

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL McNAIR

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 78871

Appeal From A Judgment of Conviction (Jury Trial)
Eighth Judicial District Court
The Honorable Douglas Herndon, District Judge
District Court No. C-17-327395-1

APPELLANT'S APPENDIX VOLUME 5 OF 10

Navid Afshar
State Bar #14465
JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Michael McNair

Electronically Filed
Nov 16 2020 08:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

<u>VOLUME</u>	<u>PLEADING</u>	<u>PGS</u>
5	Amended Jury List (2/28/19)	907
10	Criminal Court Minutes (unfiled)	1979-2010
2	Defendant McNair’s Motion in Limine to Introduce Preliminary Hearing Testimony of Anthony Razo and Kenneth Saldana. Defendant’s Motion to Have Appointed Co0unsel Available for Mitchell Johnson if he is Called as a State’s Witness (2/11/19).	338-43
9	Defendant’s Proposed Instructions to the Jury (3/6/19) . . .	1669-1721
2	Ex Parte Motion and Order for Defendant’s Inmate Phone Calls and Information Regarding Access Information (2/21/19).	368-71
10	Exhibit List and Exhibits (unfiled)	1968-78
1	Information (10/24/17)	159-61
9	Instructions to the Jury (3/7/19)	1858-1899
10	Judgment of Conviction (5/3/19).	1964-65
4	Jury List (2/27/19)	626
1	Motion for Disclosure of Evidence and Motion to Have the Handgun that was Recovered tested for Any DNA (2/23/18).	202-08
1	Motion to Clarify Bail Obligation to Include House Arrest (3/30/18).	218-23
2	Motion to Preclude the State From Using Any C CDC Telephone Records in the Case in Chief or Rebuttal (2/21/19)	372-82

10	Notice of Appeal (5/22/19)	1966-67
2	Notice of Defendant's Expert Witnesses (7/2/18).	281-94
2	Notice of Defendant's Witnesses (2/15/19)	352-53
1	Objection to State's Motion to Increase Bail (4/17/18)	229-33
1	Petition for Pre-Trial Writ of Habeas Corpus (12/14/17)	169-76
7	Second Amended Jury List (3/6/19)	1668
10	Sentencing Memorandum and Objections to the Presentence Investigation Report (4/23/19)	1912-31
2	State's Fourth Supplemental Notice of Witnesses and/or Expert Witnesses (2/19/19)	360-67
2	State's Notice of Witnesses and/or Expert Witnesses (6/22/18).	251-80
1	State's Response to Defendant's Motion for Disclosure of Evidence and Motion to Have the Handgun that was Recovered Tested for DNA (3/13/18)	209-14
1	State's Return to Writ of Habeas Corpus (12/21/17)	177-89
2	State's Second Supplemental Notice of Witnesses and/or Expert Witnesses (1/15/19)	332-37
2	State's Supplemental Notice of Witnesses and/or Expert Witnesses (1/8/19)	313-27
2	State's Third Supplemental Notice of Witnesses and/or Expert Witnesses (2/15/19)	354-59
9	Stipulation and Order (3/7/19).	1908-09
1	Transcript of Hearing October 23, 2017 (12/3/17)	1-158

1	Transcript of Hearing October 25, 2017 (6/10/19)	162-64
1	Transcript of Hearing October 31, 2017 (6/24/19)	165-68
1	Transcript of Hearing January 9, 2018 (6/24/19)	190-98
1	Transcript of Hearing February 7, 2018 (6/24/19)	199-201
1	Transcript of Hearing March 20, 2018 (6/24/19)	215-17
1	Transcript of Hearing April 10, 2018 (6/24/19)	224-28
1	Transcript of Hearing April 19, 2018 (6/24/19)	234-43
2	Transcript of Hearing May 23, 2018 (6/24/19)	244-46
2	Transcript of Hearing June 20, 2018 (6/24/19)	247-50
2	Transcript of Hearing July 12, 2018 (6/24/19)	295-99
2	Transcript of Hearing July 18, 2018 (8/23/18)	300-06
2	Transcript of Hearing October 24, 2018 (6/24/19)	307-09
2	Transcript of Hearing December 5, 2018 (6/24/19)	310-12
2	Transcript of Hearing January 9, 2019 (6/24/19)	328-31
2	Transcript of Hearing February 14, 2019 (6/24/19)	344-51
3	Transcript of Jury Trial Day 1 February 26, 2019 (7/1/19) . .	383-625
4	Transcript of Jury Trial Day 2 February 27, 2019 (7/1/19) Pages 1-244 (continued in next volume)	627-870
5	Transcript of Jury Trial Day 2 February 27, 2019 (7/1/19) Pages 245-280 (continuation)	871-906
5	Transcript of Jury Trial Day 3 February 28, 2019 (7/1/19) .	908-1089

6	Transcript of Jury Trial Day 4 March 1, 2019 (7/1/19) . . .	1090-1216
6	Transcript of Jury Trial Day 4 March 1, 2019 (7/1/19) (partial transcript testimony of Jamelle Shannon only)	1217-50
7	Transcript of Jury Trial Day 5 March 4, 2019 (7/1/19) . . .	1251-1459
8	Transcript of Jury Trial Day 6 March 5, 2019 (7/1/19) . . .	1460-1667
9	Transcript of Jury Trial Day 7 March 6, 2019 (7/1/19) . .	1722-1857
9	Transcript of Jury Trial Day 8 March 7, 2019 (7/1/19) . . .	1900-1907
10	Transcript of Hearing May 1, 2019	1932-63
9	Verdict (3/7/19)	1910-11

1 MR. PIKE: Your Honor, while we're in recess, do you have a
2 designated alternate jurors?

3 THE COURT: They'll be the last two once you've gone
4 through the list. I scramble them up when we number them for the
5 actual start of the trial, so they don't know -- they themselves don't know
6 but you guys will know as you're doing your peremptory challenges,
7 whoever the last two are of the 14, those are your two alternates.

8 MR. PIKE: Okay. Great, thank you.

9 THE COURT: Uh-huh. All right. We'll be in recess, guys.

10 [Recess taken at 4:09 p.m.]

11 [Trial resumed at 4:24 p.m.]

12 [In the presence of the prospective jury]

13 THE MARSHAL: Rise for the jurors.

14 THE COURT: Mr. Ankrum, you're getting excused, so don't
15 even take your seat. Don't worry, you're all good.

16 PROSPECTIVE JUROR NUMBER 064: All right.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NUMBER 064: I'm out of here.

19 THE COURT: Okay. You guys can be seated. We'll be back
20 on the record. Mr. McNair is present with his attorneys, State's
21 attorneys are present, the prospective jurors are present. We've
22 excused Mr. Ankrum, which brings us to Mr. White.

23 All right, Mr. White, Badge Number 77, how you doing, sir?

24 PROSPECTIVE JUROR NUMBER 077: [Inaudible].

25 THE COURT: Why don't you grab that microphone, take that

1 seat on the top row for me, please, I would appreciate it.

2 So how long have you lived here, sir?

3 PROSPECTIVE JUROR NUMBER 077: I've lived here 29
4 years.

5 THE COURT: And what's your level of education?

6 PROSPECTIVE JUROR NUMBER 077: Some college.

7 THE COURT: What type of work do you do?

8 PROSPECTIVE JUROR NUMBER 077: I have two major
9 jobs. I'm an accounting clerk for Boyd Gaming and I am a professional
10 musician.

11 THE COURT: Are you married?

12 PROSPECTIVE JUROR NUMBER 077: No.

13 THE COURT: Any children?

14 PROSPECTIVE JUROR NUMBER 077: No.

15 THE COURT: Ever been a juror before?

16 PROSPECTIVE JUROR NUMBER 077: No.

17 THE COURT: Ever been the victim of a crime before?

18 PROSPECTIVE JUROR NUMBER 077: I've worked in retail
19 during some burglary, smash and grab type things.

20 THE COURT: Okay. That result in ever having to go to court
21 and testify?

22 PROSPECTIVE JUROR NUMBER 077: No.

23 THE COURT: Okay. Ever been arrested or convicted of any
24 kind of crime?

25 PROSPECTIVE JUROR NUMBER 077: No.

1 THE COURT: Do you believe you could keep an open mind
2 and not decide any issues in a case until it's submitted to you for your
3 deliberations?

4 PROSPECTIVE JUROR NUMBER 077: Yes, I do.

5 THE COURT: Do you believe that you could treat police
6 officers like any other witness and evaluate their testimony in light of
7 everything in the case?

8 PROSPECTIVE JUROR NUMBER 077: I do. I might weigh
9 their opinion a little heavier just because I have a respect for the badge.

10 THE COURT: Understood. Is that based on kind of a belief
11 that maybe they have more training and experience in certain areas than
12 other --

13 PROSPECTIVE JUROR NUMBER 077: Yes.

14 THE COURT: -- people have?

15 PROSPECTIVE JUROR NUMBER 077: Yes.

16 THE COURT: Okay. So not just because they wear the
17 badge but because of a perception about their -- the circumstances of
18 their employment?

19 PROSPECTIVE JUROR NUMBER 077: That's correct.

20 THE COURT: Okay. You have listened to all the questions
21 that have been asked the last couple of days by both of the attorneys.

22 PROSPECTIVE JUROR NUMBER 077: Yes.

23 THE COURT: I'm not pretending they're not going to ask
24 questions anyway but I'm trying to cover this. Anything about what
25 either side has raised that causes you any concern or things that you

1 need to tell us about?

2 PROSPECTIVE JUROR NUMBER 077: No, I believe that I'm
3 capable of performing the function.

4 THE COURT: Okay. Very good.

5 On behalf of the State.

6 MS. BLUTH: Thank you. Can I stay right here, Judge --

7 THE COURT: Yeah.

8 MS. BLUTH: -- is that okay?

9 Hi, how are you?

10 PROSPECTIVE JUROR NUMBER 077: I'm well.

11 MS. BLUTH: Okay, good. So I'm not going to ask you every
12 single question, right, but I'm going to get some of the ones where I think
13 some -- you know, the heavier answers would be all right. So, in
14 regards to sitting in judgment of another individual, do you have any
15 issues with that or any reservations?

16 PROSPECTIVE JUROR NUMBER 077: No, I feel confident
17 what -- as it's been explained and asked amongst everybody else, I feel
18 like I would be okay there.

19 MS. BLUTH: Okay. When I was talking about the two
20 different phases of a trial, did you feel comfortable with the explanation
21 that I gave about that?

22 PROSPECTIVE JUROR NUMBER 077: Yes.

23 MS. BLUTH: And did you feel comfortable with the fact when
24 you're in one of those phases, you can't be thinking about the other?

25 PROSPECTIVE JUROR NUMBER 077: Yes.

1 MS. BLUTH: All right. And did you feel that His Honor and
2 myself or Mr. Pike explained the three forms of punishment and that you
3 understood those and you would consider them?

4 PROSPECTIVE JUROR NUMBER 077: I understand those.

5 MS. BLUTH: You already talked about your views in regards
6 to law enforcement, have you ever had any negative contacts with law
7 enforcement?

8 PROSPECTIVE JUROR NUMBER 077: No, my contacts with
9 law enforcement have been fairly adequate.

10 MS. BLUTH: In regards to the question about a close family
11 member or a friend, have anybody in that situation or that relationship to
12 you been the victim or accused of a crime?

13 PROSPECTIVE JUROR NUMBER 077: Not to my
14 knowledge.

15 MS. BLUTH: How do you feel the criminal justice works in
16 general?

17 PROSPECTIVE JUROR NUMBER 077: In general, I think it
18 works fairly well. My experience with it personally is fairly limited so I
19 don't have a lot of firsthand knowledge of those kinds of things,
20 especially local law enforcement and local government, I don't have a lot
21 of experience with that.

22 MS. BLUTH: What type of musician are you?

23 PROSPECTIVE JUROR NUMBER 077: Well I play in a -- I
24 mean, wherever I can get paid really, but I get -- I play in a tribute act,
25 classic rock.

1 MS. BLUTH: Okay. And so do you work like every night or
2 just when you guys get a gig? How does it work?

3 PROSPECTIVE JUROR NUMBER 077: I work weekends
4 mostly with those kinds of things. I go out of town probably two to four
5 weekends out of the year -- or two to four weekends out of the month,
6 excuse me. And so I've got 40 hours a week here in town and then --
7 yeah, my next couple of weeks are fairly free but I have a one-nighter on
8 the 9th, which is a Saturday and then another couple of shows probably
9 a week or two later.

10 MS. BLUTH: Okay. Do you watch CSI, NCIS, any of those
11 science-type cases -- or shows?

12 PROSPECTIVE JUROR NUMBER 077: I have a cursory
13 familiarity with those shows. I wouldn't call myself a big fan.

14 MS. BLUTH: All right. Do you have any expectation because
15 of the things that you've seen on those shows that you think hey, this is
16 how it works on there, it's got to be how it is in here?

17 PROSPECTIVE JUROR NUMBER 077: No, no, I think those
18 shows are not reality.

19 MS. BLUTH: Okay. Have you ever been a witness or
20 participated in trial in any fashion?

21 PROSPECTIVE JUROR NUMBER 077: I have not.

22 MS. BLUTH: Feel comfortable voicing your opinion in front of
23 others?

24 PROSPECTIVE JUROR NUMBER 077: Yeah, I feel fairly
25 comfortable. I'm sort of a timid, kind of nervous, shy person and -- yeah,

1 I mean, it's tough to say until I get into it -- into the situation. I would like
2 to think that I would be pretty steadfast in my thoughts and bring things
3 up. I would like to think that about myself.

4 MS. BLUTH: Okay. I talked a little bit yesterday about, you
5 know, there are rights that all of us are afforded as citizens of this
6 country and one of those is the right -- we don't have to testify on our
7 own behalf, you know? If we're charged with a crime, we don't have to
8 do that. Are you okay with that? Do you und -- not that do you
9 understand that but what I mean is do you understand why someone
10 might not want to do that?

11 PROSPECTIVE JUROR NUMBER 077: It's a question I have
12 not considered up until I suppose this moment. I wouldn't hold it against
13 somebody if they did not take the stand in their own defense.

14 MS. BLUTH: Okay. And then we've been hearing this
15 phrase -- or these two words, reasonable doubt. You know, the State
16 has to prove to you beyond a reasonable doubt.

17 PROSPECTIVE JUROR NUMBER 077: Uh-huh.

18 MS. BLUTH: Because it's a murder trial, would you hold us to
19 above that burden, simply because the charges are what people deem
20 as, and they are, serious?

21 PROSPECTIVE JUROR NUMBER 077: I think I would need
22 to be more explained the difference between reasonable and
23 unreasonable in that situation.

24 MS. BLUTH: Yeah.

25 PROSPECTIVE JUROR NUMBER 077: I understand that that

1 explanation is coming down the line at some point. And once that's
2 spelled out for me, I feel like I'd feel more confident in knowing the
3 answer to that question.

4 MS. BLUTH: Thank you. Is there anything that I haven't
5 asked you that you think that we would should know when we're
6 determining whether or not you would be a good juror for this case?

7 PROSPECTIVE JUROR NUMBER 077: Nothing that I can
8 particularly think of. Sometimes I have trouble focusing.

9 MS. BLUTH: All right.

10 PROSPECTIVE JUROR NUMBER 077: I kind of fade in and
11 out of just awareness. I have difficulty with that --

12 MS. BLUTH: Sure. I --

13 PROSPECTIVE JUROR NUMBER 077: -- but that's it.

14 MS. BLUTH: -- once had a juror who had that same issue and
15 I'm not saying you should do this because I think it would hurt but he
16 kept a rubber band on his wrist and whenever he felt himself drifting he'd
17 snap and that's when I knew like my questions were going too long
18 because I'd like a snap and then oh, crap. But anyways I'm not saying
19 that that's something you should do but I think --

20 THE COURT: [Snaps something].

21 MS. BLUTH: Judge, stop it.

22 PROSPECTIVE JUROR NUMBER 077: It's a thought. It's
23 certainly a thought.

24 THE COURT: Please, go ahead.

25 MS. BLUTH: I think that -- I'm just saying tools in your

1 backpack, like my mom used to say, those are good things to have.

2 THE COURT: I see.

3 MS. BLUTH: Thank you so much. We appreciate it. We'll
4 pass.

5 THE COURT: Mr. Pike.

6 MR. PIKE: Thanks.

7 I'd like to think I could just ask one question. What musical
8 instrument do you play?

9 PROSPECTIVE JUROR NUMBER 077: Well, I'm a vocalist
10 and I play electric string bass in this band. I've played -- I studied it in
11 college and so I play a number of different things. But that's what I get
12 paid for right now is vocals and string bass.

13 MR. PIKE: Okay. For a shy person to get up and play and
14 sing --

15 PROSPECTIVE JUROR NUMBER 077: It's --

16 MR. PIKE: -- in front of a group --

17 PROSPECTIVE JUROR NUMBER 077: It's easier actually on
18 stage than it is talking to somebody one on one. I feel more confident
19 projecting my voice out to a crowd of people than I do trying to listen and
20 respond.

21 MR. PIKE: Okay.

22 PROSPECTIVE JUROR NUMBER 077: It's easier to give a
23 monologue than it is to have a dialogue for me.

24 MR. PIKE: That's true. All right. Mel Tillis found it easier to
25 sing than it was to even talk. He had a noticeable stutter.

1 PROSPECTIVE JUROR NUMBER 077: Yeah. That's true.

2 MR. PIKE: And you'd agree with me that there are some
3 reasons why people wouldn't want to get up and testify on the stands,
4 wouldn't you? Some people that were afraid to get in front of a group
5 and talk.

6 PROSPECTIVE JUROR NUMBER 077: Yeah.

7 MR. PIKE: Some people may have had surgery for cleft
8 palates and may have a speech impediment.

9 PROSPECTIVE JUROR NUMBER 077: Okay.

10 MR. PIKE: Some people may stutter and that may be
11 misperceived.

12 PROSPECTIVE JUROR NUMBER 077: Yes.

13 MR. PIKE: So some -- you'd agree with that and you
14 overcome it when you sing in having that.

15 PROSPECTIVE JUROR NUMBER 077: Yes.

16 MR. PIKE: Okay. Great. Now, let me go to this -- and this
17 one question and I'll be done. Now, murder entails certain components,
18 you know, premeditation, deliberation, malice aforethought, and so it's
19 not like well I think that the State may have made a finding of a --
20 beyond a reasonable -- may have proven beyond a reasonable doubt of
21 one or two of those things, but the State has to -- a burden to prove each
22 and every element of the offense beyond a reasonable doubt. Can you
23 compartmentalize those different elements and hold the State to proving
24 that beyond a reasonable doubt?

25 PROSPECTIVE JUROR NUMBER 077: Well, once again, I

1 think really it's just a matter of a lack of education on the topic, but I do
2 feel confident that I'd be able to -- I feel confident that I'd be able to hold
3 the State to the prove their case beyond a reasonable doubt.

4 MR. PIKE: And in each and every element.

5 PROSPECTIVE JUROR NUMBER 077: Yeah.

6 MR. PIKE: Okay. And would you agree -- of the three
7 potential sentences for first-degree murder, you'd agree with me that all
8 of those are severe punishments?

9 PROSPECTIVE JUROR NUMBER 077: Yes.

10 MR. PIKE: Okay. And you'd be -- you'd consider all three of
11 them in making a decision if you're every called upon to do that?

12 PROSPECTIVE JUROR NUMBER 077: I would consider all
13 three.

14 MR. PIKE: Okay. Thank you.

15 No further questions. Pass for --

16 THE COURT: Pass for --

17 MR. PIKE: -- cause.

18 THE COURT: -- cause. Great.

19 All you guys left are done. So thank you very much for your
20 time the last couple of times. As you can see, we go through a lot of
21 people going through this process. It's a very delicate and serious
22 process. So they will not try and get you on any other jury, you're
23 completely done with jury duty. And I really appreciate you sticking
24 around the last couple of days, okay? Thank you.

25 And good luck with baseball season, Mr. Pienta.

1 PROSPECTIVE JUROR NUMBER 079: Appreciate it.

2 THE COURT: Would you guys prefer for them to stay in the
3 room?

4 PROSPECTIVE JUROR NUMBER 079: Yes, please.

5 THE COURT: Okay. So here's what we're going to do.

6 There's a process that the attorneys go through now with the 32 of you
7 that involves kind of going back through their notes over the last couple
8 of days and whittling it down to the 14. It's much easier for them to do
9 that while they can kind of see your faces, so they're going to be kind of
10 discussing things among themselves, passing a list back and forth which
11 I'll give this to the State. Jacque, you guys -- or JR will give it to you.

12 So you guys can just kind of talk quietly amongst yourselves.
13 I'm guessing this will take probably about 20/25 minutes. But I'm also
14 guessing you would us rather us finish this tonight rather than having
15 those of you that are going to be done having to come back tomorrow,
16 yeah? Okay.

17 So I'll get you out of here as quick as we can after this process
18 is done.

19 [Peremptory Challenges]

20 MR. PIKE: May we approach?

21 THE COURT: Yeah.

22 [Bench Conference Begins]

23 MR. PIKE: The State's peremptory on Lyons --

24 THE COURT: Okay.

25 MR. PIKE: And so we'd make a challenge under Batson.

1 THE COURT: Well, I think we need to go through the process
2 first and let them exercise all of their challenges. I won't release --

3 MR. PIKE: Okay.

4 THE COURT: -- anybody, but then I'll let you guys make a
5 record you want to, any challenges --

6 MR. PIKE: Okay.

7 THE COURT: -- who's been excused, patterns, everything,
8 okay?

9 MS. BLUTH: Okay. That's good.

10 [Bench Conference Concludes]

11 [Peremptory Challenges]

12 THE COURT: Okay. Can you guys approach the bench?

13 [Bench Conference Begins]

14 MS. BLUTH: Are you going to ask us to argue up here?

15 THE COURT: You can, sure.

16 Okay. So you guys still have the challenge as to Ms. Lyons.
17 Okay? Is that the only one?

18 MR. ROGAN: No, we're going to do it on four people.

19 THE COURT: Four people.

20 MR. ROGAN: Yeah.

21 THE COURT: So go ahead and go back, I'll get everybody
22 outside.

23 [Bench Conference Concludes]

24 THE COURT: Folks, we need to take a break. I'm sorry, I
25 need to send you outside.

1 During the recess you're admonished not to talk or converse
2 among yourselves or with anyone else on any subject connected with
3 this trial. Or read or watch or listen to any report of or commentary on
4 the trial any medium of information including, without limitation,
5 newspapers, television, the internet, and radio. And you cannot form or
6 express an opinion on any subject connected with the trial until the case
7 is finally submitted to you.

8 If you could step outside, thank you.

9 [Outside the presence of the prospective jury]

10 THE COURT: Okay. All right. So we are outside the
11 presence of our jury. And the Defense had indicated at the bench that
12 they wish to make Batson challenges as to three individuals. You guys
13 can go ahead.

14 MR. AFSHAR: All right. Thank you, Your Honor. I'll be
15 making on behalf of the Defense and Mr. McNair. The first one is Juror
16 0050, Jeanna Lyons.

17 THE COURT: Okay.

18 MR. AFSHAR: The second one is Mr. Pool -- I'm just trying to
19 find her badge number.

20 MS. SIMPKINS: 68.

21 MR. AFSHAR: 68.

22 THE COURT: Okay.

23 MR. AFSHAR: And the last one is Ms. Hernandez, 037.

24 THE COURT: Okay.

25 MR. AFSHAR: So there's a few cases I want to cite. If I could

1 just read them into the record, that way I can kind of like refer back to
2 them.

3 THE COURT: Okay.

4 MR. AFSHAR: The first one's going to be *Diomampo v. State*.
5 It is -- let me get the full citation. *Diomampo v. State*, 124 Nev. 414, 185
6 P.3d 1031 (2008).

7 The second one I'm going to be citing is *Williams v. State*.
8 This one is 134 Nev. Advanced 83 429 P.3d 301 (2018).

9 THE COURT: Okay.

10 MR. AFSHAR: And I'll probably be referring to *Watson*, I can
11 get that citation as well.

12 But the last case I'll be referring to is *Cooper v. State*, 134
13 Nev. Advanced Response 104 (2018), Westlaw Number 6804279.

14 THE COURT: Okay.

15 MR. AFSHAR: Okay. So to begin this, Your Honor, there's a
16 couple things I want to go through. So, first of all, under *Diomampo*, the
17 reason that case is because we can bring a mixed ethnicity challenge.
18 In *Diomampo*, there were four jurors that were challenged of mixed
19 ethnicities and the Nevada Supreme Court reverse in that case on just
20 one of the jurors I believe. So -- who was a Hispanic juror.

21 Here we have Ms. Lyons, who's African American. We have
22 Ms. Hernandez, who self-identified in the report as Hispanic. Ms. Pool, I
23 can't identify here ethnicity but she did write other. Based on information
24 and belief in the State's -- and the Court is free to, you know, comment
25 on this as well, I assume she was either Hispanic or African American.

1 THE COURT: Okay.

2 MR. AFSHAR: But she def -- she said other and she had kind
3 of darker features.

4 THE COURT: Okay.

5 MR. AFSHAR: So we have three women of mixed ethnicity
6 origin -- different ethnicities. I believe one of them -- I think Ms. Pool is
7 African American or at least part African American.

8 So the reason I bring this up is that usually the issue is well,
9 oh, was there a pattern? But in *Williams* and in *Cooper*, the Nevada
10 Supreme Court went beyond that; they said no, a pattern is one way.
11 But while a pattern is just one way, there are several other ways. And
12 one of the ways in *Cooper* was the mathematic percentage of who was
13 dismissed compared to they're included in the venire.

14 THE COURT: Okay.

15 MR. AFSHAR: So just doing it on Ms. Lyons alone, assuming
16 she was the only African American, so we had -- if it's just Ms. Lyons -- I
17 mean, so we had Mr. Harris, that's 2 out of a 34 panel? I think we had a
18 34 venire panel.

19 MR. PIKE: 32.

20 THE COURT: 32.

21 MR. AFSHAR: Oh, sorry, 32. So that means that the State
22 used about 13 percent of their strikes on a group that represented 5
23 percent of the venire panel, to get rid of 50 percent of that group. Now
24 why do I bring that up? Because in *Cooper* the Nevada Supreme Court
25 found that 2 out of 5, I think --

1 THE COURT: Can you go back, I'm sorry? Tell me those
2 numbers again.

3 MR. AFSHAR: Yeah, let me just --

4 THE COURT: What were you saying?

5 MR. AFSHAR: So we have -- so if Ms. Lyons is the only
6 African American --

7 THE COURT: Okay.

8 MR. AFSHAR: -- that, you know, we can identify. And the
9 only --

10 THE COURT: Well, Mr. Harris as well.

11 MR. AFSHAR: And Mister -- that's what I mean for our -- you
12 know, for our challenge.

13 THE COURT: Okay.

14 MR. AFSHAR: So that means that the State used 5 percent
15 of -- no, I'm sorry, 13 percent of their total strikes to get rid of 50
16 percent --

17 THE COURT: Where does 13 percent come from? What is
18 that?

19 MR. AFSHAR: I got that from 2 out of, I think it was 34.

20 THE COURT: It's 32.

21 MR. AFSHAR: 30 -- okay.

22 THE COURT: And the 2 are who?

23 MR. AFSHAR: Mr. Harris and Ms. Lyons. But let me double
24 check that calculation.

25 THE COURT: But the State didn't strike Mr. Harris.

1 MR. AFSHAR: That's not the point. In *Cooper*, there was a
2 23 venire panel that was --

3 THE COURT: No, but you said the State used 13 percent of
4 their strikes.

5 MR. AFSHAR: Correct.

6 THE COURT: So if they didn't strike Mr. Harris, how is he
7 included in the percentage of strikes they used?

8 MR. AFSHAR: Oh, I apo -- then I think I meant 1 out of 8,
9 that's where I got the 13 percent.

10 THE COURT: Okay. So 1 out of -- so they had 9. So they
11 used 1 out of their 9, which would be 11 percent.

12 MR. AFSHAR: 11 percent, okay.

13 THE COURT: Okay.

14 MR. AFSHAR: Sorry about that, Your Honor.

15 THE COURT: That's okay.

16 MR. AFSHAR: So 11 percent on Ms. Lyons, to get rid of 50
17 percent for a group that represented 5 percent the --

18 THE COURT: Okay.

19 MR. AFSHAR: -- venire panel.

20 So turning to *Cooper*, there's where the calculations were
21 involved. And in *Cooper* -- let me just skip to the page. So in *Cooper*,
22 the Court said -- I just want to read this into the record, Your Honor.

23 While numbers alone may not give rise to an inference of
24 discriminatory purpose, we conclude that the percentage of peremptory
25 strikes used against African Americans in this case was disproportionate

1 to the percentage of African Americans in the venire, such that an
2 inference of purposeful discrimination was shown in the case.

3 One of the cases they cited was *Fernandez v. Roe*, 286 F.3d
4 1073, 1078 (9th Circuit), stating: Prima facie case established for
5 prosecutor used 29 percent of their peremptory challenges to remove 50
6 percent of the targeted group that comprised 12 percent.

7 THE COURT: Okay.

8 MR. AFSHAR: So that's just for one. That's just for Ms.
9 Lyons.

10 Now, under *Diomampo*, we could do all three. So if we do all
11 three, that means that the State used -- first of all, if I could just address
12 Ms. Hernandez then separately?

13 THE COURT: Okay.

14 MR. AFSHAR: I believe based -- as I was going through the
15 report, she was the only self-identified Hispanic, at least in this venire
16 panel. And if I'm wrong on that, the State or the Court can correct me.

17 THE COURT: Yeah, I -- she had in race somehow listed
18 Hispanic --

19 MR. AFSHAR: Okay.

20 THE COURT: -- as opposed to the other five I think that said
21 other.

22 MR. AFSHAR: Okay. So she's --

23 THE COURT: Ms. Padilla, things like that who were -- who
24 may have well been Hispanic.

25 MR. AFSHAR: So -- but just based on the fact that we know

1 that she's Hispanic, I would argue that that's 100 percent of the Hispanic
2 population on the venire panel and they used -- did the Court say 11
3 percent, if it's 1 out of 9?

4 THE COURT: Yeah, 1 out of 9 would be 11 percent.

5 MR. AFSHAR: Okay. So they used 11 percent to get rid of
6 100 percent that represented 1 out of 32.

7 THE COURT: Well, but, come on now, that's disingenuous to
8 say there's no other Hispanic folks on the panel when we know that
9 there are five in the panel of 32 who identified as other and we know that
10 there were about 15 percent the original panel that were Hispanic in the
11 ethnicity part. So I don't think it's fair to say 100 percent of the Hispanics
12 were excluded because that lady happened to put Hispanic into her race
13 designation versus ethnicity.

14 MR. AFSHAR: I totally understand, Your Honor.

15 THE COURT: Okay.

16 MR. AFSHAR: I would say though that we had five to begin
17 with. I don't know how many of those five were left. Even if with like two
18 or three, that's still a significant number I would say.

19 THE COURT: Okay.

20 MR. AFSHAR: At least under *Cooper* in the Ninth Circuit
21 cases that they cited.

22 THE COURT: Okay.

23 MR. AFSHAR: Now, let's take all three and combine them.
24 So if we take all three that means three wit -- and we can also raise a
25 *Batson* challenge, it's not as strong, it's a different gender than the -- but

1 we can still raise it. Three women of ethnicity comprising that would be
2 30 percent, I guess -- 33 percent of their challenges to get rid of that
3 group. I think under any of the ways we do it, whether it's individual or
4 when we combine them, under *Cooper*, that shows that we've met the
5 first prong.

6 I just want to note that the first prong isn't showing systematic
7 exclusion. It's only showing that we have to show do the totality of the
8 facts or the circumstances give rise to an inference. And I would argue
9 that under *Cooper* we've met that.

