --

25 A Mm-hmm.

1 Q -- does that mean you're -- you have your firearm and it's like
2 in the dumpster --

3 A Absolutely.

4 Q -- aimed at something?

5 A Yes.

6 Q Or someone?

7 A Absolutely, yes.

8 Q Okay.

9 A 'Cause at that point we're -- it's a very unknown situation.

10 High risk obviously 'cause there's a shooting that just happened.

11 Suspects just ran. We had the officers that said shots fired. So yes we
12 are aiming down into the dumpster in case it is a suspect that we're
13 looking for.

14 Q So you realize that there's a suspect or a person in the
15 dumpster; what happens next?

16 A So immediately after that, we start giving verbal commands.
17 Obviously, show us your hands, show us the hands. I remember there
18 being a delay and then eventually I remember seeing hands coming up
19 out of the trash. As the hands were coming up, I don't remember what
20 side it was, but I remember seeing a gun very close to where his hands
21 just came from. I remember seeing a gun laying down there and then
22 also some baseball style gloves also nearby where he was coming out.

23 Q Okay. State's Exhibit 386; do you see the dumpster where
24 you located this individual?

25 A If I remember correctly, it's the -- the dumpster that's on the

1 left --

2 Q Of the photo?

3 A -- in the photograph on the one that is on the left hand side.

4 Q Okay. State's Exhibit 388; still the dumpster to the left?

5 A Correct.

6 Q And so once you see the hands come up despite seeing a
7 firearm, do you allow or -- this individual to come out of the dumpster?

8 A So at this point we kind of verbalize what we had. There are
9 cops all in the area. There were cops that came up very shortly after
10 that and we physically grabbed him from inside the dumpster, pulled him
11 out and took him into custody.

12 Q Showing you State's Exhibit 349; what's this showing?

13 A That looks like the inside of a dumpster where we took the
14 subject out of.

15 Q Okay. State's Exhibit 397.

16 A That looks like the baseball gloves that I saw when we were --
17 after we took him out or right around the same time.

18 Q Okay. And we've been having trouble with the mouse, so can
19 I just -- the black glove towards the middle bottom of the photo, is that
20 what you're referencing?

21 A Yes, ma'am. Absolutely.

22 Q Okay. And then how about towards the left middle near this --

23 A That looks like the other glove.

24 Q Okay. Drawing your attention to this other black object also
25 towards the left bottom; what is that?

1 A It looks like the firearm that we saw. Like I said it was very --
2 everything was kind of in close proximity when we took him out.

3 Q Okay. Okay. And so once you place the suspect or once that
4 suspect was pulled out of the -- the dumpster, did someone arrive or did
5 crime scene analysts arrive to secure what was located in this
6 dumpster?

7 A They did. Yeah. It's standard protocol after any time we have
8 a crime such as this, we're not going to process it ourselves. So we do
9 ask for ID techs to come out and they're the ones that take -- take a hold
10 of this.

11 Q Okay. Did you remain at this scene or did you see the items
12 being pulled out of the dumpster?

13 A I don't remember if I stayed there and I don't remember them
14 pulling them out.

15 Q Okay. So showing you State's Exhibit 415; do you recognize
16 the individual depicted here?

17 A I do.

18 Q Okay.

19 A That looks like the subject that we pulled out of the dumpster
20 that night.

21 Q Okay. And State's Exhibit 419; do you recognize that
22 individual?

23 A I do.

24 Q Okay. Was he identified as Pierre Joshlin?

25 A Yes, ma'am.

1 Q State's Exhibit Number -- all right. So, Officer, just going --
2 Your Honor, just for -- as a demonstrative aid of 1701 and 1801 North J
3 Street, I don't believe the defense has an objection, but I'd like to publish
4 a map that's located on Mr. Giordani's phone.

5 THE COURT: Any objection?

6 MR. LEVENTHAL: No objection.

7 THE COURT: Okay. You may publish.

8 BY MS. LEXIS:

9 Q Officer, do you see the buildings depicted here?

10 A I do.

11 Q Okay. Do they show 1701 and 1801 North J Street? Do you
12 need me to zoom out a little?

13 A No. I think I could see it. Does this -- you said the mouse
14 doesn't work? Can I just describe it?

15 Q It does. It does.

16 A Oh okay.

17 Q It's just sometimes problematic.

18 A It looks like this would be the complex right here.

19 Q Okay. Which was 1701?

20 A Well, they're 1701 and 1801 are connected.

21 Q Okay. So is 1701 more south?

22 A It should be this one right here --

23 Q Okay. Okay.

24 A -- if I'm looking at it correctly.

25 Q And then 1801 is the one above?

1 A 1801.

2 Q Perfect. Okay.

3 I have no more questions for this witness, Your Honor.

4 THE COURT: Thank you. Cross examination.

5 MR. TANASI: Not the defense, Your Honor. Thank you.

6 THE COURT: Okay. Thank you very much for your testimony
7 here today. You may step down. You are excused.

8 THE WITNESS: Thank you. Thank you, Your Honor.

9 THE COURT: Thank you for being here.

10 Do you have another witness?

11 MR. GIORDANI: Not today.

12 THE COURT: Not today.

13 MR. GIORDANI: We cut her loose. Sorry. We thought we
14 were --

15 THE COURT: Who cut a witness loose?

16 MR. GIORDANI: Sorry.

17 THE COURT: Okay. We have gone through all the witnesses
18 today, so we are going to conclude for the evening.

19 During this recess you're admonished not to talk or converse
20 amongst yourselves or with anyone else on any subject connected with
21 this trial or read, watch or listen to any report of or commentary on the
22 trial or any person connected with this trial by any medium of
23 information, including without limitation newspapers, television, the
24 Internet or radio; form or express any opinion on any subject connected
25 with this trial until the case is finally submitted to you.

1 You're further admonished you may not communicate with
2 anyone including your fellow jurors about this case on your cellphone,
3 email, Blackberry, iPhone, text messaging, through Twitter or any blog
4 or website, through the internet chat room or by way of any other social
5 networking website including but not limited to Facebook, Myspace,
6 LinkedIn and YouTube.

7 We'll be in recess 'til tomorrow morning. We're going to start
8 at --

9 MS. LEXIS: Ten.

10 THE COURT: -- your witness isn't going to be here 'til 10:30;
11 right?

12 MR. TANASI: 10:30, correct, Your Honor.

13 THE COURT: Can we start at 11?

14 MR. TANASI: That's fine.

15 THE COURT: Okay.

16 MR. TANASI: Eleven.

17 THE COURT: I just want to make sure that won't cause a
18 problem.

19 MR. LEVENTHAL: Not from me.

20 THE COURT: Okay. All right. So tomorrow morning at 11
21 o'clock. You can just come up to the 14th floor at which time Officer
22 Hawkes will greet you and bring you in. Thank you very much. We'll
23 see you tomorrow.

24 THE MARSHAL: All rise for the exiting jury.

25 [Outside the presence of the jury]

1 THE COURT: How -- how close are we? I mean 'cause you
2 guys are keeping a really good pace.

3 MR. GIORDANI: We are.

4 THE COURT: You're doing a great job.

5 MS. LEXIS: We are.

6 MR. GIORDANI: So we have a couple of witness that we
7 probably won't be able to get 'til Monday, but because the expert is
8 going on tomorrow --

9 THE COURT: Okay.

10 MR. GIORDANI: -- it won't be an issue. We'll fill the
11 afternoon. But I don't see us going past Monday for argument unless
12 actually -- unless Mr. Matthews decided to testify.

13 MR. TANASI: There was -- there's one additional defense
14 witness.

15 MR. GIORDANI: Oh yeah.

16 MR. TANASI: We have two experts. So it's one tomorrow,
17 then one possibly on Monday whenever the State's done, so.

18 MR. GIORDANI: But we'll for sure be done by Wednesday
19 portion.

20 MR. TANASI: I think that's right.

21 THE COURT: All right. But you have enough witnesses to fill
22 the day tomorrow?

23 MR. GIORDANI: Oh yeah.

24 THE COURT: Okay. So we'll just do Dr. Chambers and then
25 we'll go back to the State calling their witnesses.

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MS. LEXIS: Yes.

MR. LEVENTHAL: Yes.

THE COURT: Okay. How about jury instructions?

MR. GIORDANI: I promise to have those to the Court before the weekend.

THE COURT: Okay. I'm happy with that. That's tomorrow; right?

MR. GIORDANI: I know.

THE COURT: I'm happy with that.

MR. GIORDANI: So like 11:58 tomorrow night.

THE COURT: I'm happy with that. Thank you. Thank you.

MR. TANASI: Thank you.

MS. LEXIS: Thank you, Your Honor.

MR. LEVENTHAL: Thank you.

[Jury Trial, Day 4 concluded at 4:42 p.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Michelle Ramsey
Court Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JEMAR D. MATTHEWS aka
JEMAR MATTHEWS
JEMAR DEMON MATTHEWS,
Defendant.

CASE#: 06C228460-2
DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE
FRIDAY, SEPTEMBER 28, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 5**

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.
JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorneys

For the Defendant:

TODD M. LEVENTHAL, ESQ.
RICHARD E. TANASI, ESQ.

Also Present:

KENNETH N. PORTZ, ESQ.
Deputy District Attorney

RECORDED BY: KRISTINE SANTI, COURT RECORDER

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FRIDAY, SEPTEMBER 28, 2018, AT 11:17 A.M.

[In the presence of the jury]

THE COURT MARSHAL: Thank you, everyone. Please be seated. Please come to order. Court is now in session.

MS. LEXIS: Good morning.

MR. GIORDANI: Good morning.

THE COURT: Does the State stipulate to the presence of our jury panel?

MR. GIORDANI: Yes, Your Honor.

THE COURT: The Defense?

MR. LEVENTHAL: Yes, Your Honor. Thank you.

THE COURT: You may --
Thank you.

You may call your next --
Oh, that's right.

MR. LEVENTHAL: Your Honor --

THE COURT: I -- you're right. I'll let the jury know.

MR. LEVENTHAL: Oh, okay. Very good.

THE COURT: Because you're going to call your witness;
correct?

MR. LEVENTHAL: Out of order, that's correct.

THE COURT: Okay. Ladies and gentlemen, Mr. Leventhal is going to call one of his witnesses out of order so we can accommodate a schedule. So, we're going to go to the Defense for a moment and

1 then when he's done then the State will go back to putting on their case.
2 So, it would be a little different. Mr. Leventhal will do direct. The State
3 will do cross. Mr. Leventhal will do redirect, and then recross. And then
4 we'll go back to the State. Thank you.

5 And you may call your first witness.

6 MR. LEVENTHAL: Thank you. Mr. Matthews calls Dr. Mark
7 Chambers.

8 THE COURT MARSHAL: If you'll please step up near the
9 witness stand and remain standing, raise your right hand and face the
10 clerk, please.

11 **MARK CHAMBERS**

12 [having been called as a witness and being first duly sworn,
13 testified as follows:]

14 THE COURT CLERK: Thank you. Please be seated. And
15 could you please state and spell your name for the record?

16 THE WITNESS: Mark Chambers, M-A-R-K
17 C-H-A-M-B-E-R-S.

18 THE COURT CLERK: Thank you, sir.

19 THE COURT: You may proceed.

20 MR. LEVENTHAL: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MR. LEVENTHAL:

23 Q Good morning, Dr. Chambers. How are you?

24 A Good morning, sir.

25 Q You're a doctor; PhD?

1 A PhD psychologist, yes.

2 Q A psychologist. And where did you get your education from?

3 A I did my undergraduate studies at Stanford University. I
4 graduated there with a bachelor's degree in psychology with a minor in
5 biology. I graduated Phi Beta Kappa, top ten percent of my class. I also
6 earned a master's degree in education from Stanford University as well.
7 And then I went on to do my PhD doctoral studies at Northwestern
8 University where I earned a degree in clinical psychology.

