

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

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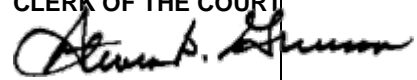
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DISTRICT COURT
CLARK COUNTY, NEVADA

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
FRIDAY, MARCH 01, 2019

**RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 4
VOLUME IV**

APPEARANCES:

For the State:

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JEFFREY S. ROGAN, ESQ.
Chief Deputy District Attorneys

For the Defendant:

RANDALL H. PIKE, ESQ.
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RECORDED BY: SARA RICHARDSON, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Friday, March 01, 2019

[Trial began at 1:08 p.m.]

[Outside the presence of the jury]

THE COURT: You guys have anything outside the presence?

MS. BLUTH: No, sir.

THE COURT: Okay.

MR. PIKE: No. We have by stipulation the various State and
Defense exhibits.

THE COURT: So what do you got?

MR. ROGAN: The State's 72 through 87 will be admitted by
stipulation.

THE COURT: Are those more photographs?

MR. ROGAN: Photographs and the schematic.

THE COURT: Okay.

MS. SIMPKINS: And Defense Exhibits A through G are
admitted by stipulation. They're all photographs, Your Honor.

THE COURT: Photographs. Okay.

MR. ROGAN: That's correct.

THE COURT: Correct.

MR. ROGAN: That's correct.

THE COURT: So 72 through 87 State. A through G, as in
girl, will be admitted from the Defense.

[STATE'S EXHIBIT NUMBERS 72 through 87 ADMITTED]

[DEFENSE EXHIBIT NUMBERS A through G ADMITTED]

1 MS. SIMPKINS: Thank you.

2 THE COURT: Anything else?

3 MS. BLUTH: No, I don't think so.

4 MS. SIMPKINS: No, Your Honor.

5 THE COURT: No. Okay.

6 You can go ahead JURORS.

7 [In the presence of the jury]

8 THE MARSHAL: All rise for the jurors.

9 THE COURT: Thank you. You all can be seated. We'll be

10 back on the record with Mr. McNair, his attorneys, State's attorneys,

11 jurors are all present. At this time, we're going to continue on with the

12 State's case-in-chief. You can call your next witness.

13 MR. ROGAN: State calls a Jamelle Shannon.

14 **[TESTIMONY OF JAMELLE SHANNON; previously transcribed]**

15 THE COURT: State may call their next witness.

16 MS. BLUTH: Thank you. State calls Joshua Brennan.

17 **JOSHUA BRENNAN**

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 spell your name for the record, please.

22 THE WITNESS: All right. Joshua Brennan. J-O-S-H-U-A,

23 B-R-E-N-N-A-N.

24 THE COURT: Thank you, Mr. Brennan.

25 Ms. Bluth.

1 MS. BLUTH: Thank you.

2 **DIRECT EXAMINATION**

3 BY MS. BLUTH:

4 Q Good afternoon, Mr. Brennan. How are you doing?

5 A Pretty good.

6 Q Okay. Thank you. I'd like to turn your attention to September
7 of 2017. During that time period where were you working -- or how were
8 you working?

9 A I was a security guard at Palms Main Mortuary.

10 Q Now, did you -- were you a security guard at Palms or did you
11 work through a private company and then you guys --

12 A We are --

13 Q Go ahead.

14 A We're clientele is the Palms Mortuary -- we -- my company is
15 known as G4S.

16 Q G-4-S.

17 A But we -- G4S. Yes.

18 Q All right. And let's talk a little bit about first of all how often you
19 would work at the Palms?

20 A I'm there five days of the week. I am off on, I do believe it was
21 Tuesday and Wednesday.

22 Q And we're talking back in September of 2 --

23 A Back in September, yes.

24 Q Okay.

25 A I no longer am employed there.

1 Q Say it again.

2 A I am no longer employed at that location.

3 Q All right. So where was the physical address of that Palm
4 Mortuary?

5 A I know it's going to be on Main Street, I think it was 4550?

6 Q All right. I'm going to show you what's in evidence as State's
7 3. Just to orient you here we got North Las Vegas Boulevard and
8 running east to west, we have East Searles.

9 A Correct.

10 Q Where is the Palm Mortuary?

11 A The Palm is going to be up -- our main building is up on to the
12 hill there.

13 Q So.

14 A That is our graveyard site and then we have a back gate
15 there.

16 THE COURT: Hold on my friend. We can't tell where you
17 were pointing. This thing has a little mouse.

18 THE WITNESS: Okay.

19 THE COURT: So if you just click left and then you can circle
20 stuff.

21 THE WITNESS: Okay.

22 BY MS. BLUTH:

23 Q Could you show us?

24 A So this whole thing here is the Palms Mortuary.

25 Q All right.

1 MS. BLUTH: And for the record, Judge. He is -- if we are
2 going on the left side of the picture, there's a bunch of grass, and then in
3 the top left corner is says Palm Downtown Mortuary Cemetery. And he
4 has put a red circle around all of the grass areas.