10 THE COURT: Okay. All right. State.

11 MS. BLUTH: Sure. So I mean, I think that what we have to
12 look at is the beauty of these cases is that they're not just towards the
13 State. When you look at *Diomampo*, you look at *Williams*, and you look
14 at *Cooper* and you apply them to the situations we have here, if you look
15 at the sides -- the kicks by each side, so you have the State here, we
16 kicked six Caucasian individuals, one African American, one Hispanic,
17 and then one other, which was Ms. Pool.

18 THE COURT: Correct.

19 MS. BLUTH: Because we could not identify her.

20 If you look at the Defense, they kicked five Caucasians, two
21 individuals that were Asians, one Native American, which there was
22 absolutely one Native American on this, so that would be 100 percent,
23 and they also kicked one African American, which would be Mr. Harris.
24 So, when you want to talk percentages, I mean, we can -- you have to
25 look at both sides. I think what's more important though is the reasons

1 why these kicks were made.

2 And I want into specifics in regards to the three individuals
3 because for two out of the three of those, that being Ms. Lyons and Ms.
4 Pool, we had approached during the proceedings and discussed our
5 concerns and challenged those individuals. We did not for Ms.
6 Hernandez, so I'm going to start with Ms. Hernandez.

7 THE COURT: Okay.

8 MS. BLUTH: The reason why we chose to kick Ms. Hernandez
9 for cause was because of one statement that -- well two statements
10 really. She talked about being very shy and not being able to voice here
11 opinions in front of groups. But what really bothered me about her was
12 when she said, you know, I think I would probably not want to voice my
13 opinion and I would just go with the others. That brings me great
14 concern about someone who really just doesn't even want to voice their
15 opinions to begin with.

16 She was very quiet, we didn't hear much about her. So the
17 fact that she stated because she's so shy, because she's usually the
18 most quiet person in the group, and that she would probably just go with
19 the majority, that's not someone we feel comfortable as being part of a
20 jury where we're here to decide whether or not someone committed
21 murder. So that was the sole reason why we kicked Ms. Hernandez for
22 cause. Or excuse me, for -- we kicked her -- used a peremptory on her.

23 In regards to Ms. Lyons, we approached on two different
24 occasions, believing that we had enough reasoning to ask you to kick
25 her for cause. And I recognize that we were denied on that but there

1 were lots of things that she said that brought us great concern.

2 The fact that she brought up that she believed she was racially
3 profiled. And my question to her was -- that happened here in
4 Henderson. And my question to her was is that when your distrust of the
5 police started and she said no, it actually happened before that because
6 I was racially profiled once before that.

7 Then I said well was that when your -- is that when you began
8 to not trust the police? No, it actually happened before that when I
9 was -- back when I was a nurse a long time ago and the police officers
10 would bring prisoners in and I would hear them talking.

11 So we're talking about someone who didn't just recently have
12 a -- engage in some type of contact with the police, she's had a level of
13 distrust with them for many, many, many years.

14 Another thing that brought us concern is the fact that she said
15 she would treat officers differently. She would try not to but she could
16 not definitively say that she would not be able to do that. She said that --
17 and she used that good analogy that I spoke about with -- on the record
18 yesterday about that -- you know, if an officer walked in here without
19 officer clothes on, I would believe them more than an officer who walked
20 in and was fully clothed in officer gear.

21 The fact of the matter is, is that she just would assess police
22 officers' credibility differently. She has a deep-seeded mistrust in them
23 and that made us uncomfortable. And so those were the reasons that
24 we chose -- she also talked about when she -- not only was she racially
25 profiled but when she asked the police officer she felt -- not felt, she

1 believed that he had lied to her. So that was for Ms. Lyons.

2 In regards to Ms. Pool, to be quite honest with you, I did not
3 think that Ms. Pool was African American, I thought that she was more of
4 Hispanic -- I thought she was more of a Hispanic descent, but either/or,
5 we did have race-neutral reasons. The first concern for Ms. Pool was
6 that she had asked Your Honor a few questions seeking clarity in
7 regards to the separation between the two phases of a trial.

8 And the one thing that she said on two different occasions was
9 that she wasn't sure she would -- she thought that she would have
10 difficulty separating the phases in regards to she said she would keep
11 thinking about the three penalties. If she were in the guilt phase, she
12 couldn't promise us that that wouldn't keep coming back into her mind.
13 And she referred to it as, in quotes: A humongous weight on her
14 shoulders.

15 Also something that brought us concern in regards to she was
16 very big on rehabilitation and she talked about her brother who was in
17 jail for a period of time. She didn't feel like anything good came out of
18 that, it was only once he got out and got into a halfway house that she
19 felt that he was able to make positive changes and rehabilitate himself.

20 So those are always comments that are concerning to the
21 State when we're going into a penalty phase where someone doesn't
22 feel -- it seemed to me by her comments in that she believes in
23 rehabilitation and that there aren't situations where, you know, we
24 should put people away indefinitely. That people don't get better and we
25 need to get them out of prison and into programs. And so those were

1 the concerns that we had for Ms. Pool.

2 Unless I'm forgetting anything else, Mr. Rogan, that I
3 whispered -- any --

4 [Colloquy between Counsel]

5 THE COURT: All right. Anything further from the Defense?

6 MR. AFSHAR: Yes, Your Honor. So this is the problem. This
7 is why the Nevada Supreme Court's been reversing on these issues. I
8 mean, they reversed *Williams* within -- it was on October 25th and then
9 *Cooper* was reversed on 20 -- December 27th. I'd like to refer to
10 *Williams* just for a second here. Because we were at the first prong, we
11 hadn't gone to the second, but the Court hadn't rule don the first prong
12 yet.

13 So what happened in *Williams*? Before the Court ruled on the
14 first prong, the State interjected objecting that Williams himself had
15 excused an African American venire man for cause and there was no
16 pattern of discrimination. In *Williams*, the Nevada Supreme Court said
17 that before the Court makes a ruling on the first prong that just occurred
18 here and the State interjects with racial neutral reasons, the first prong is
19 moot, we've now gone to the second prong. And that's why they
20 reversed in *Williams*. So now we've gone to the second prong, we have
21 to go to the sensitive inquiry, third prong.

22 A couple things I would like to address though is that, you
23 know, Your Honor pointed out that Ms. Lyons for -- saying that she
24 would be okay, that she could be fair, we have concern for some jurors
25 who were in the other side --

1 THE COURT: well, I think what I said at the bench was I
2 absolutely think you have reasons to strike her for cause, I don't think
3 she's -- or excuse me, during your peremptory challenges, I don't think
4 she meets the threshold for striking for cause and I was comparing her
5 to Ms. Brown in terms of a lot of the equivocal versus unequivocal and
6 certain answers that were being given.

7 MR. AFSHAR: Fair enough. And --

8 THE COURT: Okay.

9 MR. AFSHAR: -- that's the other situation was with Ms.
10 Brown, because that that was a pattern, going back to Ms. Brown. I
11 don't think something that Ms. Brown did -- I mean, I understand the
12 reasons the State offered but I don't think it stood out. I think it's logical
13 to infer that there was a pattern there based on Ms. Brown as well.

14 But again, we've now moved beyond the second prong. Now
15 under *Williams* -- and I can show it to the Court, I have the case right
16 here, we have to move to the third prong. Because Judge Smith in
17 *Williams*, right away ruled after the second prong -- and he even said the
18 same thing, you got rid of African Ameri -- can then the Nevada
19 Supreme Court en banc, unanimous reversal kicked it back. So now we
20 have to go into the third prong.

21 THE COURT: Okay.

22 MR. AFSHAR: Which the Court -- you -- the Court does a
23 sensitive inquiry of it right now.

24 THE COURT: So here's the thing. I mean, I don't think -- and
25 look, the -- a lot of times the State does this because the courts will say I

1 don't know that there's a pattern but why don't you give me your race-
2 neutral reasons --

3 MS. BLUTH: Right.

4 THE COURT: -- and I think that's a lot of the reasons why the
5 State often just jumps into it, here, let me just give you the reasons and
6 we don't have to go through all this.

7 There's a reason that the courts have always said that
8 numbers alone don't rule because there is no case law that stands for
9 the proposition that if you have a juror, or even a couple of jurors, that
10 are -- who without question challengeable because of their answers, but
11 they happen to be part of a racial minority, then you just have to leave
12 them on the jury.

13 So it can't be that well, there was only one Hispanic person
14 and the State challenged them so that's automatically, you know, per se,
15 reversible. There's still got to be some inquiry into what was going on.

16 Now, I think it's vastly different to say, you know, the State
17 uses 29 percent of challenges to wipe out 50 percent of the African
18 American population of a jury pool, versus the State uses one challenge,
19 versus an African American but there only happen to be two of them on
20 the pool. I don't think, in my mind, that that establishes a pattern, nor
21 would I say that challenging one of any minority establishes a pattern.

22 I don't disagree with the proposition that to an extent you're
23 making an inquiry, whether there was a pattern of trying to remove all
24 racial minorities, you can kind of put everybody together in that regard.
25 In this case, that would be three folks. But I also agree that I don't know

1 what Ms. Pool's, you know, cultural or ethnicity or anything is.

2 I didn't assume that she was African American because of her
3 skin tone. I didn't assume that she was Hispanic, or Eastern, or Middle
4 Eastern, or Pacific Islander or anything. I mean, I looked in the, you
5 know, the same thing you guys probably did and she said other. So I
6 don't -- and Pool I'm assuming is her maiden name since she was
7 married, so I don't really know what her ethnicity is. It's not that I fault
8 either of you for saying oh, she may be African American, she may be
9 Hispanic, maybe she's both. I don't know. I just know that she kind of
10 checked the other box.

11 With regard to saying three people out of nine were struck
12 who were racial minorities, that then means that the State uses a little
13 over 20 percent of their challenges against racial minorities and 67
14 percent or so on Caucasian folks. I don't know that that considering that
15 you had about 16 percent of the panel of 32, I think there were 19
16 Caucasian folks and 13 that identified as African American, Asian,
17 Native American, or other.

18 So 13 folks of a racial minority and the State struck three of
19 those. So that's 23 percent of the State's strikes against the minority
20 pool, versus 67 against the Caucasian pool. So I don't know that that in
21 my mind addresses a pattern, nor do I know that striking 3 of 13, which
22 is the same 23 percent, would establish a pattern of trying to remove the
23 racial minority.

24 Now, the State oftentimes brings up what you all did about
25 well, the Defense struck certain folks. I agree with Navid. That's

1 irrelevant unless you're raising your own *Batson* challenge, which
2 prosecutors have done before. I actually had a really, really experienced
3 death penalty attorney that when the State raised that in one of our
4 cases said well that doesn't apply to me and I was like it absolutely
5 applies.

6 Neither side can seek to, you know, for purposes of just I want
7 to strike all the women or I want to strike all the African Americans, or I
8 want to strike all the Hispanic folks, or I want to strike all the Asian folks,
9 whatever it is, neither side should be engaging in that. But nonetheless,
10 with regard to the issues that were raised here, I do think there are race-
11 neutral reasons as to the three individuals.

12 And particularly as we were discussing Ms. Lyons, Ms. Lyons,
13 the main concern that had been raised to me when I was listening to her
14 and then what was raised I believe by the State when she was first
15 challenged was the equivocation and being able to be fair to both sides.
16 She was kind of -- she was one of the I will try.

17 And I believe the State challenged everybody that made that
18 same kind of well, I can try, but they wouldn't say I can do it. That
19 included Ms. Gasperino, who had a lot of other issues as to why she
20 was being challenged. Mr. Bushong, I believe -- I don't think she used
21 the words try but Ms. Brown was along those same lines of trying to get
22 people to their ability to be fair and impartial a to both sides and some
23 struggle getting people to admit that they could do that.

24 Ms. Lyons also had the issue with her distrust of police officers
25 and what we discussed about how she viewed an officer that was out of

1 uniform and therefore she didn't know they were an officer. Versus her
2 distrust of any officer that was in uniform.

3 So I think there were certainly race-neutral reasons and I
4 believe that she was challenged in a similar way to other people that you
5 all just happened to agree with, like Gasperino was agreed with and
6 some of the others. So it wasn't that she stated reasons and was struck,
7 whereas other people stated similar reasons and were left on.

8 Likewise, with Ms. Pool, in terms of what the State has raised
9 today about their concerns about her, I was less concerned with her
10 confusion about the process. I think what she explained later was that
11 oh, I thought you were asking me about deciding sentencing in a
12 vacuum, not being part of the trial phase and just trying to decides
13 somebody's sentence, which I'm not sure how she got confused on that
14 because we were telling them they would sit through obviously a trial
15 phase before they could ever get to the other part but I understood the
16 confusion.

17 I also understand the State's concerns when you have people
18 that have family members that have been incarcerated. She wasn't
19 terribly different in that regard to some of how she viewed rehabilitation
20 and incarceration issues, as did Ms. Braughton, whose brother had
21 similar issues and I think the State struck Ms. Braughton as well who
22 was a Caucasian woman.

23 And then finally, Ms. Hernandez. For the reasons stated for
24 Ms. Hernandez, I agree from viewing and listening to Ms. Hernandez in
25 court that she as a very, very quiet and reserved, kind of a more meek

1 individual. It was tough to hear her on occasion. So look, I mean, I think
2 from the standpoint of both sides, you often get concerned if you think
3 somebody may just follow along with whatever the majority is,
4 depending upon how you view -- you know, where the majority may go
5 in a particular case, that may be good for you, that may be bad for you.

6 Some people genuinely want people that are going to be able
7 to, you know, express their own opinions and come up with their own
8 opinions during the course of deliberations. In that regard I think Ms.
9 Hernandez was not too different from other folks that were either
10 excused under the undue burden or excused by agreement of the
11 parties or also challenged.

12 And the one that was challenged that comes to mind was Ms.
13 Ebel who it was more about language but also was kind of expressing
14 some not so sure how I would be able to -- I think she said it's not that I
15 worry about being under -- able to understand everybody else, I worry
16 about my ability to really be able to interact with everybody else and try
17 and explain things that she had some reservations about that, being able
18 to partake in that; partly because of her Romanian descent and
19 language issues.

20 So all things being said, I'm going to deny any challenge to the
21 three folks that were challenged.

22 Now, that being said, you're not making *Batson* challenges to
23 theirs, you were just pointing out what you thought were appropriate
24 issues?

25 MS. BLUTH: Yes.

1 THE COURT: Okay. All right. So I'm going to leave the
2 panel as situated. So before we get them back in though, let me just
3 make sure that everybody has the same thing here. I have your jurors
4 as being Ms. Robinson, Ms. Stevens, Mr. Gustilo, Mr. White, Ms.
5 Evangelista, Mr. Carey, Mr. Aguirre, Mr. Patlan, Ms. Devon, Mr.
6 Alcantara -- Alcantara, excuse me. Ms. Martinez --

7 MS. SIMPKINS: Did you skip Padilla?

8 THE COURT: Did I skip --

9 MR. ROGAN: I think he skipped Padilla.

10 MS. SIMPKINS: You skipped Padilla.

11 THE COURT: Oh, I skipped Padilla, I'm sorry. Ms. Padilla.
12 So it's Ms. Padilla, Ms. Devon, Mr. Alcantara, Ms. Martinez, and then
13 your alternates as Ms. Stockwell and Ms. Trinidad.

14 MS. SIMPKINS: Yes.

15 THE COURT: Is that what you all have?

16 MR. ROGAN: Yep.

17 MS. SIMPKINS: That's what I have.

18 THE COURT: All right, JR, you can get them in.

19 THE MARSHAL: Yes, Your Honor.

20 [In the presence of the prospective jury]

21 THE MARSHAL: All rise for the jurors.

22 The panel is present, Your Honor.

23 THE COURT: All right. You all can be seated, thank you. We
24 will be back on the record. Mr. McNair, his attorneys, the State's
25 attorneys, and our panel of 32 are present.

1 So I got 18 of you that I'm going to release, Ladies and
2 Gentlemen, so this is a longer list of names. If you'll let me read through
3 them before you get up to leave, I would appreciate it.

4 So were are going to excuse Ms. Savino, Badge Number 5;
5 Mr. Jacobs, Number 11; Ms. Gruber, Number 55; Mr. Haman, Number
6 13; Ms. Ebel, Number 14; Mr. Conti, Number 49; Ms. Belmonte, Number
7 18; Ms. Lyons, Number 50; Mr. Gondy, Number 26; Ms. Pool, 68; Mr.
8 Smith, 32; Ms. Braughton, 70; Mr. McAndrew, 36; Ms. Hernandez, 37;
9 Mr. Dresel, 52; Mr. Oyler, 53; Mr. Harris, 54; Mr. Riecki, 76.

10 Thank you all very much for your time the last couple of days
11 and your participation. I hope that it has been at least somewhat
12 informative and rewarding for you. So I appreciate your patience with us
13 and you are all done with jury duty. Thank you.

14 I hope our baseball team does well, Mr. Gondy.

15 PROSPECTIVE JUROR NUMBER 026: Thank you.

16 THE COURT: You'd be surprised. Sometimes people try and
17 sneak out with the other group, so I always have to count to make sure
18 we still have 14 people. Okay.

19 So I'm not going to delay you any further tonight, I'm going to
20 go ahead and release you. When we get here in the morning, I'll have
21 some more instructions for you about things.

22 When you go outside though, JR's going to give you some
23 blue badges that are juror badges now that you've been selected as
24 jurors. Please make sure you wear that whenever you come into the
25 building. He's also going to tell you about parking. Your parking

1 changes now, you park right across the street from the courthouse.

2 If any of you need any letters or anything for employers to let
3 them know that you're doing jury duty, then let him know that as well and
4 I'll get those typed up for you. We can give you a hard copy, if you need
5 it e-mailed or something like that just let us know, okay?

6 And then tomorrow when you get here in the morning you'll
7 probably be all scrambled up. There is no delineation between what
8 your number is, Juror Number 1 versus 14, so just so you know. Then
9 I'll have some introductory remarks to give you, takes about 10/15
10 minutes and then we will roll into opening statements from the attorneys
11 and then the presentation of evidence, okay?

12 Yes?

13 JUROR NUMBER 9: What time?

14 THE COURT: That's a good question. We're going to start
15 tomorrow at 10:30. So for now I want you to come and just collect out in
16 the hallway. If I don't have any other juries in any of the other four
17 departments deliberating, I'll try and keep you all in the back where the
18 deliberation room is and the bathrooms so you don't have to hang
19 around outside. It's not the best set-up since obviously the attorneys,
20 witnesses, and everybody are coming through there.

21 But for right now when you get here tomorrow, just kind of
22 collect together if you would. You kind of -- you want them down at the
23 end of the hallway?

24 THE MARSHAL: At the end is fine, Judge.

25 THE COURT: At the end down here on the -- to the left of my

1 court as you exit. And then we'll see about keeping you in the back as
2 we get forward with the trial, okay?

3 Anybody else have any questions for right now?

4 No. All right.

5 I apologize that we went a little past 5:30 tonight but I certainly
6 appreciate you sticking around, okay? We'll see you tomorrow.

7 THE MARSHAL: All rise for the jury.

8 [Outside the presence of the jury]

9 MS. BLUTH: Judge, what's your preference tomorrow in
10 regards to timing? I know we're obviously going to read the instructions,
11 then we're going to do openings. Do you want us to have a few
12 witnesses before lunch or do you want --

13 THE COURT: Do you guys have any idea about how long
14 openings are?

15 MS. BLUTH: Mine's less than 30 minutes. It's pretty --

16 THE COURT: [Snapping something].

17 MR. PIKE: That was hilarious.

18 THE COURT: For forever. For forever I'm going to hold on to
19 my rubber band now. I'm sorry, so what'd you say?

20 MS. BLUTH: So less than 30 minutes for my opening.

21 THE COURT: Okay.

22 MS. BLUTH: Obviously, I don't know about Defense.

23 THE COURT: I would say plan on witnesses after lunch just
24 because even if we get through our calendar quickly, which we should
25 be able to do between the change over from getting people gone and up

1 here and all that, I mean, even if we finish up a few minutes before
2 12:00, that's fine, we'll just start at 1:00 with witnesses.

3 MS. BLUTH: Okay. Sounds good.

4 MR. PIKE: I anticipate -- I just want to let you guys know with
5 the opening --

6 THE COURT: Pardon me?

7 MR. PIKE: I anticipate my opening will be about 30 minutes
8 as well.

9 THE COURT: Okay. 30 minutes.

10 [Evening recess at 5:37 p.m.]

11 * * * * *

12
13
14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Brittany Mangelson
Independent Transcriber

1 JURL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 28 2019

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

BY Kory Schütz
KORY SCHLITZ, DEPUTY

5 State of Nevada
6 vs
7 Michael McNair

CASE NO.: C-17-327395-1

DEPARTMENT III

8 C-17-327395-1
9 AJUR
Amended Jury List
4819498

10 AMENDED JURY LIST



- | | |
|--------------------------|--------------------|
| 11 1. Stephen Aguirre | 8. Paul Gustilo |
| 12 2. Maricar Martinez | 9. Fannie Trinidad |
| 13 3. Renee Robinson | 10. Ruth Devon |
| 14 4. Dawn Evangelista | 11. Ashley Padilla |
| 15 5. Harry Alcantara | 12. Michael Carey |
| 16 6. Patricia Stockwell | 13. David Patlan |
| 17 7. Lorna Stevens | |

18 ALTERNATES

19 SECRET FROM ABOVE

20
21
22
23
24
25
26
27
28
000907



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL MCNAIR,

Defendant.

CASE NO. C-17-327395-1

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,
DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 28, 2019

RECORDER'S TRANSCRIPT OF HEARING
JURY TRIAL - DAY 3
VOLUME III

APPEARANCES:

For the State:

JACQUELINE M. BLUTH, ESQ.
JEFFREY S. ROGAN, ESQ.
Chief Deputy District Attorneys

For the Defendant:

RANDALL H. PIKE, ESQ.
MELINDA E. SIMPKINS, ESQ.
NAVID AFSHAR, ESQ.
Chief Deputy Special Public Defenders

RECORDED BY: SARA RICHARDSON, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Thursday, February 28, 2019

[Trial began at 10:43 a.m.]

[Outside the presence of the jury]

THE MARSHAL: Court called to order.

THE COURT: You guys can sit down. Thank you.

MS. BLUTH: Thank you.

THE COURT: So do you want to talk to Mr. White?

MS. BLUTH: I think we -- if you wouldn't mind Judge and
then --

THE COURT: Sure.

MS. BLUTH: And then we had a few things just before
opening statements that we want to iron out with Your Honor.

THE COURT: Okay. So let's do that.

MS. BLUTH: Okay. So there is an individual by the name of
Ashley Parmley, who neither side has been able to secure her presence.

THE COURT: Okay.

MS. BLUTH: We're act -- I mean, we're actively looking for
her to use as a witness but we're also actually looking for her, for her
family. They haven't heard from her in several months. They believe
her to be dead.

THE COURT: Okay.

MS. BLUTH: The last contact we have with a -- is another
homeless person who had contact with her I believe a few months again
and said she was heavily, heavily -- the words method out. The reason

1 why I'm bringing this up is -- Ashley Parmley sees the shooting,
2 describes the shooter and then sees the individual in the 1300 block and
3 identifies someone by the name of Alfonso Henderson as the shooter.

4 THE COURT: Okay.

5 MS. BLUTH: So at this point in time I don't believe it would be
6 appropriate for either one of us to get into any of that in openings
7 because I just don't think either of us would be able to say we have a
8 good faith basis. We've been actively looking for her for a month.

9 We've reached out to all of her family, like I said they believe
10 that -- they are scared that she's dead.

11 THE COURT: Okay.

12 MS. BLUTH: We've checked all the hospitals. We've
13 checked all the jails and we contacted the coroner's office. Nobody has
14 found her. So that was the first issue.

15 THE COURT: Okay. Mr. Pike.

16 MR. PIKE: In reference to that Your Honor, without -- again,
17 we haven't been able to locate her also. And she did not testify at the
18 time of preliminary hearing, so she wasn't part of the motion that I
19 brought.

20 THE COURT: Okay.

21 MR. PIKE: The -- without her coming into testify it would be a
22 hearsay statement as to what she told the officer or the detectives who
23 actually had placed Alfonso in handcuffs.

24 THE COURT: Okay.

25 MR. PIKE: And then released him at the scene.

1 THE COURT: Okay.

2 MR. PIKE: We have the testimony of Mr. Saldana who was,
3 according to his preserved testimony was within five feet of the shooting.
4 So I -- he is a much more reliable witness and much more percipient
5 witness. So unless I can find a way to get around the hearsay or believe
6 that it would become important, I will not raise the issue of the third
7 person that was placed in the handcuffs or potential charges or identified
8 in this case until I find a good faith basis to bring that in.

9 THE COURT: And that third person is -- who Ms. Parmley
10 ID'd?

11 MR. PIKE: Right.

12 THE COURT: Him? Okay. So short answer is you're not
13 going into it in opening. If at some point during the trial you feel there is
14 a basis evidentiary to get into it or somebody finds her then we can talk
15 about it again.

16 MR. PIKE: Right.

17 THE COURT: Okay.

18 MR. PIKE: That would be the appropriate time.

19 MS. BLUTH: The second issue is for one of our first witness
20 by the name of Anthony Razo. Mr. Razo was also homeless, living in
21 the area. Two things about him; number one, he had just gotten out of
22 jail on some -- I believe it was just some misdemeanor things. I don't
23 believe the Defense is intending in getting in on that, I just don't find it
24 relevant.

25 The second issue, which is probably a little bit of a bigger

1 issue is he sees the argument between Mr. McNair and the victim in this
2 case before the shooting happens. And they're on opposite sides of the
3 fence of this Unified Container. And Mr. Razo says that he sees the
4 victim keep his hands behind his back, but he sees like a shiny metal in
5 his hands which he believes to be a knife. He said that he never sees
6 the victim brandish it towards the Defendant. He doesn't believe the
7 Defendant ever saw it, but he says to the police, I believe this is valid
8 stand your ground, this is a stand your ground state -- he kind of goes
9 on for pages. He deals -- he goes through some mental -- he has some
10 mental issues but he -- so he goes back and forth in regards to that.

11 We don't believe that that's relevant. It would obviously be his
12 opinion. It's also contradictory because he states that the Defendant
13 never -- he never saw the knife because the victim kept it behind his
14 back the entire time.

15 THE COURT: Okay.

16 MS. BLUTH: So his opinion about stand your ground and
17 whether or not Mr. McNair had a right to shoot and kill the victim in this
18 case is -- we find to be irrelevant.

19 THE COURT: Okay.

20 MR. PIKE: He was observing the conduct of the parties and in
21 reference to that although it is -- that is a legal theory --

22 THE COURT: Right.

23 MR. PIKE: -- I mean, that would be fair game to cross-
24 examine him on saying well, you believe it was this but what's the basis
25 of that. You're not trained in the law. You don't know really what that is.

1 But you --

2 THE COURT: So let me interrupt you. If we acknowledge
3 that he doesn't know what it is and he's not trained in the law, then how
4 is his opinion on that somehow relevant?

5 MR. PIKE: Well, that's what we have to find out. His opinion
6 is, you know, stand your ground is kind of like just a self-defense.

7 THE COURT: Sure.

8 MR. PIKE: It's -- was it a self-defense? Did you see a knife
9 brandish? Did you not see a knife brandish? You know there was a
10 knife or you appeared there was a knife. And it appeared to be a
11 dangerous situation. So there was some expectation that it's a
12 dangerous place, t's a homeless corridor, it's at night, there's been an
13 argument.

14 And all of that put together did he believe, you know, we can't
15 ask him a -- the ultimate question, was it justified? Or but in your
16 opinion, we could ask was it in self-defense? And it also goes to the
17 state of the mind of the victim in that Mr. Razo believes that he was
18 behaving or had the ability to act in a violent matter and or was armed?

19 THE COURT: That is different. That aspect of it I agree.
20 That anything that he's describing about the demeanor of the victim,
21 whether the victim had something that could have been a weapon, that
22 he saw a shiny object in his hand, did the victim make any overtures
23 towards Mr. McNair during this argument, any of that stuff I think is fair
24 game.

25 But my opinion that is was self-defense that's a legal opinion

1 for the jury. That in my mind that would be no different than somebody
2 coming in and saying, oh, I saw this confrontation and the Defendant
3 clearly acted not in self-defense and intended to kill this person. That's
4 again, that's something for the jury to decide, I mean, they can use the
5 facts to infer intent and or self-defense state of mind. But witnesses
6 can't tell them my opinion as a lay witness that this was self-defense, or
7 this was first degree murder, or this was voluntary man slaughter
8 whatever.

9 So I would agree that whatever he says about -- I believe this
10 was stand your ground, or this was self-defense I would say that's
11 inappropriate for the witness to get into.

12 MR. PIKE: All right. Thank you.

13 THE COURT: But everything else that Ms. Bluth was
14 describing -- I don't know if you were asking to keep that out as well, but
15 all that is I think is relevant and admissible.

16 MS. BLUTH: I think that's all fair game.

17 THE COURT: Okay.

18 MR. PIKE: All right. The other part about him being in
19 custody at the time that he testified. It was some misdemeanor items
20 he -- there not proper for purposes of impeachment. He does have one
21 prior felony conviction.

22 THE COURT: What was he in custody for?

23 MR. PIKE: Some misdemeanors.

24 MS. BLUTH: And I.

25 THE COURT: Was it theft-related things, drug-related things?

1 MS. BLUTH: So there's two times that he's in custody though.
2 He's in custody when he testifies at prelims.

3 MR. PIKE: Correct.

4 MS. BLUTH: And he's in custody right before he sees this go
5 down. I was actually referencing him being in custody because he talks
6 about that a lot in his statement. He says, I just got out of jail so I've
7 only been living here for a few days. I don't think either of those are
8 irrelevant that he was in custody on misdemeanors on each of those.
9 Although when he was in custody on the prelim.

10 MR. PIKE: He's DV.

11 MS. BLUTH: Oh, yeah, that's right.

12 THE COURT: DV.

13 MR. ROGAN: I think it was the same offense, Your Honor, but
14 it was just in custodial dates is two different times.

15 THE COURT: So did he like fail to do his requirements and
16 went back to jail or something?

17 MR. ROGAN: I think so, but I can't say for sure.

18 MR. PIKE: Yeah, he was not.

19 THE COURT: If it was a misdemeanor, DV charge then I
20 would say yeah, I don't know that there's anything within impeachable
21 from that. I mean, theft, dishonesty is a little different.

22 MS. BLUTH: Yeah.

23 THE COURT: Then I would agree that it doesn't sound like
24 there's anything about being in jail prior to whatever he witnessed in this
25 case. Being sup -- in custody at the time he testified, I mean, if it's DV I

1 would say yeah, I would agree that it seems that it's not really relevant to
2 bring up at all.

3 MR. PIKE: Thank you. And it was brought up at the, you
4 know, the only way that it would be brought up if he was here, in
5 custody --

6 THE COURT: In custody, yeah, I agree.

7 MR. PIKE: -- and then we would explain that it was something
8 unrelated, but yeah, the impeachment materials with Mr. Razo's
9 judgement of conviction was -- been provided to me by the State.

10 THE COURT: Okay. What's the last thing, is that it?

11 MS. BLUTH: Jeff, is that it?

12 MR. ROGAN: That's it.

13 MS. BLUTH: That's it. Yeah.

14 THE COURT: Okay. All right. Why don't you go ahead get
15 Mr. White and we'll chat him up.

16 In the future, these are things that at the end of the day, tell
17 me that we have things we need to discuss before opening. So we can
18 either do it at the end of the day --

19 MS. BLUTH: Okay.

20 THE COURT: Or I can tell them a little later so we don't have
21 to be sitting around.

22 MS. BLUTH: Okay.

23 [Pause in proceedings]

24 THE COURT: Mr. White, just grab a seat. First seat's fine,
25 don't worry about it.

1 So we'll be on the record here. Mr. McNair and his attorneys
2 are present, State's attorneys are present, we have our one juror, Mr.
3 White. All right.