9 Q And do you have any academic honors that you can tell the
10 jury about?

11 A As I said, I earned a Phi Beta Kappa distinction and graduated
12 with distinction at Stanford University. I also was awarded a number of
13 fellowships during my time at Northwestern University.

14 Q And your forensic experience, what forensic experience do
15 you have?

16 A My forensic experience began -- and maybe before I start that
17 I should just explain to the jury so that they understand the difference.
18 There's different kinds of psychologists, and I do two different types of
19 psychology. Clinical psychology, which is probably something you're
20 more familiar with, that's if you go to see somebody for problems with
21 depression or anxiety or issues with your family, your children, your
22 spouse. Typically, a clinical psychology is -- a psychologist is who you
23 would see.

24 Forensic psychology is simply the application of psychological
25 principles and science to the courtroom setting. So, any kind of a case,

1 whether it's criminal or civil or even family cases, might require a
2 psychologist to help understand certain psychological issues that are
3 relevant to the case in some way.

4 So, my training in clinical -- sorry -- forensic psychology began
5 during my pre-doctoral internship at Northwestern. Most PhD programs
6 require you to do a one-year full-time internship at a clinical setting. The
7 setting that I did my internship in was at the Dallas child guidance clinic
8 in Dallas, Texas. And although we worked a lot with families and
9 children that had psychological issues, we also dealt with a lot of court
10 cases mostly involving child abuse of some sort, and so we were trained
11 in and had experience in dealing with court-related cases, and therefore
12 we received some training in forensics as well.

13 Since that time, I have done a variety of functions in the
14 forensic field and also have a considerable amount of continuing
15 education classes in the forensic area.

16 Q Have you ever been qualified as an expert witness?

17 A Yes, many times.

18 Q Where?

19 A Here in District Court, also in several other jurisdictions;
20 Michigan, California, Wyoming, I believe. I also testify frequently in
21 Federal Court; both the military and civilian sides of Federal Court. So,
22 quite a few different jurisdictions there.

23 Q Okay. And do you primarily testify on behalf of the
24 prosecutions or the defense or do you mix that up?

25 A Depends on where it is. In most of my federal work,

1 especially for the military, it's a split of about 50/50. Here in Las Vegas
2 it's probably a little bit more on the side of the defense; as a matter of
3 fact, quite a bit more on the side of the defense. But it really just
4 depends on the jurisdiction and, you know, who is aware of my services
5 and asks for them.

6 Q Okay. Can you guestimate over the last 15 years, in your
7 experience, how many times have you testified?

8 A In the last 15 years?

9 Q Approximately.

10 A Probably 50 or more.

11 Q Let's take you down to some of the areas of expertise that you
12 have under your belt. Can you tell the jury a couple of the areas that
13 you have an expertise in?

14 A Well, as I said, I'm a forensic psychologist and, as I explained
15 earlier, what that means is that anything that is of a psychological nature
16 and could be related to a court-related matter comes under that purview.

17 So, there are a lot of different psychological issues, as you
18 might imagine, that could come up in the context of a criminal or civil
19 trial. So, things like how memory works, how drugs and alcohol affect
20 people's perception and behavior and memory of events, how mental
21 illnesses affect the way that people behave and the choices that they
22 make and the way in which they may or may not understand their
23 actions or be able to control them.

24 Sometimes when it comes to cases involving children I will
25 testify about developmental issues with children, how their age and

1 experience and education might affect the way that they perceive a
2 situation and recall it later or are able to describe their experiences.

3 So, all of those areas come under the basic heading of
4 forensic psychology and are things that I have talked about or testified to
5 in previous cases.

6 Q Does that include eyewitness reliability, unreliability and
7 memory issues?

8 A Yes, as I mentioned, memory is a big part of what I do, and
9 eyewitness identification comes under that category because,
10 essentially, when somebody is testifying as an eyewitness, they're
11 testifying about their memory of an event that they presumably
12 observed.

13 Q What I'd like to do now is talk about the types of -- oh, I -- just
14 to give you an outline of types of -- the ways that police officers or
15 specifically Metro uses to get someone to identify or -- an eyewitness.
16 Then I'd like to go through some general things and then talk specifically
17 about this case.

18 So, what types of ways does the police use to have a person
19 identify who they think is a suspect in a case?

20 A Well, there are three basic methods that are typically used to
21 get an identification by a witness of a suspect. The first is what they call
22 a show-up, and that's when the police have captured or detained a
23 person that they believe could be a suspect in a criminal matter and so
24 they -- either they bring the witness to the suspect or bring the suspect
25 to the witness and they show them -- the witness the person that they've

1 detained and say is this the guy. So, it's a simple yes or no. Either they
2 say yeah, that's the guy or no, it's not or they might say I'm not sure; it
3 kind of looks like the guy, but I'm not a hundred percent sure. But,
4 essentially, they've given them one person to identify as either yes, they
5 are the person that committed the crime or that you witnessed in this
6 situation or no, they're not.

7 The second type is a live lineup, and that's kind of what
8 people probably are familiar with from TV where they bring in a number
9 of people, usually about six, that they line up in a room. And then the
10 witness views them, usually from another room through a two-way glass.
11 And, typically, one of the people in that lineup is who the police believe
12 or suspect is the criminal or the person of interest. And then the witness
13 is asked to determine whether one of those persons is the person that
14 they observed and then to pick them out; number one or three or five or
15 whatever it might be.

16 And then the third type of witness ID is what we call a photo
17 lineup. It's very similar to the live lineup, but instead of seeing actual
18 persons standing in front of them, the witness is given a set or a grid of
19 six pictures. And then they're told to look at that and then determine if
20 they recognize one of the pictures as being the person that was
21 responsible or the person that they observed in whatever incident it was
22 that they supposedly eye witnessed.

23 Q Okay. So, you've outlined the three different ways that the
24 police officers utilize the eyewitness. Have you ever heard of what's
25 called a double blind test?

1 A Yes.

2 Q Okay. What is a double blind test?

3 A Well, the double blind test is, essentially, where the person
4 conducting the lineup also does not know if the actual suspect, the
5 person that they've detained, is in the lineup or not. And the reason
6 that's done is because research has shown that when the -- it's usually
7 an officer -- when the officer knows who the person is that's the suspect,
8 they can sometimes give subtle hints or cues to the witness as to which
9 one is the right one or which one is the one they believe to be the right
10 one.

11 Q So, in terms of double blind, is that going to the reliability of
12 the test itself?

13 A It makes a difference. The research has shown that there are
14 fewer false identifications of somebody who isn't a suspect or didn't
15 commit the crime if it's done in that manner with the double blind
16 technique.

17 Q Dr. Chambers, did you review anything -- what did you review
18 to prepare for today?

19 A I was provided the police report, the --

20 Q I'm -- let me -- if I stop you --

21 MR. LEVENTHAL: May we approach real quick?

22 THE COURT: You may.

23 MR. LEVENTHAL: Thank you.

24 [Bench conference -- begins]

25 MR. LEVENTHAL: I didn't admonish Dr. Chambers --

1 MR. GIORDANI: Oh.
2 MR. LEVENTHAL: -- about the prior trial.
3 THE COURT: Okay.
4 MR. LEVENTHAL: So, I'd like to do that now.
5 MR. GIORDANI: Yeah.
6 MR. LEVENTHAL: It just hit me that he can't --
7 THE COURT: No. I can't --
8 MR. LEVENTHAL: -- talk about the prior trial.
9 THE COURT: And I don't want you to, like, go whisper in his
10 ear or something. That seems kind of weird to me.
11 MR. LEVENTHAL: Right.
12 MR. GIORDANI: Yeah.
13 THE COURT: But why don't you just state any objection to
14 Mr. Leventhal leading.
15 MR. GIORDANI: Well --
16 THE COURT: Did you not tell him at all?
17 MR. GIORDANI: -- he should do it. He should probably do it.
18 MR. LEVENTHAL: I didn't.
19 THE COURT: Okay. Why don't we -- I'd rather take a recess
20 because I don't want the jury to see you going up and talking to the
21 witness.
22 MR. LEVENTHAL: Oh, yeah. Okay.
23 THE COURT: I don't think that was --
24 MR. LEVENTHAL: I'm sorry, judge. I didn't think about it.
25 THE COURT: That's okay. That's okay.

1 [Bench conference -- concludes]

2 THE COURT: At this time we're going to take a short recess.

3 During this recess you're admonished not to talk or converse amongst
4 yourselves or with anyone else on any subject connected with this trial,
5 or read, watch or listen to any report of or commentary on the trial or any
6 person connected with this trial by any medium of information, including,
7 without limitation, newspapers, television, the Internet or radio, or form
8 or express an opinion on any subject connected with this trial till the
9 case is finally submitted to you. We'll be in recess for five minutes.

10 Thank you.

11 THE COURT MARSHAL: All rise for the exiting jury, please.

12 [Outside the presence of the jury]

13 THE COURT: Okay. The record will reflect that the hearing is
14 taking place outside the presence of the jury panel.

15 MR. LEVENTHAL: Thank you, judge.

16 THE COURT: You can have it now.

17 [Colloquy between counsel and the witness]

18 MR. GIORDANI: Sorry, Judge.

19 THE COURT: That's okay.

20 MR. GIORDANI: While we have the -- are we on?

21 THE COURT: Yeah, we're on, uh-huh.

22 MR. GIORDANI: While the jury's out of the room the parties
23 have stipulated to replace existing Exhibit 21 with just the map. There
24 was an error on existing Exhibit 21, and we fixed that error in this email.
25 Is that okay with the Court?

1 THE COURT: So, it's still going to be Exhibit 21?
2 MR. GIORDANI: Yes, ma'am.
3 THE COURT: Are you okay with that?
4 THE COURT CLERK: I am if you are.
5 THE COURT: Okay.
6 MR. LEVENTHAL: And Defense agrees.
7 THE COURT: So, you'll withdraw the old one, and then
8 there'll be a new 21.
9 And you'll stipulate?
10 MR. LEVENTHAL: We'll stipulate.
11 THE COURT: Okay. Thank you.
12 MR. GIORDANI: Thank you.
13 THE COURT: Can we bring them back in?
14 MR. LEVENTHAL: Yes.
15 THE COURT: Okay.
16 MR. LEVENTHAL: Thank you.
17 THE COURT: Bring them back in.
18 THE COURT MARSHAL: All rise for entering jury, please.
19 [In the presence of the jury]
20 THE COURT: Does the State stipulate to the presence of the
21 jury panel?
22 MR. GIORDANI: Yes, Your Honor.
23 THE COURT: The Defense?
24 MR. LEVENTHAL: Yes, Your Honor. Thank you.
25 THE COURT: Okay. You may continue with your direct

1 examination.

2 BY MR. LEVENTHAL:

3 Q Thank you for your indulgence, Dr. Chambers. Let me just
4 take you back. You identified the three ways that a police officer uses
5 the identification as a photo -- way -- a lineup or a show-up. You talked
6 about the double blind.

7 Where I was before we took a break was I was asking you
8 what materials have you reviewed personally to prepare for your
9 testimony today?

10 A There was a police arrest report that was produced in this
11 case by the varying police officers that were involved in the case, and, I
12 believe, it was fairly lengthy and included summaries of interviews that
13 the police did with many of the witnesses or people involved with the
14 case.

15 There was also a preliminary hearing that was held for the
16 case, in which several people involved in the case testified, and so I had
17 the opportunity to review the transcript from that preliminary hearing. I
18 don't know that what I reviewed was the complete hearing. It most likely
19 was not, but it contained at least the transcripts from the testimony of
20 some of the key witnesses in the case.

21 Q Okay. And in that testimony in those transcripts, of the three,
22 which did the metropolitan police department utilize in this case as a --
23 the identification process?

24 A Well, the ID, as my understanding, was done by one of the
25 police officers who had been involved in pursuing the suspects and

1 ultimately arresting several of them, and so I believe that they had used
2 a show-up procedure with one of the officers who had pursued the
3 suspect when they had somebody in custody and wanted to know if that
4 was the person he believed was the one he had given chase with.