5 THE COURT: That's correct.

6 BY MS. BLUTH:

7 Q So and -- what shift did you work on those days?

8 A So I'm there from 6:00 p.m.to 2:00 am.

9 Q All right. So obviously evening time in to the early morning
10 hours.

11 A Correct.

12 Q How long did you work there for?

13 A I was employed at that location for over six months.

14 Q As part of your duties was it common for you to patrol the
15 grounds?

16 A Yes.

17 Q And if we're looking at this map, would you patrol just walking
18 around all over the property?

19 A So we have two types of patrols; one is known as ordained
20 patrols where we go from one location to the next where our tags are,
21 the others are randomized patrols. At that location we do randomized
22 patrols. So we go from throughout the buildings besides specific ones
23 that are marked off to throughout the grounds and graves themselves.

24 Q So would you spend a lot of time outside --

25 A Yes.

1 Q -- patrolling that area?

2 A Absolutely.

3 Q Was it common for you while you were patrolling to either
4 have contact with or see several homeless individuals that lived or
5 stayed in this grass -- excuse me the dirt area in front of --

6 A Absolutely. So you would see homeless from here to here
7 and at any given time we'd have anywhere between 40 to 50 homeless.

8 Q Okay. So I'm just -- whenever you make marks, I'm sorry, I
9 have to keep stopping, but I just have to make a record of where you
10 were marking. And so you did -- if we're going on North Las Vegas
11 Boulevard, we see two dirt lots in front of the Palm Mortuary. And you
12 drew basically a red line at the northern part of those dirt roc -- dirt lots
13 and at the southern part of those dirt lots, would that be fair?

14 A Correct.

15 Q And you said that at any given time you have somewhere in
16 between 40 or 50 homeless individuals --

17 A Absolutely.

18 Q -- staying in that area.

19 A Yes.

20 Q All right. And was it common for you to have contact with
21 them, speak with them, et cetera?

22 A Yes. With part of our patrols it is to make sure that they don't
23 set up tents or tarps along our back wall as it is a mortuary, we want it to
24 look presentable. So we generally try and keep them on to the sidewalk
25 where that's not part of the actual property and away from our gates.

1 Q Okay. And while you were doing patrols, was it also common
2 for you to see certain employees coming and going in to this parking lot
3 that I'll refer to either as Flavors or Unified Containers?

4 A Yes.

5 Q Okay. So now I want to turn your attention specifically to
6 September 14th of 2017. Were you working on that evening?

7 A Yes.

8 Q And were you doing your normal job duties? Sorry this is a
9 really fat --

10 MS. BLUTH: Is that you, Judge, or is that me?

11 THE COURT: That's me.

12 MS. BLUTH: Oh, okay.

13 THE COURT: I was just clearing the screen from the other
14 stuff.

15 MS. BLUTH: Okay. Thank you.

16 BY MS. BLUTH:

17 Q Were you patrolling the outside areas --

18 A Yes.

19 Q -- during that evening?

20 A We were -- or actually I should say I were just finishing up
21 third patrol, which is where we're going and getting the actual tags. So
22 it's an orderly patrol. At that time, I was positioned up on the hill, which I
23 will mark if you need me to.

24 Q Would you please?

25 A Absolutely. So we have a small plot right here that is up

1 inside the tree lines where the memorial stone is --

2 Q Okay.

3 A -- which overlooks our grounds.

4 Q And I'm going to zoom in, just so the Ladies and Gentlemen of
5 the jury can see what you marked.

6 Oh, actually I think it's frozen, just one sec. You might have to
7 remark it for me, Mr. Brennan.

8 A Okay.

9 Q Just one second though, okay?

10 Okay. All right. So I'm going to go in -- so you drew a circle --
11 we -- if we -- we see a bunch of palm trees --

12 A Yes, right there up on that hill.

13 Q -- there are two kind of lines. And so from that hill -- from your
14 position on that hill, can you see down in to where those homeless
15 individuals would be staying?

16 A Absolutely.

17 Q While you were up on that hill, did you hear or see anything
18 that caught your attention?

19 A During that time when I was up on there, just finished getting a
20 tag, I heard what sounded like a little bit of shouting and yelling, sounds
21 of a scuffle. Now, we are required to go to down there and check in
22 case that they're trying to get over the fence or anything like that. So
23 when we did hear that sound I did report it in and started making my way
24 down there.

25 Q Okay. When you start hearing what you're referring to as a,

1 you know, like a scuffle tell me first of all when you -- what are you
2 hearing that makes you think it was a scuffle?