4 So how are you doing?

5 JUROR NUMBER 9: Honestly, not well.

6 THE COURT: Okay. You nervous?

7 JUROR NUMBER 9: Very.

8 THE COURT: Okay. So, I mean, look at pretty much 90
9 percent of the people that do jury duty are doing it for the first time.
10 Whether it's a homicide case or anything else. So I get that after you
11 found out yesterday that you were being selected, my marshal told me
12 that out in hall that you were a little panicked about that, a little nervous.
13 Is it just the prospect of now -- I'm now a jury or is there anything else
14 going on?

15 JUROR NUMBER 9: Well, if I'm honest, I don't believe that I
16 was entirely forthcoming with the state of my mental health --

17 THE COURT: Okay.

18 JUROR NUMBER 9: -- when I was being interviewed.

19 THE COURT: Okay.

20 JUROR NUMBER 9: I've been diagnosed with clinical
21 depression and panic disorder.

22 THE COURT: Okay.

23 JUROR NUMBER 9: And I suffer frequent panic attacks,
24 some of which are fairly debilitating.

25 THE COURT: Okay.

1 JUROR NUMBER 9: I attempted while I was being
2 questioned to try to compartmentalize that aspect of myself
3 intellectually --

4 THE COURT: Okay.

5 JUROR NUMBER 9: -- in a desire to try to serve the
6 community, but after being chosen and the realization setting forth my
7 body and my -- the psychology got the better of my intellect.

8 THE COURT: Okay.

9 JUROR NUMBER 9: And I don't believe that I would be
10 available emotionally or mentally to be able to follow the requirements
11 that are needed of me as a juror.

12 THE COURT: Okay. So are you taking medication now?

13 JUROR NUMBER 9: I had been prescribed medication years
14 ago and about ten years ago I had decided to stop my medication.

15 THE COURT: Okay. If you don't mind me asking, why did
16 you stop? Did you feel like you didn't need it anymore or?

17 JUROR NUMBER 9: I felt like I wanted to attempt to live
18 without any sort of chemical adjustment.

19 THE COURT: Sure.

20 JUROR NUMBER 9: I felt like I could exist without it.

21 THE COURT: Okay.

22 JUROR NUMBER 9: But if I'm honest, over the past five or
23 six years especially my condition has been worsening.

24 THE COURT: Okay.

25 JUROR NUMBER 9: And my job as a musician doesn't afford

1 me very much in terms of medical insurance. My recent addition -- my
2 recent hiring by Boyd Gaming has just recently giving me insurance at
3 the start of this year. I'm looking forward to maybe seeing somebody
4 about it.

5 THE COURT: Okay. So here's the first thing I'll say, just you
6 and I, as a couple of dudes talking, there's nothing wrong with taking the
7 medication, right.

8 JUROR NUMBER 9: Okay.

9 THE COURT: Whether it's in my family, you, everybody else
10 in the community, there's a whole lot of people -- I think society has
11 become a little more enlightened in that, right. That we have a lot of
12 folks, you know, brain chemistry isn't just where, maybe we need it to
13 be, to be able to comfortable function, and so a lot of people are taking
14 medication. There's nothing wrong with that.

15 And in the future because I'm sure you'll be summonsed for
16 jury duty in the future, be honest, right. And if you need to you say hey,
17 can I talk to you without everybody else around?

18 JUROR NUMBER 9: I'm --

19 THE COURT: We can do that as well. But what the problem
20 is, is when we get here, right. I've excused everybody else, we've sworn
21 the jurors, and now somebody has an issue that they didn't tell me
22 about, which kind of causes some problems obviously.

23 And it's not that I want to, you know, make you do something
24 that's going to cause you some mental harm, but it's just a difficult
25 problem to work through. Okay.

1 JUROR NUMBER 9: I understand.

2 THE COURT: All right. State, you guys want to ask any
3 questions of Mr. White?

4 MS. BLUTH: No, Your Honor.

5 THE COURT: All right. Mr. Pike?

6 MR. PIKE: No, Your Honor.

7 THE COURT: Okay. Is there anything else that you wanted
8 to tell me? Anything else that I need to know?

9 JUROR NUMBER 9: Just that a lot of my coping method --
10 mechanism for dealing with a lot of this is to attempt to disassociate
11 myself from my current surroundings.

12 THE COURT: Okay.

13 JUROR NUMBER 9: The reason why I think that I would not
14 be an effective juror is because I would not be able to affectively listen to
15 counsel or any sort of -- anybody that's talking on the stand.

16 THE COURT: Okay.

17 JUROR NUMBER 9: I don't feel confident -- I'm certain that I
18 would be unable to recall key facts within the case and I certainly don't
19 feel confident -- I'm convinced that I would not be able to make an
20 effective decision at the end of this.

21 THE COURT: Okay. So is it safe to characterize you as kind
22 of having good days and bad days? The only reason I say that is
23 yesterday you seem -- you as -- as normal as the day is long.
24 Obviously, you told us, you know, I'm a little quiet, I don't really speak
25 my opinion too much. When we talked about the difference of being on

1 stage as a musician which look, I get, my kids have both been in theater
2 and there's a difference between that and interacting with everybody
3 else. But I didn't get any sense yesterday, that you were struggling with
4 being here or having any problems.

5 JUROR NUMBER 9: I was --

6 THE COURT: And quite honestly today, it's demonstratively
7 different not just in what you're telling me but in your body language as
8 well.

9 JUROR NUMBER 9: Yes, sir. When I was sitting in the
10 audience it was easier for me to cope, not being spoken to or not having
11 to pay attention to my surroundings.

12 THE COURT: Okay.

13 JUROR NUMBER 9: I was able to keep my head down and
14 just kind of pretend that I was somewhere else. When I was called up, I
15 was very intimidated by the jury box, by counsel, and by the seemingly
16 rushed nature of the questions. I ended up saying yes, and -- to a lot of
17 things that I -- and didn't end up speaking out on this because I felt like I
18 was nervous that my peers would be upset that I would take additional
19 time at the end of the day.

20 THE COURT: Okay.

21 JUROR NUMBER 9: To keep them from going home.

22 THE COURT: Okay. All right. Still no questions?

23 MS. BLUTH: Oh, I do have a question now.

24 THE COURT: Okay.

25 MS. BLUTH: You stated that at the end of the day you felt like

1 you didn't voice your opinion on some of the questions because you
2 wanted to keep it moving, you didn't want people to be angry with you?

3 JUROR NUMBER 9: Yes.

4 MS. BLUTH: Can you think of off the top of your head what
5 were the opinions that you stayed silent on that you do have?

6 JUROR NUMBER 9: Well, the opinion that I don't believe that
7 I would be an effective juror --

8 MS. BLUTH: Oh, okay.

9 JUROR NUMBER 9: -- because of my mental conditions.

10 MS. BLUTH: Were there any specific questions though that
11 we asked where you answered, no, but it should have been a yes, and
12 we should have known things besides whether or not you thought you
13 could be fair and impartial and effective.

14 JUROR NUMBER 9: Just that in the sense when you asked
15 me is there anything else that I should know about me and I just said,
16 no, that's -- you guys have everything, but I didn't.

17 MS. BLUTH: Okay. Thank you so much. Nothing further,
18 Judge.

19 THE COURT: Anything, Randy?

20 MR. PIKE: No. Just for future references there's -- would it
21 have been more comfortable if it would have just been you individually
22 here in the courtroom talking with the attorneys and the Judge and
23 without all the other jurors around?

24 JUROR NUMBER 9: Yes, that would have been slightly
25 easier. But I don't know that it would of necessarily -- I don't feel

1 confident that it would have changed by demeanor much.

2 MR. PIKE: Okay. There wasn't -- you didn't feel confronted --
3 or adversely confronted by either myself or the DA?

4 JUROR NUMBER 9: Just the intimidation of speaking to
5 lawyers in a courtroom for the first time.

6 MR. PIKE: Thank you very much, sir.

7 THE COURT: So if I understand the answer you just gave Mr.
8 Pike, a moment ago. You probably would have said what you said
9 yesterday anyway, even if it was by yourself and then just kind of hope
10 that I'll get through this okay. And after it was over yesterday, you
11 realized I'm not going to get through this okay.

12 JUROR NUMBER 9: Yeah. As soon as -- I wanted to say
13 yes, to as many things as possible just to make the questions stop.

14 THE COURT: Got it. Okay. All right. I'll tell you what, why
15 don't you go ahead and head back with the marshal. And JR you guys
16 can just hang outside for just a second. Let me talk to the attorneys
17 before you go get -- just keep Mr. White with you for a moment. Thank
18 you, Mr. White.

19 JUROR NUMBER 9: Thank you.

20 [Juror Number 9 exits]

21 THE COURT: Anything?

22 MS. BLUTH: I'm going to ask that he be released. I feel really
23 uncomfortable with his mental state with some of the things that voiced.
24 I mean, he is -- when I walked into court this morning, I told the Defense
25 that I really did think he was having a mental breakdown outside. All the

1 other jurors were sitting together, he was completely separated and he
2 was just pacing back and forth, pacing back and forth, ringing his hands,
3 I just don't think he has the right -- I don't want to say mental health
4 because that --

5 THE COURT: Right.

6 MS. BLUTH: -- but I just don't think right now is an
7 appropriate time for him to be a juror.

8 THE COURT: Randy.

9 MR. PIKE: I'm just -- I'm concerned that some of his coping
10 skill like snapping the rubber band, which we can all use now for -- with
11 the State.

12 MS. BLUTH: You're welcome.

13 MR. PIKE: A little bit too long.

14 THE COURT: We are all going to hold Mr. Bluth to that in the
15 future.

16 MS. BLUTH: You're welcome.

17 THE COURT: I contemplated putting rubber bands in all the
18 juror's chairs today so they could start snapping when they felt like you
19 were talking too much.

20 MR. PIKE: But with that, and I mean that with no -- nothing
21 derogatory towards him because he's found great ways to
22 accommodate what he demonstratively shows as a disability, but he just
23 works through it. And rather than subject him to this and the potential
24 that it may -- we may go further into the jury -- the trial process and then
25 he would have to leave. I think it's better to do it at this time.

1 THE COURT: Okay. So, yeah. I will make a finding that he
2 was certainly somebody that I would have excused for cause yesterday
3 had he been forthright, and I appreciate that he admitted today that he
4 wasn't forthright yesterday. But he clearly has some issues which
5 there's no sigma too, but I appreciate that he admitted that he's had
6 some mental health issues that he's been prescribed medication for in
7 the past and he chose to stop taking and that he's -- by his own
8 admission that he's hoping to maybe get back on.

9 And he's really in the best position -- I think we always realize
10 with jurors that's why we make them commit to certain things, he's in the
11 best position to tell us whether he's in a state of being where he can be
12 an effective juror. And it sounds like from his own admission that that's
13 just not going to happen. My worry would be -- because this started
14 immediately last night. My -- as I can't remember if we were still on the
15 record, but last night after we released the jury, my marshal came back
16 in and said, I think he's having a panic attack outside right now. And
17 obviously it's continued on into today.

18 And so my worry would be if you try and have him go forward
19 and if something happened in front of the other jurors, does something
20 happen during lunch breaks with the other jurors, does something
21 happen in deliberation with the jurors that is of such a nature that you
22 end up having to declare a mistrial because of some conduct that he's
23 engaged in.

24 So for all those reasons I do think it's appropriate to go ahead
25 and excuse him. And we will move forward. That means Ms. Stockwell

1 becomes a deliberating juror and Ms. Trinidad is our alternate.

2 Okay. Anything else before we get started?

3 MS. BLUTH: No, Your Honor.

4 THE COURT: Have you guys made sure your stuff is all

5 connected, and hooked up, and ready to go?

6 MS. BLUTH: Yes, I did.

7 THE COURT: Okay.

8 MR. PIKE: I'm hooked up and connected.

9 MS. BLUTH: Are you sure?

10 MR. PIKE: I'm going to stand up and I'm going to talk. I'm

11 going to talk me an argument.

12 [Pause in the proceedings]

13 [In the presence of the jury]

14 THE MARSHAL: All rise for the jurors.

15 THE COURT: You all can be seated thank you. All right. We

16 will be on the record Mr. McNair's here with his attorneys, State's

17 attorneys are present, we have our jurors present as well.

18 Ladies and Gentlemen, before we get started, I'm going to

19 give you a different oath. There is a separate oath that we administer to

20 folks once you're selected as jurors. So again, you can remain seated

21 but it you'll just raise your right hands for me.

22 [Clerk swears in the jury panel]

23 THE COURT: Okay. Does everybody have a clipboard and

24 notepad in your chairs?

25 Yeah. Okay. Great.

1 So as I mentioned yesterday there's some information that I'm
2 going to go through with you before we get into the opening statements
3 from the attorneys. It is information that's common just a little bit of a
4 road map, if you will, about how a trial goes so you'll kind of be familiar
5 with things as they're starting to occur. There are some preliminary
6 legal instructions in here as well. It is not a substitute for the jury
7 instructions at the end of the case. It's just a couple of preliminary
8 things.

9 And then there's also some information that I'm going to talk to
10 you about -- about what you can and cannot do as jurors during the
11 course of the trial. Before I do any of that though I'm going to have Kory
12 read to you the Information. Again, the Information is a document that
13 puts somebody on notice of the charges they're facing not evidence of
14 the allegations. But she's going to read the charges to you as well as
15 the plea that was entered by Mr. McNair to those charges.

16 [The Clerk read the Information aloud]

17 THE COURT: All right. So those are the charges in the case,
18 Ladies and Gentlemen. And again the Information that contains those
19 charges is just the Notice Documents, it's not evidence of the allegations
20 it contains. Mr. McNair, has plead not guilty to those two charges and
21 as he sits here, as we talked about yesterday constitutionally, he's
22 presumed innocent. The purpose of the trial will be to see if the State
23 meets their burden of proof in regard to the charges that they've
24 brought.

25 The evidence in the case, as we talked about yesterday with

1 you all as fact finders. Your primary purpose in the case is to be the fact
2 finders and figure out what you think the evidence is based upon what
3 you are provided in terms of testimony of witnesses and any kind of
4 exhibits that are introduced during the course of the trial. And you can
5 make inferences from the evidence which you believe are reasonable
6 based on what's been provided to you.

7 Trial begins with opening statements. Each side has the
8 opportunity to make an opening statement. Opening statements are the
9 words of the attorneys, not evidence; it's just an opportunity for the
10 attorneys to discuss with you what they believe the evidence is going to
11 be once we starting putting on evidence in a case in chief. And I'll talk
12 about a case in chief in a moment.

13 As I said, each side has an opportunity to make an opening
14 statement. The Defense in particular doesn't have to make an opening
15 statement, they don't have any kind of burden in the case. They could
16 also defer making an opening statement until after the State presents
17 their evidence in the case in chief.

18 So what's a case in chief? Case in chief is just each party's
19 opportunity to present their evidence. So it consists of the calling of
20 witnesses and the production of exhibits, whether it's a document or a
21 physical item or something of that nature. Any witnesses that are called
22 in the State's case in chief -- the State goes first. Any witnesses that are
23 called in the State's case in chief, the State gets to question them and
24 the Defense gets to question them as well. And once the State is
25 finished with their case in chief it's kind of referred to as resting their

1 case. Then the Defense would have the opportunity to present a case in
2 chief.

3 Again, the Defense has no burden in the case, they don't have
4 to produce a witnesses or evidence, but they have the opportunity to do
5 so. If they choose to call witnesses, then the State has that same
6 opportunity to examine their witnesses like they had the opportunity to
7 examine the State's witnesses.

8 Depending upon whether the Defense puts on any witnesses
9 in a case in chief the State would then have an opportunity to present
10 what we call a rebuttal case. And the Defense could potentially put on a
11 surrebuttal case.

12 In regard to the evidence that gets produced in a trial, we
13 generally refer to it in one of two ways, and you've probably heard these
14 terms before we call it direct evidence or circumstantial evidence. Direct
15 evidence is the testimony of the person about what they personally saw,
16 or heard, or did, such as an eyewitness to something.

17 Circumstantial evidence on the other had is jury gets
18 presented with a chain of facts and you can use that chain of facts to
19 infer the existence of some other fact, even though that other fact wasn't
20 proved by direct evidence. And I'll give you an example to kind of --
21 makes it a little easier to understand.

22 Let's say you're driving home after work today -- or after court
23 today, and you're on 95, you're going out to the northern part of town
24 and it starts to rain. And you see the rain falling on your car maybe if
25 your radio's off, you hear the rain falling on your car. You have to put

1 your windshield wipers on, you can see the ground getting wet, people
2 kind of drive goofy like they do here when it rains. Maybe you roll your
3 window down, you got your hand out you can feel the rain on your hand.

4 If anybody asked you to come in court and testify about that
5 later on, as to whether it was raining February 28th, 2019 at 5:30 in the
6 evening, you'd be an eyewitness. You could provide direct evidence. I
7 saw the rain. I heard the rain. I felt the rain. I was experiencing,
8 personally, the rain.

9 On the other hand, let's say you drive home after court today
10 and you park your car in your driveway and you notice what you would
11 believe to be rain clouds in the sky, very dark clouds but it's not raining.
12 And you go inside your house, a couple you come back outside and now
13 you notice that the grounds wet, you car's wet, water's running down the
14 street, the clouds are gone, the sun's poking through, it's very humid in
15 the air and your looking around saying pretty sure it rained while I was in
16 my house. I didn't see the rain, or hear the rain, or feel the rain but
17 there's all these little factors that lead me to conclude that it rained, even
18 though I didn't personally experience it. So that would be proof of the
19 fact that it rained by use of circumstantial evidence.

20 Under the law you can use both direct evidence and
21 circumstantial evidence to decide any issue in the case. It will be up to
22 you to decide if a fact has been proven by circumstantial evidence and it
23 will be up to you to decide how much weight to give any piece of
24 evidence, whether it's direct or circumstantial but you can utilize both
25 forms of evidence in deciding any and all issues in the case.

1 Anything you see or hear outside the courtroom is not
2 evidence and that must be disregarded.

3 In regard to the presentation of evidence, please understand
4 as well that it's the duty and obligation of attorneys to raise objections to
5 things that they feel should not properly be brought before the jury.
6 Don't hold it against them for doing that. That's part of doing their job.

7 Objections are usually raised to a question asked of a witness
8 before the witness actually answers the question. So there is a
9 perception that maybe the question is improperly formed, it deals with a
10 topic that's not really relevant to the trial, it's going to call for some kind
11 of improper answer, things like that, so the attorneys will raise an
12 objection.

13 If I overrule the objection, witness gets to go ahead and
14 answer the question. If I sustain an objection, that means that the party
15 that's asked the question needs to ask a different question, move on to a
16 different topic something like that.

17 Sometimes objections get raised after a witness has already
18 started answering a question. So we all know people that you run into
19 them and you're just kind of in passing say hey, how you doing, right?
20 Most people just say great and kind of keep going. Some people, you
21 know, you're still talking to ten minutes later because their -- they just go
22 on and on about whatever it may be. People do that a lot when the
23 come to court. Because coming to court isn't kind of like casual coffee
24 table conversation, there are certain rules of evidence that apply.

25 So for instance if somebody has a pretty simple question and

1 they, you know, kind of what to go off on a tangent, there may be
2 objections that are raised where I have to stop the witness, sustain an
3 objection and order you to disregard certain things that the witness has
4 said because they weren't related to the question.

5 If I do that, if I order something stricken and I order you to
6 disregard it, you have to do just that. Even though you already heard it,
7 it is something that you cannot give any weight or consideration to in
8 your deliberations.

9 With regard to the witnesses themselves, in considering the
10 weight in value of the testimony of any witness you can take into
11 consideration the attitude and behavior of the witness, the interest of the
12 witness and the outcome of the case if any, the relationship of the
13 witness to the Defendant or the State, the inclination of the witness to
14 speak truthfully or not, and the probability or improbability of the
15 witnesses' testimony, given everything else in the case.

16 So what that means in short is that you can give each witness
17 whatever weight and credibility you deem them appropriate and you can
18 parcel that out to the portions of their testimony as well.

19 After all the evidence has been produced regardless of who
20 calls the witness, we'll have closing arguments in the case. Before the
21 arguments, I'll give you the jury instructions. We talked about that a little
22 yesterday so you'll have those read to you before the arguments. And
23 then we'll have closing arguments.

24 Closing arguments, like opening statement are the words of
25 the attorneys they're not evidence, but it's the opportunity for the

1 attorneys to discuss with you the evidence you've received and talk to
2 you about the jury instructions you've been given, and about how you
3 should put all that together to come up with a just and proper verdict in
4 the case.

5 Because the State has the burden of proof, they both begin
6 and end the closing arguments so the prosecution can give a closing
7 argument, the Defense can give a closing argument, and then the
8 prosecution can give a rebuttal closing argument. After the arguments,
9 that's when you all will go back to deliberate on your verdict.

10 During the course of the trial, we give you the club path -- the
11 clipboards and note pads obviously so that you can take notes.
12 Notetaking is important, you don't get a transcript at the end of the case
13 about what everybody has said. On the other hand, it's also important to
14 watch and listen to people as they testify so don't let really ambitious
15 note taking interfere with your ability to watch and evaluate the
16 witnesses as well. And don't pay any attention to when I'm taking notes
17 or not, I may be taking notes about witnesses, about jury instructions,
18 about tomorrow's calendar whatever it may be. So just kind of rely on
19 yourselves to engage in notetaking.

20 During the course of the trial, if any of you come upon the
21 belief that maybe you know something about the case or about one of
22 the witnesses and we did not talk about it during jury selection, I need
23 you to do two things; number one, let the marshal know right away and;
24 number two, please don't talk to any other jurors about what it is you
25 think you've come to believe you know about the case.

1 And this usually happens like this, the attorneys talk to you
2 about these long lists of witnesses, right. When we do jury selection
3 but you don't get a year book where you get to go in and look at
4 everybody. Occasionally somebody walks into court and a juror says
5 wow, didn't recognize their name but I recognize that person. They live
6 in my neighborhood, they go to my grocery store, their kids go to school
7 with my kids whatever it may be. If anything like that happens and you
8 think hey, maybe I know something about this, just as I said, make sure
9 you let the marshal know right away so we can talk about it if we need to
10 and don't say anything to any of the other jurors about what it is you
11 think you know.

12 You're also admonished that you cannot visit the scene of any
13 of the acts or occurrences made mention of during the trial unless I
14 specifically direct you to do so. That means, you know, if people talk
15 about the scene where something's alleged to have occurred, a
16 residence where somebody lives, anything like that, you can't go driving
17 by those places to look at them on your own. You have to rely each of
18 you individually on the evidence on that's presented here in court.

19 You cannot investigate the case on your own. You cannot
20 engage in any kind of legal or factual research on your own. Again,
21 everything you need to know, you'll learn here in court.

22 Don't engage in any social media communication, we talked
23 about that yesterday. And you must not be influenced in any degrees by
24 any personal feelings of sympathy or prejudice against either the State
25 or the Defendant. They're both entitled to the same and fair and

1 impartial considerations from our jurors.

2 One of the things that came up yesterday, I think it was Randy
3 during his questions in jury selection, mentioned that you all get to ask
4 questions through the course of the trial. So jurors are allowed to ask
5 questions, written questions of any of the witnesses who are called to
6 testify. There's a specific kind of protocol to how we do that however.
7 You're not encouraged to ask a large number of questions because
8 that's obviously the primary responsibility of the attorneys involved. And
9 I have the ability to preclude individual jurors from asking, you know, an
10 excessive number of questions. I've never had to do that in 14 years.
11 Jurors are always more than appropriate, so don't worry about that.

12 The way the process works is, let's say the State calls a
13 witness. The witness takes the stand and the State gets to conduct
14 what we call direct examination that's their opportunity to examine the
15 witness. Following that the Defense gets to conduct cross-examination
16 that's their opportunity to examine the witness. That may go back and
17 forth a couple of times. We call it redirect examination, recross
18 examination.

19 As soon as they're both done, I'll look over to you all and say,
20 do we have any questions from our jurors. It has to be in writing so don't
21 just kind of fire it off verbally, you got to write it down so we can look at
22 it. But if you have questions just make sure you raise your hand so we
23 know. JR will collect the questions from you, they'll bring them up to me,
24 I'll take a look at them with the attorneys and if I decide they're legally
25 appropriate, I'll ask the questions of the witness and then they'll -- the

1 attorneys will get a chance to follow up. We do then not have more
2 questions from the jurors. It's just that one opportunity for you all to ask
3 those questions.

4 For your questions to be legally appropriate, they need to be
5 factual in nature and designed to clarify information the witness has
6 already been provided. So it cannot be a question for me or the
7 attorneys or somebody else who you think may be a witness later on or
8 should be a witness anything like that. It's got to be Mr. Jones is on the
9 stand, Mr. Jones is describing some things and I need some clarification
10 on that. If you abide by that, you'll generally be okay.

11 What I always suggest to people is, maybe if you have these
12 questions while the witness is testifying you write them down. A lot of
13 times as the attorney's questions go on, your questions get answered so
14 you just kind of cross that one out. But once we get to the end if you still
15 have those questions just, like I said, raise your hand.

16 The only thing I need is that you write your juror number on
17 the piece of paper. So we start with Number 1 where Mr. Aguirre is and
18 go all the way down to number 14 -- or Number 13 now. So just write
19 your juror number and then your question. Please make them legible. I
20 don't always have the best handwriting but I need to make sure yours
21 are legible so I know what's being asked.

22 And then use a sufficient piece of paper because I have to
23 write some notes on there as well. I have jurors who are very
24 conscientious sometimes and they tear off little bitty pieces of paper.
25 You can use a whole page, it's okay, even if your questions don't take

1 up the whole page.

2 All right. Don't discuss the case with anyone as I said, you
3 have to keep an open mind but even during our deliberations you cannot
4 discuss it with each other. The only time to discuss the case is in the
5 deliberation room. And make sure you do not decide any issues in the
6 case until you go back to deliberate with your fellow jurors.

7 If you need a break at any time, please get my attention or
8 JR's attention as you kind of came to understand during jury selection
9 we take a break about every hour and a half to two hours so you can
10 kind of depend on that. But if you're not feeling well, if you're -- need to
11 use the restroom anything like that ahead of those normal breaks then
12 like I said, get our attention.

13 You can bring drinks into the courtroom, I think I said that
14 during jury selection if I didn't, I apologize. But if you're bringing a drink
15 into the courtroom, bringing some candy, things like that in there it's
16 perfectly fine. Try and bring drinks that have a top to it though if you
17 would so they don't spill or anything.

18 If you can't hear a witness, then get our attention as well.
19 Sometimes we may forget to get the microphone close to where the
20 witness is. Sometimes people just have a very soft voice. If any of you
21 have any hearing difficulties that are causing you any problems because
22 of where you're situated that we have some headphones that you can
23 where as well. So just kind of let JR know that.

24 Is there anybody testifying in anything other than the English
25 language?

1 MS. BLUTH: There's not.

2 THE COURT: Okay. All right. So that's pretty much it for me.
3 Just a reminder, don't talk to each other about the case, don't talk to
4 anyone else about the case, don't do any kind of investigation or
5 research on your own. And please always remember before you come
6 into court to silence your phones. You don't have to turn them off, but if
7 you just make sure there on completely silent even vibrating because
8 sometimes that interferes with the sound system in here if the phone
9 goes off and vibrates.

10 All right. Thank you. I will turn it over to the State for their
11 opening statement.

12 MS. BLUTH: Thank you, Judge.

13 [Colloquy between Counsel and the Clerk]

14 THE COURT: So this was part of our delay this morning,
15 unfortunate -- it's not the attorney's fault. I mean, it's -- at the end of the
16 day, all this kind of stuff, blame me. It's my courtroom. But we have a
17 new system that got put in and we have some glitches.

18 MR. PIKE: Court's indulgence.

19 THE COURT: Okay.

20 **OPENING STATEMENT**

21 BY MS. BLUTH:

22 September 14th of 2017, started off like any other day for the
23 victim in this case. His name is Gordon Phillips. But by the end of that
24 evening Mr. Phillips lay in the hospital deceased because he had been
25 shot eight times. The individual responsible for the death of Mr. Phillips

1 is the man who sits before you today and that is Defendant, Michael
2 McNair. But to understand that situation we need to go back and look at
3 some of the facts that surrounded how these two began in an altercation
4 or an argument in the earlier hours that evening.

5 So as a point of reference, we talked a little bit yesterday
6 about this Flavors. I think Mr. Pike had talked to you about a lot people
7 go to this Flavors Ice Cream Parlor. It's on -- located at 1300 North Las
8 Vegas Boulevard. And the thing about Flavors is it is an ice cream --
9 like little ice cream parlor, but it's connected to a building that has a lot of
10 different companies. Overall the whole building belongs to Anderson
11 Dairy where a lot of us get our milk, right.

12 But Anderson Dairy owns Crystal Peaks, which is a water
13 bottling company and then Unified Containers, which creates all the
14 bottles for Anderson Dairy and Crystal Peaks so all of those companies
15 work in these buildings located at this 1300 North Las Vegas Boulevard
16 point of business.

17 So if you look up here, just to give you an idea of where this is
18 located in the valley. So Las Vegas Boulevard you see it running north
19 and south and then you see the Searles is -- and that is the com -- the
20 cross streets of where this Flavors, Crystal Peaks, Unified Containers,
21 Anderson Dairy business is. So that's where that's located.

22 And then as a point of reference also if you look across the
23 way that's where Palm -- the downtown Palm Mortuary is so you guys
24 can kind of get an idea of the place in Clark County that we're talking
25 about.

1 So across from Unified Containers which I'm going to -- I don't
2 want to have to say Unified Containers, Flavors, Anderson Milk every
3 time, so I'm just going to call it Unified Containers from this point on. But
4 across from Unified Containers and a little bit down, there is what we
5 refer to as a homeless encampment. And that's where usually like a
6 larger group of homeless people will -- I don't want to say they
7 necessarily live together but they live in a common area. So that's
8 where they'll have their cots, their sleeping bags okay and that is where
9 at this point in time Gordon Phillips was living and that's where he was
10 staying, that's where he would sleep at night.

11 The Defendant was working at Unified Containers and so he
12 worked -- most of the time he worked night shifts and so you're going to
13 hear the fact in regards to this happened about -- their contacted
14 happened between 9:13 and 9:26 p.m. on that date.

15 This is the inside of Unified Containers where Mr. McNair
16 worked. And the reason why I'm bringing this particular picture up is to
17 talk to you about two things. Number one, a lot of this was caught on
18 video surveillance, there's video surveillance both in side and outside of
19 the Unified Containers. The time you will look up -- always when you're
20 watching the video, up in the right-hand time will be -- excuse me up in
21 the right-hand corner will be the timing of the video. It is forward three
22 hours. So here it says 12:22 the actual time is always -- you just need to
23 subtract three so it's actually 9:22, it starts at 9:13, ends at 9:26, but just
24 to give you a point of reference.

25 So this is the inside and you're going to watch the video

1 surveillance, you're also going to hear from several witnesses. And I'm
2 going to go through several stills of the video in a moment. The video is
3 actually I think total maybe like 54 minutes long so I'm not going to play
4 the entire thing in my opening statement. You will hear the end -- you
5 will see the entire thing when we play it through some of the witnesses.
6 But for this purpose, I'm just going to go through stills of the video and
7 discuss what you are looking at.

8 The other thing that you will hear from live witnesses who
9 were witnesses to actually what happened and you will hear from those
10 individuals. And basically, what they'll say is that Mr. McNair was
11 listening to music, very loud music outside of his pickup truck when he
12 was on one of his breaks. His front door was open, he was standing
13 outside and he was listening to music.

14 Mr. Phillips, who was sleeping at the time or getting ready to
15 go to sleep walked over and told him that he needed to turn or asked
16 him that he would like him to turn his music down and an argument
17 ensued between the two.

18 So you will see that contact start -- excuse me, at about 9:13
19 pm. So if you see the red circle that's the Defendant's vehicle, it's a
20 black truck, and the door's open and you can see there are two
21 individuals, one on the side of the fence where the truck is, that would
22 be the Defendant Mr. McNair. And then there's another individual on the
23 opposite side of the fence and that is the victim in this case, Mr. Phillips.