5 Q Okay. Do you have any training or have you read any
6 treatises regarding any causes of wrongful convictions?

7 A Yes.

8 Q And what is that training?

9 MR. GIORDANI: Judge, I would object.

10 THE COURT: Yeah. What's the relevance?

11 MR. LEVENTHAL: Do you want to approach?

12 THE COURT: Sure.

13 MR. LEVENTHAL: I don't want to say it out loud.

14 THE COURT: Sure.

15 [Bench conference -- begins]

16 MR. LEVENTHAL: So, there's documentation that the
17 Innocence Project has done that's -- he's going to be able to say up to
18 80 percent of the convictions that have now been overturned are due --
19 solely based on eyewitness testimony. There's no DNA, there's no --
20 eyewitness testimony has been proven to be the number one thing
21 that --

22 MR. GIORDANI: Keep it down, man.

23 MR. LEVENTHAL: -- like -- sorry -- that overturns. And he
24 has experience in that. He told me that he's testified to that and he's
25 been trained in that to know that the Innocence Project has researched

1 and done -- and knows that if they're that high, that it is all you have is
2 the eyewitness. And, especially, if it's the unreliability of the show-up,
3 the technique of the show-up, that it's even greater.

4 MS. LEXIS: Your Honor, we would object. I think that evades
5 the province of the jury. I think then we would have to -- if he's going to
6 talk about these cases where that's been the case, we're going to now
7 have to get the facts of those cases and compare it to this case. It's like
8 mini trial after mini trial after mini trial.

9 THE COURT: Yeah.

10 MS. LEXIS: And I don't think he's even going to be familiar
11 with that.

12 THE COURT: I don't think it's appropriate to go down a road
13 of wrongful conviction.

14 MR. LEVENTHAL: Okay.

15 THE COURT: I think you can talk -- I know what an expert
16 witness talks about when you talk about eyewitness identification, and I
17 think he can give his opinions without talking about that type of training.

18 MR. LEVENTHAL: We're good. Okay. Thank you.

19 THE COURT: Thank you.

20 MS. LEXIS: Thank you.

21 [Bench conference -- concludes]

22 BY MR. LEVENTHAL:

23 Q Dr. Chambers, of the three ways, in your experience, which
24 one is the least reliable in terms of getting a identification correct?

25 A The show-up method.

1 Q And why is that?

2 A Well, first of all, there's only one person to choose from and
3 it's pretty natural for the witness to assume -- and, in fact, research
4 confirms this -- that when the police bring to them someone that they
5 believe to be a possible suspect, that the police probably did their job
6 and they've got the right guy. And so there's automatically bias built into
7 the process; the fact that they're only giving them one guy and so is this
8 the guy.

9 And they tend to be suggested -- they're suggestable, and so
10 they're influenced by that process that the police have brought them only
11 one person, so they're a little more likely -- actually, quite a bit more
12 likely to then identify that as being the person they remember seeing.

13 Q And when they bring that person to the person that's
14 identifying, is that -- is the suspect usually in some sort of custodial type
15 of -- at that point?

16 A I don't know what the numbers are on that, but it's certainly
17 often the case, that they have that person in handcuffs or otherwise
18 detained in a way that would also influence the witness to believe that
19 they must have done something wrong.

20 Q Okay. Let's talk about confidence. If somebody comes in and
21 says I'm 100 percent confidence, does that equal reliability?

22 A No, in fact, the research has been fairly surprising on that.
23 There are a number of studies that have looked at the relationship
24 between accuracy and confidence when it comes to eyewitness
25 identification.

1 And there was one study in particular, a fairly famous one,
2 that was done, I think, back in 2004 by some Yale researchers where
3 they submitted people to an experience; a very intensive interview with
4 someone over a period of about 40 minutes. And then later the next day
5 they asked them to try to identify who the person was that had
6 interviewed or interrogated them. And they found virtually no
7 relationship between how -- whether they were accurate or not in their
8 identification and how confident they were in the accuracy of their
9 identification.

10 Q Okay. How would it -- when we're talking about the most
11 unreliable testing, the show-up based on what you just said, how
12 important is it that the subject identifying the person give a complete
13 description prior to seeing that person?

14 A Well, that helps to improve the confidence that you might have
15 in the identification. If they've given a fairly detailed description of the
16 suspect, the person that they recall observing in the crime scenario or
17 whatever the situation might have been, you would expect that the
18 police should then bring them somebody who matches that description
19 at least pretty closely. And then if they go on to identify the person as
20 the perpetrator as they recall, then that at least increases the reliability
21 that that identification is accurate.

22 Q Let's talk about some of the factors to test reliability. What
23 does it mean to you when I say the word -- the sentence the opportunity
24 to view the subject? Is that important?

25 A Yes, as I talked about earlier, eyewitness identification is

1 mainly a function of memory. And when we look at how memory works
2 there are three components to memory, all of which are important in
3 order for a memory to be accurate.

4 And the first component is perception and attention, and,
5 essentially, what that means is that you can't remember something if --
6 that you didn't notice to begin with. And there's all kinds of studies that
7 look at that where they've shown people scenarios or videos or even live
8 situations and there's something going on in the background of that
9 situation, but they're not paying attention to that. And so then you ask
10 them later if they remember it; no, they don't remember it because they
11 weren't paying attention it.

12 A really famous study -- maybe some people have seen it on
13 YouTube or other videos online where they have people playing
14 basketball. There's like a group of six or eight people and they're
15 passing basketballs back and forth. And they ask the subjects of the
16 study to count how many times a person in a white shirt passes the ball
17 to a person in the black shirt. And they're supposed to count the
18 number and then when the video is over, then they give the number.

19 And so they perform that task, they get the number, and then
20 the researchers ask by the way, did you notice the gorilla walking
21 through the scene in the middle of the video? And most people would
22 go what gorilla, what are you talking about? And when you go back and
23 show them the video again, there's clearly a guy in a gorilla suit that
24 walks right through the scene, stops in the middle, pounds his chest,
25 walks off the other side. And nobody even noticed him because they

1 weren't paying attention to that, they were paying attention to how the
2 ball was being passed and the colors of the shirts of the people passing
3 the ball. So, of course, there's not going to be any memory of that
4 because people weren't paying attention to it.

5 So, attention is a very important part of memory. If you didn't
6 pay attention to it, if you didn't see it or perceive it, then you're not going
7 to later remember it.

8 Q Does stress, anxiety or fatigue enter into any of what you had
9 just suggested regarding the opportunity to view?

10 A Yes.

11 Q And how does that enter into that?

12 A We all have experienced at times in our lives when we're
13 more alert or attentive than others. So, if you haven't slept well the night
14 before and you're kind of sleepy, you're not all with it, you -- and you
15 have to sit in a classroom, for instance, you might not be able to take in
16 the information that's being presented as well as if you've had a good
17 night's sleep, a couple cups of coffee and you're really alert and, you
18 know, ready to take in that information.

19 So, fatigue can affect perception, which we talked about
20 already is an important part to memory, and so if we're not perceiving
21 things as accurately because our arousal level is too low, then we don't
22 take it in as well, we don't store it as well, and it's hard to remember it
23 afterwards.

24 Now, stress does the opposite thing. Stress causes us to be
25 stimulated. And stimulation, to a point, is good, but anybody who's had

1 too many cups of coffee in the morning can know that if you're
2 overstimulated you don't function at an optimal level.

3 And then -- and, matter of fact, if you graph the relationship
4 between perception and stimulation it actually looks like an upside down
5 U. So, for a little bit, as stimulation is increasing, perception improves
6 also, but if we get past the optimal point of stimulation and we're
7 overstimulated, then our perception drops down.

8 And that's what happens with stress. So, when somebody is
9 overly stressed, they're in an unusual situation where they're worried
10 about their safety or there's something else important going on that
11 would cause them to feel stressed, you can actually see a decline in the
12 quality of perception and attention, and that's then going to affect the
13 quality of the subsequent memory.

14 Q How about adrenaline, an adrenaline rush; somebody is --
15 something's happening, an adrenaline rush [indiscernible], does that
16 affect, as well, somebody's memory in terms of a show-up?

17 A Yes, and, in fact, adrenaline is one of the factors in stress that
18 causes people to be less accurate and perceptive because they've gone
19 past that optimal level and now dropped down because they're
20 overstimulated. So, any time there's a lot of excitement or stimulation in
21 a situation, especially with stress and threat, then that can cause people
22 to go past that optimal level and not be as accurate in their perception
23 and memory of an event.

24 Q And, finally, have you ever heard of the term cross-race?

25 A Yes.

1 Q And what is that?

2 A Well, the research on eyewitness identification in some
3 scenarios has focused on the identification or recollection or witness ID
4 of a person of a different race than yourself. So, for instance, the --
5 I -- the most common scenario I think we hear about is a white person
6 observing a black person committing some sort of a crime and then later
7 having to identify that person.

8 And so what we have found from the research is that that type
9 of identification when you're trying to remember and later identify a
10 person from a different race than yourself is much poorer. It's lower in
11 accuracy than if you're identifying somebody of the same race.

12 Q Why is that?

13 A Well, there's a couple of reasons. The main reason is that
14 anytime we're exposed to stimuli or a situation or information, we tend to
15 focus on the part of that stimulus that is most significant, that stands out
16 among all the other things that happened.

17 So, for instance, if I ask you what you had for breakfast two
18 weeks ago and it was your normal, mundane ordinary breakfast, you
19 might guess that it was what you usually have, but you wouldn't
20 remember that specific day. But if it happened to be Father's Day or
21 your birthday and you went out to dinner with your -- or went out to
22 breakfast with your family or friends, then you remember it because
23 that's a little different; it's significant.

24 So, with cross-racial identification, when you observe a person
25 of another race, the difference in the race is the thing that's most

1 significant, and so that's what witnesses tend to focus on and recall and
2 pay attention to. They're less likely then -- because they're focusing on
3 the race of the individual being identified, they're less likely to pay
4 attention to other features like size of the nose, how big the ears are,
5 skin tone, shape of the mouth, whether the eyes are close together or
6 wide set, things that would distinguish that person from other members
7 of their race.

8 And so they have a harder time if they're given a lineup, for
9 instance, of six black people, they go well, yeah, I remember it was a
10 black guy, but I don't remember much else about him, there's nothing
11 else that really stands out to me. And so they have a much more
12 difficult time identifying somebody in that situation.

13 Q Okay. Have you had -- have you done any research
14 regarding whether police officers are any better or worse than, say, a lay
15 person or somebody who's not employed by -- as a police officer?

16 A I'm not aware of any research on that issue other than to say
17 that, generally, police officers, as a result of their training, don't have a
18 better memory for things related to their work than ordinary people. So,
19 in other words, their recollection of a scene or of details from a scene
20 doesn't necessarily seem to be any better than anyone else.

21 Q Let's focus specifically on this case. You indicated you
22 reviewed a number of transcripts and you saw that it was a show-up, it
23 was late at night. Tell the jury what you feel going through all of the
24 factors you just went through regarding this particular case.

25 MS. LEXIS: Your Honor, may we approach?

1 THE COURT: Sure.

2 [Bench conference -- begins]

3 MS. LEXIS: I just want to make sure --

4 THE COURT: I'm uncomfortable with that question.

5 MS. LEXIS: Me too.

6 THE COURT: I think you have to ask a more specific

7 question.

8 MR. LEVENTHAL: Oh, okay.

9 MS. LEXIS: Because I just don't want there to be commenting

10 on the reliability of the witness or veracity or anything like that.

11 MR. LEVENTHAL: Right.

12 THE COURT: Yeah.

13 MS. LEXIS: That's what I'm worried about.

14 MR. GIORDANI: You should be --

15 THE COURT: He can --

16 MR. GIORDANI: Issues with the procedure --

17 THE COURT: He can --

18 MR. GIORDANI: -- done.

19 MS. LEXIS: Correct.

20 THE COURT: Right.

21 MR. GIORDANI: Issues with --

22 THE COURT: And he can talk about what the studies have

23 shown.