3 A Shouts, cussing, usual things that lead to either a drunkard or
4 something like that causing some type of issue along our back fence.

5 Q From where you were could you see down to the individuals
6 that --

7 A Yes.

8 Q -- the scuffle was occurring between?

9 A Absolutely.

10 Q Okay. Tell me what you saw?

11 A I saw one BMA, about 6'1 wearing blue shirt like a navy blue
12 shirt, jeans that were short cut, and then next to him was a shorter
13 Hispanic male. He was wearing a beige colored shirt, again the same
14 blue jeans that were short cut and there was one of the homeless men
15 that was kind of towards ground that they had approached and started to
16 mess with.

17 Q All right. So I want to break that down a little bit for you.
18 Okay. So you said you saw one BMA -- so I know what you mean, but
19 what is BMA?

20 A BMA is a black male adult.

21 Q Okay. So you saw one black male adult about, you said about
22 6'1.

23 A Yes.

24 Q Blue shirt and then you said jeans but shorter. What do you
25 mean by that?

1 A So I'm going to stand real quick.

2 Q Okay.

3 A Shortcut in other words right here where the ankle is up a bit
4 so it would show about that much skin.

5 MS. BLUTH: Okay. And Judge for the record, Mr. Brennan
6 has stood up and he's lifted up his pants till they're about maybe two or
7 three inches above his ankle showing that that's where those jeans cut
8 off.

9 THE COURT: Got it. Thank you.

10 BY MS. BLUTH:

11 Q All right. So that was one of the individuals.

12 Now, in regards to -- could you make out any hair or anything
13 on the head?

14 A Could have been a do-rag, again its dark, hair was low, little
15 bit of a turf coming out on back for the black male. And then for the
16 Hispanic, it was short shaved.

17 Q Okay. So in regards to the Hispanic male, and forgive me if
18 you already said this, what was his height in comparison to the black
19 male?

20 A I'd say he was about a head shorter.

21 Q When you looked down there could you see who was doing
22 the yelling -- or who would -- shouting?

23 A There was the two males that looked like they were doing the
24 shouting and the male on the ground was somewhat defending and
25 covering his face when they started to attack him.

1 Q Okay.

2 A Next to him was a female, she did shout, she started
3 screaming and then the gunshots rang out. At that point I am down the
4 hill and can no longer see who had fired the weapon.

5 Q All right. So the individual that was laying down, had you seen
6 that individual before; the one laying down?

7 A Yes. He had been around for over two weeks, frequenting
8 along the back there.

9 Q So did you believe him to be homeless?

10 A Yes.

11 Q All right. When you say that those two people -- you -- I'm
12 sorry, you said that the man laying down had his hands above his face
13 and you stuck your hands over your face like you were protecting your
14 face.

15 A Yes. As if he was protecting his face and head.

16 Q And you said the other two were attacking him. What were
17 they doing?

18 A From the original point of view, from the very start it looked
19 like the first one the male had grabbed him while the Hispanic was
20 coming up to hit him in the side. At that point the male is like this tucked
21 down and about one knee down.

22 Q All right. So you said that the taller of the two, the African
23 American male --

24 A Yes.

25 Q -- grabbed him -- or held the man on the ground and you

1 believe to -- for -- the Hispanic man went over and punched him.

2 A Correct.

3 Q And then you also stated that the man laying down went up on
4 one knee like he was trying to get up?

5 A Correct.

6 Q Okay. At that point, do you try to make your way down to that
7 area?

8 A Yes. At that point, I'm now making way down, I can no longer
9 see what is going on and then I heard the shots ring out.

10 Q Okay. How many shots do you think that you heard?

11 A Five.

12 Q Had you ever seen the Hispanic individual before?

13 A I've seen him maybe once before.

14 Q Where had you seen him?

15 A Across the lot, the Flavors yard.

16 Q And what about the black male adult that you referenced. Had
17 you seen him before?

18 A Yes. I've seen him about three occasions. One of which was
19 interacting with said homeless and it was a very negative interaction.

20 MS. SIMPKINS: Objection.

21 MS. BLUTH: Okay.

22 MS. SIMPKINS: Your Honor, may we approach?

23 THE COURT: Yes.

24 [Bench Conference Begins]

25 MS. BLUTH: Sorry, go ahead.

1 THE COURT: So I'm not sure what this is but that's the
2 second time we've had this negative interaction of people kind of
3 reference here. So what is it that people are talking about? And, I
4 mean, we're kind of getting in to the area of potentially bad acts stuff.