24 So you'll hear from witnesses who actually, you know, see
25 what's going on because obviously you can see the video but you can't

1 hear what's going on. But you'll hear from witnesses and you'll hear that
2 Mr. Phillips approached and asked him, turn down the music. Mr.
3 McNair didn't want to turn down the music and so the two get into an
4 argument.

5 After that argument, the Defendant goes inside and gets an
6 individual by the name of Ramiro Romero. Ramiro works at Unified
7 Containers as well and the Defendant is his supervisor. And so you'll
8 watch Mr. McNair go in speak to Mr. Romero and then the two then go
9 back outside to this part of the building. So that is Searles, the street
10 directly across that you're looking at here from this view. And what you'll
11 see around 9:17 p.m.so just a few minutes after that argument between
12 the Defendant and the victim, he, he being Mr. McNair, goes and get Mr.
13 Romero and the two get out -- go out to the steps.

14 Mr. Phillips is standing over here in the street and you'll hear
15 from witnesses that the Defendant was kind of shouting things over at
16 the victim.

17 While you watch these two on the steps, you will notice two
18 things. Number one, you will see the Defendant make a telephone call,
19 you can see his cell phone lighting up, you can see him on it for a few
20 seconds, maybe a minute. And you'll see another thing. Now, right
21 now, I wish I were taller but I can't reach, but if you look right now the
22 Defendant's hand is outstretched and he is holding a gun out like this.

23 You'll have this video -- first of all you'll see this video multiple
24 times during the trial but you'll also take it back for you when you
25 deliberate you can slow it down and do all these things. But about 9:17

1 the Defendant raises up his hand towards the victim the victim still in the
2 street -- raises up towards his hand and he displays a weapon. Does
3 not shoot the weapon but just displays it and then puts his hand down.

4 Right after that at 9:19, the Defendant and Mr. Romero then
5 leave the property and you can see them, the Defendant's in the blue
6 shirt, Mr. Romero's in the dark clothing, they exit the property thought
7 that sliding gate and they walk all the way up to Searles and then they
8 stop right here at this corner. And you will hear from witnesses and you
9 can kind of see on the video. They stop at the corner, the don't cross
10 the street and they are shouting things over at the victim.

11 The victim, like I said, the -- his you'll see it in a moment but
12 his cot or little sleeping bag area is a little bit down the street right over
13 here on the Palm Mortuary side.

14 After the yelling occurs, both return back to the property,
15 meaning Mike McNair and Ramiro Romero walk back to the property,
16 you can see them where the red square is, walking back into the
17 property. And then Mr. Romero enters back into the property where he
18 remains for the rest of the time of this incident.

19 The Defendant waits right here at this sliding glass -- excuse
20 me at this sliding gate. What he is waiting for is this individual to come.
21 Right at 9:22 pm, an individual by the name of Mitchell Johnson arrives
22 in this white Suburban. This white Suburban as you can see has quite a
23 bit of damage on the passenger side of it which you will hear witnesses
24 talk about.

25 Mitchell Johnson is the Defendant's younger brother. They're

1 about three years apart. Mitchell Johnson arrives in that Suburban with
2 his girlfriend, Bianco Redden. You will watch as Mr. Johnson gets out of
3 the vehicle. He doesn't have a shirt on at first, he's in black pants and
4 he has a black shirt I believe like over his head, he then takes off --
5 takes the shirt off of his head, puts it on his body, so he's in all black.

6 Another thing about Mr. Johnson he's actually quite a bit
7 smaller than Mr. McNair, several inches. He's more about 5'5, 5'6, he's
8 a smarter -- excuse me, he's smaller individual, whereas the Defendant
9 is taller about 6'0, 6'1 and much more lengthy -- lanky.

10 You will see about 9:22, that Suburban arrives and at 9:23,
11 you can see the both of them walking across the street so they walk up
12 Searles Avenue towards the Boulevard and then you see them cross the
13 street. You can see them on the video, they actually go right up to the
14 corner and they do cross over the street.

15 You then see very shortly after at, 9:25, you see them both
16 running around the corner, running back to Flavors. You will hear that
17 those shots were fired at 9:25. The reason why we know that is because
18 at 9:26 the 9-1-1 calls start coming in about someone being shot.

19 The two come back to the property, Mitchell Johnson gets
20 back into the Suburban and he and Bianco Redden take off. The
21 Defendant will go into the property and you'll see video surveillance from
22 him once he enters back into the property. But like I just said the 9-1-1
23 calls come in at 9:26, talking about multiple gunshots and that someone
24 has been shot multiple times.

25 As those phone calls are coming in, the Defendant walks back

1 into Unified Containers to that same area where Mr. Romero was
2 working.

3 At 9:26, you'll see him reaching for something in his left pocket
4 and right after that you'll see the gun. He pulls out the gun clearly. He
5 shows the gun to Mr. Romero, you can see the gun right there in his left
6 hand, he shows the gun to Mr. Romero and speaks to him. You can see
7 him now putting the gun back into his pocket with his right hand. He
8 speaks to Mr. Romero and the two go off camera for a split second, we
9 can't see them.

10 The next thing we can see is at 9:27 the Defendant is pulling
11 out a red backpack from his locker. You will watch as he walks away
12 with that red backpack, which I'm going to get back to in a second.

13 You'll also see at 9:31, he changes his clothing. He gets out
14 of his blue Unified Containers jersey top and puts on this red shirt.

15 At 9:33, he then goes to the sink and washes his face as well
16 as his hands.

17 At -- in this area of Unified Containers, there's -- this shelf is
18 up here, you see all the cardboard boxes. You will hear from an
19 individual by the name of Lyle Galeener. Lyle Galeener will tell you that
20 shortly after this all goes down, he is looking for something up there and
21 he finds this red backpack. And he sees that it's out of place, and the
22 red backpack is pretty much open. When he looks into the backpack, he
23 clearly sees this firearm.

24 So the police are already on scene -- they get on scene very
25 quickly, like I said those 9-1-1 calls come in at 9:25, 9:26, they're there

1 within minutes. And so Mr. Galeener takes what he sees, he puts it
2 underneath the -- one of the supervisor's desks and makes sure to alert
3 police in regards to what he's found. And I'm going to talk about that in
4 a second. But here's the backpack closeup that you saw on the video
5 surveillance.

6 All right. So now I want to talk a little bit about the law
7 enforcement side of it. So the 9-1-1 call comes in and some of the
8 information coming in on those 9-1-1 call is that there was this
9 altercation -- you know, this argument between this homeless individual
10 and the Defendant. And that the Defendant gets angry after that first
11 argument at the fence and he gets into his black truck and he starts
12 doing donuts in the parking lot and then parks his vehicle, goes in, gets
13 Ramiro Romero.

14 So the police know early on, okay, we're looking for this --
15 somebody who's in a black truck who probably works there that's doing
16 these donuts, all right. So that's some information that they have
17 preliminarily.

18 Patrol officers respond as in most violent crimes what will
19 happen is, is 9-1-1 gets called, patrol officers respond, they assess the
20 situation and when it's a homicide and they know that the victim it --
21 looks like the victim is going to die or is dead they then call homicide out
22 to the scene.

23 Crime scene analysts, like we talked a little bit about when we
24 were picking the jury, they're also called out to the scene.

25 When patrol gets there because of the information that they

1 have from witnesses and that they believe that the shooter is an
2 individual who works inside Unified Containers. So they then pull
3 everybody out of Unified Containers and separate them, so that they
4 can, you know, talk to witnesses, figure out who was on shift and things
5 like that. So that's what patrol does before homicide gets there.

6 Now, crime scene analysts, by the time they get there, Mr.
7 Phillips has been taken to the hospital. So he's not there when police
8 and, you know, crime scene analysts and homicide get there. He's been
9 taken to the hospital where he will be declared deceased within an hour.

10 But when crime scene analysts do respond, they go to this
11 area, this square that you see is where Mr. Phillips was laying. This is
12 where his area where he was sleep -- would sleep. And then you'll
13 notice these cones. And what those cones represent is where cartridge
14 cases and bullets are found. And you'll -- the importance of these are
15 that you'll hear from crime scene analysts and homicide detectives that
16 when they see cartridge cases or bullets they -- of course those are
17 important, right. They collect them so they can do forensic analysis on
18 them later.

19 What they noticed about this particular -- these particular
20 cartridge cases is they were 45 caliber auto and then they had CBC on
21 the bottom of the bullet. I don't know if you can read it from that far.
22 They noticed that in that weapon that was found in the Defendant's
23 backpack that he was seen carrying is the same type of ammunition.
24 The 45 auto CBC. So that was noted in their reports.

25 Like I stated, not only will you be hearing -- or excuse me will

1 you be viewing the video but you'll also hear from several witnesses.
2 Now, one of those individuals is a guy named Joshua Brennan. And Mr.
3 Brennan works security -- for a security company that had a contract
4 with Palm Mortuary. And so Mr. Brennan will explain to you that he
5 heard an argument. He could hear some yelling going on. And he
6 looked, he wasn't super close, he believes he was some where between
7 50 and 100 yards away, and he was standing up on a hill. And he could
8 hear this arguing and he sees two men approaching the victim, who he
9 knew as a homeless individual and that the homeless individual was
10 laying down as the two individuals approached him.

11 He said that he saw a few punches being thrown towards Mr.
12 Phillips, the victim in this case, but that the victim never really had an
13 opportunity to get up or to fight back. He then heard five -- he -- one of
14 the individuals pulled out a gun and shot it about five times. Those two
15 individuals then returned -- went running towards Flavors. Of the two
16 individuals he couldn't tell which of the one was the shooter, he could
17 just tell that one pulled out a gun, five shots, and then the victim fell, and
18 the two ran towards Flavors.

19 You'll also hear from an individual by the name of Bret Lesh.
20 Bret, was also homeless at the time. Him and his twin brother, Bart -- so
21 Bret and Bart Lesh, they were living in that same area just a few spots
22 down from where Mr. Phillips was living at the time -- was staying at the
23 time.

24 And Bret will tell you that he saw two black males come from
25 the parking lot and that they -- he could hear them yelling at the victim.

1 He saw them at one point return back to the Flavors parking lot and then
2 he saw them come back and heard yelling again.

3 He described one of the males to be a lot taller than the other
4 one. He thought about 6'0, 6'1 and that he had a blue sweatshirt on.
5 He stated that he heard five shots and it was the taller of the two that did
6 the shooting. The shorter of the two was more stepped back and didn't
7 seem to be as involved and the taller of the two in the blue sweatshirt
8 was the individual who shot and killed the victim.

9 You will also hear from an individual by the name of Anthony
10 Razo. Mr. Razo was also homeless during this time and he was staying
11 a few -- we've been talking a lot about, you know, the Flavors parking lot
12 and the homeless encampment. He didn't necessarily -- at this time he
13 wasn't staying in that homeless encampment that you see in front of
14 Palms Mortuary, he was actually standing or sitting right across from
15 Flavors, right across Searles Avenue.

16 And he will tell you that the Defendant was playing his music
17 very loudly and that he had seen the Defendant before -- that the
18 Defendant worked at Flavors -- or not at Flavors but at Unified Container
19 and that he had seen the Defendant before. That the Defendant was
20 outside of his black truck playing music very loudly. He saw Mr. Phillips
21 approach and ask the Defendant to turn down the music and an
22 argument ensued between the two of them.

23 Mr. Razo will tell you that as he was -- from where he was
24 standing, he saw the victim had his hands behind his back and he saw a
25 shiny -- something shiny in his hands which he believes to be a knife,

1 but that the victim kept it behind his back the entire time, never showed
2 it to the Defendant, never brandished it to the victim -- excuse me to the
3 Defendant and that from Mr. Razo's observation, he never saw that the
4 Defendant even saw what he believed to be the knife in front of -- in
5 back of Mr. Phillips.

6 He stated that 15 to 20 minutes later he was walking up
7 towards the Boulevard when he saw the Defendant walking in what he
8 referred to as a hot pursuit towards the victim with a weapon in his left
9 hand. He said that because of what he thought was about to go down
10 he wanted nothing to do with it and so as he's walking towards Searles
11 the Defendant goes left -- excuse me as he's walking on Searles
12 towards the Boulevard the Defendant goes left and he goes right. And
13 he hears gunshots.

14 Now, one thing about Mr. Razo is that is what he told the
15 police about the gun. When he goes on tape so when he goes to have
16 his interview taped, he leaves out the gun part. And so police say okay,
17 but when you were off tape, you would agree with us that you told us
18 very clearly that he was in hot pursuit with a weapon in his hand. Mr.
19 Razo says yes, I agree with you that is what I said, that is what I said I
20 saw but now I don't know why I said that.

21 The Defendant was interviewed like I told you if you remember
22 I was saying when the police arrive, they get information about this black
23 truck doing donuts, about this argument and so they want to speak to all
24 of the employees. And so they take Mr. McNair and they interview him.
25 Mr. McNair states that he was outside on his smoke break and he was

1 playing music that the victim came over and told him to turn it down
2 because the victim was trying to go to sleep and an argument ensued.

3 He then states that he goes back inside to Flavors, he comes
4 back out and the victim was at the gate and that another argument
5 ensued and the victim attempted to spit at him. He stated that he
6 followed the victim but stopped at the corner and he was shouting at the
7 victim and a security guard who works at Unified Containers by the
8 name of Dennis Simpson told him to come back, it wasn't worth it. And
9 so he just came back and nothing happened.

10 So obviously when the detectives are interviewing Mr. McNair,
11 they've gone through a good portion of the video and they know that
12 several aspects of that are not comporting with what they were seeing
13 on the video surveillance.

14 You'll hear from a doctor by the name of Doctor Mancini. She
15 is not the doctor that did the autopsy in this case, but they work within
16 the same office. The doctor that did the autopsy on this case is out of
17 the jurisdiction at this point in time. So what you'll hear from Doctor
18 Mancini is she then looks through all the reports, looks through all of the
19 pictures and she can determine her own -- make her own opinion in
20 regards to cause of manner of death.

21 I mean, this is, you know, obviously he was shot multiple times
22 so it's not really a mystery in regards to how he died. But she still will go
23 through the pictures with you, explain the gunshot wounds to you, where
24 they are located, what they did internally to the body, and discuss her
25 opinion as to the cause and manner of death.

1 What she will tell you is that there were eight gunshot wounds
2 to Mr. Phillips' body. And that the cause of his death was multiple
3 gunshot wounds and her opinion as to the manner of death is homicide.

4 There was some forensic testing done in this case as well and
5 I talked to you about what the crime scene analysts found when they
6 went and -- I showed you, you know, the six -- the cartridge cases and
7 the bullet that they found at the scene.

8 What happens a lot of the time is, you know, you'll go to --
9 detectives will go to autopsy and there they will learn, okay, there's eight
10 gunshot wounds, so we really should if we're doing our math right and
11 one bullet didn't hit two areas, we should be looking for eight cartridge
12 cases, eight bullets. So they realized that they were missing a few, I
13 believe they only recovered six the night before. So they go back the
14 following day and they are able to find some additional ballistic
15 evidence.

16 So what happens then is, in regards to the firearm that was
17 found in the red backpack that was sent to the Las Vegas Metropolitan
18 Police Department's forensic lab for what's referred to, we all talked
19 about, is DNA testing. You will hear from a forensic analyst by the name
20 of Tiffany Adams who did the DNA on this case.

21 She will tell you that on that gun, is the Defendant's DNA. She
22 also did DNA to see if Ramiro Romero had touched the gun or Mitchell
23 Johnson had touched the gun and in regards to those two people, there
24 wasn't enough -- she could tell that there was multiple people's DNA on
25 the gun but there just wasn't enough of a sample of those other

1 individuals to determine whose DNA it was. But she was able to
2 determine that the Defendant's DNA was on the gun.

3 You'll also hear from a forensic scientist by the name of Glenn
4 Davis. Glenn Davis works in the firearm and toolmark section of the Las
5 Vegas Metropolitan Police Department and what he does is he looks at
6 certain cartridge cases and bullets. And he can determine if those
7 cartridge cases bullets were fired from the same weapon and if they
8 have -- and if he has both the cartridge case and the weapon, he could
9 say oh, those are a match that firearm fired that bullet and cartridge
10 case.

11 So what you'll hear from Mr. Davis is that all of the cartridge
12 cases that were found at the scene had the same type of rifling
13 characteristics and that all of those came from the gun in the
14 Defendant's backpack.

15 Ladies and Gentlemen, after you have seen the video in this
16 case, after you have seen the pictures and heard testimony from the
17 witnesses in this case the State will be asking you to take that all into
18 consideration and come back and find the Defendant guilty with the
19 charges that we have charged him with. Thank you.

20 THE COURT: Thank you. Mr. Pike.

21 MR. PIKE: Thank you.

22 I'll flip that over shortly.

23 **OPENING STATEMENT**

24 BY MR. PIKE:

25 Good morning, Ladies and Gentlemen of the jury, this is one

1 of the few opportunities that the attorneys get an opportunity to address
2 you directly. We can't talk to you out in the halls although -- we're fairly
3 friendly people and we'd like to do that but we can't -- there can't be any
4 in -- appearance of impropriety. So as the Judge indicated we can't do
5 that so this is my opportunity to say hello.

6 And it's also my opportunity to give it -- to you the evidence
7 and as opposed to the interpretation of the evidence that's going to be
8 presented, what the Defense believes the evidence will show the facts
9 that will come forward and the testimony that will come forward in this
10 case.

11 The Court talked to you a little bit about direct evidence and
12 about circumstantial evidence. Well, let me talk a little bit about
13 circumstantial evidence. If you're going into a -- an area that you believe
14 may be dangerous, if you're going into an area like a homeless
15 encampment or corridor and you don't know why those people are
16 homeless, you don't know the circumstances and it's at night, well, that
17 doesn't mean that they are it means that they very well be.

18 And if you're driving down an area such as this and for the --
19 this is State's Proposed Exhibit Number 5. We've reached an
20 agreement that all of the photographs that have been presented will be
21 admitted into evidence and I request permission to publish this.

22 THE COURT: You may do so.

23 MS. BLUTH: That's correct.

24 THE COURT: And you can -- that's correct?

25 MS. BLUTH: Yeah.

1 THE COURT: You can do it with any of them. You don't need
2 to ask me each time about publishing.

3 MR. PIKE: Okay. Thank you.

4 If you're driving down that area at night, and if you're going
5 and you see tents and people lying on the str -- on the ground or not
6 sure who they are or what's going on or if they're dangerous or not.
7 Circumstantially, you'll look at it -- just like if you think it might rain,
8 you're going to roll up your windows, and so it doesn't rain in on you. If
9 you're driving through that area of town at that time of night, and under
10 those circumstances, you're probably going to roll up your windows if
11 their down. You're probably going to lock your doors. You might drive a
12 little bit faster. Because there is circumstantial evidence or beliefs that
13 it's going to be dangerous and those -- that that maybe -- that may
14 change your attitude and how you would behave.

15 It's a dark place isn't it -- you go -- for those of you who that
16 have been here for -- forever I guess like me. It used to be an old
17 Desert Industries warehouse. Now, it's turned into Flavors which is a
18 store that sells ice cream, snacks, little bag of chips and things like. So
19 it's a place where the homeless that are there can go over and maybe
20 get some -- oh, buy some snacks, some food, and something like that,
21 or they might find somebody there who works there that would give them
22 snacks or sometimes if it's outdated they'd give it do them.

23 Well, that's the kind of guy that Michael McNair was. He didn't
24 have -- he had worked there for a while. He had been, as Ms. Bluth
25 indicated, he'd been promoted to a supervisor. He was supervising

1 individuals. He was there -- he was doing his job at that point in time
2 and as part of the things that he had to do as a supervisor was fix some
3 of the machines if they broke down, watch over the trucks that came in
4 because if people were in those trucks either homeless people or
5 somebody else was in those trucks or if they were trying or if they were
6 trying to steal things from the truck. You'll hear and the evidence will
7 show you that that was part of his job to -- along with security to make
8 sure that the employees were safe, and there were circumstances
9 surrounding that that he would go in and have access to the parking lots
10 within the area.

11 And as we heard from one of the jurors that talked about
12 product protection or product loss, some of that would be if somebody's
13 coming in or they're threatening -- or threats to come in and steal items
14 that Mr. McNair would watch for that. I hate to use the term 86 because
15 that's more of a restaurant term, I guess, but trespass people if they
16 were stealing or if there was anticipat -- if there was demonstrable
17 evidence that they may interfere with the business. Well, that was a
18 business he worked for and that was what he was doing that night.

19 Now, Mr. Phillips came across Searles Street, and before I go
20 into that, there's a number of ways that evidence will come into you.
21 One way is by a party will present it and a witness will identify it and then
22 we'll -- it will be admitted into evidence and then the determination will
23 be made whether or not there will be an objection.

24 Well, this is -- this happened in a short period of a time,
25 photographs are photographs, they show what they are, videos are

1 videos they -- in the interpretations of what is the content of a
2 photograph or a video well, that's up to you, but they are what they are.
3 So a lot of times you'll hear say, you know, we agree or stipulate that will
4 come in. So evidence comes in by way of stipulation that means both
5 parties what you to see this, and want you to hear this, what you look at
6 it. And that's true of the photographs, that's true of the videos.

7 And the witnesses is a little bit different. That's testimonial
8 and we get to -- you get to hear them, we get to ask them questions, and
9 you get to ask them questions, Court will do what needs to be done if
10 there's objections.

11 Now, coming across and getting into an argument over some
12 music and hearing what Mr. Razo indicated appeared to him to be a
13 knife, would not be uncommon for somebody in that area to be carrying
14 a knife. And that's probably one of the reasons why those two brothers
15 were there and the evidence I'm sure will indicate that they were there to
16 protect each other; they kind of did that. It's a dangerous place so and
17 because people have weapons as they go in there.

18 And when he got into a verbal altercation, with Michael you'll
19 find that that was kind of difficult for Michael because he has a
20 noticeable stutter. And as that was going through and with that
21 argument and Mr. Phillips coming back and doing that at his job while he
22 was just sitting there on his break, it was something that you can
23 anticipate that that behavior may be dangerous, maybe somebody that
24 shouldn't come on to the property. And so before he finishes his night
25 shift, the evidence will suggest that he's going to 86 him. He's going to

1 tell him not -- don't come on to the property. You shouldn't come in
2 not -- at least not in the state that you're in.

3 And then -- and because the gate that you -- that was
4 demonstrated to you in the photographs in the State's opening was on
5 Searles Street and Michael had the keys to that because he'd open the
6 gates for the trucks to come in and make sure that they were then
7 closed and locked so that the homeless people would not come on to
8 the property and have any problems with that.

9 He was just taking care of his responsibilities and was going
10 through that. And as he was going through the obligations that he had
11 as a supervisor, as an employer -- or excuse me as an employee, he'd
12 have to identify the individual that had -- was a potential problem for the
13 company, and that was Mr. Phillips.

14 So in the area that that is, you know that it's potentially
15 dangerous so he doesn't go alone. He's not going to go by himself. He
16 knows it's dangerous so he's not going to go alone because he has a
17 wife and children at home. He's not going to endanger himself or the
18 livelihood of his family because of that. He doesn't go alone because he
19 needs help for somebody -- from somebody to make sure that it -- if he
20 gets nervous and if his stutter becomes so pronounced that he cannot
21 communicate with this individual that has been arguing with him that
22 there was somebody there.

23 And that's important because if you're going to commit a
24 crime, you don't do it in front of an area that you work for that you know
25 has surveillance. You don't go and bring a co-employee, you don't go

1 and bring somebody that is going to come in and be a witness to you
2 committing a crime, and for your own protection. And so the evidence
3 shows that he doesn't go alone.

4 The evidence -- actually there are three instances of video that
5 happens when Michael goes out to identify Mr. Phillips. And the first
6 one, he walks down inside of the gates, along with the security guard,
7 and there's other employees and they're out there and they're looking
8 for Mr. Phillips and well, that's when the security guard suggests to him
9 that just let it go. Well, no it's dangerous it's part of my job so I want to
10 take care of this and so you're not going to come out of the property, so
11 I'll get another employee that will come out with me.

12 Again, all of these videos not just stills from the videos will be
13 given to you so that you can see them all, so you can watch them all, so
14 you can take them back into the jury room when you do that. And also,
15 as I indicated before, everybody knew that there was surveillance both
16 inside and outside of the Flavors and the manufacturing company
17 behind it.

18 So the first person -- or the second time that he goes out, he
19 goes out with Mr. Romero and you saw the picture of Mr. Romero. He's
20 a fairly robust gentleman who is kind of prone to anger. He went out
21 there thinking that well, maybe there's going to be a fight and he'll testify
22 about that. You'll be at -- you'll hear testimony regarding his statement
23 that he gave to the police and statements that he has given in court at
24 hearings prior to this.

25 And that they went out and Mr. Romero said well, there's

1 going to be a fight. I'm good for a fight, let's go. He gets all the way
2 from Searles all the way up to Las Vegas Boulevard North and then
3 Michael says no, this -- I'm -- we're not here fight with him, we're not
4 here to hurt anybody and so they go back.

5 Mitchell, who is Michael's younger half-brother, comes over
6 and he's looking for some money and he wants to get some money from
7 his brother. He will testify or will tell you, I assume, the same thing he
8 told the police, that he was coming over to get some money to buy some
9 drugs -- to buy some marijuana.

10 And at that point in time, that he had -- let me take a step back
11 not only was that a fact but Mitchell had actually worked there. He had
12 worked there, he knew the area, he knew what was going on and he
13 came out and at that point in time he walked over to the area where Mr.
14 Phillips was at and they went across the street.

15 Now, this is the point in time when they have the homeless
16 people -- they have people that they try and get people to watch out for
17 them the evidence will suggest that the brothers, as I indicated before.
18 And with Mr. Phillips, there was a Kenneth Saldana, and Kenneth
19 Saldana has testified that he was about five feet away at the time of the
20 shooting, that's five feet away, about a yard another two. About five feet
21 away from where the shooting occurred. And he didn't know the people
22 that came out from Flavors and that were over there, but he do know
23 that the person that came out of the Suburban, the white Suburban, was
24 the person that approached Gordon Phillips. And he was the person
25 that punched Gordon Phillips.

1 And the shorter of the men stepped back three feet and shot
2 Gordon. That's testimony and that will be read into the record and for
3 your consideration. And the evidence it sounds strange that the -- well
4 the evidence gets -- sounds strange would be argumentative, let me say
5 this, the charging document that has been read to you said it was either
6 Michael McNair that shot him or it was an unidentified or an unknown
7 individual.

8 Well the -- Mitchell was an employee there. Mitchell had
9 drove up there and the dents and all the other information -- or all the
10 other indicators of the car, the Suburban was identified to them and the
11 police found Mitchell Johnson.

12 And the evidence is also going to show that Michael waited
13 there, at work after the shooting. Didn't go anywhere. He waited there,
14 waited there for the police, didn't leave his job. Mitchell on the other
15 hand, the evidence shows, got in the car and ran. He went to hide.
16 Went to go away and didn't wait to talk to the police, say well, you know,
17 get his side of the story or anything like that.

18 When he is located, he reappear -- Mitchell, the evidence is
19 going to show that he repeated lied to the police about that evening
20 about his involvement. Lie Number 1, I wasn't there. Lie Number 2,
21 well, I was there and I got kind of halfway down Searles, but I didn't go
22 all the way down. Lie Number 3, I didn't hit Mr. Gordon. Lie Number 4, I
23 didn't shoot Mr. Gordon.

24 When you have an eyewitness that is that close and that
25 interested in what's going on, then that individual, the evidence is

1 certainly going to suggest is the most reliable witness and that would be
2 what happened. There was no conversation, no conspiracy it was a
3 sudden act by Mitchell Johnson without premeditation, deliberation,
4 malice of forethought. There's different -- the different component parts
5 and so it was a circumstantial thing where I believe -- well, the evidence
6 will demonstrate that it's not a first-degree murder it's --

7 MS. BLUTH: Judge, I'm going to object, this is argument.

8 MR. PIKE: Okay. Thank you.

9 THE COURT: I'll sustain the objection.

10 BY MR. PIKE:

11 The evidence will not show the component parts. You will be
12 given a certain number of them.

13 In rela -- relationship to the gun and how it was found. Well,
14 you got to look at the testimony of the expert that's going to come in and
15 say where was the DNA found. Where was the lesser portion of that
16 DNA, as opposed to the DNA that was Michael McNair's?

17 And what may have occasioned a brother -- one brother
18 turning on another one and one protecting another one. Because the
19 evidence will show that to Mitchell, Michael's disposable.

20 And in fact, when you hear the testimony of Mitchell Johnson,
21 he's called on -- called to the stand which we anticipate he will be, the --
22 in relationship to the gun and it not being in his physical possession, he
23 seeing in relationship to his brother, well, shit then it's even better for me
24 because now I'm out of it then. That suggests that he knew the
25 evidence that -- him saying that would suggest that he knew he was in it

1 and he knew a lot more and I suggest that -- the evidence would
2 suggest that that would be similar to admission.

3 So based upon the alternate theories that the State presents
4 to you, there is not evidence beyond a reasonable doubt and they will
5 not -- the evidence will not present to you enough evidence to go
6 beyond a reasonable doubt to believe that Michael McNair fired that gun
7 and certainly there will be for Mitchell Johnson.

8 So at the end of the case and the close of the case, the
9 evidence will lead you to that final conclusion that Michael McNair is not
10 guilty of murder.

11 THE COURT: Thank you. All right, folks we're going to go
12 ahead and take our lunch recess at this time.

13 During the recess you're admonished not to talk or converse
14 among yourselves or with anyone else. Or read or watch or listen to any
15 report of or commentary on the trial by any medium of information
16 including, without limitation, newspapers, television, the internet, or
17 radio. You cannot form or express any opinion on any subject
18 connected with the case until it is finally submitted to you for your
19 deliberations. No legal or factual research or investigation on your own.

20 And I will see you back at let's say 1:15, it's about an hour.
21 And then we will start up with State's case in chief. Thank you.

22 Every time we take a break just leave your clipboard and pen
23 in your chair.

24 [Outside the presence of the jury]

25 THE COURT: You guys have anything outside the presence?

1 MR. AFSHAR: Your Honor, I just have one brief matter.

2 THE COURT: Sure.

3 MR. AFSHAR: Added to the record.

4 I don't want to relitigate the Batson challenge, but there's
5 something else I wanted to address that's somewhat related to that.

6 THE COURT: Okay.

7 MR. AFSHAR: So in the case of Ms. Pool, there was
8 ambiguity as to what -- by our side, by the State, by the Court as to what
9 ethnicity should be defined with.

10 THE COURT: Okay.

11 MR. AFSHAR: I looked at NRS 6.045, subsection 5. And it
12 calls for the Jury Commissioner to -- and her office, to track the race of
13 every single juror who shows up for jury duty, as well as who is on the
14 final panel.

15 THE COURT: Okay.

16 MR. AFSHAR: This has come up in another case and it came
17 up yesterday, so by statute if we're getting people who are unidentified
18 then that statute's not being complied with. Secondly, I want to site to a
19 Massachusetts State Supreme Court case *Commonwealth v. Arriaga*
20 438 Mass 556, 558, 781 N.E.2.d 1253, 2003.

21 The reason I site to that case, beyond the statutory issue that
22 we have here, in that case the Supreme Court of Massachusetts said
23 then in order to be able to comply with Batson, a constitutional issue of
24 fundamental of due process, that we need to be able to identify the race
25 of the jurors. I'm not talking about anything invasive or, you know,

1 something like that, but just like all the other jurors who self-identified.

2 So they site to the Federal Standard, the JSSA. So I just want
3 to read this brief part into the record.

4 The Federal Courts require potential jurors to provide
5 information on race informing jurors that the information is required
6 solely to enforce nondiscrimination in jury selection. The Supreme
7 Judicial Court of Massachusetts now adopts the same approach and
8 instructs the Jury Commissioner as soon as practical to require
9 disclosure of racial and ethnic background of potential jury on the juror
10 of confirmation form. And modeled after the qualification form used in
11 the Federal Court.