24 MS. LEXIS: Well, I --

25 THE COURT: But he can't go -- he can't form an opinion on if

1 he thinks this idea was reliable or not.

2 MR. GIORDANI: Yeah.

3 THE COURT: I mean, you can certainly argue that to the jury
4 based on his testimony. So, that's why that question made me
5 uncomfortable.

6 MR. LEVENTHAL: Okay.

7 THE COURT: I think you just need to be more specific who --

8 MR. LEVENTHAL: More specific as to each, like --

9 MS. LEXIS: Yeah.

10 MR. LEVENTHAL: What is the nighttime, what is the, you
11 know, the anxiety.

12 THE COURT: Yes.

13 MR. LEVENTHAL: What is --

14 MR. GIORDANI: Yeah.

15 THE COURT: The factors.

16 MR. LEVENTHAL: Okay. And I'm not -- you got caught. I
17 was going to -- he's not leading --

18 MR. GIORDANI: As long as he doesn't invade the province of
19 the jury and say he misidentified or something.

20 MR. LEVENTHAL: Oh, he won't. He won't.

21 MR. GIORDANI: We've already told him he can't do that.

22 THE COURT: Thank you.

23 MS. LEXIS: Thank you.

24 [Bench conference -- concludes]

25 BY MR. LEVENTHAL:

1 Q Dr. Chambers, I'm going to take you back to our case here
2 and sort of walk through each -- sort of what stands out as a factor in
3 this case, and then have you -- or tell the jury what your opinion of that
4 is. What -- the factor that you've got a police car and a person with a
5 weapon, what did -- how does that go into your analysis of an inaccurate
6 identification?

7 A One of the things that we haven't talked about yet that factors
8 into eyewitness reliability and accuracy is something called the weapon
9 focus or the weapon effect. And what researchers have found is that
10 when the perpetrator in an ID situation has a weapon in that situation,
11 the witness tends to focus most of their attention on the weapon rather
12 than on the face, and as a result of that, those individuals are much less
13 accurate in identifying the perpetrator than they would be when a
14 weapon is not present.

15 Q Okay. This particular case happened in the evening; correct?

16 A Yes.

17 Q Okay. How does that affect somebody's ability to eye witness
18 somebody?

19 A Well, obviously, lighting has a big effect on a person's ability
20 to see and identify features and perceive all of the relevant details of a
21 situation. So, well, you know, things like distance and lighting and how
22 long you've had the opportunity to look at the face of the individual that
23 you're later identifying; all of those are going to be a factor in how well
24 you remember the face and, therefore, how likely you are to accurately
25 identify them later.

1 I would add one other thing to the lighting issue. We've -- we
2 already talked about the fact that in a cross-racial identification, that a
3 white person is less likely to pay attention to the features of the face of a
4 black person than they are just the fact that they're black, but, also,
5 when lighting is low, someone with dark skin, it's more difficult to identify
6 and distinguish their features than somebody that has lighter skin.

7 Q Okay. We talked about adrenaline. What about, like, chasing
8 somebody and the opportunity to view that person from behind; how
9 does that play into your knowledge?

10 A Yes. As we talked about, when there's a high-stress situation
11 like a police chase or -- and when you add in then the presence of a
12 weapon and so there's the potential for danger and threat and even
13 death, then, of course, that's going to cause stimulation of a degree that
14 we would characterize as stress or an adrenaline rush. And it's very
15 often the case that under those conditions people are not as good at
16 being able to identify the individual that they're trying to identify as being
17 involved in that situation.

18 Q What about the length of time after somebody sees somebody
19 to the time that they're brought back for the show-up; does that play into
20 the factor that you would consider regarding the reliability of a
21 show-up?

22 A Yes, of course, we all know that memory deteriorates over
23 time, so the longer the time is between observing an event and later
24 recalling it, the less accurate that identification is going to be.

25 Research shows that there can be measurable and significant

1 decline in memory even over the course of over a few hours. And other
2 research has indicated that even under the best conditions immediately
3 after an event, accuracy of identification is only about, at a maximum, I
4 think, 67 percent. So, it's going to go down from there as the time
5 increases, and then all these other factors that we're talking about come
6 into play.

7 Q Okay. And in this case we had an officer who indicated that
8 he was following a car that he had known that several individuals had
9 gotten into. Does that factor in to the reliability of the test as well?

10 A Well, there is always an element of bias in any kind of recall,
11 whether it's eyewitness identification or just describing an event or a
12 situation or incident that you've observed, and so when people have
13 kind of frequency notions about how things should be or who was
14 present, who wasn't, that's going to always influence, to some degree,
15 your recollection, including eyewitness identification.

16 Q Okay. What -- in your expert opinion, what should have been
17 done in this case, reading through it? What would have been a better
18 technique than the one that was implored that evening on September
19 30th of 2006?

20 A Well, certainly, some sort of a lineup would have been better.
21 As we said, those are always more reliable than just a show-up. It
22 would have certainly been helpful if the officer that made the
23 identification had given a detailed description of the suspect ahead of
24 time, and there's two reasons for that. We've kind of already talked
25 about one of them, but the other is that it just shows that he did get a

1 good enough look at the suspect to be able to provide those details.

2 Q Okay.

3 A So, if all he's able to say, for instance, is well, it's a -- you
4 know, an African American man and he's wearing a black T-shirt and
5 jeans, there's not a lot of detail there. It doesn't indicate that there was
6 much observation or perception of anything beyond that, and so there
7 wouldn't be much for him to go on then in terms of being able to identify
8 the person.

9 Q Okay. So, your suggestion would have been a lineup or at
10 least a better more detailed accurate description of the person before a
11 show-up?

12 A Yes, and I will also add that even lineups have their problems,
13 depending on how they're conducted. If -- we talked earlier about the
14 issue of the double blind set up, and not all of those are done that way.
15 I'm not sure how the police department is conducting them these days,
16 but I know in the past they have done photo lineups, at least, where the
17 presenting officer is familiar with who the suspect is in the six.

18 And you have to understand that when those are done, when
19 they present the lineup to the witness, the witness is encouraged to kind
20 of talk out loud and there's an interaction between the witness and the
21 officer about their observations. So, it's not just they get the six pictures
22 and the person goes yeah, it's that one, they'll say, eh, this guy, he --
23 you know, his mouth kind of looks like the guy I remember, but the ears
24 look different, and this guy, his hair was longer than the guy that I
25 remember, and so on. And so that interaction with the officer can

1 influence the ultimate selection of which person they pick.

2 So, there's a couple of things that are recommended to avoid
3 some of that. First of all is the double blind procedure. The second is
4 that this process of presenting with six pictures and saying pick one,
5 even that has its problems because very often individuals, witnesses
6 feel the need to pick somebody. Again, like we talked about before, they
7 assume that the police are doing their jobs, so they assume that if
8 they're presented with six pictures, that the suspect is one of those
9 pictures.

10 Now, sometimes police will -- and they're doing this more and
11 more these days -- say hey, he may be there, he may not be there, you
12 know, he -- we don't know. And that does tend to improve, a little bit,
13 the process.

14 But research has shown it's even better if what you do instead
15 is tell them hey, we're going to show you a bunch of pictures one at a
16 time, and you look at each picture and you tell us you think that is or that
17 isn't the guy, and we're going to go to the next one and we'll keep
18 showing you pictures, and he may be in there, he may not; we don't
19 know, but just tell us for each picture whether you think it's yes or no, as
20 opposed to the lineup, which, as I said before, puts some pressure on
21 them to pick somebody, and very often they pick the wrong person.

22 Q Why does that -- instead of having a portrait of six different
23 people, why is the one-on-one more -- have the -- why is there more
24 accuracy or more reliability to that?

25 A Because it -- first of all, it forces them to focus just on that one

1 picture and to decide whether that guy is the guy or not. When there's
2 six pictures the tendency is just to pick the guy that looks most like the
3 person that they remember. Okay. They've got six choices; they're
4 going to pick one of them. They're going to pick the guy that looks best,
5 so they're comparing the pictures with each other, which they really
6 shouldn't be doing. They should just be looking at the picture, is that the
7 guy or is that not the guy. And it's easier them -- for them to say yes
8 and no to each picture than it is to say no to all of them.

9 Q Okay. Well, we have a show-up here where one person was
10 brought to a witness; right?

11 A Mm-hmm.

12 Q So, are you saying that the person who's doing the identifying
13 is told that they're going to look at a number of people, one at a time,
14 beforehand?

15 A Not at a show-up, no.

16 Q Not at a show-up; I understand.

17 A Yes.

18 Q The show-up is only one person.

19 A Right.

20 Q So, you're talking about the photo array --

21 A Yes.

22 Q -- that's done one at a time.

23 A They call it sequential lineup.

24 Q Okay.

25 A As opposed to a simultaneous lineup.

1 Q Okay.

2 A So, simultaneous is the six pictures all at the same time. The
3 sequential lineup is one at a time, yes or no. If it's no, then we go on to
4 the next one.

5 Q And, again, they're told that they may or may not -- the person
6 may or may not be in that.

7 A Correct, in any of the pictures that we've shown.

8 Q And what does that do to somebody psychologically as they're
9 going through trying to figure out who they identified or who they think
10 that is in that picture?

11 A Well, like I said, what it forces them to do is to compare that
12 picture with their mental image of the person that they saw, not with the
13 other pictures around it, and so it -- it's -- increases accuracy because
14 it's comparing it with the right thing. It's comparing it with their memory,
15 not with some other pictures that, you know, may or may not be the right
16 one, so --

17 MR. LEVENTHAL: Dr. Chambers, I thank you for being here
18 today.

19 I'll pass the witness. Thank you.

20 THE COURT: Thank you very much.

21 Cross-examination?

22 MR. GIORDANI: Yes. Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. GIORDANI:

25 Q Good afternoon, sir.

1 A Good afternoon.

2 Q How are you today?

3 A Fine, thank you. You?

4 Q Great. Thank you for asking. How much did the Defense pay
5 for your services?

6 MR. LEVENTHAL: I'm going to object as to relevancy, and if
7 we want to approach I can talk about that.

8 THE COURT: Overruled.

9 You can answer.

10 BY MR. GIORDANI:

11 Q Go ahead.

12 MR. LEVENTHAL: Well, we --

13 THE COURT: Okay. You know what? You can approach.

14 [Bench conference -- begins]

15 MR. GIORDANI: That's like a 101 to cross.

16 MR. LEVENTHAL: This is an appointed case. I haven't paid
17 anything for him. It's just the State paying for him. I've been appointed
18 on this case. I wouldn't know how much he's making. He's billing to
19 Drew Christensen, Your Honor.

20 THE COURT: Yeah, but he's still getting paid.

21 MR. LEVENTHAL: From the State.

22 THE COURT: Right.

23 MR. LEVENTHAL: Okay.

24 THE COURT: I mean, we don't need to go into who's actually
25 paying the bills.

1 MR. GIORDANI: Okay.

2 THE COURT: But --

3 MR. LEVENTHAL: Well --

4 THE COURT: -- I think you're entitled to ask on
5 cross-examination how much a witness has charged and is paid. I don't
6 think it's relevant who the payor is.

7 MR. LEVENTHAL: Okay.

8 MR. GIORDANI: Okay.

9 MR. LEVENTHAL: We -- this -- okay. That's why -- he said
10 Defense and I got -- I'm not paying the man.

11 THE COURT: You're not.

12 MR. GIORDANI: I thought that was cross 101, but I'll go
13 ahead and ask him if you'll let me.

14 THE COURT: Go ahead.

15 [Bench conference -- concludes]

16 BY MR. GIORDANI:

17 Q How much are you getting paid for your services here today,
18 sir?

19 A Well, I don't know exactly, but it just depends on how long we
20 last here. I charge by the hour. But I get \$300.00 an hour for in-court
21 testimony and a review of documents and consultation and all of that.
22 So, assuming that with travel and all that I'm here three hours, that's
23 \$900.00. And then I think I spent a few hours reviewing the documents
24 and consulting with counsel, so another \$900.00 on top of that. So,
25 maybe \$1,800.00 total.