12 The only reason I'm addressing this is that I'm hoping that the
13 Nevada Supreme Court, using its supervisory authority will impose this
14 so that we can be in compliance with 6.045 subsection 5 and be able to
15 make proper facts and challenges.

16 THE COURT: So what would you propose that Jury
17 Commissioner do differently? I mean, we ask them to identify their race.

18 MR. AFSHAR: And if they don't comply, send it back and.

19 THE COURT: There's a difference between somebody says
20 I'm not going to give you that, which I think they have the right to do, but
21 in Ms. Pools case she just checked the other box which people routinely
22 do when the identify as, you know, mixed race. Whether they're Asian
23 and African American, or Hispanic and Caucasian, or Asian and
24 Caucasian, whatever, they'll check off the box of other which is, I don't
25 really identify as any one particular thing.

1 So I don't know how much more delineated we can make that.
2 I think it's --

3 MR. AFSHAR: Yeah.

4 THE COURT: -- there's a distinct difference between the Jury
5 Commissioner says I'm not going to collect that data or I'm not going to
6 ask people for that data or follow up at all and what we do when we ask
7 them for the data and we delineate all those different races which we do,
8 but we also include the other designation for people that are, you know,
9 multiple races or ethnicities.

10 So I appreciate your concern.

11 MR. AFSHAR: Yeah.

12 THE COURT: And you're right that none of us yesterday
13 could really come to any kind of conclusion to say hey, gee, judging a
14 book by it's cover, we think Ms. Pool is African American, and Hispanic
15 whatever the other, you know, potential designations that we were
16 chatting about.

17 But I don't think that allowing people to indicate other if they
18 have, you know, multiple ethnicities or races is inappropriate at all. So I
19 don't think it's a situation where the Jury Commissioner isn't trying to
20 gather the data, it's that you have somebody that's indicated other,
21 which I think they're kind of entitled to do.

22 MR. AFSHAR: Thank you, Your Honor.

23 The only thing that I would add is that means that the statute
24 can't be complied with. And as the Florida State Supreme Court
25 ordered in *Smith v. State*, it's not that much of an intrusion to ask

1 someone to identify their particular race.

2 So for all those reasons again, I'm just putting this on the
3 record so that I'm hoping that Nevada Supreme Court will do that so we
4 can comply with the statute, as well as ensure a Defendant's right to a
5 Batson challenge.

6 THE COURT: Okay.

7 MR. AFSHAR: Yeah.

8 THE COURT: Well, in moving forward just kind of know that if
9 you guys want for particular, I would assume every other judge would do
10 it. But if we have that situation in jury selection and it can't be
11 determined and somebody says other and you guys don't want to be the
12 one to do it, all you got to do is ask and I'll ask them what their race or
13 ethnicity is.

14 MR. AFSHAR: I really appreciate it, Your Honor. Because
15 then in *Arenas* we were told no. That was the issue with --

16 THE COURT: That the judge said it --

17 MR. AFSHAR: The judge said, no.

18 THE COURT: -- they wouldn't do it.

19 MR. AFSHAR: Yeah.

20 THE COURT: Okay.

21 MR. AFSHAR: So I appreciate that.

22 THE COURT: No. Look I never have the problem --

23 MR. AFSHAR: Yeah.

24 THE COURT: -- being the bad guy that has to ask the
25 questions --

1 MR. AFSHAR: Awesome.

2 THE COURT: -- that you guys don't want to ask but I know
3 that's it not always -- you worry that people get upset about that. But I
4 think I've had that before where people have said other and so I can ask
5 it in a way that I don't think is too offensive to people. But sometimes
6 they may say I'd rather not answer that question. Then we might be
7 kind of stuck with that but I don't have any problem asking them. Okay.

8 MR. AFSHAR: All right. I appreciate that. Thank you, Your
9 Honor.

10 THE COURT: Sure.

11 MR. PIKE: One thing, Your Honor, we -- there was an
12 agreement with the State that all of the photographs that they produced
13 are admissible and we'll stipulate to their admission to their publishing at
14 this time.

15 THE COURT: Got it. What -- how many of them are marked
16 just so you know.

17 THE CLERK: 2 through 71. Mr. Rogan said 1 is going to be a
18 disc.

19 THE COURT: 1 is going to be?

20 THE CLERK: A disc.

21 THE COURT: Oh. Is it a video disc or something?

22 MR. ROGAN: Yes.

23 THE COURT: Okay. So 2 through 71, all the photographs will
24 be admitted.

25 **[EXHIBITS 2-71 ADMITTED BY STIPULATION]**

1 THE COURT: You all don't need to ask me if you want to
2 publish whenever anything's admitted you can just go ahead and do
3 that.

4 MR. PIKE: We appreciate it. Thank you.

5 THE COURT: All right, guys. Thank you.

6 MR. PIKE: We'll have the autopsy photographs marked and
7 those that we can agree upon --

8 THE COURT: Okay.

9 MR. PIKE: -- be admitted or.

10 MS. BLUTH: She's not till next week so we've got time on
11 that.

12 THE COURT: Got it.

13 [Recess taken at 12:24 p.m.]

14 [Trial resumed at 1:26 p.m.]

15 [Outside the presence of the jury]

16 THE COURT: You guys can be seated, thank you. Either
17 side have anything outside the presence?

18 MS. BLUTH: No.

19 MR. ROGAN: No.

20 THE COURT: No.

21 All right. JR, you can go ahead.

22 [In the presence of the jury]

23 THE COURT: Thank you. You all can be seated. We'll be
24 back on the record. Mr. McNair, his attorneys, State's attorneys and our
25 jurors are present.

1 We will continue on with our trial and start the State's case in
2 chief. You can call your first witness.

3 MS. BLUTH: Thank you. The State calls Bret Lesh.

4 **BRET LESH**

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

7 THE CLERK: Thank you. Please be seated.

8 If you could state and spell your name for the record, please.

9 THE WITNESS: Bret Lesh. B-R-E-T, L-E-S-H.

10 THE COURT: All right. Mr. Lesh, thank you very much.

11 Ms. Bluth.

12 MS. BLUTH: Thank you.

13 **DIRECT EXAMINATION**

14 BY MS. BLUTH:

15 Q Good afternoon, Mr. Lesh. How are you?

16 A Good.

17 Q Good. So I want to turn your back attention -- your attention
18 back to September of 2017 if I could. Okay.

19 A Uh-huh

20 Q At that point in time, where were you living?

21 A On Las Vegas Boulevard.

22 Q All right. Can you give us an idea kind of -- maybe of the
23 cross streets or in what area of the Boulevard you were staying?

24 A By Flavors and a little ways from Catholic Charities.

25 Q All right. Was there a group of individuals that were homeless

1 that were kind of living --

2 A Yes, there was.

3 Q -- on those cross streets?

4 A There was a lot of people there.

5 Q Was one of those individuals a guy named Gordon Phillips?

6 A Yes.

7 Q And how did you know Gordon?

8 A He used to go to the library and drop his stuff off with myself
9 and a couple of friends and we would hold it for him. And when he'd
10 come at night, he would get it from us. Really nice guy.

11 Q Okay. And so you knew Gordon from the fact that you guys
12 all lived together on that same street?

13 A Correct.

14 Q Okay. So I'm going to show you what's in evidence as State's
15 3. And I'm going to zoom in for you and ask you a few questions about
16 this. Okay.

17 A Okay.

18 Q So just so I can start you with a -- get you oriented, right here
19 this white square this would be Flavors, this parking lot right here.

20 A All right.

21 Q And then going north to south would be north -- would be Las
22 Vegas Boulevard and then this cross street would be Searles.

23 A Right.

24 Q So do you -- have you ever had to work a mouse like a
25 computer mouse?

1 A Never.

2 Q Okay. May I approach, Judge?

3 A I can figure it out though.

4 THE COURT: I'll get it if you just tell me where it is you need
5 to have something indicated on there, but there's a -- there should be a
6 mouse sitting by you there. And you just move it around, you can kind
7 of get that little circle to where ever you.

8 MS. BLUTH: So just flip it around.

9 THE WITNESS: Oh, the other way.

10 MS. BLUTH: Yep.

11 THE WITNESS: Where do you want it?

12 BY MS. BLUTH:

13 Q So let me get the pen first for you, one second. Okay. Would
14 you mind showing me where you would stay? So you can just click on
15 this right here -- or you just point it to me and I'm going to do it.

16 MS. BLUTH: Is that okay, Judge?

17 BY MS. BLUTH:

18 A It would -- I think the cemetery is right here. I think this is the
19 cemetery on -- it's in the dirt right along here.

20 Q Okay. So anywhere.

21 A Right here.

22 Q Up in the Boulevard. Okay. All right. So is that square -- is
23 that -- would that be a fair representation?

24 A Yes.

25 MS. BLUTH: So, Judge, for the record, I've made a red mark

1 on the west side of Las Vegas Boulevard but north of East Searles.

2 THE COURT: So yeah, on the photograph, the record will
3 reflect that the gentleman's indicating north of Searles, westside of North
4 Las Vegas Boulevard, kind of a long side, looks like an open dirt lot, but
5 closer to the roadway area.

6 MS. BLUTH: Thank you.

7 BY MS. BLUTH:

8 Q And then did -- for a period of time did Gordon sleep close to
9 you and your twin brother Bart?

10 A Yes, he did.

11 Q Shortly before this incident that we're about to talk to, like a
12 few days before, did he move a little bit further down the Boulevard?

13 A Yes, he did.

14 Q When you say that Gordon -- when he would leave for the
15 library during the day, what did he sleep on? What would he leave you?

16 A A blanket, a piece of cardboard, a pillow, sometimes, you
17 know, a jacket.

18 Q All right. Would -- and that piece of cardboard would that be
19 what he would lay on?

20 A Yes.

21 Q All right. I'm going to show you State's 8. And one second
22 because I got to switch out of here.

23 All right. So I'm going to zoom out. Does that look like --

24 A Yeah.

25 Q -- the cardboard that --

1 A Yeah.

2 Q -- Gordon would sleep on and some of his items?

3 A Yes.

4 Q How often would you hold Gordon's belongs would you say?

5 A Almost every day.

6 Q At any point in time did you ever see Gordon with a knife?

7 A No.

8 Q Did you ever see a knife in any of Gordon's belongings?

9 A I never have. No, I didn't.

10 Q So now, I want to turn your attention specifically to September
11 14th of 2017. And when I say that date, do you know the date that I'm
12 referring to?

13 A Yes.

14 Q Okay. I want to turn your attention to the evening hours so a
15 little bit after 9:00. Where were you and Bart?

16 A We were down this way, a little bit from there, and we were on
17 our cots.

18 Q So when I had the first exhibit on, State's 3 and I drew that red
19 line in the dirt area, is that where you were?

20 A Yes.

21 Q And about how far would you say you were from where
22 Gordon was?

23 A Maybe 75 to 100 feet might.

24 Q Okay. And was Gordon at his cardboard bed?

25 A Yes.

1 Q At that time?

2 A Yes.

3 Q All right. Are you asleep?

4 A He was on the sidewalk by it.

5 Q Standing or sitting?

6 A Standing.

7 Q Okay. What draws your attention over to where Gordon is?

8 A The yelling.

9 Q And could you hear what people were saying when they
10 were -- the yelling was going on?

11 A I thought I heard something about a girlfriend and then I heard
12 him say something about well, we'll be right back. And they went across
13 the street and came back and when they came back that's when, you
14 know, I heard the shots.

15 Q Okay. So I want to break that down for a second. So when
16 you initially hear the screaming and your attention is drawn over to
17 where Gordon is, are you awake or asleep when that shouting starts?

18 A I was awake -- it woke me up.

19 Q The screaming woke you up?

20 A Yes, it woke me up.

21 Q All right. And when you look over to where Gordon is, how
22 many besides Gordon, how many other people can you see?

23 A Two others.

24 Q Could you tell if they were -- could you give us any physical
25 description of either of those two people?

1 A Both were Black.

2 Q All right.

3 A One was taller than the other.

4 Q And what about color of clothing in regards to the taller
5 individual?

6 A Yeah, I keep trying to remember it's I believe it was gray or
7 kind of maybe -- let me think --

8 Q That's okay.

9 A -- blue. I think it was a blue.

10 Q Okay. And you had the opportunity to speak to the police at
11 some point when they showed up, right.

12 A Right.

13 Q And do you remember telling them that you believe that the
14 taller individual was about 6 feet tall and --

15 A Right.

16 Q -- wearing a blue sweatshirt?

17 A Right.

18 Q Was that right?

19 A Right.

20 Q Okay. And that any point in time you want to look at a copy of
21 your statement, you just let me know and I'll bring it to you, okay?

22 A Okay.

23 Q Now, when you said that there was shouting, did you see
24 Gordon doing any shouting or was it more coming from the other two
25 individuals?

1 A The other two individuals.

2 Q So we have the -- the one who's the 6-foot-tall one, African
3 American, with a blue sweatshirt. What about the other individual?
4 What can you tell us about him?

5 A I think it would -- he had on a light blue shirt, he was quite a bit
6 shorter.

7 Q Okay. And so you said that you heard some arguing,
8 something about a girl, and then you heard someone say we'll be back.

9 A Yeah. We'll be back.

10 Q Could you tell who said that?

11 A The tall one.

12 Q All right.

13 A Because he was, you know, pointing at him and, you know,
14 while he was talking and.

15 Q Pointing at Gordon?

16 A Yes.

17 Q All right. So after the taller one says, we'll be back. Tell me
18 what's the next thing you see?

19 A I see them go down the street on the side of Flavors and turn
20 into, you know, walk into the parking lot and then I couldn't see them no
21 more.

22 Q Okay.

23 A And then they came back and when they came back all of a
24 sudden, I look over there and, you know.

25 MR. PIKE: Objection, Your Honor, no question before the

1 witness.

2 MS. BLUTH: Let me stop for a second, Judge.

3 THE COURT: Okay.

4 MS. BLUTH: You're not doing anything wrong. I'm just going
5 to stop and clarify a few things. Okay.

6 THE WITNESS: Yeah.

7 BY MS. BLUTH:

8 Q All right. So when -- after the taller of the two says, we'll be
9 back. You said that they walked over to Flavors, is that right?

10 A Right.

11 Q Or back over to Flavors?

12 A Right.

13 Q What does Gordon do?

14 A Gordon sat down for a minute.

15 Q Okay. Sat down on his -- like in that cardboard area?

16 A Yeah.

17 Q All right. Then you said that the two individuals come back
18 over.

19 A Right.

20 Q How much time would you say if you know, went by between
21 when the two people left and the two people came back?

22 A Maybe about five minutes.

23 Q All right. So when those two individuals come back, do they
24 go -- up those two go right back to where Gordon is?

25 A Gordon stayed on the sidewalk and the two individuals, one

1 was -- the shorter one was in the street and the other one stepped up to
2 where Gordon was.

3 Q Okay. So I'm going to show you now State's 7. This
4 cardboard -- it's basically a cardboard box, right. But it's flattened out.

5 A Right.

6 Q So I'm just -- if you don't mind, I'm just going to keep referring
7 it to as to the piece of cardboard. Okay.

8 A Sure.

9 Q So this piece of cardboard is the one that you previously
10 identified as belonging to Gordon.

11 A Right.

12 Q You stated that the taller individual walked up on to the
13 sidewalk, is that right?

14 A Correct.

15 Q And then the shorter of the individual -- can you show me
16 where he was in the street?

17 A He was -- you see where the second cone is in the street?
18 You have one right in the gutter, one back a little ways and then one
19 back even further. No, the other one.

20 THE COURT: This one?

21 THE WITNESS: There you go. Yes.

22 THE COURT: Okay.

23 MS. BLUTH: Okay.

24 THE COURT: So.

25 THE WITNESS: And the taller individual stepped right up,

1 you know, on the sidewalk right there.

2 THE COURT: So I can't see where you're --

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: -- pointing.

5 THE WITNESS: Just right at the cone there, or right up there.

6 THE COURT: Right ahead of that cone?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Looks like you're pointing in this area?

9 THE WITNESS: Yes.

10 THE COURT: Okay. So I circled the third cone going left to
11 right in the street. That's where you're indicating that the shorter
12 individual was.

13 THE WITNESS: Yes, it.

14 THE COURT: And then I made a circle kind of on the curb
15 right on to the concrete area, in between what would be cones one and
16 two in the street. And that's where you're indicating the taller individual
17 stepped --

18 THE WITNESS: Yes.

19 THE COURT: -- on to the sidewalk.

20 THE WITNESS: Uh-huh.

21 THE COURT: Okay. Thank you.

22 BY MS. BLUTH:

23 Q Okay. So did you hear any arguing going on when the two
24 individuals came back?

25 A No. When they came back, all I heard was gunshots.

1 Q All right. Was there ever any -- did you see any punches
2 being thrown or any physical contact between anybody?

3 A No. Not at that time.

4 Q When you say not at that time, had you seen it at some point?

5 A Earlier there was a lot, you know, when they first, you know,
6 got together it was like some hand gestures and stuff like that. You
7 couldn't tell if they were connecting with each other or what.

8 Q Okay. So then I want to go back then if we wouldn't mind. So
9 now I want to go to the very first time that you're saying that, you know,
10 you heard the conversation about the -- something about a girl or your
11 lady. And then we'll be back. You said that you could see hand
12 gestures but you couldn't tell if any connects were being made.

13 A Right.

14 Q So when you say you could see hand gestures did it look like
15 punches or did --

16 A It looked like punches.

17 Q Did you ever see anybody, you know, fall to the ground?

18 A The taller guy.

19 Q You saw the taller guy fall to the ground?

20 A Yes, and then the shorter guy helped him up.

21 Q Okay. After the taller guy fell to the ground and he was helped
22 up by the shorter guy, is that -- did he say anything at that point?

23 A That's -- when that happened that's after that is when they got
24 the gun. They went and I guess got the gun or whatever it was because
25 when they came back.

1 MR. PIKE: Objection, calls for specul -- speculation.

2 THE COURT: I'll sustain the objection.

3 MR. PIKE: Asked to be stricken.

4 BY MS. BLUTH:

5 Q Okay. So my question is remember when he said -- when you
6 said that the taller guy said, we'll be back. Was that before or after you
7 say the tall guy get -- go to the ground?

8 A It was after.

9 Q Okay. So the tall guy goes to the ground, and then gets up
10 and he says' we'll be back.

11 A Right.

12 Q All right. So now they go back to Flavors and they come back
13 over. All right. So now, I'm going to talk about the second time that
14 they're there. You said that you didn't hear any yelling or anything.

15 A No.

16 Q And you -- all of the first thing you hear -- or the thing you hear
17 is the gunshots.

18 A Yes.

19 Q Could you see which of the two individuals was the shooter?

20 A The one, the tall guy in the front was the one that was closest
21 to Gordon and, you know, I couldn't see a flash so, you know, I couldn't
22 say if it was him but he was the one that was closest to Gordon so.

23 Q Okay. How would you say his -- would you say his demeanor
24 or his behavior was different in any way from the individual who was in
25 the back?

1 A Yes. The individual who was back was pretty much just kind
2 of, you know, just minding his own business just standing there.

3 Q And how was that different than the taller individual in the blue
4 sweatshirt?

5 A This taller individual was doing the hand gestures like I said
6 and, you know, it looked like they were fighting and, you know.

7 Q They were fighting, meaning him and Gordon?

8 A Right.

9 Q Okay. After you heard the shots, how many do you think you
10 heard?

11 A I think four or five.

12 Q Then what happened after you heard that?

13 A I looked back down there and seen Gordon laying on the
14 sidewalk.

15 Q Okay. Did you see the two individuals? Did they run, walk
16 where did they --

17 A They ran across the street to Flavors.

18 Q Did you see once they got to Flavors -- were there any
19 vehicles that took off?

20 A There was white Suburban, I believe it was that either one or
21 two of them got in and they took off in that and that made a left on Las
22 Vegas Boulevard.

23 Q Okay. After the shooting takes place, do police get there
24 relatively quickly?

25 A Yeah, they got there pretty quick.

1 Q And once they get there do you -- are you able to make
2 contact with them or either -- or they make contact with you?

3 A Yes.

4 Q And discuss the things that you're talking with us right now?

5 A Yes.

6 Q And as part of your interview, did they record what you and
7 the detective were talking about?

8 A Yes.

9 Q And have you had an opportunity to read that?

10 A Yes, I have.

11 Q Have you also had an opportunity to review video surveillance
12 system from the Flavors to see if you recognized anybody on the video?

13 A Yes.

14 Q And when you were shown that video did you recognize
15 someone?

16 A Yes.

17 MS. BLUTH: Your Honor, the parties are stipulating the
18 custodian of records for Unified Containers will be coming in tomorrow to
19 discuss their system and authenticate the video but the parties are
20 stipulating to its admission. It's State's Proposed 1.

21 THE COURT: Correct?

22 MR. PIKE: That's correct, Your Honor. We're also -- that
23 custodian of records I assume we're requesting that he bring in the
24 employment records of my client.

25 THE COURT: Okay. That will be admitted. You can publish

1 that.

2 **[STATE'S EXHIBIT NUMBER 1 ADMITTED]**

3 MS. BLUTH: Thank you.

4 BY MS. BLUTH:

5 Q All right. So what I'm going to do, Bret, is I'm going to pull up
6 the video which is State's Exhibit 1. Just give me a sec.

7 [Surveillance video playing]

8 BY MS. BLUTH:

9 Q And I fast forward -- I have fast forwarded until about 26:44 in.
10 It went back way more then that, it went back to 26:30, but in a moment,
11 we're going to go into a different room and you're going to see a couple
12 different people. Do any of these -- do this individual or do any
13 individuals you're about to see look familiar to you?

14 A The one in front, yeah. The Black guy.

15 Q And what about him looks familiar to you?

16 A He was the one in front.

17 Q Okay. And when you --

18 A The tall one.

19 Q I'm sorry.

20 A He was the tall one.

21 Q And you're able to identify that individual --

22 A Yeah.

23 Q -- that individual that you see in State's 1 --

24 A Yeah.

25 Q -- as the individual in the front? And that is the individual that

1 you told the police was the shooter of Gordon?

2 A Yes.

3 Q Did you see that Suburban -- did you see any markings on it
4 or any problems that it had?

5 A Yeah. A big dent in the, I believe it was the right door in the
6 rear.

7 Q Thank you so much Mr. Lesh.

8 MS. BLUTH: Your Honor, that concludes by direct. I'll pass
9 the witness.

10 THE COURT: All right. Mr. Pike.

11 **CROSS-EXAMINATION**

12 BY MR. PIKE:

13 Q Good afternoon, Mr. Lesh.

14 A Good afternoon.

15 Q My name is Randy Pike. We haven't had a chance to meet
16 before but --

17 A Pleased to meet you.

18 Q I'm going to be asking you a few questions this afternoon, if I
19 may.

20 A Yes, you may.

21 Q Okay. I appreciate that. Now, you and your brother were at
22 that point in time, basically living in that lo -- that area, right?

23 A Yes.

24 Q Okay. And so you got to know some of the people that were
25 around that area.

1 A Yes.

2 Q Okay. You would go in on occasion and buy some --
3 something to eat over at Flavors.

4 A Right, yes.

5 Q And your brother would as well.

6 A Yes.

7 Q Okay. And Gordon Phillips also would. Did you know his last
8 name?

9 A No.

10 Q You just knew him as Gordon?

11 A Gordon, yes.

12 Q Okay. That's pretty much true out there on the street, right?

13 A Yeah, it pretty much is.

14 Q Okay. You don't get to know people but, you know, you get to
15 know them enough so that maybe if you need somebody to watch your
16 stuff then you -- somebody that will return your things to them.

17 A Right. Well, we're working next door to him.

18 Q You were working? Oh, where was that?

19 A It's like a little place like kind of like Catholic Charities but they
20 stay outside there.

21 Q Okay. And let me get that map out here if I could.

22 MS. BLUTH: Randy, it's right there.

23 MR. PIKE: Down here, thanks. In the old days we just have
24 you mark it with a marker and then we have some record of it.

25 ...

1 BY MR. PIKE:

2 Q So where --

3 A It's.

4 Q -- where it's at. I'm going to use my finger here and maybe
5 you can direct me. There's Flavors and then you were -- said you was --

6 A Right on that side go more left. It was right -- the building right
7 after the cemetery there. No, back in the front. Yeah, there you go.

8 Q That one?

9 A Yeah, it used to be a church. They used to have parties there
10 and.

11 Q Okay. So actually, towards North Las Vegas.

12 A Yes.

13 Q Okay.

14 THE COURT: Hold on a second because somehow your
15 hand is frozen in time. Let's try that again.

16 MR. PIKE: My fingerprints may show up somewhere.

17 THE COURT: So that building there is where he indicated
18 and what I've circled is on North Las Vegas Boulevard on the west side
19 of the road just north of the dirt lot area.

20 THE WITNESS: Right.

21 THE COURT: Okay.

22 BY MR. PIKE:

23 Q And so we kind of -- I kind of get to know people that work
24 there at the different locations, maybe at Flavors, and have you ever met
25 Michael McNair seated here?

1 A Never met him.

2 Q Never met him before, you never went into --

3 A Seen him over there, yeah.

4 Q Okay. And sometimes some of the employees there will give

5 outdated food or something to you guys that are having a rough go.

6 A Well.

7 Q Sometimes.

8 A Sometimes, yeah. It had to be the guy that runs the place.

9 Q Okay. You know his first name?

10 A I don't remember, blonde hair, white guy, I think his -- it might

11 have been his sister or somebody --

12 Q Okay.

13 A -- that worked with him.

14 Q So there's no restrictions or anything --

15 A No.

16 Q -- that would hold somebody back on doing what's right.

17 A No.

18 Q No. Okay. And along with getting to know Gordon, did you

19 know Kenneth -- Kenneth Saldana?

20 A Ken the -- Kenneth, yeah, he used to work there with us.

21 Q Sounds familiar. Okay. He worked there with you. And he

22 got to be pretty good friends with Gordon. And Gordon would start

23 staying there where he was.

24 A Because Ken used to stay with us too.

25 Q Okay. So the two or four of you would kind of get together

1 because sometimes that might be a dangerous place at night.

2 A Yes.

3 Q All right. And it's not uncommon for people to carry knives or
4 other things to protect themselves.

5 A There was a lot of people that didn't, I mean, we were close
6 enough to the building. I didn't have one.

7 Q Well, some people would, some people wouldn't.

8 A Yeah.

9 Q Okay. And until you got to know them you wouldn't know
10 whether or not that was a type of a person who would carry a knife of
11 wouldn't carry a knife, would that be a fair statement?

12 A Well, being you said that I've known Gordon, I think fair
13 enough to where I know he didn't have a knife.

14 Q Well, I'm saying -- I'm not saying that you didn't know Gordon
15 that well. But if somebody that didn't know Gordon that well was coming
16 up in that area or coming up to you. You didn't carry a knife but they
17 might be a little bit weary -- wary about that until they got to know you.

18 MS. BLUTH: Judge, I'm going to object. That's just
19 speculation at this point.

20 THE COURT: Mr. Pike.

21 MR. PIKE: Okay. Let me rephrase that.

22 THE COURT: Okay.

23 BY MR. PIKE:

24 Q Until you got to know somebody, you wouldn't know whether
25 they were the type of person who would carry a knife or not carry a knife,

1 would that be a fair statement?

2 A Yes.

3 Q Okay. Good. Now, you indicated that Kenneth and Gordon
4 were now kind of pairing off during that time and at the time the shooting
5 occurred Kenneth was much closer to where the shooting occurred than
6 you were, wouldn't that be a fair statement?

7 A Kenneth was not that far from us.

8 Q Okay. Well, he was a lot -- he was closer to Gordon, wasn't
9 he?

10 A Kenneth was only about from me to the jurors.

11 Q Okay. And at that point in time.

12 THE COURT: So let me clarify it, Randy.

13 MR. PIKE: Oh, I'm sorry.

14 THE COURT: When you say you to the jurors, you talking
15 about to the --

16 THE WITNESS: To the right of us.

17 THE COURT: -- to the right of you.

18 THE WITNESS: My brother and I, yeah.

19 THE COURT: So about where Mr. Pike is now.

20 MR. PIKE: So this wall over here, this little pony wall.

21 THE WITNESS: Yeah. Right.

22 THE COURT: Okay. So that's 10 to 15 feet.

23 MR. PIKE: That's roughly two yards.

24 THE COURT: Okay. So from the end of the witness stand
25 will be roughly six feet until where the gentleman's sitting add another

1 four feet or so, so about ten feet.

2 MS. BLUTH: And Judge, could I just get clarification? Are we
3 referring to where Kenneth was to Gordon or Kenneth to them? I just
4 want to make sure.

5 THE COURT: Who were you referring in terms of Kenneth's
6 positioning?

7 THE WITNESS: Well, he said Kenneth and so I said Kenneth
8 was to the right of us.

9 THE COURT: To the right of you?

10 THE WITNESS: Right.

11 THE COURT: Okay. Thank you.

12 BY MR. PIKE:

13 Q And did you -- you said that there were two times when you
14 saw some people coming up to talk -- or -- to talk with Gordon, right?

15 A Right.

16 Q First time you saw that video and you had some -- you saw
17 somebody that was wearing what looked like some hair color -- covering
18 like a netting or something like that or like a hoodie. Do you remember
19 seeing that person in the video that the State had played for you?

20 A No.

21 Q Okay. The person -- when you were giving the voluntary
22 statement to the police at that point in time, they told you that they were
23 recording the conversation with you, didn't they?

24 A Yes.

25 Q And they did that with your permission?

1 A Yes.

2 Q And you were trying to give them the information as best as
3 you could at that point in time?

4 A Yes.

5 Q Okay. Now, do you remember telling the police that -- how far
6 you were away at the time of the shooting?

7 A I believe I told them it was about 100 yards.

8 Q Okay. About a football field.

9 A Yeah.

10 Q Okay. And then from -- and from where you were at and I'll
11 keep my finger out of it this time. Now, this doesn't even show now.

12 MS. BLUTH: Just.

13 THE COURT: Hold on.

14 BY MR. PIKE:

15 Q So 100 yards up -- coming up this port -- coming up south --

16 THE COURT: It's not showing on the picture, Randy, I'm
17 sorry. Hold on.

18 [Colloquy between Counsel and Court]

19 BY MR. PIKE:

20 Q All right. So, there we go. All right. Now, coming south of --
21 down Las Vegas Boulevard this is where you were sleeping and this is
22 where all the events occurred, right?

23 A Yes.

24 Q Okay. Now, about 100 yards away is this flat or is it on an
25 incline?

1 A It's on, like an incline.

2 Q Okay. So you would be up a little bit higher looking down
3 upon what was happening, right?

4 A I think it's the other way. I think it was a little higher --

5 Q Okay.

6 A -- up there.

7 Q They would have been higher up from -- then -- where you
8 were at. And your brother was about the same.

9 A Because people used to actually slide down the hill.

10 Q Okay. And so you saw two Black individuals and the person
11 that you saw in -- you indicated to the police at that time, it looked like he
12 was wearing a hoodie.

13 A Right.

14 Q Remember that so could you -- when you say somebody's
15 wearing a hoodie, what does that look like? Because some people may
16 have a different idea of what a hoodie is. Is it something where --

17 A Well, it looked dark, you know, and, you know, kind of like a,
18 you know, he had something on his head.

19 Q Like a hoodie. Okay.

20 A Yeah. And then I also told them when they turned around that
21 he had dreadlocks too.

22 Q Okay. So now, going through that and in relationship what
23 you saw during that evening, you were asked by the police if you saw
24 somebody who you thought had pulled the trigger, and he -- along with
25 the description of a dark blue hoodie you indicated that there was

1 something unusual about his pants. And do you recall that?

2 A I really don't.

3 Q You don't. Do you remember telling the police that he was
4 wearing shorts?

5 A No, I don't.

6 Q Okay. Well let me see.

7 MR. PIKE: That would be on page 9.

8 MS. BLUTH: Thank you.

9 MR. PIKE: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 BY MR. PIKE:

12 Q Mr. Lesh, I'm going to come up and ask you some questions.

13 A Yeah, no problem.

14 Q Okay. And just if you could look at that, just read it to yourself,
15 don't read it out loud. Okay.

16 Does that refresh your recollection as to what you told the
17 police the person you believed to be the shooter was wearing as far as
18 pants?

19 A You know I really don't remember even saying it. I don't.

20 Q Okay. But it --

21 A I'm being totally honest. I don't remember.

22 Q If I told you that you said that he had on a light blue shirt and
23 dark blue shorts that -- and you saw that on this report -- or on this
24 transcription. You wouldn't disagree with that.

25 A I had to have said it.

1 Q Okay. And when you were saying that -- you also said that as
2 the people left that -- in the Suburban that both of the individuals left.
3 Remember saying that to the police?

4 A And I also told him that it could have been one.

5 Q No. Well, okay so.

6 A You know I could have.

7 Q You weren't sure. You were trying to give them the best --

8 A I could have -- you know, I told them that it was two, you
9 know, but it could have been one. I -- you can't see over there.

10 Q Okay. Fair enough, it was dark that night.

11 A Right. Until the Suburban pulled out, you didn't even see it.

12 Q Okay. And you saw -- which way did the Suburban go?

13 A Left on Las Vegas Boulevard.

14 Q Okay. And you -- could you tell who was driving that --

15 A No.

16 Q -- Suburban?

17 In relationship to what else was going on that day it was -- had
18 you worked that day?

19 A No.

20 Q During that day and prior to you going to bed with you -- near
21 your brother. Had you had anything to drink?

22 A No. I don't drink.

23 Q You don't drink anymore?

24 A No. I haven't and I haven't since I was 20 years old.

25 Q Good on you. And at that point in time, you had been lying

1 down and when the -- you were initially asked by the police about did
2 you know the guy that shot -- that got shot, you said you didn't. You
3 didn't know that it was Gordon. Do you remember that?

4 A No. I don't, I mean, I was half awake, half asleep.

5 Q Okay. So you -- and I think you described it as I came out of a
6 dead sleep, right?

7 A Yeah, that is what I said, a dead sleep.

8 Q You remember that.

9 A That I do remember.

10 Q All right.

11 MS. BLUTH: I'm sorry, Mr. Pike, can you have a page
12 number? I didn't know where you were last.

13 MR. PIKE: Oh, I apologize.

14 MS. BLUTH: That's okay.

15 MR. PIKE: Thank you. That would be on page 12.

16 MS. BLUTH: Thank you.

17 MR. PIKE: Thanks.

18 BY MR. PIKE:

19 Q And at that time you were trying to be as cooperative to the
20 police -- with the police as you could be.

21 A Yes.

22 Q Prior to -- actually prior to giving this recorded statement you
23 filled out a handwritten statement, didn't you?

24 A Yes.

25 Q And did you review that before you testified today?

1 A No, I didn't.

2 Q Didn't. Do you remember what you wrote on that statement?

3 A I don't. I'm 60 years old, I mean, that's two years ago.

4 Q I feel it. I'm in my 60s, sharing that with you.

5 So -- but as best as you can remember at that point in time,
6 you didn't describe any clothing or anything else in your written
7 statement but you did later on in your recorded statement, would that be
8 a fair statement?

9 A If you say so. It's like I said I don't even remember the written
10 statement --

11 Q Okay.

12 A -- and I didn't even get to look at it.

13 Q Well, since you don't remember it, would you mind if I showed
14 it to you.

15 A I'd like that.

16 Q Okay.

17 MR. PIKE: May I approach the witness, Your Honor?

18 THE COURT: Yeah.

19 MR. PIKE: Page 120.

20 BY MR. PIKE:

21 Q Here you go Mr. Lesh. That's -- that portion blocked out is all
22 your personal information so.

23 A Yeah, this is my writing because I can't spell that good. So
24 yeah, it's mine.

25 Q Which is fine. Okay. And did that refresh your recollection

1 that you gave a written statement for the police and then you waited to
2 talk to the detectives afterwards.

3 A All right.

4 Q Okay. That's the way things happen. And between the time
5 that you gave this written report -- or voluntary statement, and before --
6 between that time and the time that you gave the recorded statement did
7 you talk with other people about what they may have seen?

8 A No.

9 Q Did you talk to your brother about what he may have seen?

10 A No, they kept us pretty much apart.

11 Q Okay. And at the first voluntary statement that you gave, you
12 said you woke up and there was some fighting go on and the -- that all
13 three individuals were involved in the fight?

14 A No. I -- what I meant by fighting was they were arguing and,
15 you know, I couldn't tell if they were fighting. You could just see, you
16 know, hand movements.

17 Q Okay. And --

18 A It could have been pushing it, it could have been pointing.

19 Q And you were asleep and at the time you were sleeping you
20 indicated that you had a cot. Did you and your brother both have cots?

21 A Yes.

22 Q Okay. So you were not --

23 A We were lucky.

24 Q You were the -- one of the lucky ones, you weren't on the
25 ground --

1 A Right.

2 Q -- you were -- you had your cot. Okay. Great. Appreciate that
3 and so I -- when you sleep I take it, like me, you don't sleep with the
4 glasses on.

5 A No.

6 Q Okay. So you wake up out of a dead sleep you put on your
7 glasses and you tried to remember best what you saw.

8 A I wasn't wearing glasses at that time.

9 Q You weren't wearing glasses --

10 A No.

11 Q -- at that time. Okay. When did you get the glasses you have
12 right now?

13 A I just got glasses about six months ago.

14 Q And prior to that time did you need glasses but you didn't have
15 any?

16 A They said I was far sighted in one eye and near sighted in the
17 other.

18 Q Okay. So you just --

19 A Yeah, just kind of.

20 Q Moving back and forth. All right.

21 MR. PIKE: Court's indulgence.

22 THE COURT: Okay.

23 MR. PIKE: Apologize on that -- about that.

24 BY MR. PIKE:

25 Q Now, when -- you indicated that you saw people -- two

1 people -- two individuals coming over and they had some contact with
2 Gordon, right?

3 A Right.

4 Q The first two people that came where they the same as the
5 second two people that came?

6 A I thought they were, yeah.

7 Q Okay. You thought they were but you're not sure.

8 A I'm pretty sure they were -- the same size everything. He
9 stayed back from the taller one, you know --

10 Q Okay.

11 A -- basically the same spots.

12 Q Okay. So but you're certain -- you feel --

13 A Yeah, I'm certain I'm.

14 Q -- pretty certain that there were two --

15 A -- I'm certain. No, I'm certain it

16 Q -- that there were two.

17 A No, I'm certain that it was the same people.

18 Q Okay. I didn't want to interrupt you I apologize. But they
19 came at two different times, right?

20 A Yes.

21 Q And that was about five minutes apart of could it have been a
22 little bit longer?

23 A It could have been longer.

24 Q And while you were participating with the police, did you ever
25 meet with them again? For instance, did a detective ever come forward

1 and show you a photo lineup to say --

2 A No.

3 Q -- do you recognize anybody in this.

4 A Uh-uh.

5 Q When you're saying uh-uh, I need to --

6 A No.

7 Q -- you say yes, or no.

8 A Nobody.

9 Q Okay. It's for the record. It's being recorded. I appreciate it.

10 A No, nobody came showed me a lineup or anything.

11 Q And could you tell whether or not either of those two people
12 had any kind of facial hair, have a beard or anything like that?

13 A No.

14 Q And until you saw the video today have you ever seen that
15 video?

16 A No.

17 MR. PIKE: Appreciate you time, sir.

18 THE WITNESS: No problem.

19 MR. PIKE: Thank you very much.

20 THE COURT: Ms. Bluth.

21 **REDIRECT EXAMINATION**

22 BY MS. BLUTH:

23 Q All right. So I want to make sure I'm clear -- this is State's 3 in
24 regards to where you were sleeping at that time and I'm sorry that it's
25 unclear to me because I know that you said it. So if Flavors is here and

1 here's the intersection of Las -- of North Las Vegas Boulevard and
2 Searles you tell me when to stop my pen in regards to -- first of all
3 should I go up or down?

4 A Go up.

5 Q Up. Okay. Then you tell me when to stop my pen.

6 A Right there.

7 Q Okay. So pretty much in the front of Searles. Obviously
8 across the street from Searles but in the front of it.

9 A Right. Yes.

10 Q Okay. Now, Gordon.

11 THE COURT: I think you said in the front of Searles.

12 MS. BLUTH: Oh, in the front of Flavors. I apologize. Thank
13 you.

14 THE COURT: So essentially directly across the street from
15 that building.

16 THE WITNESS: Well, not directly across the street more to
17 the right. It was right there, yes.

18 THE COURT: Okay.

19 MS. BLUTH: All right. So.

20 THE COURT: So across the street and down a tad.

21 THE WITNESS: Yes.

22 THE COURT: But it -- north of Searles.

23 THE WITNESS: Yes.

24 THE COURT: Okay. Thank you.

25 ...

1 BY MS. BLUTH:

2 Q So if we're looking at the actual map in itself, you would be
3 right in the --

4 A Yes.

5 Q -- A in Vegas. Do you see the A?

6 A Yes, I can.

7 Q Okay. All right. Now, Gordon -- you talked about Gordon
8 being down on the south side of Searles, right.

9 A Right.

10 Q Now, on -- would Mr. Saldana, would Kenneth be between you
11 two or on the opposite side of Gordon?

12 A Between us.

13 Q All right. So -- okay, so in between you guys. All right. Thank
14 you for clarifying that for me. Mr. Pike asked you if you remember
15 anybody from Flavors ever going out and handing food to the homeless
16 or things like that. Do you remember that line of questioning?

17 A right.

18 Q The individual that you saw in the video had you seen him
19 have interactions with the homeless --

20 A Yes.

21 Q -- before. Would you say those were positive or negative?

22 A Negative.

23 Q Okay. Had you ever seen him hand out any food or anything
24 like that?

25 A No.

1 Q Okay. In regards to the individuals running back to the
2 Flavors after the shots had been fired and the Suburban takes off, as
3 you sit her today -- well, actually no, I mean, as you were speaking to
4 the police you weren't sure if one or two got in, is that right?

5 A Correct.

6 Q But you saw the vehicle take off.

7 A Yes.

8 Q Okay.

9 MS. BLUTH: Thank you so much. Nothing further.

10 THE COURT: Randy, anything further?

11 MR. PIKE: I -- just real briefly.

12 **RECROSS-EXAMINATION**

13 BY MR. PIKE:

14 Q I'm back again, Mr. Lesh. I'm going to ask you just a few more
15 questions. I don't know how to put this but let me see if I can do it this
16 way.

17 A Just put it.

18 Q Okay. Well, you know, it would not have been uncommon for
19 people that were there on the street and didn't have any money to items
20 from Flavors to go over and try and take some -- or take some food.

21 MS. BLUTH: Objection, speculation only if he knows.

22 BY MR. PIKE:

23 Q Only if you know.

24 A I don't know that because the majority of them have food
25 stamps.

1 Q Okay. And so if some -- it wouldn't be uncommon to have
2 somebody try and -- if you know -- did you ever see anybody try and
3 steal food out of the Flavors?

4 A I personally never seen it.

5 Q Okay. You didn't do it. You didn't see anybody do it. All
6 right. The other thing that there was a question about identification I
7 guess it was that you -- when you were talking with the police.

8 MR. PIKE: And this will be page 8, Counsel.

9 MS. BLUTH: Thank you.

10 BY MR. PIKE:

11 Q You were asked to describe the two individuals as best you
12 could, is that -- and that's -- that was part of the police questioning that
13 they gave you, right? And you're nodding your head yes. Is that a yes?
14 Okay.

15 A Yes. I'm sorry.

16 Q That's okay. I don't mean to be rude.

17 A I'm half awake, half asleep right now so.

18 Q Okay. And at that point in time the -- do you remember the
19 officers asking you if there was anything distinctive about them and what
20 his hairstyle was like? And if you don't remember that, I've got.

21 A Yeah, that, I told him it looked like he had dreadlocks.

22 Q Okay. Well, now let me show you the transcript if I may.

23 A Yeah.

24 MR. PIKE: Can I approach, Your Honor?

25 THE COURT: Yes.

1 MR. PIKE: Okay.

2 BY MR. PIKE:

3 Q Now, on page 8 and just showing let's see this question. I'm
4 sorry can you read that? Which is your nearsighted eye?

5 A Yeah, when you moved it over.

6 Q Now, does that refresh your recollection?

7 A Yes.

8 Q As to the question that the police asked you and the answer
9 that you gave them?

10 A Right.

11 Q Okay. And when the officers asked you could you -- was --
12 what his hairstyle was like you told them, I couldn't tell what his hairstyle
13 really that much, right?

14 A Right.

15 Q And that's what you told them and that was -- your memory
16 would be better in that point in time because it just had happened then it
17 would be today, wouldn't it?

18 A Yes. I mean we waited until 3:00 in the morning till --

19 Q So it was --

20 A -- we got to talk to them.

21 Q Okay. So it was a long day.

22 A Yeah.

23 Q All right.

24 MR. PIKE: Well, it's going to be a little bit shorter right now.

25 Thank you, very much. No, further questions.

1 THE COURT: Anything further, Ms. Bluth?

2 MS. BLUTH: Just one.

3 **FURTHER REDIRECT EXAMINATION**

4 BY MS. BLUTH:

5 Q Did you -- before you went on tape with the police officers did
6 you also discuss what you had seen with the other like patrol officers
7 briefly and things like that?

8 A Yes.

9 Q Okay.

10 MS. BLUTH: Nothing further, thank you.

11 THE COURT: All right. Anything from our jurors? Yes.

12 [Bench Conference Begins]

13 MR. PIKE: Okay.

14 MR. ROGAN: That's fine.

15 THE COURT: Okay.

16 [Bench Conference Concludes]

17 **EXAMINATION BY THE COURT**

18 BY THE COURT:

19 Q All right. Mr. Lesh, got a couple of questions for you if you
20 recall. Was Gordon sitting down at the time of the shooting or was he
21 standing at the time?

22 A Standing.

23 Q He was standing. Okay.

24 THE COURT: Mr. Bluth any questions based on mine?

25 ...

1 **FOLLOW-UP EXAMINATION**

2 BY MS. BLUTH:

3 Q You said that after the two -- the first time after the two black
4 males leave, you said he sat down --

5 A He sat down.

6 Q -- and so as they were approaching is that when he got up?

7 A He got back up.

8 Q Okay. Thank you.

9 A No problem.

10 THE COURT: Mr. Pike, anything?

11 MR. PIKE: No follow up.

12 THE COURT: All right. Mr. Lesh, thank you so much for your
13 time today, sir. I really appreciate it, you are excuse.

14 THE WITNESS: You're very welcome, thank you.

15 THE COURT: State may call their next witness.

16 MR. ROGAN: Anthony Razo.

17 **ANTHONY RAZO**

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

20 THE CLERK: Thank you. Please be seated. If you could
21 state and spelling your name for the record, please.

22 THE WITNESS: Anthony Razo. R-A-Z-O.

23 THE COURT: Common spelling of your first name?

24 THE WITNESS: Anthony, A-N-T-H-O-N-Y.

25 THE COURT: Thank you very much, Mr. Razo. All right. Mr.

1 Rogan.

2 MR. ROGAN: Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 BY MR. ROGAN:

5 Q Good afternoon, Mr. Razo. How are you?

6 A Good, how are you?

7 Q I want to talk to you about a shooting that you were a witness
8 to back in September of 2017. Do you know what I'm talking about?

9 A Yes, sir.

10 Q Do you remember where you were living at the time that that
11 shooting took place?

12 A Off of Searles Street.

13 Q Where you homeless?

14 A Yes.

15 Q All right. I'm going to show you State's Exhibit 2. Now, I
16 showed this to you just a little while ago, right?

17 A Yes.

18 Q Okay. And in the top of State's Exhibit 2, you see a building
19 and it's marked on the photograph saying 1300 North Las Vegas
20 Boulevard, right?

21 A Yes.

22 Q And that's where the store called Flavors is, correct?

23 A Yes.

24 Q All right. Now, if you could tell us and I'm going to move the
25 picture up a little bit so we can see the street to the south of that building

1 that street is Searles, correct?

2 A Yes.

3 Q All right. Can you use that mouse in front of you and -- sorry
4 let me control it for just a second, can you just use the mouse to kind of
5 circle where you recall where you would stay?

6 THE COURT: If you left click, Anthony, then you can hold it,
7 you can, there you go.

8 THE WITNESS: Okay.

9 THE COURT: There you go. Now, look see you got a job on
10 Monday night football now.

11 All right. So the gentleman has circled an area right above
12 the word Google in the photograph which is the southside of Searles a
13 little east of the corner of North Las Vegas Boulevard.

14 BY MR. ROGAN:

15 Q Thank you, Mr. Razo. So obviously you circled a big part of
16 the street. You didn't sleep in the street, right?

17 A No, sir.

18 Q Okay. Did you -- you slept on the sidewalk or was there an
19 area on the other side of the sidewalk where you could reside?

20 A On the sidewalk against the wall there.

21 Q Okay. Thank you. Now, there were other homeless people in
22 the ves -- in that same area, right?

23 A Yes.

24 Q Okay. And they all -- they would sleep along North Las Vegas
25 Boulevard as well, right?

1 A Yes.

2 Q Now, at some point between 9:00 and 10:00 p.m.that -- on
3 September 14th which is the day of the shooting, correct?

4 A Yes.

5 Q You saw someone that caught your attention. Can you tell us
6 who you saw and what that person was doing?

7 A The ge --

8 Q Do you need that map?

9 A No.

10 Q Okay.

11 A There was a gentleman that came from the -- along the North
12 Las Vegas Boulevard and came down the middle of Searles Street.

13 Q So he came from North Las Vegas Boulevard east bound
14 down Searles?

15 A Yes.

16 Q And where did that man go to?

17 A To the fence over by Flavors parking lot.

18 Q All right. Now, we're looking at an aerial map of Exhibit 2.
19 There's a fence between Searles and the Flavors building.

20 A Yes.

21 Q Okay. How tall is that fence?

22 A It's about six feet tall.

23 Q Okay. So that man that you see approaches that fence. Do
24 you know why he's going there? Or at -- let me rephrase. What does he
25 do when he gets to that fence?

1 A He gets in an argument with another -- with a gentleman that's
2 behind the fence and he's asking him to turn his music down.

3 Q Okay. So the man that is walking down Searles and
4 approached that other on the other side of the fence. Is he a homeless
5 man?

6 A No.

7 Q Okay. As far as you could tell at the time was he a homeless
8 person that approached -- the man that approached the man on the
9 inside of the fence.

10 A Oh, yes. Yes, he was homeless.

11 Q Now, the other guy, the guy on the inside of the fence the
12 one's that closer to the Flavors building. Could you tell if he was an
13 employee or not of somewhere in that building?

14 A Yes.

15 Q And what made you conclude that?

16 A He had a like a blue shirt on.

17 Q All right. Anything distinctive about that blue shirt?

18 A It had like a name patch places.

19 Q Do you recall if there were one or two kinds of patches?

20 A I believe that it was just like one patch of square and it was
21 just around, like his, you know.

22 THE COURT: Kind of looking at the breast?

23 THE WITNESS: Yes, like breast pocket.

24 THE COURT: Area of the shirt. Okay.

25 ...

1 BY MR. ROGAN:

2 Q All right. I'm showing you State's Exhibit 70. Is that similar to
3 what you saw?

4 A Yes.

5 Q All right. Now, what was the employee, I guess we'll call him,
6 what race was he?

7 A African American.

8 Q What about the homeless man that approached him. What
9 race was he?

10 A He was African American as well.

11 Q All right. So what was the employee doing at the time that the
12 homeless man approached him?

13 A He was playing loud music.

14 Q And where was the music coming from?

15 A From his vehicle.

16 Q Can you tell -- can you describe the vehicle for us?

17 A It was like a black truck.

18 Q Now had you ever seen either of these two individuals before?

19 A No.

20 Q At the time that you first noticed the employee playing that
21 music was he with anyone else?

22 A No.

23 Q Do you remember telling the police that there was another
24 truck parked right there that was lighter in color and possible with the
25 security guard?

1 A Yes.

2 Q All right. So your recollection today is that he was by himself
3 but you told the police there may have been a security guard with him.

4 A Yes.

5 Q Okay. So what specifically do you remember the homeless
6 man telling the employee?

7 A That he needed to turn his music down because he was
8 bothering his wife from sleeping?

9 Q What did the employee say back to the homeless man?

10 A He was like get off the street and get an apartment or stop
11 being homeless.

12 Q And what does the homeless man say, if anything, back to the
13 employee?

14 A He was just like you need to turn your music down because
15 you're bothering me.

16 Q All right. Did at any point the homeless man make any verbal
17 threats to the employee?

18 A I remember him saying he was like going to jump over the
19 fence or, you know, I'll come over the fence or something like that.

20 Q And when he said that did the employee say anything back?

21 A He was like come on over, you know, come on over. Jump
22 over the fence if you want or.

23 Q And when they were saying these things were their voices
24 elevated or we're they speaking like you and I are speaking right now?

25 A Yes. They were like yelling back and forth at each other.

1 Q Now did the homeless guy end up climbing over that fence?
2 A No.
3 Q All right. Did you see either of the two men with -- that being
4 the employee that you just described and the homeless man either of
5 those two with a weapon?
6 A The homeless guy had like a knife behind his back.
7 Q What made you think that?
8 A Because I could see a silver blade and he was like holding it
9 behind his back.
10 Q In one hands -- or one hand or two hands?
11 A Two hands like clasped behind his back.
12 Q Okay. Did he ever bring that knife out in front of him?
13 A No.
14 Q How far away where you from this argument that was taking
15 place?
16 A About 50 to 75 feet away.
17 Q And how long did that argument last?
18 A Probably two or three minutes.
19 Q Now, eventually did the two men part ways?
20 A Yes.
21 Q Where did the homeless man go?
22 A He went back to where he -- wherever he was coming -- he
23 was -- he went up -- back up the street.
24 Q So he went west bound on Searles back towards North Las
25 Vegas Boulevard?

1 A Yes.

2 Q What does the employee do?

3 A He went in the parking lot and did some donuts and went back
4 that way. He was behind the gate.

5 Q All right. Let's talk about that a little bit. So he's still with his
6 truck, right?

7 A Yes.

8 Q Is the music still playing?

9 A Yes.

10 Q What kind of music was it by the way?

11 A Like hip hop and R&B.

12 Q But eventually he gets into that truck and you said he donuts.
13 Can you describe that for us please?

14 A He did like a couple donuts in the parking lot or around there,
15 driving real fast.

16 Q So squealing tires that whole thing?

17 A Yes.

18 Q All right. Does he eventually park that truck?

19 A Yes.

20 Q And where does he park it?

21 A The same area like the truck was parked like a right over here.

22 THE COURT: Unfortunately, we can't see where you're
23 pointing.

24 THE WITNESS: Oh.

25 THE COURT: I'm sorry.

1 MR. ROGAN: Yeah. Sorry, you got to use the little.

2 THE COURT: See in -- there you go.

3 BY MR. ROGAN:

4 Q Okay. So in the parking lot south of -- south of the building
5 and you're indicating a southern most parking spaces.

6 A Yes.

7 Q To your recollection.

8 A Yes.

9 Q All right.

10 MR. ROGAN: Court's indulgence.

11 THE COURT: Go ahead.

12 BY MR. ROGAN:

13 Q Okay. Showing you State's Exhibit 52. Does this truck match
14 the appearance of what you saw on the evening of September 14th?

15 A Yes.

16 Q Okay. And this is how you saw it parked after the man -- the
17 employee did donuts in the parking lot?

18 A Yes.

19 Q All right. So showing now State's Exhibit 51. Does it appear
20 that that truck is actually parked next to the building?

21 A Yes.

22 Q Okay. Now, after you saw that employee do donuts, and park
23 the truck next to the building did you see what he did or where he went
24 after that?

25 A He came outside the building walked down the middle of the

1 street.

2 Q Okay. So let's talk about that. Did he immediately get out of
3 the truck and come out into the street or did he disappear for a little bit?

4 A Disappeared for a little bit.

5 Q Okay. So after he got out of the truck and disappeared for a
6 little bit or where you couldn't see him when was the next time you saw
7 him? How much time had elapsed?

8 A Probably like 15 minutes.

9 Q Okay. At some point when he reappeared, was he with
10 another employee?

11 A Yes.

12 Q And could you tell what race or nationality the other employee
13 was?

14 A I believe he was Hispanic.

15 Q Did you -- why did you think he was an employee?

16 A He -- they just seemed to be having a conversation.

17 Q Okay.

18 A Together.

19 Q And do you remember the employee that we were talking
20 about, the black employee, did he say anything at the time you saw him
21 again?

22 A He said he had to like clock out and go take care of
23 something.

24 Q Did he say take care of something or take care of this?

25 MR. PIKE: Objection, Your Honor. It's hearsay.

1 THE WITNESS: I think take care of this.

2 THE COURT: Well.

3 MR. ROGAN: Court's indulgence.

4 THE COURT: I'm going to overrule it as to hearsay. But I
5 want to make sure you're accurately describing what it was. Do you
6 recall specifically what it was that was said?

7 THE WITNESS: I don't.

8 BY MR. ROGAN:

9 Q Okay. I'm going to show you page -- let me back up. You
10 remember speaking to the police a few days after this took place, right?

11 A Yes.

12 Q And they recorded a statement that you gave to them, right?

13 A Yes.

14 Q And before your testimony today you've had an opportunity to
15 review that a couple times.

16 A Yes.

17 Q Okay. So right now, you don't remember what the African
18 American employee said. Do you think you could remember if you took
19 a look at page 19 of your statement?

20 A I do.

21 Q All right.

22 MR. ROGAN: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. ROGAN:

25 Q All right, sir. If you could look towards -- read silently please

1 the bottom half of page 19.

2 MR. PIKE: May I approach with Counsel?

3 THE COURT: Yes.

4 MR. PIKE: No, I mean.

5 THE COURT: Oh, approach the bench or -- okay.

6 BY MR. ROGAN:

7 A All right.

8 Q Okay. Mr. Razo, do you remember now after reading page 19
9 what the African American employee said?

10 A He said I need to clock out and take care of this.

11 Q So after that takes place, where do you see the African
12 American employee go?

13 A Like down Searles Street.

14 Q Okay.

15 A Towards North Las Vegas Boulevard.

16 Q So he leaves the property of the Flavors building, correct?

17 A Yes.

18 Q And how does he get from the property -- the Flavors property
19 on to Searles?

20 A He's walking.

21 Q Okay. Does he have to go through a gate or a fence that you
22 describe previously?

23 A Yes.

24 Q And how does he get through that gate?

25 A He walks through it.

1 Q Okay. Is it an electric gate, manual gate?

2 A Yes.

3 Q Electric.

4 A Electric gate I believe.

5 Q Okay. And so he then you said goes on to Searles in which

6 direction on Searles was he traveling?

7 A He went west.

8 Q Towards Las Vegas Boulevard?

9 A Yes.

10 Q The same direction that the homeless had gone 15 -- or 15

11 minutes before.

12 A Yes.

13 Q Okay. Was he with anyone?

14 A No. I didn't see him with anyone.

15 Q Okay. Was he saying anything?

16 A Not that I could hear.

17 Q And when he was walking could you describe his demeanor

18 for us?

19 A He was walking like pretty fast and with like purpose, I guess.

20 MR. PIKE: Objection, speculation and ask for the last portion

21 be stricken.

22 THE COURT: Well, I'll sustain the objection as to that and

23 strike that part. You just saw him walking, you said pretty quickly.

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Thank you.

1 By MR. ROGAN:

2 Q Did you see him with a weapon?

3 A No.

4 Q All right. Now when you first spoke with the police a few days
5 later did you tell the police initially that you saw him with a gun?

6 A Yes.

7 Q And then that was before they started recording your
8 statement, right?

9 A Yes.

10 Q And then later on when they turned the tape recorder on did
11 you tell -- did you say to the police I didn't see him with a gun?

12 A Yes.

13 Q And why? Why did -- why that change?

14 A I don't know I just I can't remember, I mean, I -- there was no
15 gun when I saw him walking.

16 Q Okay. So your memory today is that you don't remember him
17 with a firearm?

18 A No, not.

19 Q Okay. After you saw that Black -- the African American
20 employee walking quickly, in the direction that the homeless man had
21 gone. What were you thinking?

22 A That something was going to go down so -- something was
23 going down. So I was like I got to get out of here.

24 Q Were you fearful?

25 A Yes.

1 Q And where did you go?

2 A I went up to North Las Vegas Boulevard -- to Owen and
3 Mains, north.

4 Q So you headed from your location on Searles, you headed
5 west towards North Las Vegas Boulevard.

6 A Yes.

7 Q And then north on North Las Vegas Boulevard towards Main
8 and Owens.

9 A Yes.

10 Q And while you're traveling what if anything did you hear?

11 A When I got up to North Las Vegas Boulevard and Main I heard
12 what sounded like gunshots.

13 Q How many do you think you heard?

14 A Seven.

15 Q And how long do you think it was between the last time you
16 saw the African American employee and the time you heard the
17 gunshots. How much time had elapsed?

18 A Probably like half an hour or 45 minutes.

19 MR. ROGAN: Court's indulgence.

20 By MR. ROGAN:

21 Q Okay. Do you remember telling the police a different time?

22 A Yes.

23 Q Okay. What do you remember telling the police?

24 A That is was like 15 minutes.

25 Q Okay. So is your memory today that is was longer than 15

1 minutes?

2 A Yes.

3 Q It was more like a half an hour?

4 A Yes.

5 Q Okay. So did you actually see the shooting?

6 A No.

7 Q All right. Now, you gave a description to the police of the
8 African American employee, correct?

9 A Yes.

10 Q Now, you've already said that he was wearing a blue shirt with
11 that patch on it, right?

12 A Yes.

13 Q Do you remember how tall he was?

14 A He was about 5'10.

15 Q Do you remember -- hold on one second. Do you remember
16 telling the police that he was a bit taller than that?

17 A Yes. I remember saying like 6 foot to 6'2 I think.

18 Q Okay. So that's what you told the police back then.

19 A Yes.

20 Q All right. And do you remember whether he was skinny, fat?

21 A Skinny.

22 Q Skinny. Okay. Do you remember giving the police a weight
23 range?

24 A Like a 180 pounds, I believe.

25 Q Right. Do you remember telling the police about a 140 to 160

1 pounds?

2 A Yes.

3 Q Okay. I know it's tough to remember a lot of these things.

4 A It is.

5 Q Okay. Do you remember also -- we're you a bigger guy back
6 then?

7 A No. I was a skinner guy.

8 Q Okay. Do you remember if you described the African
9 American employee's hair to the police?

10 A Yes.

11 Q And what did you describe that as?

12 A It was black and like bald.

13 Q So black or bald?

14 A Yes.

15 Q Okay. Do you remember saying it looked like a shaved head?

16 A Yes.

17 Q All right. I'm showing you State's Exhibit 49. If you could take
18 a look at that gentleman's head or hair. Is that how you remember it
19 looking?

20 A Yes.

21 MR. ROGAN: Court's indulgence. Pass the witness.

22 THE COURT: Mr. Pike.

23 MR. PIKE: Thank you.

24 ...

25 ...

1 **CROSS-EXAMINATION**

2 BY MR. PIKE:

3 Q Good afternoon, Mr. Razo.

4 A Good afternoon, sir.

5 Q You and I had an opportunity to speak at the time of a
6 preliminary hearing when you testified.

7 A Okay.

8 Q Do you recall testifying at that time?

9 A Yes.

10 Q And you were sworn and you -- the same oath that you swore
11 today.

12 A Yes, sir.

13 Q And during the time of the testimony you were trying to
14 remember as best you could what occurred.

15 A Yes.

16 Q And you were telling -- to the best of your ability at that time
17 you were telling your best recollection and trying to comply with the --
18 well, the swearing in that you did that you would tell the truth.