1 Q Fair enough. You indicated that -- when you were going
2 through your history of testimony you indicated that you've testified
3 locally several times, and I want to say you said around 50 times.
4 Correct me if I'm wrong.

5 A I think the --

6 THE COURT: Well, I think it was limited to a period of time.
7 I think the question was --

8 BY MR. GIORDANI:

9 Q Correct me if I'm wrong.

10 A Yes, that -- that's my recollection is I was asked over 15 years
11 how many times had I testified. I don't think it was limited to local.

12 Q Oh, okay. So, over 15 years you said you were -- testified
13 how many times?

14 A I think about 15 -- 50; five, zero.

15 Q Five, zero?

16 A Yeah.

17 Q And you kind of said well, it's been quite a bit more for the
18 defense. Do you have an idea of how much more?

19 A Well, again, I qualified that and said that my local testimony
20 was mostly for the defense, but the work that I do for the military is pretty
21 evenly divided between prosecution and defense.

22 Q Okay. And locally quite a bit more for the defense. What do
23 you mean by that?

24 A Correct.

25 Q Do you have numbers?

1 A I don't have exact numbers, but I've only been asked to testify
2 by the local -- by your office, the DA's Office, I think, maybe three times
3 in that period.

4 Q Okay. And then the rest of the time is for the defense?

5 A Yes, or it may be ordered by the Court. I do consultations that
6 are ordered directly by the courts that are not by either side, so they're
7 simply I'm providing information to the Court for its consideration.

8 Q And so I'm clear, what we're talking about now, you're talking
9 about testimony in the same area of which you're testifying here today?

10 A On eyewitness identification?

11 Q Yes.

12 A No.

13 Q Okay. Now, let's talk about that. How many times have you
14 testified for the State with regard to identification?

15 A For the State?

16 Q Yes.

17 A I don't think I ever have.

18 Q Okay.

19 A Not here locally, no.

20 Q Okay. You've discussed the show-up identification procedure,
21 the lineup identification procedure, and then a sequential lineup
22 identification procedure. Is there any other procedures that you're
23 aware of?

24 A Not that I'm aware of, no.

25 Q Okay. So, show-up identifications are a fairly common police

1 practice; would you agree with me there?

2 A I don't know how often they're used, but I've certainly heard of
3 many cases where it's done, yes.

4 Q Okay. Typically used in scenes that are dynamic and scenes
5 where the person is apprehended very close by or close in time; would
6 you agree with me there?

7 A Generally that seems to be the case when it's used, yes.

8 Q Okay. And you would agree with me it being a common
9 practice that people have positively identified and correctly identified
10 people in show-ups thousands of times?

11 A I'm sure that has been the case, yes.

12 Q Okay. So, you're not sitting here telling this jury that just
13 because a show-up was done that it's not valid?

14 A Correct.

15 Q Okay. Fair enough. You indicated a couple of things that
16 would strengthen or make a -- an ID more reliable. Do you remember
17 that line of questioning?

18 A Yes.

19 Q Would you agree with me that seeing someone from a close
20 distance, say four feet away, would be more reliable than seeing
21 someone from, say, 20, 30 feet away?

22 A Of course.

23 Q Okay. Especially if that person is facing you?

24 A Yes.

25 Q Especially if that person is right in front of your window of your

1 vehicle?

2 A Well, if you're facing them, then that's -- are -- assumed.

3 Q Okay.

4 A It would have to be the case.

5 Q Would you agree with me that having someone identify close
6 in time to the interaction, meaning a show-up being done an hour later,
7 would be more reliable than a show-up, say, ten hours later?

8 A Yes, sir.

9 Q Okay. Would you agree with me that accurate cross-racial
10 identifications exist?

11 A Of course.

12 Q Okay. You're not sitting here telling this jury that a white guy
13 can never identify a black guy or a black guy can never identify a white
14 guy?

15 A Not at all.

16 Q Okay. This -- I want to ask you a couple questions about this
17 next subject. Can you tell this jury the difference between identifying a
18 stranger and recognizing someone you know?

19 A There is a difference. Certainly, if it's somebody that you're
20 already familiar with, then that identification, generally, is going to be
21 more accurate.

22 It can still have some error built into it. There are cases that
23 I'm familiar with where people have misidentified somebody that they
24 were supposedly familiar with, and sometimes that can be from a bias
25 effect. So, if they expect it to be somebody that they recognized or have

1 some preconceived expectation of that, that can have some effect on
2 the accuracy of their identification.

3 But, generally, yes, if it is somebody that you had previous
4 experience with and you are familiar with, then, of course, you're going
5 to be able to identify them more easily and accurately.

6 Q You've mentioned lighting. You talked about lighting being an
7 obvious, kind of, factor in the reliability of an identification; right?

8 A Yes.

9 Q And you indicated that seeing someone on a dark street -- and
10 I'm not -- these aren't your words, but seeing someone on a dark street
11 is probably less reliable than seeing someone in a well-lit room, such as
12 this?

13 A Right.

14 Q Would you agree with me that seeing someone near a very
15 well-lit sign shedding light on their person would increase the reliability
16 of the identification?

17 A Increase it compared to the absence of that light, yes.

18 Q Sure. I mean, it's common sense; right?

19 A Right.

20 Q A lot of this stuff -- and I'm not demeaning your profession in
21 any way -- is common sense?

22 A Of course.

23 Q IDs can be reliable in the dark. IDs can be reliable in the light.
24 It just depends on the scenario.

25 A That's right.

1 Q And it depends on the identifier, the person identifying?

2 A Yes.

3 Q You'd agree with me that police officers are trained
4 observers?

5 A I'm not sure I can agree with that.

6 Q Okay. You'd agree with me that police officers have more
7 training in observing things than the normal person?

8 A Well, that -- I think that's the same question, and my answer's
9 the same to that.

10 Q Okay. You would agree with me that police officers go
11 through extensive training, not only in the academy, but throughout the
12 course of their careers?

13 A I -- I'm sure they do, yes.

14 Q Okay. That training has checks on it as well. I mean they
15 have supervisors that they answer to, et cetera; right?

16 A Yes.

17 Q Cops are expected to observe things and document them in
18 reports further?

19 A Correct.

20 Q So, that would be training in observation; right?

21 A Well, it's more training in reporting, I suppose.

22 Q Right, but what are you reporting? Your observations.

23 A Yeah, but that's not training in observation. That's training in
24 reporting what you observe. I don't know for a fact that they get training
25 in observation.

1 Q Okay.

2 A Or that there is any part of their training that increases the
3 accuracy of their observations.

4 Q Understood. So, you indicated earlier that there -- or you
5 talked about this example -- it was kind of funny -- the gorilla that runs
6 across the basketball court?

7 A Right.

8 Q So, I want to kind of step back and put a scenario in front of
9 you. So, say someone is observing a vehicle that they had been
10 chasing in a high speed pursuit. You can assume I'm -- the observer's a
11 police officer; right? That person is asked about what happens when
12 those men get out of the vehicle, and he responds I didn't see two of the
13 men get out; my attention was on one of them. In that particular
14 scenario your whole idea of attention and perception would actually
15 support his identification of that person he was focusing on.

16 A More so than the other two, yes.

17 Q Okay.

18 A So, he would be more likely to be able to identify that
19 individual, as opposed to the other two that he's not paying attention to.

20 Q Right, and you would agree with me that if he's able to identify
21 that one person, it's likely -- and he didn't even see those people, where
22 they went, it's likely his attention and perception were focused on that
23 one individual though?

24 A Yes.

25 Q Okay. The -- Mr. Leventhal -- I apologize -- asked you a little

1 bit about the show-up procedure, and I think your response was
2 this -- it's in quotes, but it -- I know it's not your exact words. Correct me
3 if I'm wrong. When someone is detained by police that could influence
4 the witness to think that the police got the right person.

5 A Yes.

6 Q And, therefore, influence their identification if they positively
7 identify them.

8 A Yes, I would agree with that.

9 Q Okay.

10 A That's accurate, yes.

11 Q And that kind of brings in this aspect of pressure from the
12 police; would you agree with me there?

13 A Not necessarily pressure. It's just that, as we talked about
14 already, people's preconceived notions, their expectations, their biases
15 all affect the way that they perceive events and how they recall events.
16 So, we know that simply giving a person a slight little bit of information
17 about something that they observed can affect how they will report it
18 later.

19 And so if the police bring somebody in and they've got them in
20 handcuffs or they've got them detained, then that's a little bit of
21 information that could influence that person's recall of who it was that
22 they observed and make -- it does, based on the research, make them
23 more likely to identify that person as the suspect they saw.

24 Q And that would be more applicable to a lay person identifying
25 someone, as opposed to a police officer.

1 A I don't know why it would be.

2 Q You would agree with me that an ID close in time to the
3 interaction that is corroborated by another ID would be more reliable
4 than simply that ID standing on its own?

5 A Yes.

6 Q Okay. Corroboration's important; right?

7 A It can be, yes.

8 Q Especially when it comes to identification.

9 A Yes.

10 MR. GIORDANI: Can I have the Court's brief indulgence?

11 All right. Thank you very much, sir.

12 I'll pass the witness, Your Honor.

13 THE COURT: Thank you.

14 Any redirect?

15 MR. LEVENTHAL: Thank you.

16 **REDIRECT EXAMINATION**

17 BY MR. LEVENTHAL:

18 Q Dr. Chambers, you were asked about familiar -- if somebody's
19 familiar with the person; right?

20 A Yes.

21 Q Okay. As a police officer, you would expect them, through
22 their training that Mr. Giordani just asked you about -- you'd expect them
23 to give a accurate description of the person that they saw prior to the
24 show-up; correct?

25 A Yes.

1 Q Okay. So, just saying a black male in blue jeans and a black
2 shirt, is that a specific enough description for familiarity to increase the
3 reliability of that eyewitness or decrease it?

4 A Well, if the person, the suspect who's being pursued was
5 identified by the witness, in this case the police officer, as someone he
6 knew prior to the end of the incident, you know, in other words, prior to
7 the show-up, during the incident itself, then you would expect that that
8 would increase his ability to provide details of his appearance because if
9 he's seen them before and he's familiar with them, then he's going to
10 know things like how big his nose is and how wide apart his eyes are
11 and what kind of hair he has and so on.

12 But what could happen in a situation like that is that the police
13 officer or whoever the witness is might get just enough of a view of the
14 guy and say hey, that kind of looks like so-and-so, the guy that I used to
15 know from before, and then they -- when they bring so-and-so in to see
16 him they go yep, I knew it, it -- that was so-and-so.

17 That's different than actually identifying him because that --
18 you've already now introduced a little bit of bias because you've made
19 an assumption in your head that that was the guy that you think you
20 know or -- familiar with, and then they bring in the guy you do know or
21 are familiar with and then that reinforces that bias or assumption.

22 Q So, you would expect that that officer, trained, would indicate
23 to somebody during that time before the show-up that they know that
24 person and there's something more specific?

25 A Well, yeah, of course you would expect him to provide the

1 name if he's somebody that he's familiar with and he says -- you know,
2 he doesn't have to describe him as a black man in a black T-shirt, he
3 says it's so-and-so, and give his name, and let's go find him.

4 Q Okay. Mr. Giordani asked you about lighting. Remember
5 those questions about lighting?

6 A Yes.

7 Q If lighting -- okay. Let me give you this scenario. You've got --
8 you might have a light, but if somebody's jumping out of a vehicle and
9 rolling, they're on the ground.

10 A Mm-hmm.

11 Q Correct? And then they get up and then they're hit by the car,
12 they go back on the ground, and then they jump up and run. Does
13 lighting factor into any -- I mean could lighting factor into any of that
14 when you've got a double hit, like a --

15 A Well, certainly, at night when you have a light source from a
16 specific direction, that's going to be different than in broad daylight when
17 there's ambient light all around because when you have ambient light,
18 then any direction that you turn or any angle at which you're viewed,
19 there is still fairly full illumination on the face and it's easier to observe.