19 A Yes, sir.

20 Q Okay. Not a comfortable place to be up on the witness stand
21 is it?

22 A No, sir.

23 Q And I appreciate you coming into testify today. Now, what
24 you -- you did give the police a written statement before you gave a
25 recorded statement, isn't that true?

1 A I believe I did.

2 Q A voluntary statement.

3 A I believe I was recorded first.

4 Q Okay. Let me show you your voluntary statement.

5 MR. PIKE: May I approach the witness, Your Honor?

6 THE COURT: Yes.

7 MR. PIKE: Okay.

8 BY MR. PIKE:

9 Q What I'm showing you is a voluntary statement and all of your
10 personal information that has been blocked out on this. Do you
11 remember writing this out?

12 A Yes.

13 Q And did you write this out before or after you talked -- you
14 gave a recorded statement to the police?

15 A I believe it was after I talked to the police.

16 Q All right. And at the time that you gave the statement to the
17 police would you say that your recollection is better then than it was now
18 as to what happened?

19 A Yes.

20 Q Okay. You hadn't had anything to drink that night?

21 A No.

22 Q Okay. You hadn't taken any drugs or anything like that?

23 A No.

24 Q And where you had chosen to stay or while you were going
25 through that rough time and were kind of homeless, I guess, you were

1 looking for a safe spot. So did you go to find a place that was well-lit?

2 A Yes.

3 Q And so did you have anybody there that was -- you kind of had
4 so you could watch over each other so you could sleep?

5 A There was other people by me but I didn't really know them at
6 all.

7 Q Okay. And you didn't know the gentleman that was shot,
8 Gordon Phillips?

9 A No.

10 Q You didn't know the person that eventually was either charged
11 or arrested?

12 A No.

13 Q You were never shown a physi -- or a photo lineup?

14 A No.

15 Q And in fact the -- you've just been shown that one picture that
16 was -- that the DA just showed to you?

17 A Yes.

18 Q Okay. So you didn't have anybody else to compare that to, to
19 say well, you know, here's a photograph of six different people and can
20 you pick out the person that did it? You never had that happen?

21 A No.

22 Q You did come in and testify and it was -- you were not used to
23 being homeless at that point, were you?

24 A No.

25 Q And so this was an unusual circumstance for you and also

1 seeing what was going -- what you thought was going to go down was
2 an unusual circumstance for you.

3 A Yes.

4 Q You're paying attention to it. And did you see a white truck
5 drive out to the front of the parking lot of Flavors?

6 A No. I don't remember that.

7 Q You don't remember seeing that. Did you see two gentlemen
8 walk out there and with one wearing a net over a beard?

9 A No.

10 Q Okay. So prior to -- if those things happened, you left the area
11 before that happened.

12 A After the one -- when one person walked up that street, I left
13 after that.

14 Q Okay. So just when one person walked up. You never saw
15 two people walk down the street. And then another -- two different
16 people walk down the street.

17 A No.

18 Q You -- after the music and you saw what you believed to a
19 knife -- that there was a knife. You thought that it was time to get out --
20 get away from there?

21 A Yes.

22 Q And that's what you did.

23 A Yes.

24 Q When the police talked with you before you filled this out and
25 before you gave a statement you -- did they give you information about

1 well, we got a shooting that occurred. Did you see this, do remember
2 what people were wearing?

3 A A little bit.

4 Q A little bit. And you in going through this when you were
5 actually going away from the location you were walking towards North
6 Las Vegas, right?

7 A Yes.

8 Q And the -- it would be safe to say that you just heard the shots,
9 you didn't see anything.

10 A Yes.

11 Q Okay. You couldn't identify anybody with a gun or anything
12 else.

13 A No.

14 Q You just know that what you saw you believed to be a knife
15 and it was time to leave.

16 A Yes.

17 Q In fact, about how far away were you at the time that you
18 heard what sounded like gunshots?

19 A About five blocks away.

20 Q Okay. And those city blocks -- let me see if I can put in
21 something different then that. Have you gone all the way down to where
22 the Pawn Shop was?

23 A Yes, that's where I was at.

24 Q Okay. So in between where the pawn shop is at and where
25 you were at there were a number of street lamps between the area that

1 you had gone to and where Flavors was at?

2 A Yes.

3 Q Okay. So that would have interfered with your ability to see
4 exactly what happened.

5 A Yes.

6 Q Okay. So you didn't see anything other than what you
7 described for the Ladies and Gentlemen of the jury today. You don't
8 have any other information to -- in relation to what happened?

9 A No.

10 Q Okay. Did you see a white Suburban pulling away?

11 A No.

12 Q And you also gave the police a contact information so if they
13 needed to ask you any more questions, they could do that.

14 A Yes.

15 Q Okay. Between the time that the preliminary hearing that you
16 testified at before and the Court today have you talked with any other
17 officers, detectives or the DA about this case?

18 A Yes.

19 Q Who did you talk with and when.

20 A Couple people from the District Attorney's office.

21 Q And did you have a copy of your testimony that you gave in
22 front of the -- preliminary hearing to review prior to coming into Court
23 today?

24 A Yes.

25 Q And as well as a copy of the statement that you gave.

1 A Yes.

2 Q Okay. And while you say that you saw a gentleman that was
3 an employee -- you identified as an employee you can't say today
4 whether or not that was the person who shot anybody.

5 A No.

6 Q You -- and nor were you given any -- nor were you in any
7 location where you could say that I say somebody shot anybody?

8 A Yes.

9 Q While you were homeless in that area were you at times
10 fearful that people that you came across other homeless people might
11 have knives?

12 A Yes.

13 Q Was that one of the reasons why you picked a lighted area in
14 order to try and sleep there?

15 A Yes.

16 MR. PIKE: Court's indulgence.

17 I don't have any further questions. Thank you, Mr. Razo.

18 THE COURT: Mr. Rogan.

19 MR. ROGAN: Thank you.

20 **REDIRECT EXAMINATION**

21 BY MR. ROGAN:

22 Q Sir, I just want to clarify just one thing with you, Mr. Razo. You
23 didn't leave the area until the employee, the man in the blue shirt with a
24 patch, started walking down Searles towards North Las Vegas
25 Boulevard, right?

1 A Yes.

2 Q It wasn't when you saw what you thought to be a knife behind
3 the homeless man's back, right?

4 A Yes.

5 Q Okay. And do you remember telling police specifically that
6 you left because you saw that African American in hot pursuit of the
7 guy?

8 A Yes.

9 Q All right. And that you were fearful not because of a knife but
10 you were fearful because --

11 MR. PIKE: Objection, Your Honor, leading.

12 MR. ROGAN: Okay.

13 Do you remember when --

14 THE COURT: Well, are you referencing his statement?

15 MR. ROGAN: Oh, yeah, I'm looking at his statement.

16 THE COURT: Okay. Go ahead.

17 MR. ROGAN: Thank you.

18 BY MR. ROGAN:

19 Q Do you remember saying I got to get out of here because that
20 guy's about to shoot that guy?

21 A Yes.

22 Q Meaning the African American employee is about to shoot the
23 homeless guy?

24 A Yes.

25 Q And that's why you left the area.

1 A Yes.

2 THE COURT: Mr. Pike.

3 MR. PIKE: Thank you.

4 **RECROSS-EXAMINATION**

5 BY MR. PIKE:

6 Q You never really saw a gun, did you? You were just giving
7 that information to the police?

8 A Yes, sir.

9 Q And you had some concerns about talking to the police.

10 A Yes.

11 Q Okay. During the last -- within the last ten years have you
12 ever been convicted of a felony?

13 A No.

14 MR. PIKE: Your Honor, may we approach the bench?

15 THE COURT: Sure.

16 [Bench Conference Begins]

17 MR. PIKE: This is the guy?

18 MR. ROGAN: Yeah.

19 MR. PIKE: Okay.

20 THE COURT: What.

21 MR. ROGAN: You're stuck with the answer, no, buddy.

22 MR. PIKE: Okay.

23 THE COURT: What.

24 MR. PIKE: Well, I just got a copy of a judgement of
25 conviction.

1 THE COURT: For a?
2 MR. PIKE: For a battery by a prisoner.
3 THE COURT: Felony?
4 MR. PIKE: Yeah.
5 MR. ROGAN: So he's got to -- he's going through the
6 Veteran's Courts, so he's going to drop down.
7 THE COURT: All right.
8 MR. ROGAN: So I think he's confused about what a
9 conviction is.
10 MR. PIKE: Okay.
11 THE COURT: All right.
12 [Bench Conference Concludes]
13 THE COURT: All right. Mr. Pike, anything further?
14 BY MR. PIKE:
15 Q During the last ten years have you ever been on probation?
16 MR. ROGAN: Objection, asked.
17 MR. PIKE: No. I'd -- not the same question.
18 THE COURT: Well, approach the bench. Approach the
19 bench.
20 [Bench Conference Begins]
21 THE COURT: But, hold on, the only thing they asked on
22 redirect was is this what you told the police about why you left. Now,
23 what are you going back into now?
24 MR. PIKE: I'm just impeaching him.
25 THE COURT: Pardon.

1 MR. PIKE: I'm just impeaching him with prior conviction.

2 THE COURT: I know but like I'm not sure why we're doing
3 this on redirect when there was a sole topic on -- approach to original
4 cross-examine -- or recross-examination. But what is the issue of
5 probation? He doesn't have a felony. He doesn't have a felony.

6 MR. PIKE: Well, hasn't dropped down yet.

7 THE COURT: Is he? Well, what's the relevant [sic] of what if
8 somebody's been on probation. The impeachment is you get convicted
9 of a crime, when was it, what was it.

10 MR. PIKE: Well, no, or if he's been released on probation or
11 parole within any time in the last ten years.

12 THE COURT: Okay.

13 MR. PIKE: On a felony.

14 THE COURT: So what is the conviction and when was it?

15 MR. PIKE: It was in 2018 for battery by a prison --

16 THE COURT: Okay.

17 MR. PIKE: -- category B Felony.

18 THE COURT: All right. That's what I thought you just said
19 was being dropped down.

20 MR. ROGAN: Yes. I think he's confused because he
21 answered no, but I think he's confused because he gets a drop down.
22 So I think he's confused about the meaning of the word conviction. The
23 witness is what I'm saying.

24 THE COURT: Does he currently have a conviction?

25 MR. ROGAN: Oh, yeah.

1 THE COURT: Oh, okay.
2 MR. ROGAN: Yeah.
3 THE COURT: Oh, I thought you guys were saying that it was
4 in limbo or something.
5 MR. ROGAN: No.
6 MS. BLUTH: No.
7 THE COURT: Being -- or something. Oh, I see. Okay. Oh,
8 got it. Okay. So you can ask him about that. I'm sorry. Okay.
9 [Bench Conference Concludes]
10 THE COURT: All right. You can go ahead.
11 BY MR. PIKE:
12 Q Okay. Are you -- have you -- are you now or have you been in
13 the last ten years been on probation for a felony?
14 A Yes.
15 Q Okay. And that's -- but that's something that's if you
16 completed it, it will be dropped down so.
17 A Yes.
18 Q That correct? Okay. So you just pled guilty to battery by a
19 prisoner, which was a felony but if you complete probation it will be
20 dropped down?
21 A Yes.
22 Q Okay. Thank you.
23 MR. PIKE: No further questions.
24 THE COURT: All right. Mr. Rogan.
25 ...

1 **FURTHER REDIRECT EXAMINATION**

2 BY MR. ROGAN:

3 Q So just to be clear, because Mr. Pike asked whether you were
4 convicted and initially you said no, did you say no because you're going
5 to be getting a lesser offense called a gross misdemeanor when you
6 finish probation?

7 A Yes.

8 Q And you're in Veteran's Court right now, right?

9 A Yes.

10 Q And when you complete that and complete probation, you'll
11 receive that gross misdemeanor, as long as you do everything right?

12 A Yes.

13 Q Okay. Thank you.

14 THE COURT: Anything from our jurors?

15 Yes.

16 [Bench Conference Begins]

17 MR. ROGAN: Okay.

18 MR. PIKE: It wasn't a personal observation, so I don't see
19 anything wrong with the question. Do you?

20 MS. BLUTH: No. Not at all.

21 THE COURT: Okay.

22 [Bench Conference Concludes]

23 THE COURT: Okay.

24 ...

25 ...

1 **EXAMINATION BY THE COURT**

2 BY THE COURT:

3 Q Mr. Razo, a quick question. Did the employ -- at any time that
4 you were observing him, did the employee do anything or gesture in any
5 way that he had a gun?

6 A No.

7 Q Okay.

8 THE COURT: Mr. Rogan, any questions based on mine?

9 MR. ROGAN: No, Your Honor.

10 THE COURT: Mr. Pike.

11 MR. PIKE: No, Your Honor.

12 THE COURT: All right. Mr. Razo, thank you very much for
13 coming to court today, sir. I appreciate it, you are excused. Okay.

14 All right. And we will take a short recess before we continue
15 on with our next witness -- or is your next witness a quick witness or?

16 MS. BLUTH: Not really.

17 THE COURT: Okay. So we'll take a quick recess, Ladies and
18 Gentlemen, before we continue on.

19 During the recess you're admonished not to talk or converse
20 among yourselves or with anyone else on any subject connect with the
21 trial. Or read or watch or listen to any report of or commentary on the
22 trial by any medium of information including, without limitation,
23 newspapers, television, the internet, and radio. Or form or express the
24 opinion on any subject connected with the case. No legal or factual
25 research or investigation on your own.

1 We'll be in recess for 15 minutes.

2 [Outside the presence of the jury]

3 THE COURT: You guys have anything outside the presence?

4 MS. BLUTH: No, Your Honor.

5 MR. PIKE: No.

6 THE COURT: Okay. All right. We will be in recess.

7 MS. BLUTH: Did you say we're starting at 1:00 tomorrow,

8 Judge?

9 THE COURT: Pardon?

10 MS. BLUTH: Did you say we're starting at 1:00 tomorrow?

11 THE COURT: No. Tomorrow is 10:30 -- or excuse me, no.

12 1:00. Tomorrow's Friday, yes. I have a hearing all morning.

13 MS. BLUTH: And Monday is?

14 THE COURT: Monday we can start at 9:00, 10:00 if you guys

15 have morning appearances or.

16 MS. BLUTH: I don't have any. Do you, anybody?

17 MS. SIMPKINS: I have to check. I don't know.

18 MS. BLUTH: Okay. Just let me know.

19 MS. SIMPKINS: I'll let you know.

20 THE COURT: Okay. All right. Well, we'll just plan on 10:00

21 because then we're bringing them in 10:00 - 10:30 at the earliest.

22 MS. BLUTH: Sounds good.

23 [Colloquy between Counsel]

24 [Recess taken at 2:51 p.m.]

25 [Trial resumed at 3:11 p.m.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[In the presence of the jury]

THE MARSHAL: All rise for the jurors.

THE COURT: Thank you. Everybody can be seated. We'll be back on the record. Mr. McNair's here with his attorneys, State's attorneys, jurors are all present.

State may call their next witness.

MR. ROGAN: State's going to call Matthew Stedeford.

MATTHEW STEDEFORD

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

THE CLERK: Thank you. Please be seated. If you could state and spell your name for the record, please.

THE WITNESS: Matthew Stedeford. M-A-T-T-H-E-W, S-T-E-D-E-F-O-R-D.

THE COURT: All right. Sir, thank you. Mr. Rogan.

DIRECT EXAMINATION

BY MR. ROGAN:

Q Good afternoon, Mr. Stedeford. Where do you work?

A Right now is at Flavors/Golden Wheat.

Q And is that -- are those companies -- are they located at 1300 North Las Vegas Boulevard here in Las Vegas, Clark County Nevada?

A Yes, they are.

Q How long have you worked at those companies?

A Since May of 2014.

Q What do you do there?

1 A Right now I'm a dock worker. I load up the trucks for the
2 drivers.

3 Q What is Golden Wheat? What is that company?

4 A It's bread, distributing company, and then also like chips and
5 other product.

6 Q And what is Flavors?

7 A Flavors is the store and it's like ice cream, milk, and there's
8 Mexican candies that are at that store.

9 Q Okay. So Flavors sells those things?

10 A Yes.

11 Q Okay. And are Golden Wheat and Flavors -- do they occupy
12 the same building?

13 A Yes.

14 Q Are there other companies that occupy or industries that
15 occupy that same building at 1300 North Las Vegas Boulevard?

16 A Yes.

17 Q And what are they?

18 A Unified Container, Flavors or course, the Golden Wheat, and
19 then there's the Hadado which is kind of a security system -- or like the
20 ground security that like patrols the buil -- like the around the --

21 Q The whole complex.

22 A -- area. Yeah.

23 Q Okay. And is this near Anderson Dairy?

24 A Yes, it is kiddy-corner like -- or right next door to them.

25 Q Okay.

1 A Like same kind of parking lot area.

2 Q All right. So showing you Court -- State's Exhibit 2. If you
3 could please look on that computer screen next to you and you see
4 there's a building that's marked on this exhibit as 1300 North Las Vegas
5 Boulevard.

6 A Yes.

7 Q Is that where all of these companies are located?

8 A Yes.

9 Q Okay. At the intersection of Searles and North Las Vegas
10 Boulevard.

11 A Yes.

12 Q All right. Do each of the different companies, do their
13 employees have different colored shirts?

14 A Yes.

15 Q And what color shirt do you wear?

16 A Right now I don't actually have one, but it would be a maroon.

17 Q All right. What color do the folks who are working for Unified
18 Container wear?

19 A Like a light/dark blue tee-shirt.

20 Q Okay. Showing you State's Exhibit 70.

21 A Yes, that would be it.

22 Q Okay. And now, are those shirts for all the different
23 companies -- are they laundered on site or at least is the laundry
24 collected on site?

25 A Yes.

1 Q And is -- are the laundry returned to 1300 North Las Vegas
2 Boulevard?

3 A Yes, they are.

4 Q Okay. Showing you State's Exhibit 39.

5 A Yeah.

6 Q What is depicted in that photograph?

7 A Yep, that's how we place them all -- or there yeah, there's a
8 laundry bin that we put them in and that's where they get put when they
9 come back from the cleaners.

10 Q Okay. So at the end of a shift or when the shirt gets dirty you
11 just deposit it in the laundry bag?

12 A Yes.

13 Q Something like is depicted in State's Exhibit 41?

14 A Yes.

15 Q Now back in September -- on September 14th, 2017 there was
16 a shooting in the vicinity of 1300 North Las Vegas Boulevard.

17 A Yes.

18 Q Were you working at the time --

19 A Yes.

20 Q -- that that shooting took place?

21 A Yeah, I was on a lunch break.

22 Q What was your shift on that evening? If you remember.

23 A I think it was from 2:30 in the afternoon till whenever we finish
24 which is usually around 11:30 - midnight.

25 Q So what time would you have taken your lunch break?

1 A Usually around that 9 -- 9:00 time frame.

2 Q All right. So you call it lunch but it's --

3 A Yeah.

4 Q -- because it's -- you're in the middle of your work day.

5 A Yeah.

6 Q All right. And where did you take your lunch?

7 A In one of the like we call it the conference room. It's in one of

8 the facilities on the building -- or in the complex.

9 Q Where you taking your lunch with anyone else?

10 A Yes.

11 Q How many other people?

12 A It was me plus three other people.

13 Q All right. Now during your lunchbreak did you hear anything

14 that caught your attention?

15 A Just the sound of a loud like someone was bagging on a door.

16 And then like probably a minute or two after that the police sirens.

17 Q Are there any windows in the conference room that view the

18 outside?

19 A No. Not from that conference room.

20 Q Okay. At some point did you leave the conference room to go

21 see what was going on?

22 A Probably about five or so minutes after we heard more sirens

23 come.

24 Q Where did you go?

25 A We went out on to the dock area from the conference room to

1 kind of a gated-up area so we could see in front of Flavors.

2 Q Okay. Again, I'm showing you State's Exhibit 2.

3 A Okay.

4 Q On the left-hand side is North Las Vegas Boulevard --

5 A Yes.

6 Q -- running north to south and the bottom of the photograph is

7 Searles --

8 A Okay.

9 Q -- running east to west. Can you use that little -- I'll set it up
10 for you, I'm sorry. Do you see the little mouse that's?

11 A Yeah.

12 Q Could you grab that mouse and kind of circle with the mouse
13 where you were standing?

14 A So right around this area right here is -- there's a gate and
15 that's where we were kind of standing.

16 Q All right. And where was the police activity that you saw?

17 A Down around this area.

18 Q Okay. Thank you. Oh, let me make a record of that. I'm
19 sorry. So you circled looks like an outdoor area to the north of --

20 A Yeah.

21 Q -- the 1300 North Las Vegas Boulevard building between that
22 building and another building to the north, correct?

23 A Yes. And that's where the conference room is, is on the other
24 side of that.

25 Q Okay.

1 A The place that you can't really see.

2 Q All right.

3 A And that's the dock area is where I circled.

4 Q All right. And then you -- the other circle that you made you
5 circled the intersection of North Las Vegas Boulevard and Searles,
6 correct?

7 A Yes.

8 Q All right. Thank you. Were there a lot of police officers?

9 A From what I can recall there was at least maybe four or five
10 like police cars that were there.

11 Q Okay. Do you have any idea what was going on?

12 A At the time, no.

13 Q So what did you do after you observed all that police activity
14 and had no idea what was going on?

15 A We kind of me and my co-workers went to go get a better view
16 went back into the conference room and then out through another door
17 to go kind of in front of the store area to see -- like from at least outside
18 on like the street.

19 Q Okay. We're going to do that little exercise again. If you could
20 just circle for us, where you stood the second time to get a better view?

21 A This one is not actually on the map.

22 Q Okay.

23 A Because it's actually on the top like area. I don't know if you
24 have another.

25 Q Yes. Let me show you State's Exhibit 3 then. Okay.

1 A Yes, that one's a little bit better.

2 Q Now this is a enlarged view of that same 1300 North Las
3 Vegas Boulevard map that you saw earlier, correct?

4 A Yep.

5 Q All right. Can you again, let me set it up for you, use that
6 mouse to circle if you can where you were standing the second time?

7 A This one we were right about here.

8 Q All right. So you actually went further norther -- further away
9 from the intersection --

10 A Yeah.

11 Q -- North Las Vegas Boulevard and Searles.

12 A Yeah.

13 Q Thank you. At that point did you have any better idea of what
14 was going?

15 A Still, no.

16 Q All right. So did you want to find out?

17 A A little bit, yes.

18 Q So what did you do to find out?

19 A So I walked back inside and I walked to kind of like the Crystal
20 Peaks area and that to find Michael McNair to kind of see because he
21 was kind of like my -- like I looked up to him as a friend and a buddy.
22 And went to see if he knew because he was the kind of go to guy with
23 information.

24 Q Okay. So you mentioned Crystal Peaks is that --

25 A Yes.

1 Q -- another --

2 A Yeah, that's another company, my bad.

3 Q -- that also works out of 1300 North Las Vegas Boulevard?

4 A Yes. Yeah, they make the gallons -- or at least they fill the
5 jugs with juice -- water.

6 Q Okay. Did you find Mike McNair?

7 A Not at first, no.

8 Q How long did it take you to find him?

9 A About five to ten minutes.

10 Q Where did you find him?

11 A It was next to the Blow Mold, which is Unified Container.

12 Q Do you see Michael McNair here in court today?

13 A Yes.

14 Q Can you please point to him and describe something that he's
15 wearing right now?

16 A Right now he's wearing a blue button-up like you would be at
17 a church.

18 Q Is he wearing a tie as well?

19 A Yes.

20 Q All right.

21 MR. ROGAN: Judge, could the record please reflect that the
22 witness has identified the Defendant?

23 THE COURT: Yes.

24 MR. ROGAN: Okay.

25 ...

1 BY MR. ROGAN:

2 Q Now when you first saw him, what color of shirt was he
3 wearing?

4 A He was wearing the blue Unified Container shirt.

5 Q The blue Unified Container shirt that looked like what you saw
6 in State's Exhibit 70?

7 A Yes.

8 Q And let me actually pull out a different photograph. Showing
9 you State's Exhibit 49. As you see Mr. McNair depicted in State's
10 Exhibit 49, is that how he appeared on the evening of September 14th,
11 2017, when you saw him?

12 A Yes.

13 Q Was he -- is he wearing his Unified Container outfit in this
14 photograph?

15 A Yes.

16 Q And what color is that shirt?

17 A It is the light blue.

18 Q And what color is -- are his pants?

19 A They were either a dark blue or black, I'm not sure which one
20 it was.

21 Q And how tall is Mr. McNair?

22 A I'd say like 6'0 to 6'1.

23 Q And is he skinny, fat, medium build?

24 A Skinny.

25 Q Okay. Was he carrying anything at that time?

1 A A red tee-shirt one of the other companies.

2 Q And which hand was he carrying it, if you remember?

3 A That I don't remember.

4 Q Okay. Did you see him do anything with that red tee-shirt?

5 A I did see him kind of toss it into one of the laundry bins.

6 Q And which room again, was he in when he did that?

7 A It was another break room for the Unified Container area.

8 Q Okay. And it was a red shirt tossed into a laundry bag like we

9 saw in State's Exhibit 41.

10 A Yes.

11 Q Now, he worked for Unified Container, right?

12 A Yes.

13 Q Should he have been wearing a red shirt like that?

14 A Not to my knowledge, no.

15 Q Okay. When you made contact with him on the evening of

16 September 14th, did you ask him what was going -- what -- if he knew

17 what was going on outside?

18 A Yes.

19 Q Did -- what did he say in response?

20 A To what I remember is he said that he didn't have any clue

21 kind of was playing it off a little bit. Yeah.

22 Q You say playing it off, but could you please describe for us

23 how he was answering the questions that you were asking him?

24 A Yeah, trying to just like avoid [sic] the question.

25 Q Could you describe his demeanor for me?

1 A Kind of looked a little nervous.

2 Q Okay.

3 A That's about all I -- try to remember.

4 Q Did you eventually end your conversation with him?

5 A Yeah.

6 Q Where did you go after that?

7 A Me and him both went to where our -- my other co-workers

8 were out -- inside in front of that other area.

9 Q So the same area you were before?

10 A Yes. The one where -- met back up with the co-workers on

11 like the exhibit.

12 Q Okay.

13 A The other one.

14 Q The other exhibit. So you picked out two spots, one was

15 between the two buildings?

16 A Yes.

17 Q Is that the spot you're describing or is it the spot even further

18 north?

19 A Yeah, the further back one.

20 Q The further north one. Okay. And Mr. McNair went with you?

21 A Yes.

22 Q Now, let me just ask you this when you were eating lunch was

23 Mr. McNair -- wasn't with you, right?

24 A No. No, it was just us four.

25 Q All right. How long do you think you stayed outside watching

1 the action?

2 A I'd say for another couple like five minutes or so and then we
3 went back to -- me and my other co-workers went back to working.

4 Q Did Mr. McNair go back to work with you?

5 A Not with us but he did go back to Crystal -- their -- like the
6 Blow Mold area.

7 Q Okay. When -- after you went back to work, were you
8 eventually contacted by the police?

9 A Yes, they came on to the property and told us to -- to get the
10 scene under control and all that.

11 Q Okay. How long after you had started working did the police
12 come in and take control of the scene?

13 A I'd say probably another ten or so minutes, they came to tell
14 us to get off the property so they can.

15 Q All right. So they told all the employees to get out of the
16 building --

17 A Yes.

18 Q -- or get off the property?

19 A It was to get on to the like sidewalk right there in front of Blow
20 Mold area.

21 Q Okay. So showing you State's Exhibit 2 again.

22 A Yes.

23 Q Looking at the 1300 North Las Vegas Boulevard building
24 where was it that you were directed by the police to go?

25 A Right where these bottom cars are parked.

1 Q Okay. So the -- this parking lot to the south of the building.
2 A Yes.
3 Q Where --
4 A Facing Searles.
5 Q Facing Searles all right. And so all of the employees went out
6 there.
7 A Yes.
8 Q Okay. Was Mr. McNair there?
9 A Yes.
10 Q And what was happening to him?
11 A Right then -- the one of the cop was having him in handcuffs in
12 front of his vehicle.
13 Q Eventually did you give an interview to the police?
14 A Yes, near the end of all of it.
15 Q And how long did you have to wait before you gave that
16 interview?
17 A I would say it was close to six hours that we were waiting
18 there.
19 Q All right. And did you know whether they were also
20 interviewing all these other employees and people there, as well?
21 A Some of them did leave one at a time.
22 Q Okay.
23 A But other than that it still took awhile for them to start the
24 interviews.
25 Q Did you have to back to work after that?

1 A Yes.

2 Q Okay. You said you worked at the 1300 North Las Vegas
3 Boulevard building since May of 2014.

4 A Yes.

5 Q And during -- did you know Michael McNair from that date?

6 A From that date on basically, I've known him.

7 Q Okay. Do you know what kind of vehicle he drove?

8 A It was Dodge Ram 1500, black pickup, yep.

9 Q All right. Is that -- in State's Exhibit 53, is that the black pickup
10 that he was driving?

11 A Yes, it is.

12 Q Did you ever know him to do -- to take that black pickup out
13 into the parking lot on his break?

14 A Yes.

15 Q All right. And what would he do with that?

16 A Sometimes he would do a little bit of burnouts but other than
17 that nothing much.

18 Q Burnouts meaning what?

19 A Just like donuts, just spinning the tires.

20 Q Doing that kind of thing?

21 A Yeah.

22 Q Okay.

23 MR. ROGAN: Court's indulgence. I'll pass the witness.

24 THE COURT: All right. Mr. Pike.

25 ...

1 **CROSS-EXAMINATION**

2 BY MR. PIKE:

3 Q I need to set up.

4 A Yep, no worries.

5 Q Good afternoon, Mr. Stedeford.

6 A Morning -- or afternoon.

7 Q My name is Randy Pike. I'm going to be asking you a few
8 questions if I may.

9 A Okay.

10 Q You indicated that you had worked at that complex because
11 there were a number of businesses --

12 A Yes.

13 Q -- for a number of years. Is that yes?

14 A Yes.

15 Q Okay. I'm going -- sometimes I'll have to ask you to say yes
16 or no because this is being recorded.

17 A Okay.

18 Q For the record, so I'm not trying to be rude.

19 And during that period of time you indicated that you got to
20 know Michael fairly well.

21 A Yes.

22 Q Did you ever meet his wife?

23 A No. Or I don't remember -- recall, but I know I've met a couple
24 of the people that he's brought with him, like his kids and I think his wife
25 was one of them.

1 Q Okay. Not one of his kids, but.

2 A Yeah, I know.

3 Q His kids. And he had actually worked his way up and had
4 obtained a promotion while he was working there?

5 A Yes.

6 Q What was his position that -- while he was working there?

7 A Mechanic, kind of like a supervisor for the Blow Mold.

8 Q And can you describe the Blow Mold machine? What does
9 that do?

10 A It makes the gallon jugs for Anderson Dairy to -- so they can
11 fill with milk.

12 Q And that's a sanitary area --

13 A Yes.

14 Q -- isn't it? So you can't even eat your lunch in there.

15 A Yeah, no food/drink.

16 Q So anything that you bring to eat for lunch you have to take
17 away from that area and that's one of the reasons why you go into the
18 conference room.

19 A Yep.

20 Q Okay. And in fact, if you were to have a drink of any kind of
21 food within that sanitary area, you may -- it may shut down the whole --

22 A Yes.

23 Q -- business, right? Okay. And then Michael, you indicated he
24 would repair the machines and that was part of his responsibilities.

25 A Yes.

1 Q Okay. Did he work about the same shift that you did?

2 A Every now and then it did fluctuate. Sometimes he would
3 come in during like the morning time to work on it if no one else was
4 available. But most likely, yes. He was around the same timeframe.