20 But if there's a light coming from one source and there's a lot
21 of movement and a lot of change of direction, there might not be very
22 much time when the light actually shines directly on that person's face,
23 so there would be less time in order to be able to observe the face and
24 identify features that help with later identification.

25 Q Okay. And you were asked about, sort of, specificity on that

1 person that the officer was looking at, but has there been any studies?
2 And if the officer knows that there's other people in the car that may
3 have weapons, does that play into how focused they are or are they
4 not -- tunnel vision, they're looking around at everything?

5 A Well, things like knowing that there are other weapons in the
6 car could certainly affect the overall stress level because, obviously, that
7 indicates a heightened level of threat, and the more of a threat is
8 perceived by the person that's doing the observing, the more stress
9 they're going to be in. We've already gone over all of that, that stress
10 has a major effect on eyewitness identification.

11 It's not going to play a role, necessarily, in the weapon effect
12 because the weapon has to be visible in order for it to have an effect,
13 but if the individual has a weapon at the time that they're being
14 observed, then the accuracy of their -- of the identification of their face is
15 going to be significantly decreased because whether they realize it or
16 not -- and this is the other thing that maybe we should talk about -- is
17 that very often witnesses overestimate how much time they spend
18 looking at a suspect's face. So, they might say oh, I've, you know,
19 looked at it, you know, intently for two minutes -- two minutes is a long
20 period of time -- and usually it's not more than a few seconds. And then
21 when you divide that time out between looking at the suspect's face and
22 paying attention to the weapon, then that further decreases the amount
23 of time that's actually spent looking at the face.

24 And I should mention that part of the reason why the weapon
25 effect exists is because when somebody has a weapon, that's the thing

1 that's most important to you at that moment and so you're watching the
2 weapon because that is the thing that poses a threat to you and so you
3 want to know what he's doing with it. Is he pointing it at you? Is he
4 cocking the gun? Is he -- has a finger on the trigger? Those are all
5 things that you need to know for survival. Those are much more
6 important things than looking at his face so you can remember what he
7 looks like later.

8 MR. LEVENTHAL: Very good. Thank you, Dr. Chambers.

9 Pass the witness.

10 THE COURT: Any recross?

11 MR. GIORDANI: Yes, I'll just be brief, Your Honor.

12 **RECROSS EXAMINATION**

13 BY MR. GIORDANI:

14 Q I'm a little confused. So, I believe that when I questioned you,
15 you indicated a person identifying someone they know or are familiar
16 with is more reliable than someone identifying a stranger?

17 A Yes.

18 Q Okay. Lighting increases the reliability -- good lighting
19 increases the reliability in identification?

20 A Right.

21 Q Okay. Corroboration increases the reliability of --

22 A Yes.

23 Q -- identification?

24 A Correct.

25 MR. GIORDANI: Okay. I'll pass the witness.

1 THE COURT: Anything else for this witness?
2 MR. LEVENTHAL: No, Your Honor. Thank you.
3 MR. GIORDANI: Thanks.
4 THE COURT: Okay. All right. We have a question.
5 [Bench conference -- begins]
6 THE COURT: 7?
7 THE COURT CLERK: Yeah.
8 THE COURT: We've got to mark those.
9 MR. TANASI: A joke.
10 MR. GIORDANI: Hmm?
11 MR. TANASI: This is going to be a big joke.
12 MR. GIORDANI: Oh.
13 MS. LEXIS: He's going to talk.
14 MR. TANASI: Okay. Ouch.
15 MR. LEVENTHAL: What?
16 MR. GIORDANI: It's the young guy.
17 MS. LEXIS: He's got a lot of questions.
18 THE COURT: Do you have another one?
19 THE COURT MARSHAL: Pardon me.
20 THE COURT: Thank you.
21 MS. LEXIS: That's a good question.
22 MR. GIORDANI: Yeah.
23 MS. LEXIS: Love that.
24 THE COURT CLERK: Oh, sorry. I didn't know he was going
25 to --

1 MS. LEXIS: Love it.

2 MR. GIORDANI: That's a great question.

3 MS. LEXIS: Love.

4 MR. GIORDANI: Love it.

5 MS. LEXIS: Love him.

6 MR. GIORDANI: Ask all those.

7 MR. LEVENTHAL: Well, hold on, hold --

8 MS. LEXIS: Oh.

9 MR. LEVENTHAL: I'm glad you guys love him.

10 MR. GIORDANI: I should have asked this.

11 THE COURT CLERK: Here you go.

12 THE COURT: The other attorneys said yes.

13 MR. LEVENTHAL: Well, he's already said that how it doesn't

14 take -- well, two sources where it's [indiscernible].

15 MS. LEXIS: Yeah.

16 MR. TANASI: Well, normally --

17 MR. GIORDANI: Yes.

18 MR. TANASI: -- you've got to rely on this [indiscernible].

19 MS. LEXIS: No objection.

20 THE COURT: I'm not going to -- what? I think it's a ridiculous

21 question.

22 MR. LEVENTHAL: Do you have a problem with any of those?

23 MS. LEXIS: It's perfect because how one officer didn't know

24 the guy's name, but he recognized him.

25 MR. TANASI: I don't have a problem with any of them.

1 MR. LEVENTHAL: Okay, but he's going to use those.
2 MR. TANASI: Yeah.
3 MR. LEVENTHAL: But -- yeah.
4 THE COURT: Of course you can run someone's name. I
5 think --
6 MR. TANASI: Did you see that one, Judge?
7 MR. LEVENTHAL: We didn't see this one.
8 MR. GIORDANI: We have no objection to any of those
9 questions based on --
10 MR. LEVENTHAL: Can you have some way to not --
11 MS. LEXIS: Yes, that's true.
12 MR. LEVENTHAL: -- know them?
13 MR. TANASI: Huh? Know their face and not know their
14 name, but -- no sense.
15 THE COURT: I mean, I think that's kind of a ridiculous
16 question.
17 MR. TANASI: Yeah, I agree.
18 THE COURT: Okay.
19 MR. TANASI: I agree.
20 MR. LEVENTHAL: It has nothing to do with eyewitnesses.
21 MR. TANASI: Right, so --
22 THE COURT: I don't think it has anything to do with
23 eyewitness --
24 MR. GIORDANI: Okay. Understood.
25 THE COURT: -- identification.

1 MR. LEVENTHAL: I would agree.
2 MS. LEXIS: That was really --
3 MR. LEVENTHAL: Great.
4 THE COURT: But there's no objection to -- it's Court's Exhibit
5 7?
6 MR. GIORDANI: No.
7 THE COURT: And you want me to ask them all?
8 MR. GIORDANI: Yes, please.
9 MR. LEVENTHAL: Thank you.
10 MR. GIORDANI: Thank you.
11 MR. TANASI: We love it too.
12 THE COURT: Thank you.

13 [Bench conference -- concludes]

14 **QUESTIONS OF THE JURORS**

15 THE COURT: Okay. Dr. Chambers, would someone with
16 training, such as a police officer, have less of the weapon effect than
17 someone who has no training, such as you and I?

18 THE WITNESS: I don't know that that's the case. I've never
19 seen any studies that have indicated that police officers are less likely to
20 have -- be subject to the weapon effect. I think one of the factors that
21 could affect that is how often they have that experience of being
22 involved in a situation where there is a weapon. The more often they
23 have experience with those kinds of situations, the less likely it would be
24 that they're distracted or deterred by the weapon.

25 THE COURT: Okay. If the one picture is more effective than

1 six pictures, wouldn't a show-up be more effective than a lineup?

2 THE WITNESS: I expected that question, and that's a good
3 question. The difference between a show-up and a sequential lineup is
4 that the individual in the sequential lineup has been told that you are
5 going to see a series of pictures; you're going to see them one at a time.
6 The suspect may or may not be in any of these pictures that you see, so
7 simply tell us for each one is it yes or no.

8 In a lineup there's no such instruction. I mean -- I'm sorry -- in
9 a show-up there's no such instruction. The police, essentially, bring the
10 guy in handcuffs, and you've got to remember that, that he's in custody.
11 They don't say we're going to be showing you a bunch of guys and
12 here's the first one. We've got a guy, we arrested him, is this the guy
13 that you saw. So, that's a very different scenario and it creates a great
14 deal more bias in the recollection than there would be with the
15 sequential lineup.

16 THE COURT: Would two sources of light, such as a lit sign
17 and a pair of headlights, add more chances to see the face of an
18 individual in front of them?

19 THE WITNESS: The simple answer to that is yes. Obviously,
20 the more sources of light you have, especially if they're coming from
21 different directions, then the greater the chance is of being able to
22 observe and then later recall the identification of the suspect.

23 THE COURT: Okay. Thank you.

24 The next question is marked as Court's Exhibit number 8, and
25 the Court is not going to ask that question.

1 Does -- Mr. Leventhal, do you have any follow-up?
2 MR. LEVENTHAL: No, Your Honor. Thank you.
3 THE COURT: The State?
4 MR. GIORDANI: No, Your Honor. Thank you.
5 THE COURT: Okay. Thank you very much for your testimony
6 here today. You may step down.
7 THE WITNESS: Thank you, Your Honor.
8 THE COURT: Thank you very much for being here.
9 MR. GIORDANI: We scheduled our witness for one, so --
10 THE COURT: Okay. Oh, for one o'clock?
11 MR. GIORDANI: Yeah, I had just texted her --
12 THE COURT: Okay. Perfect.
13 MR. GIORDANI: -- and told her to come at 1:30 though. I
14 apologize.
15 THE COURT: Okay. No, that's fine.
16 MR. GIORDANI: Because we were running a --
17 THE COURT: That's fine.
18 MR. GIORDANI: Okay.
19 THE COURT: Okay. We're going to recess for lunch. During
20 this recess you're admonished not to talk or converse amongst
21 yourselves or with anyone else on any subject connected with this trial,
22 or read, watch or listen to any report of or commentary on the trial or any
23 person connected with this trial by any medium of information, including,
24 without limitation, newspapers, television, the Internet or radio, or form
25 or express an opinion on any subject connected with this trial till the

1 case is finally submitted to you. We'll be in recess till 1:30.

2 THE COURT MARSHAL: Thank you. All rise for the exiting
3 jury, please.

4 [Recess taken at 12:25 p.m.]

5 [Proceedings resumed at 1:33 p.m.]

6 [In the presence of the jury]

7 THE COURT MARSHAL: Thank you, everyone. Please be
8 seated.

9 THE COURT: Thank you.

10 Does the State stipulate to the presence of the jury panel?

11 MR. GIORDANI: Yes, Your Honor.

12 THE COURT: The Defense?

13 MR. LEVENTHAL: Yes, Your Honor. Thank you.

14 THE COURT: Thank you.

15 The State of Nevada may call their next witness.

16 MR. GIORDANI: Thank you. The State will call Stephanie
17 Fletcher.

18 THE COURT MARSHAL: And if you'll please step up in the
19 witness stand, remain standing, raise your right hand and face the clerk,
20 please.

21 **STEPHANIE FLETCHER**

22 [having been called as a witness and being first duly sworn,
23 testified as follows:]

24 THE COURT CLERK: Thank you. Please be seated. And
25 could you please state and spell your name for the record?

1 THE WITNESS: Sure. My name is Stephanie Fletcher,
2 S-T-E-P-H-A-N-I-E F-L-E-T-C-H-E-R.

3 THE COURT CLERK: Thank you.

4 **DIRECT EXAMINATION**

5 BY MR. GIORDANI:

6 Q Good afternoon, ma'am.

7 A Good afternoon.

8 Q How are you?

9 A I'm good. How are you?

10 Q Great, thank you. What is it that you do for a living, ma'am?

11 A Currently I am a forensic scientist trainee, and I am assigned
12 to the Firearms Detail in the forensic lab at the Las Vegas Metropolitan
13 Police Department.