5 Q Okay. And it -- sometimes did his responsibilities kind of
6 change from one company to another? He may work in Flavor -- in
7 Flavors for a little while or help out there.

8 A Yes.

9 Q That yes?

10 A Yeah.

11 Q Okay. Thanks.

12 A I think they would ask him to do something and we would do it.

13 Q Okay. And so he got to know the business and the night that
14 this all happened you went to lunch around 9:00 or around that time.

15 A Yes.

16 Q Did you have a set time that you had to take your break or
17 could you go ahead and take it, you know, a little half hour before or half
18 hour after or?

19 A There is no real set time. It's just sometime during your time
20 there to take a lunch.

21 Q And when you went to take -- and when you were going to
22 take your lunch did you have to clock in and out --

23 A Yes.

24 Q -- for lunch time? Okay. And there wasn't anything at work
25 that said that you had to stay on the premises when you were taking a

1 break. And could you leave --

2 A Yeah.

3 Q -- and go get something?

4 A Yeah, you can leave to get something and then come back so.

5 Q Okay. And during that period of time, it would not have been
6 unusual for Michael or anybody if they wanted to go and have their lunch
7 outside or be outside in their car making phone calls or whatever --

8 A Yeah.

9 Q -- they were welcome to go in and out of the property?

10 A Yes.

11 Q Okay. The property itself was gated around that --

12 A Yes.

13 Q -- because of security issues.

14 A Yes.

15 Q There were a lot of homeless people around there.

16 A Yes, still are.

17 Q Still are. Okay. And sometimes that causes problems.

18 A Yep.

19 Q Have you ever been accosted by a homeless person?

20 A Not yet, no.

21 Q Okay. Not yet but has -- you've seen it happen.

22 A Yep.

23 Q Okay. And so those gates -- do they have to be opened either
24 by a key or electronically?

25 A It is by a key and then the main gate to Anderson Dairy will

1 have to be through like a -- punch in a couple numbers to get in.

2 Q And the main entry to Anderson Dairy, is that off of Searles or
3 is it off of.

4 A It's off of Searles.

5 Q Searles.

6 A Yeah.

7 Q Okay. I'm sorry that's --

8 A Yeah.

9 Q -- proper annunciation. I've been saying it wrong for a long
10 time.

11 So when all of this was going on -- because all of these
12 business are kind of owned by the same people, aren't they?

13 A Yes.

14 Q All right. So they differentiate what your function is by what
15 you're wearing that day?

16 A Yes.

17 Q And you have blue shoes -- or excuse me -- Elvis, you not
18 Elvis. You have blue shirts and red shirts --

19 A Yes.

20 Q -- that may indicate well today I'm working for Golden Wheat.

21 A Yes.

22 Q And the other days I'm working for Unified. And so that would
23 not be uncommon.

24 A Yes, it would not be uncommon.

25 Q Okay. And the night that this all happened you never saw

1 Michael wearing a red shirt, did you?

2 A No, never saw him wearing it.

3 Q He just was carrying one and put it into the laundry basket
4 where it was supposed to go.

5 A Yep.

6 Q He -- although he could have taken a lunch and have left at
7 the time that you heard the sirens, he didn't. He remained on the
8 premises, didn't he?

9 A Yes.

10 Q Okay. And you saw him when the police asked everybody to
11 move out on to the sidewalk that he went out with everybody.

12 A Yes.

13 Q Didn't attempt to leave.

14 A Yep.

15 Q You saw him cooperating with the police.

16 A Yes.

17 Q You saw him talking with the police.

18 A Yep.

19 Q And you've never seen him with a gun.

20 A No.

21 Q You didn't see him with a gun that night.

22 A Nope.

23 Q Now, let me talk to you a little bit about another employee or
24 former employee of -- I'm not sure what subdivision he is.

25 A Right.

1 Q But you know Mitchell Johnson.

2 A Yes.

3 Q Okay. Who did Mitchell Johnson work for? Who was he
4 employed?

5 A He was underneath Unified as well.

6 Q All right. And what were his functions?

7 A That I'm not sure but it was mostly I think just making sure the
8 machines running good and if there was a problem, to contact one of the
9 supervisors or the engine -- like the mechanic.

10 Q And when this happened, on the day that this happened, was
11 he still an employee of any of those companies or had he been let go?

12 A That I don't recall.

13 Q Okay. Now, in -- when everything was going on the police --
14 did the police tell everybody to stay and not -- and say that nobody
15 should leave the premises?

16 A Yes.

17 Q Okay. And -- but you did not stay inside of the fence area or
18 did you stay out on --

19 A It was on the curb inside the property.

20 Q All right. So you did have to go out and sit --

21 A Yea.

22 Q -- on the sidewalk. So everybody was in there. When you
23 heard what was a loud noise to you, did -- you didn't go outside or
24 investigate until after you heard the sirens.

25 A Yes.

1 Q Okay. And after you heard that, the first time that you saw
2 Michael, was he back in the area where he normally worked?

3 A Yes.

4 Q Okay. Now, the -- you have personal -- or personal lockers or
5 area that you can bring food or other items into, is that true?

6 A Yes.

7 Q And what area of the building is that in?

8 A That is next to the Blow Mold area and it's their kind of
9 breakroom area.

10 Q And are those lockers the kind that lock or that have a
11 combination -- or are they unlocked or open?

12 A You would have to have like a manual lock to lock them.

13 Q Okay. And so if somebody wanted one they would bring like a
14 padlock.

15 A Yes.

16 Q And use it there. Otherwise it's just open.

17 A Yeah.

18 Q Where you there -- or did you go inside when the police were
19 in there with a canine unit and searching the premises?

20 A No. I was still sitting on the sidewalk there.

21 Q Okay. You sat there till --

22 A Yep.

23 Q Six -- daybreak.

24 A Six in the morning.

25 Q Till daybreak.

1 A Yeah.

2 Q All right. And did you see a Suburban or --

3 A No.

4 Q -- did you see Mitchell Johnson there?

5 A No, I did not.

6 Q Do you know Ramiro Romero?

7 A No, that name doesn't ring a bell.

8 Q Doesn't ring a bell. Okay. While you were going back into the
9 work after this happens were the police still in the premises while you
10 were going back to work?

11 A That I don't know for sure because it was -- we were kind of
12 segregated. I don't even know when they left or that because we were
13 in the warehouse area and it's kind of blocked off you can't really see
14 what happens somewhere else.

15 Q All right. And the -- did you see the police impound any shirt
16 or any laundry -- did they take any of that into evidence?

17 A That I do not know.

18 Q Did they ask you to submit to any type of forensic testing
19 yourself, for instance did they swab you for any gunshot residue --

20 A No.

21 Q -- or anything like that?

22 A Did no.

23 Q Okay. And Mr. -- Michael's truck was still parked in the
24 parking lot when the police came.

25 A Yes.

1 Q Did you see it there?

2 A Yeah.

3 Q Okay.

4 MR. PIKE: I don't have any further questions. Thank you.

5 THE COURT: All right. State.

6 **REDIRECT EXAMINATION**

7 BY MR. ROGAN:

8 Q Just a few questions.

9 A Yep.

10 Q Mr. Stedeford. Showing you State's Exhibit 36. Is this the
11 Blow Mold area that you're describing?

12 A Yes.

13 Q Okay. And the State's Exhibit 37, is that just another angle of
14 the same location?

15 A Yes.

16 Q All right. And you describe Blow Mold as where they create
17 the plastic containers that milk and --

18 A Yes.

19 Q -- other liquids go in, right?

20 A Yeah.

21 Q Is -- can -- do you see the Blow Mold machine here?

22 A You can kind of see it in the back but yeah, that's still --

23 Q Okay.

24 A -- not really a good picture.

25 Q And once the plastic jugs are created what happens to them?

1 A They go on like a conveyer belt to kind of cool down because
2 they come out kind of hot and then upon the top there you can see like a
3 rail and it kinds of just gives it more time to cool down and then it comes
4 down to this bagger table to get put in these -- that tall stack right there.

5 Q All right. And State's Exhibit 37, do you see any lockers
6 there?

7 A No, there's no lockers inside the Blow Mold area.

8 Q So from where you were seeing Exhibit 37, where we would
9 be standing, where do you go to get to the lockers?

10 A So straight ahead there -- you can see that doorway next to
11 that window in the back.

12 Q Yes.

13 A Through that door and then like basically straight ahead is
14 another door and that leads into the other breakroom.

15 Q Okay. That's where the lockers are for --

16 A Yes.

17 Q -- the people who work at Unified Container?

18 A Yes.

19 Q Okay. Is there another breakroom or another locker room for
20 you guys?

21 A There is no locker for us, but there is another locker for Crystal
22 Peaks.

23 Q Okay.

24 A And that is kind of like there's a glass window in there.

25 Q That's okay we don't need to know about that.

1 A Yeah.

2 Q Okay. So were all of the businesses that occupy that building,
3 were they all running that night?

4 A Flavors was closed because they close around 4:00 or 5:00
5 pm.

6 Q Okay.

7 A But yeah, the Golden Wheat -- don't think Crystal Peaks was
8 there running, and then yeah, Blow Mold was.

9 Q All right. So all the guys and girls in the red shirts had gone
10 home.

11 A Yes.

12 Q Because Flavors was closed.

13 Crystal Peaks, what shirt color did they wear?

14 A It's the same blue just a different name logo on the shirt.

15 Q Okay. So they went home.

16 A Yes.

17 Q Okay. Let's see.

18 MR. ROGAN: Court's indulgence. Sorry, just a little technical
19 difficulties.

20 BY MR. ROGAN:

21 Q Okay. We're going to show you this still from State's Exhibit 1
22 if I could. Could you look at your monitor there?

23 A Okay.

24 Q You previously talked about the locker area, is that the locker
25 area?

1 A So this is not the locker area that I was mentioning.

2 Q Okay. What place is this?

3 A But this is kind of the mechanic area -- you see kind of in that

4 doorframe there right there that enters into the Blow Mold. But yeah,

5 this right here is to get like parts for the machine if it were to break and

6 stuff like that.

7 Q All right. So you're talking about the doorway at the top of the

8 frame --

9 A Yes.

10 Q -- with the open door, correct?

11 A Yep.

12 Q And that will take us into.

13 A Into the Blow Mold area.

14 Q Blow Mold area, Exhibit 37 that I showed before.

15 A Yes.

16 Q Is that a yes?

17 A Yes.

18 Q Okay. Are you familiar with the mechanics area at all?

19 A A little bit, but not too much.

20 Q Okay.

21 A Because I only go in there every once in a while, to like get a

22 wrench or something to fix something.

23 Q Thank you very much Mr. Stedeford.

24 THE COURT: Mr. Pike, anything further?

25 MR. PIKE: Nothing further, thank you very much.

1 THE COURT: Anything from our jurors?

2 Yep.

3 [Bench Conference Begins]

4 THE COURT: Thank you.

5 MS. BLUTH: I'm sorry I can't read that. Oh, how long in the
6 lunch period. Okay.

7 [Bench Conference Concludes]

8 **EXAMINATION BY THE COURT**

9 BY THE COURT:

10 Q So how long is the lunch period that the employees get?

11 A Usually about a half hour.

12 Q Half hour. Okay.

13 THE COURT: Any questions based on that Mr. Rogan?

14 **FOLLOW-UP EXAMINATION**

15 BY MR. ROGAN:

16 Q And that's for you and the company you worked for?

17 A That's for everyone.

18 Q Everybody, including Unified Containers?

19 A Yes.

20 Q Okay. Thank you.

21 THE COURT: Mr. Pike, anything?

22 MR. PIKE: No.

23 THE COURT: Okay. Thank you very much, sir. I appreciate
24 your time. You are excused.

25 THE WITNESS: Thank you.

1 THE COURT: State may call their next witness.

2 MS. BLUTH: State calls Lyle Galeener.

3 **LYLE GALEENER**

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

6 THE CLERK: Thank you. Please be seated. If you can state
7 and spell your name for the record, please.

8 THE WITNESS: What'd she say?

9 THE COURT: What's your name?

10 THE WITNESS: Lyle Galeener.

11 THE COURT: And how do you spell your first name?

12 THE WITNESS: L-Y-L-E.

13 THE COURT: And you last name?

14 THE WITNESS: G-A-L-E-E-N-E-R.

15 THE COURT: All right. Thank you, Mr. Galeener.

16 Ms. Bluth.

17 MS. BLUTH: Thank you.

18 **DIRECT EXAMINATION**

19 BY MS. BLUTH:

20 Q Mr. Galeener, I'd like to turn your attention back to September
21 of 2017. Where were you working at that time?

22 A Unified Containers.

23 Q And what shift did you work at Unified Containers?

24 A Day shift.

25 Q What hours generally are -- is day shift there?

1 A For me it's anytime -- anytime.

2 Q But just during the day?

3 A Well no I'm a -- if there's something going on at night and I get
4 called in I have to work at night too.

5 Q Okay. So on September 14th of 2017 do you -- are you either
6 at the property at Unified Containers and get notified something has
7 happened or you're already there?

8 A No. I had gotten a call late at night or early in the morning
9 something like that. It was early, it was before -- just before I was
10 supposed -- that I was going to get up and go in -- stated not to go in
11 that the whole place was shut down.

12 Q Okay. But later in the morning after --

13 A Just a little bit after that I got another text back saying go
14 ahead and come in.

15 Q Okay. So you do end up going in, in the basically early
16 morning hours.

17 A Uh-huh.

18 Q Is that a yes?

19 A Yes, ma'am.

20 Q All right.

21 A Sorry.

22 Q That's okay. When you get there is anybody allowed in the
23 building or is everybody still outside?

24 A No, they're starting to let people in the building.

25 Q While you are working at Blow -- let me back up, do you at

1 some point go inside?

2 A Yes.

3 Q To the Unified Containers?

4 A Yes, ma' am.

5 Q And what is your role or what should I say your specific job is?

6 A I'm an engineer and supervisor over Crystal Peaks and
7 Unified Containers.

8 Q Okay. Once you are allowed into the building -- are -- can you
9 give me an idea are we still in the early morning hours? Is it later now?
10 What time would you say?

11 A Oh no, I couldn't even -- I don't even remember what time it
12 was.

13 Q All right.

14 A I know it was still dark outside. So I don't remember.

15 Q Okay. When you go in and after you've been working for a
16 period of time do you find something that you ultimately alert someone
17 about?

18 A I do.

19 Q Okay. What is it that you find?

20 A I find a -- I found a gun.

21 Q Where did you find it at?

22 A On a mezzanine in a back shop that we have.

23 Q All right. So I'm going to show you State's 55. And I'm going
24 to zoom out. What are we looking at here?

25 A That's our back-shop area.

1 Q All right.

2 A And the mezzanine's on top. That's where we keep all of our
3 filters and stuff. And that's what I was going for is -- going to get an
4 inventory of filters and get some PM's set up.

5 Q Okay. So I'm going to show you State's 57, which would be
6 just a closer view of that top area, right?

7 A Uh-huh.

8 Q All right. Oh, sorry I made it dark and I meant to -- I made it
9 light and I meant to zoom in, sorry about that.

10 Okay. So when you say the mezzanine, is this the area in
11 which you found the backpack?

12 A Yes, ma'am, at the top.

13 Q Okay.

14 A I had to actually get up there to get RO filters off to the right-
15 hand side and take an inventory account of what we had on the filters to
16 the left. So I actually had to put a ladder on the table and climb up there
17 and get up there to pull the RO filters and stuff out from the back.

18 Q And at the bottom of this picture, if I just move it up right
19 there -- I don't know if you can -- you know what that -- because of the
20 lighting, it's bad, so I'm going to use.

21 A Those are, yeah, there's the table. Yeah, that's the table right
22 there.

23 Q And that's State's 56. This would be the table and the ladder?

24 A Yes, ma'am.

25 Q All right. So once you get up there and you're looking for the

1 filters and the things that you just discussed --

2 A Okay.

3 Q -- you said you found a gun. Was the --

4 A Well, I found a -- I saw a backpack. It was open and it just -- I
5 just happened to look over and there was a gun in there.

6 Q All right. Showing you State's 60. Is this the backpack you
7 saw?

8 A Yes, ma'am.

9 Q And if we zoom in the bottom, this black firearm, is that what
10 you saw?

11 A Yes, ma'am.

12 Q Once you see that, what do you do?

13 A I take the backpack. I walked out into my office, put it under
14 my desk and I call Russ Peterson and I told him. I said this is how this is
15 going to go down, man. I -- look, I was getting parts, and stuff ready for
16 some PM's and I came across the backpack with the gun in it. It's under
17 my desk in my office and that's all there is to it. I don't want nothing else
18 to do with it.

19 Q Okay. So I'm going to show you State's 58. Wait for it to
20 focus here for a second.

21 THE COURT: May have to hit the button.

22 MS. BLUTH: Perfect.

23 BY MS. BLUTH:

24 A Yeah, that's my office and that's my desk.

25 Q All right.

1 A That's where I put it, right there.

2 Q State's 59. If we zoom into underneath that chair, is that
3 where you put the backpack?

4 A Yes, ma'am.

5 Q Now you said you called -- I'm sorry did you say Russ or am
6 I --

7 A Russ Peterson.

8 Q And who's Russ Peterson?

9 A I don't even -- he's -- I don't even know what his role is -- he's
10 the owner's best friend, I guess.

11 Q Okay. Does he kind of work there too.

12 A Yeah, kind of.

13 Q Okay. And so you call him. You tell him what you found. You
14 tell him where you put it. And then you -- according to what you just
15 said, you're like and that's it -- I don't want anything to do with it.

16 A That's right.

17 Q What do you mean by that? When you said you don't want
18 anything to do with it.

19 A Well, for one, I mean, I had to do the right thing right. But I
20 don't want nothing to do with anything. I know -- I was aware what was
21 going on because of the phone call and everything and I don't want to
22 be a part of anything. I just want to do my job, be left alone.

23 Q Okay.

24 A So.

25 Q Meaning you didn't want to talk to the police about it.

1 A That's right.

2 Q And if you're being 100 percent honest, not really that thrilled
3 about being here right now.

4 A No, I'm not.

5 Q Okay. Thank you.

6 MS. BLUTH: Nothing further, Judge.

7 THE COURT: Mr. Pike or Ms. Simpkins.

8 MS. SIMPKINS: Finally me, Judge.

9 **CROSS-EXAMINATION**

10 BY MS. SIMPKINS:

11 Q Mr. Galeener, I won't take too much of your time. My name is
12 Melinda Simpkins and I'm helping to represent Mr. McNair. You know
13 him, right?

14 A Yes, ma'am.

15 Q You were his supervisor.

16 A Yes, ma'am.

17 Q Okay. And how long have you known him?

18 A A few years. Probably three or four years.

19 Q Okay. And you know that he has a stutter, right?

20 A Uh-huh.

21 Q Okay. And that can get worse as the more nervous he gets,
22 right.

23 A As he gets -- when he gets -- when Mike gets excited yeah, it
24 tends to come out a little bit but -- and when I say excited, I say excited
25 in a way like if he's in a hurry to do something or what not. Because

1 Mike's a pretty well-mannered boy, you know.

2 Q All right. And so during the time that you've know him, you've
3 never seen him with a gun, have you?

4 A No.

5 Q Okay. And you work a different shift then he does, right? It --

6 A He worked with me.

7 Q Okay.

8 A But he had -- I kind of took Mike under -- we kind of took Mike
9 under our wing. I put him into a maintenance like a mechanic training
10 program thing. And he picked up everything real fast, he learned
11 everything real fast and he was just, he was one person that we could
12 count on. He started handling calls on the weekend and taking a lot of
13 load off our back. So we kind of put him into a supervisory -- like
14 supervisor role at night. To kind of keep the guys in line and keep the
15 machines running and stuff at night.

16 Q So did your shifts kind of overlap at some point. I mean, you
17 said you had the day shift, he was the night guy.

18 A No, he came in later in the evening. Yeah, I think -- I don't --
19 there were -- like I said I worked so many times that, you know, there
20 was not set schedule for me.

21 Q Okay. Fair enough. Now, you're familiar with, you know --
22 you work for Unified Containers?

23 A Yes, ma'am.

24 Q Okay. So you are familiar with the rules about the factory floor
25 and not having any food or any drinks on the factory floor?

1 A Yes, ma'am.

2 Q Okay. And is there a place like a window sill area where
3 employees keep their drinks and things like that?

4 A On the outside of the production floor. Yes, ma'am.

5 Q Okay. And do people when they have to -- for example, when
6 there's an emergency on the factory floor and you have to go in and fix
7 things, but you have a drink in your hand you dump your drink there on
8 the window sill and go in and.

9 A Yeah, we set it on the window sill, I mean --

10 Q Okay.

11 A -- for the most part.

12 Q Okay. A lot of employees do that, right?

13 A Yeah.

14 Q Have you seen -- ever seen Michael dump his like lunch -- I
15 don't want to say dump, but put his like backpack or his lunch on that
16 window sill while he has to go take care of things on the factory floor?

17 A Not the backpack.

18 Q Okay.

19 A But his -- but when he would go to lunch or whatnot, if there's
20 something going on he would usually go out to eat somewhere so he
21 would come back with something like a Coke or whatnot and he would
22 have a Coke and he'd leave it out there or put it in my office.

23 Q Okay. And you know Mitchell Johnson?

24 A Yes, I do.

25 Q Okay. And you -- do you know he was fired from Flavors,

1 right?

2 MR. ROGAN: Objection.

3 A I terminated him.

4 Q You terminated him.

5 THE COURT: Hold on, hold on hold on.

6 MS. SIMPKINS: I'm sorry.

7 MS. BLUTH: The objection is relevance.

8 MS. SIMPKINS: Oh, sorry.

9 MS. BLUTH: That's okay.

10 THE COURT: Ms. Simpkins.

11 MS. SIMPKINS: I didn't hear you. I'm sorry, Judge.

12 THE COURT: What's the response? The objection was
13 what's the relevance of Mr. Johnson being fired?

14 MS. SIMPKINS: Well, Your Honor, I'm trying to dis -- I'll
15 withdraw the question.

16 THE COURT: Okay. Thank you. I will grant the objection
17 and strike the response.

18 BY MS. SIMPKINS:

19 Q Now, the night that this incident happened -- or the day that
20 you discovered the gun. You were in the maintenance shop, you said?

21 A Yes, ma'am.

22 Q Okay. And it was in the loft area that's used for storage.

23 A Yes, ma'am.

24 Q Okay. Do you have to have a ladder to get up to it?

25 A Yes, ma'am.

1 Q Okay. Do you know where the green lockers are in the
2 mechanics area? Do you know what I'm talking about?

3 A Well, there's two sets of green lockers.

4 Q Okay.

5 A So I don't know what you're --

6 Q So tell me --

7 A There's one set of green lockers in the back room.

8 Q Uh-huh.

9 A And there's one set of green lockers in my office.

10 Q Okay. So in your office is where the loft is?

11 A No.

12 Q Okay.

13 A No. On the back -- in the back shop is where the loft is at.

14 Q Okay. And then how far away is your office from the back
15 shop where you -- where the loft is?

16 A I don't know.

17 Q Okay. Is it like --

18 A Down the hall.

19 Q -- the next room over or is it.

20 A It's a room over, yeah.

21 Q A room over. Okay. How often do you go up there in that loft
22 area?

23 A Whenever I got to do -- whenever I have to get RO filters or
24 AC filters.

25 Q Uh-huh.

1 A Or if I need -- like I keep all thread up there. I keep
2 refrigeration pipe up there.

3 Q So would it be fair to say that you access it on a regular basis?

4 A When I -- I usually have to get the filters once a month.

5 Q Okay.

6 A So.

7 Q There are other things up there though besides filters.

8 A Uh-huh.

9 Q Okay. Do other people have access to that loft as well?

10 A If I ask them to.

11 Q So other people know that they have to get the ladder and go
12 up there and get whatever.

13 A That's the only way to get up there.

14 Q Okay. So when you were up there you noticed a red
15 backpack. Was it closed or opened?

16 A It was opened.

17 Q And besides the gun, did you notice anything else in the
18 backpack?

19 A No. I just seen a gun and I kind of like --

20 Q Did you make any --

21 A I wasn't going to mess with it. I wasn't going to do nothing. I
22 just grabbed it and took it in my office. That's it. I didn't look through it
23 or nothing so.

24 Q Okay. So you made no attempt to find out who the backpack
25 belonged to?

1 A No.

2 Q Did it look familiar to you at all?

3 A No.

4 Q Okay. And you never saw anyone put it up there, right?

5 A No.

6 Q Okay. Now besides the person that you called to tell them
7 about the backpack or about the gun did anybody else -- did you tell
8 anybody else about it? You have to answer out loud they're recording
9 this. Is that a no?

10 A Oh, I'm sorry, no, ma'am. I did not.

11 Q Okay. Thank you.

12 THE COURT: Thank you.

13 BY MS. SIMPKINS:

14 Q Now, did the police ask you to fill out a voluntary statement at
15 all or make a recorded statement?

16 A Yes, they did.

17 Q I'm sorry.

18 A Yes, they did.

19 Q And did you?

20 A No, ma'am.

21 MS. SIMPKINS: Court's indulgence.

22 No further questions, thank you.

23 THE COURT: Anything further, State?

24 ...

25 ...

1 **REDIRECT EXAMINATION**

2 BY MS. BLUTH:

3 Q In regards to where the backpack was placed, you could use
4 the ladder to access that area or you, I mean, you could just toss the
5 up -- you could -- there would be nothing to prevent you from tossing a
6 backpack or anything up there as well.

7 A No. It's a pretty open spot. I mean, there's times I'll take
8 filters and have to get out there because I'll take a filter box and go to
9 throw it up there and throw it back too far and have to get up because
10 I'm kind of anal like that. I like everything nice and neat and sticking out,
11 so I can see what's what, so.

12 Q And then when I -- when Ms. Simpkins was asking you a
13 question, I thought you said if I ask them to or if I allow them to. Do you
14 have control over that area like --

15 A Well, only as of recently do I have -- since I've lost Mike as my
16 main guy, there's really nobody else that goes up there. It would just be
17 either me or him that went up there. But now I have new mechanics I'm
18 training and whatnot and so basically, they don't go up there unless I
19 ask them to go up there.

20 Q Got ya.

21 A Can you go up there and get the parts that you need for this
22 PM or whatnot or can you go up there and get this for me, you know.

23 Q Okay. Understood. Thank you so much.

24 MS. BLUTH: Thanks, Judge. Nothing else.

25 THE COURT: Anything further?

1 MS. SIMPKINS: Very briefly, Your Honor.

2 **RECROSS-EXAMINATION**

3 BY MS. SIMPKINS:

4 Q Mr. Galeener, when you are not on premises, even when
5 Michael was working there, did you lock that area when you weren't
6 there?

7 A Oh, no. You can't lock that area.

8 Q So it was --

9 A Well --

10 Q Okay. So it was open to anybody who walked in?

11 A It's open to any -- well, I guess you can say it is actually open.
12 Security usually locks the main building doors on the outside. But the
13 main door to the Gala Blow Mold room is open and there is not -- there
14 is nothing to -- there is no other doors to lock in that area. No, ma'am.

15 Q Thank you.

16 MS. SIMPKINS: No further questions.

17 THE COURT: Anything further?

18 MS. BLUTH: No, Your Honor.

19 THE COURT: Anything from our jurors?

20 Yeah.

21 [Bench Conference Begins]

22 THE COURT: He thought he said he didn't go through it. So I
23 don't know if you guys want me to ask that or not. I'm assuming
24 somebody would.

25 MS. BLUTH: That's going to come in through a different

1 witness. He's not going to know.

2 MS. SIMPKINS: [Unintelligible].

3 THE COURT: All right. So you want me to tell them that a
4 different witness will address that?

5 MS. BLUTH: Yeah. I think that's good.

6 MS. SIMPKINS: Yeah, that's fine.

7 MS. BLUTH: Thank you.

8 THE COURT: All right.

9 [Bench Conference Concludes]

10 THE COURT: Okay. Mr. Galeener, you're all done. Thank
11 you very much for your time.

12 THE WITNESS: Thank you.

13 THE COURT: I appreciate you coming in. There's a separate
14 witness that will address the contents of the backpack.

15 All right. State may call their next witness.

16 MS. BLUTH: Judge, that's it for today.

17 THE COURT: Oh, okay.

18 MS. BLUTH: Sorry, I didn't.

19 THE COURT: There you go, folks.

20 MS. BLUTH: We went faster than we thought.

21 THE COURT: Generally, when we break early that means
22 they're ahead of schedule which is a good thing for you all. So we will
23 go ahead and take our evening recess. We're going to start at 1:00
24 tomorrow. I have a really long hearing in the morning.

25 During the recess you're admonished not to talk or converse

1 among yourselves or with anyone else on any subject connected with
2 the trial. Or read or watch or listen to any report of or commentary on
3 the trial by any medium of information including, without limitation,
4 newspapers, television, the internet, or radio. Or form or express any
5 opinion on any subject connected with the case until it is finally
6 submitted to you. No legal or factual research or investigation on your
7 own.

8 I will see you tomorrow. Thank you for your time today.

9 [Outside the presence of the jury]

10 THE COURT: You guys have anything outside the presence?

11 MR. ROGAN: Your Honor, I just want to approach your clerk
12 to have the video that actually we've been watching all day marked as
13 Exhibit 1.

14 THE COURT: Okay.

15 MR. ROGAN: If I could, please.

16 THE COURT: That's the one that was already agreed upon
17 and admitted, right?

18 MR. PIKE: That's correct, Your Honor.

19 MS. BLUTH: Is that the issue --

20 MR. PIKE: And we've been going through and picking out
21 specific points but the entirety of the --

22 THE COURT: That's what I understood the whole 64 --

23 MR. PIKE: The video goes back to the --

24 THE COURT: -- minutes or whatever is going to be
25 introduced.

1 MS. BLUTH: Yep.

2 MR. PIKE: Right.

3 THE COURT: Okay. All right. Very good. Then I will see you
4 tomorrow.

5 MS. BLUTH: Is there any issues that we might have before
6 tomorrow that we should bring up right now versus tomorrow?

7 MR. PIKE: No. Just the -- we'll have the photographs figured
8 out before tomorrow morning.

9 THE COURT: Okay.

10 MR. PIKE: For the autopsy -- or before the substitute coroner
11 appears.

12 THE COURT: Okay. And is that the first witness tomorrow at
13 1:00?

14 MR. PIKE: Dr. Green's going to come back in and tes --

15 MS. BLUTH: No, she's not. She won't be until after the
16 weekend. I can't remember if she's available Monday afternoon or
17 Tuesday afternoon. But she's not available tomorrow.

18 THE COURT: Okay.

19 MS. BLUTH: So it won't be an issue tomorrow at all.

20 THE COURT: All right.

21 MR. PIKE: Other than that, I think you're all right, Your Honor,
22 we're moving at pace and --

23 THE COURT: So based upon the location of people or not
24 finding them, I mean, are we way ahead of schedule in terms of when
25 we would likely be able to finish and arguing.

1 MS. BLUTH: With a basical -- basic full day on Monday, we
2 could potentially be done with our case on Tuesday.

3 THE COURT: Okay. So I need you guys to -- somebody
4 asked and I don't remember who it was -- was it you for a jury
5 instructions?

6 MR. PIKE: Yes.

7 THE COURT: I'll forward you a copy of one of our most
8 recent murder cases that have instructions in it. You guys can go
9 through them and just make sure you kind of think about getting me --
10 not necessarily by tomorrow obviously but by Monday, if you have any
11 other stuff you want me to look at.

12 MS. BLUTH: Okay. Sounds good.

13 MR. PIKE: Thank you.

14 THE COURT: All right.

15 MR. ROGAN: Appreciate it.

16 MS. SIMPKINS: Thanks, Judge.

17 THE COURT: All right, guys thank you.

18 MS. BLUTH: Thank you.

19 [Evening recess at 4:07 p.m.]

20 * * * * *

21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Brittany Mangelson
Independent Transcriber