14 Q When you say trainee does that mean you're training to
15 become a firearms examiner?

16 A Yes.

17 Q What did you do prior to your current position?

18 A Prior to that, I worked in the Crime Scene Investigations
19 Section as a senior crime scene analyst. I was there for 18 years.

20 Q So, a bit of a career change after 18 years?

21 A Yes.

22 Q As a crime scene analyst do you recall or did you keep track
23 of how many crime scenes that you responded to in your tenure there?

24 A I did, yes.

25 Q Are you a statistics type person, ma'am?

1 A I am, yes.

2 Q So, do you have an exact count?

3 A I do, in my 18-year career I have responded to and processed
4 approximately 4,700 crime scenes.

5 Q Four thousand seven hundred crime scenes?

6 A Yes.

7 Q Tell the ladies and gentlemen of the jury what it is that you do
8 on a typical scene or what are your duties and responsibility generally?

9 A As a crime scene analyst we are responsible to responding to
10 any and all felony crime scenes where there is physical evidence that
11 needs to be documented, recovered and processed. We do that
12 through several ways. We take notes, we generate reports, we take
13 photographs, we recover items, we fingerprint process, and in some
14 instances we also prepare crime scene diagrams.

15 Q Okay. I want to bring you back, way back, to 2006. On
16 September 30th of that year did you respond to a particular scene in the
17 Balzar and Lexington area?

18 A Yes.

19 Q When you responded what did you note going in?

20 A We were dispatched to an officer-involved shooting where one
21 of our officers was involved in a shooting, and it was -- there was also a
22 homicide related -- homicide investigation related to that scene.

23 Q Did you yourself have a general focus when it came to the
24 various scenes you just described?

25 A Yes.

1 Q And what was your general focus on?

2 A We were responsible for the processing and documentation of
3 the officer-involved shooting portion of the scene investigation, and we
4 were first directed to 1701 J Street, which is where we first responded.

5 Q All right. I want to show you State's 21. Just so the jury is
6 clear, the homicide that occurred up at the 1271 Balzar address, you
7 didn't -- you weren't responsible for that scene?

8 A No.

9 Q And you were not responsible for the 1284 carjacking scene
10 either?

11 A No, we were not.

12 Q Okay. So, I'm going to then focus down here. Can you kind
13 of orient yourself and orient the jury once you become familiar with this?

14 A So, our main focus when we initially responded was the area
15 denoted at 1701 J Street.

16 Q Okay. And that's down here in the bottom portion of this map;
17 right?

18 A That's correct.

19 Q Where, specifically, did you respond within 1701 J Street?

20 A We responded to the parking lot area located at the Sherman
21 Oaks -- sherman garden apartments, I believe it's called.

22 Q Oh, okay. And were there -- State's 391 -- a couple of
23 dumpsters that you were particularly focused on?

24 A Yes, there -- it was towards the western end of the parking lot
25 there, and there was two dumpsters situated side by side in the parking

1 lot with some vehicles that were parked nearby.

2 Q Can you see those dumpsters here in the photo?

3 A Yes.

4 Q What did you do when you arrived upon this scene?

5 A When we arrive we first meet with the first responding officers,
6 as well as the detectives who are assigned to the investigation, where
7 we receive a scene briefing, which denotes all the information that
8 they've gathered up to that point. So, we get the general story and I get
9 an idea of what evidence items or potential evidence items that they've
10 already recovered.

11 Once we complete that initial briefing, we then conduct a
12 walk- through on our own, which is where myself and the other crime
13 scene investigators who have responded with me -- we walk through the
14 scene and assess what we need to do, what sort of processing needs to
15 be done. And then duties are then assigned out by the supervisor on
16 scene.

17 Q Okay. In this particular case, once you'd been briefed and
18 divided up duties, did you focus your attention on one of these
19 dumpsters in particular?

20 A Yes, we did.

21 Q Can you tell which dumpster it is from this photograph?

22 A From this photograph I cannot tell, no

23 Q Okay. Let me show you State's 3 -- sorry -- 393. Does that
24 look familiar to you?

25 A Yes.

1 Q Is that the dumpster that you focused your attention on then?

2 A It is, yes.

3 Q Did you learn that Mr. Pierre Joshlin had been pulled from that
4 dumpster previously?

5 A I was told that during the briefing, yes.

6 Q And I'm going to show you State's 394. Is there anything of
7 evidentiary value that you see in that photograph?

8 A In the upper right-hand corner of the photograph, inside the
9 dumpster you see some black object -- a black object there with a -- it
10 looks like a tag. Those were a pair of black gloves.

11 Q Okay. Showing you now State's 396. And, ma'am, have you
12 used the new system yet with the mouse?

13 A No, I have not.

14 MR. GIORDANI: Okay. May I approach?

15 THE COURT: You may.

16 BY MR. GIORDANI:

17 Q You can no longer write with your finger on the screen, so you
18 have to --

19 A Okay.

20 Q -- click this little red thing, push and drag while you want to
21 write, and then release when you want to finish writing.

22 A Okay.

23 Q And then hit this little trash can to delete.

24 A Okay.

25 Q All right. Can you show the ladies and gentlemen of the jury

1 what you're looking at in that photo?

2 A This is a closer view of the upper -- that upper right-hand
3 portion of the dumpster that was in the more overall view. And inside
4 here would be a closer-up view of the glove, one of the gloves here.
5 And then next to it is -- this black object here is going to be the backside
6 of a firearm.

7 Q Okay. So, there are two gloves.

8 A I --

9 Q Ultimately, did you remove those two gloves from the
10 dumpster?

11 A I did, yes.

12 Q And did those appear to be baseball style or type gloves?

13 A Yes, they did.

14 Q Did you also remove that firearm from the dumpster next?

15 A I did, yes.

16 Q And later photographed in a -- kind of a sanitary setting?

17 A Yes.

18 Q State's 411, what are we looking at here, ma'am?

19 A This is the firearm once we pulled it from the dumpster. It
20 hasn't been manipulated in any fashion. This is how -- the condition it
21 was in when we pulled it from inside the dumpster.

22 Q Okay. Ultimately, you photograph it like this, and then do you
23 remove the magazine from the firearm?

24 A Yes.

25 Q And do you also check the chamber of the firearm?

1 A Yes.

2 Q And in case the jury hasn't heard this testimony yet, can you
3 describe what it means to have one in the chamber?

4 A Can I use the pointer?

5 Q Sure.

6 A Okay. This portion of the firearm we call the slide, and inside
7 this area is where a -- it's called the chamber where a cartridge or a
8 round of ammunition is seated, and if it's seated inside there that means
9 that the firearm is ready to fire. So, we always check to make sure that
10 the chamber is empty or if there is anything inside the chamber when
11 we're evaluating the contents of the firearm.

12 Q Did you do that here?

13 A Yes.

14 Q State's 412, what are we looking at here, ma'am?

15 A This is the condition of the firearm once we have removed the
16 magazine and removed the round of ammunition from inside the
17 chamber. That round is along the top edge of the firearm there; it's
18 standing upright. And then the magazine is alongside towards the
19 bottom of the firearm.

20 Q State's 4 -- well, let me back up. In that same exhibit,
21 obviously, there was one in the chamber ready to fire; correct?

22 A There was, yes.

23 Q And then there were several additional rounds in the
24 magazine?

25 A Yes.

1 Q Showing you State's 413 now. What are we looking at here?

2 A This is a closer-up view of the backside of the magazine. And
3 this particular magazine is designed to show how many rounds of
4 ammunition are loaded inside the magazine, and that's denoted by the
5 number. So, according this photograph, there were approximately 15
6 rounds of ammunition loaded inside the magazine.

7 Q Okay. And that's because the hole where 15 is, is full; is
8 that --

9 A Correct.

10 Q Were there other items of evidence, basically, around that
11 dumpster that caught your attention?

12 A There was, there was a wristwatch on the pavement just out --
13 adjacent to the dumpster area.

14 Q Showing you State's 400. Can you see that there?

15 A Yes.

16 Q And the wristwatch -- let me go to 402. Is that the wristwatch?

17 A That is, yes.

18 Q Okay. Is there also a plain, unmarked police vehicle right next
19 to the dumpster?

20 A There was, yes.

21 Q Showing you State's -- let me start with 404. Do you see that
22 there?

23 A Yes.

24 Q And State's 405, is this the unmarked police vehicle?

25 A Yes, it is.

1 Q Were there some items of potential evidentiary value
2 impounded from the hood of that vehicle?

3 A Yes.

4 Q State's 406, can you see those items there?

5 A Yes, I can.

6 Q What are they?

7 A In the forefront of the photograph there is a blue cell phone,
8 and then further towards the middle there were a set of keys, a pair of
9 tooth coverings or decorative teeth coverings; metal, and there was, I
10 believe, a quarter.

11 Q A quarter coin?

12 A Yes.

13 Q Bear with me here. Well, while I'm looking through these,
14 ma'am, can you describe if there was any processing done of that
15 particular vehicle?

16 A We did process this vehicle; however, we did not complete the
17 processing on the scene at the time of our arrival there. What we did
18 was we had it towed back to our criminalistics laboratory into our vehicle
19 processing bay and we processed it later on in the evening.

20 Q Okay. And by processed it, what do you mean by that?

21 A For this particular vehicle we decided we wanted to do some
22 fingerprint processing on the front end of the vehicle, based on the
23 information that we had on the scene, so we applied our fingerprint
24 powder and we were able to recover fingerprints from the hood and the
25 front right side of the vehicle.

1 Q Was there anything of evidentiary value that I haven't touched
2 on at this scene by the dumpsters?

3 A No.

4 Q All right. From there did you proceed to a different location?

5 A Yes, we did.

6 Q Where did you go from there?

7 A We responded to an intersection; I believe it's Doolittle and -- I
8 can't remember the cross street. I'm -- I apologize.

9 Q That's okay. Let me just throw up 366. Does that help?

10 A Yes. We responded to the intersection of Doolittle and
11 Lexington.

12 Q And what was at the intersection of Doolittle and Lexington?

13 A On Lexington there were three .45 caliber cartridge cases that
14 were on the pavement right there at the corner.

15 Q Okay. Based upon your information were those cartridge
16 cases from Officer Cupp's duty weapon?

17 A Yes.

18 Q State's 367, what are we looking at there?

19 A This is a view of the street area right there off of Doolittle. And
20 those three yellow dots that you see there, those are actually evidence
21 placards 1 through 3, and those are denoting the locations of the
22 expended cartridge cases on the ground.

23 Q Okay. Just showing you State's 370, is that the close-up --
24 closer view of those same three?

25 A Yes, it is.

1 Q 373, what are we looking at there?

2 A This is an identification shot showing item number 1 or
3 cartridge case that we recovered as item number 1.

4 Q And would there be on 374 and 375 the similar documentation
5 of those other two cartridge cases?

6 A It is the same type of photograph, yes.

7 Q And were those ultimately -- those three cartridge cases
8 impounded into evidence?

9 A They were, yes.

10 Q Prior to impounding them or during the process of impounding
11 them did you observe what caliber those were, ma'am?

12 A Yes, those were .45 caliber cartridge cases.

13 Q And is there a particular type of ammunition that Metro officers
14 use on duty?

15 A Yes, there is.

16 Q What type of ammunition is it?

17 A Our officers are issued Speer ammunition.

18 Q Is that S-P-E-E-R?

19 A Correct.

20 Q And those were -- so, they would be Speer .45 caliber
21 cartridge cases; correct?

22 A Correct.

23 Q From that area where the OIS cartridge cases were, where did
24 you proceed?

25 A We next proceeded to the church that was located just north

1 of that location of the intersection of Doolittle and Lexington.

2 Q Showing you 272, is that the church?

3 A Yes, it is.

4 Q 273, describe what we're looking at here.

5 A This is the roadway and the sidewalk area that's located on
6 the -- I believe it's the west side of the church. There's a vehicle that's
7 up on the sidewalk with its front end in contact or collided with a fire
8 extinguisher right there on the sidewalk.

9 Q Okay. 276, that's just a closer view. Describe the condition in
10 which this vehicle was when you responded.

11 A The vehicle was just as it appears in this photograph. The
12 door was open and I don't recall specifically if the engine was running or
13 not, but it is -- was photographed in that condition. That's how it
14 appeared upon our arrival.

15 Q Okay. Do you recall whether the keys were in the ignition,
16 ma'am?

17 A I don't specifically recall, no. I'd have to refer to my -- to the
18 crime scene report.

19 Q Okay. Well, how about a photo? Let me show you 287. Can
20 you see keys hanging from the ignition there, ma'am?

21 A Yes, there are keys from the ignition, yes.

22 Q Okay. Ultimately, did you and other crime scene analysts
23 process the exterior and interior of this vehicle?

24 A We did, we sealed the vehicle and we towed it back to our
25 Criminalistics Bureau vehicle processing bay where we processed it

1 later in the evening.

2 Q Was there anything of evidentiary value found within the
3 vehicle?

4 A Yes, there was.

5 Q What was that?

6 A There was a firearm located on the passenger floorboard on
7 the front right side.

8 Q State's 291, is that that firearm?

9 A Yes, it is.

10 Q And is that the condition in which it sat when you
11 photographed it -- or -- when you came upon it?

12 A Yes, it is.

13 Q Did you photograph that in a sanitary setting later on?

14 A Yes, we did.

15 Q State's 302, is that the firearm?

16 A Yes, it is.

17 Q It appears this one has one in the chamber as well?

18 A Yes, in this particular firearm there is a unfired round of
19 ammunition that is jammed inside the ejection port of the firearm itself.

20 Q All right. And let me show you 305. Does that give you a
21 better view of that jammed cartridge?

22 A Yes, it does.

23 Q And is that the condition in which the firearm was when you
24 lifted it from the passenger side of the vehicle?

25 A Yes.

1 Q Did you do the same thing you did with the last firearm with
2 this and remove the magazine and do a countdown?

3 A Yes, we did.

4 Q Showing you State's 306. What are we looking at there,
5 ma'am?

6 A This is an overall view of the firearm showing the magazine
7 removed, as well as the cartridge or the unfired round of ammunition
8 that we removed from the ejection port area.

9 Q Okay. And then State's 308, what are we looking at there?

10 A This is a view of the headstamp of the cartridge. This is just
11 manufacturer markings that are stamped into each round of ammunition.
12 So, we make sure that we photograph that to show the caliber, as well
13 as the manufacturer of the ammunition.

14 Q And what's the manufacturer and caliber here?

15 A Manufacturer's a Winchester, and it was a .45 caliber firearm.

16 Q All right.

17 A Or -- I'm sorry -- a .45 caliber cartridge.

18 Q Okay. On the right side here you can see a portion of the
19 firearm that says Officer's ACP.

20 A Yes.

21 Q I just want to be clear so the jury doesn't get confused. This is
22 not Officer Cupp's duty weapon, this is the firearm that was found in the
23 vehicle.

24 A That's correct.

25 Q Okay. Did you count down how many rounds, in addition to

1 this one, were in the magazine?

2 A Yes.

3 Q How many rounds?

4 A I don't recall specifically.

5 Q Okay. Would it refresh your recollection to look at your
6 report?

7 A Yes, please.

8 MR. GIORDANI: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. GIORDANI:

11 Q Does that refresh your memory, ma'am?

12 A It does. Thank you.

13 Q How many were in the magazine of the .45?

14 A There were six cartridges inside the magazine of the firearm.

15 Q So, six in the magazine, one in the chamber for this one?

16 A Correct.

17 Q And I forget if I asked you. Did you describe the make and
18 model of this firearm?

19 A No, I did not. This is a .45 caliber Colt.

20 Q Okay.

21 A Semiautomatic pistol.

22 Q Okay. Was there anything else of evidentiary value found
23 within the vehicle, the Lincoln?

24 A The only other thing that we did with the vehicle is we
25 fingerprint processed it after searching the interior of it.

1 Q Okay.

2 A And we recovered fingerprints from the interior and exterior of
3 the vehicle.

4 Q All right. Briefly show you a couple photographs. You had
5 indicated before that you sealed the vehicle and took it back to the lab.
6 301, what are these here?

7 A Those orange stickers are the seals that we place on the
8 vehicle prior to it being loaded onto the tow truck for transport to the CSI
9 office. We place them on all the doors, the lid to the trunk, as well as the
10 hood.

11 Q Okay. And then State's 432, where is the vehicle now and
12 what are we looking at?

13 A This is a photograph of the vehicle, after we've broken the
14 seals, inside the vehicle processing bay at our -- at the CSI office.

15 Q Okay. You've mentioned processing for fingerprints both on
16 the red vehicle, the unmarked police vehicle, and now this. And I want
17 to show you 433, have you explain what we're looking at and generally
18 the process of which you process a vehicle.

19 A Sure. This is a photograph showing one of our fingerprint
20 tape lifts in place before we actually recover it. So, the process that we
21 use when we fingerprint process is first we visually inspect whatever it is
22 that we're processing to the naked eye with the use of, maybe, a
23 flashlight to help us see if there's any areas of disturbance or any
24 fingerprints that are visible to the naked eye.

25 Once we've done that evaluation, we then use our fingerprint

1 brush and a powder. That powder is applied using the brush. We lightly
2 coat the surface using the brush and that enables the fingerprint to be
3 visualized, and the powder is visualized by the powder sticking to any of
4 the moisture that's left behind when you touch something. Water is
5 present in your fingerprints, as well as various types of oils, things like
6 that. So, the powder is actually just adhering to that moisture.

7 In order for us to recover that fingerprint we need to apply a
8 piece of clear tape over top of it, and when we lift that tape off of the
9 surface we place it onto a fingerprint card of a contrasting background.
10 So, usually we're using black fingerprint powder, so we put it on a white
11 card. We label that card with all of the applicable information related to
12 the area we've recovered the fingerprint from and then we then submit
13 that as a piece of evidence and it's part of the case file.

14 Q Okay. And would that have been submitted under the event
15 number associated with this case, being 0609303216?

16 A Yes.

17 Q And everything that we've talked about so far having been
18 impounded, would all of that have been impounded under that same
19 event number?

20 A That's correct, yes.

21 Q Okay. I want to return now back to the church. Showing you
22 292, were there other items of evidence found at the church?

23 A Yes, in the grass area, basically, between where the car was
24 located on the sidewalk and the building of the church we recovered a
25 .22 caliber rifle that was on the ground in the grass area.

1 Q State's 294, and you can see that there.

2 A And adjacent to that rifle you see another black object and
3 that is a cup holder, like a plastic-type cup holder that maybe would go
4 inside of a vehicle.

5 Q Okay. State's 297, can you describe what type of firearm
6 we're looking at here?

7 A This is a closer-up view of that .22 caliber rifle that we
8 recovered.

9 Q Was that rifle impounded under the same event number as
10 we've referenced?

11 A Yes.

12 Q And, ultimately, was a countdown conducted on that rifle as
13 well?

14 A Yes.

15 Q Showing you State's 298. How many were in -- how many
16 rounds were in the rifle?

17 A We recovered one cartridge or unfired round of ammunition
18 inside the chamber, and there was no other rounds of ammunition inside
19 the magazine.

20 Q So, that big long banana magazine, that was empty?

21 A That's correct.

22 Q And then there was one actually ready to fire in the chamber?

23 A Yes.

24 Q And would this firearm load the same way, essentially, that the
25 other semiautomatic firearms you've described loads?

1 A Yes.

2 Q Meaning that as rounds are fired more rounds are pushed up
3 from the magazine and into the chamber as we see it?

4 A That's correct, yes.

5 Q Where did you proceed from the church?

6 A From there our last scene that we were processing was
7 located at 1200 Eleanor Avenue, which was located about one block
8 north of the church location.

9 Q And at 1200 Eleanor was there anything of evidentiary value
10 that you or other Metro personnel located?

11 A There was a single red knit glove on the sidewalk in front of
12 the residence, and the glove had a large hole in it.

13 Q Okay. Would you have photographed that glove as it was?

14 A Yes.

15 Q And when you photographed that glove was it sitting -- or had
16 it been secured prior to your arrival, meaning someone around to watch
17 it?

18 A Yes, there was -- once the scene was located an officer was
19 posted in the area to make sure that no one came in or -- left or came
20 into the scene.

21 MR. GIORDANI: Okay. May I approach your clerk?

22 THE COURT: You may.

23 THE COURT CLERK: Too heavy?

24 MR. GIORDANI: No.

25 THE COURT CLERK: Do you need gloves?

1 MR. GIORDANI: I have them. Thank you.

2 THE COURT CLERK: Do you need another [indiscernible]?

3 MR. GIORDANI: No, I have them.

4 THE COURT CLERK: Okay. Thank you.

5 MR. GIORDANI: Bear with me here. I'm sorry. I didn't have

6 a chance to do this before you came in. I apologize.

7 THE COURT: Are you going to ask the witness to handle the

8 evidence?

9 MR. GIORDANI: Actually, yeah. Thank you, Your Honor.

10 THE COURT: Okay.

11 THE WITNESS: Thank you.

12 THE COURT: This is just in case you want them.

13 THE WITNESS: I appreciate that. Thank you.

14 THE COURT: You bet.

15 BY MR. GIORDANI:

16 Q Okay. You -- if I didn't ask, was that red glove impounded in a

17 similar manner as all the things that you've referenced previously have

18 been impounded?

19 A Yes, it was.

20 Q Okay. Before I move on to the actual physical evidence -- you

21 didn't put your gloves on yet; good.

22 A No, I did not.

23 Q Did you have an opportunity -- well, let me back up a second.

24 When there is an officer-involved shooting do you document the

25 involved officer?

1 A Yes.

2 Q What is the purpose of that?

3 A The purpose of that is to show how the officer appeared at the
4 time of the shooting, and what we're specifically concerned with is what
5 did the -- did their uniform -- what their uniform appeared like; were they
6 clearly identifiable as a police officer, and we also want to show how
7 their gun belt is set up and how they carry their firearm.

8 Q Okay. Showing you State's 317, who are we looking at here?

9 A This is Officer Bradley Cupp, the shooting officer involved.

10 Q And is that how he appeared when you first came into contact
11 with him that evening?

12 A Yes.

13 Q For the record, he's wearing a police vest with police in big
14 letters on his chest. Clearly he has some kind of radio or something
15 sticking out of his ear, and a firearm on his right-hand side?

16 A Correct.

17 Q Did you take that firearm -- or -- did you process that firearm
18 just like you have the other firearms?

19 A I did, yes.

20 Q State's 321, is that Officer Cupp's firearm?

21 A It is, yes.

22 Q And what's the make?

23 A This is a .45 caliber Kimber.

24 Q Okay. Kimber's the brand?

25 A Yes.

1 Q Manufacturer? Did you do a countdown on that weapon?

2 A Yes, we did.

3 Q State's 322, describe what we're looking at here.

4 A This is showing that there was one unfired round of
5 ammunition inside the chamber, and there were four unfired rounds
6 inside the magazine.

7 Q What was the capacity of that magazine, if you recall?

8 A I believe it was a seven-round capacity magazine.

9 Q Okay. Did Officer Cupp have a -- another magazine on his
10 person?

11 A Yes, he did.

12 Q Showing you State's 324. Is that it?

13 A Yes, it is.

14 Q Did you do a countdown on that magazine as well?

15 A We did, yes.

16 Q State's 325, what are we looking at there?

17 A This is just showing the contents of that magazine, which was
18 seven unfired rounds of ammunition.

19 Q Okay. So, back to that initial magazine that came out of the
20 firearm, you said I think it's a seven. Does this support your thought?

21 A Yes, it does.

22 Q Okay. So, seven in his spare magazine and then, going back
23 to State's 322, he had four in his duty magazine or the one in the
24 firearm?

25 A Correct.