5 MS. BLUTH: Sure. So yesterday Mr. Pike asked one of the
6 witnesses wasn't it common for --

7 THE COURT: Understood.

8 MS. BLUTH: Right.

9 THE COURT: Right.

10 MS. BLUTH: So we were not planning on getting in to any of
11 that.

12 THE COURT: Okay.

13 MS. BLUTH: Until that was done. I do --

14 THE COURT: But.

15 MS. BLUTH: -- know about --

16 THE COURT: But, but, but, -- just be aware that even if they
17 open the door to something, we still need to have a conversation about it
18 because if it's going to go in to any kind of acts, I mean, I'm going to
19 need to tell the jury what their role is --

20 MS. BLUTH: Sure, it's not going to go in to any --

21 THE COURT: Okay.

22 MS. BLUTH: -- specific type of acts. I mean, there are
23 specific type of acts, which I know of which I'm not getting in to, but I
24 think that they would be entitled to say I had seen interactions and they
25 were negative.

1 THE COURT: Okay. So what are the interactions that --

2 MS. BLUTH: So it depends on which witness we're talking
3 about, but with this one he would see him throw things at homeless
4 people -- that specifically that night he had seen two previous
5 interactions between the Defendant and certain homeless people. One
6 of them he talks about seeing the Defendant having like metal rods at
7 the fence and like, I don't -- like, sticking them out at the fence at them or
8 like pretending to swing at them.

9 THE COURT: The fence by the mortuary --

10 MS. BLUTH: No.

11 THE COURT: -- or the fence by the Flavors?

12 MS. BLUTH: The fence by Flavors.

13 THE COURT: Okay. All right.

14 MS. BLUTH: But basically, just yelling things at them, get a
15 job, you're a bum, things like that. So I'm not getting in to any specific
16 instances but that he had --

17 THE COURT: So there really isn't any reason he needed to
18 mention negative, it's just that you wanted to bring out that he had
19 interaction with them?

20 MS. BLUTH: No. I told him that he could not get in to the
21 specifics because he has told me every time I've met with him -- or he
22 gets in to these details. And I said just along the same lines as
23 yesterday, is I will ask you had you ever seen him have interactions in
24 the past? Would you characterize those as positive or negative and
25 that's where we had to leave it.

1 THE COURT: But you recognize if you're going to bring out
2 that he was saying that he had negative interactions so you're
3 essentially that he -- other bad acts. You're not going in to the specifics
4 but you're saying he did bad things.

5 MS. BLUTH: I don't think he -- I don't think negative
6 interactions is a bad things, I mean, him yelling at somebody isn't a
7 bad -- you saying you're a bum.

8 THE COURT: But it's not just crimes, it's bad acts. So, I
9 mean, that's a really broad thing. I'm just saying from the standpoint of
10 an appellate review --

11 MS. BLUTH: Yeah.

12 THE COURT: If you're bring out that the Defendant engaged
13 in negative conduct with other people, I mean, somebody's going to look
14 at that and say what's the relevance of that and Court, did you admonish
15 the jury on how they're suppose to consider that and blah, blah, blah.

16 MS. BLUTH: I mean, I'm just respectfully saying I just feel like
17 if you --

18 THE COURT: When you applied for [unintelligible] -- just tell
19 you how this works.

20 MS. BLUTH: But I -- just from the prosecutor side, I mean, --

21 THE COURT: Okay.

22 MS. BLUTH: -- I just feel like them bringing that up and us just
23 saying yeah, I did see interactions I felt like his proprie -- his behavior
24 was negative. I mean, I don't think that that raises to the level of bad
25 guy.

1 THE COURT: Well look, I think it's questionable. I mean, the
2 main reason that I wanted to have this conversation right now is to find
3 out is there going to be any more of this? Is anybody going to go in to
4 specifics of it?

5 MS. BLUTH: No.

6 THE COURT: Blah, blah, blah. I'm not going to admonish the
7 jury right now because I don't think we've gone in to any actual acts, but
8 I just think we need to be really, really careful if we're going to continue
9 down this line or if reference what the conduct was or.

10 MS. BLUTH: Yeah.

11 THE COURT: Because I don't think your question elicited that
12 from this guy. So my worry is, does he start throwing something out
13 there.

14 MS. BLUTH: No. He's been admonished by me.

15 THE COURT: All right.

16 MS. BLUTH: That that's not happening.

17 THE COURT: Okay.

18 MS. BLUTH: But I just want to -- if -- because of your opening
19 and because of your comments yesterday, you know, just moving
20 forward, no -- if she testifies or someone testifies about, you know, him
21 like doing nice things and all that, I will reapproach and ask the Judge
22 because I have a slew of witnesses that have him doing really mean
23 things toward the homeless, which I'm not going to get in to. And this is
24 the last witness that's going to talk about a negative interaction but just
25 so you know where I am.

1 THE COURT: All right. Go ahead, Randy.

2 MR. PIKE: Well, they haven't given us any evidence of that,
3 they haven't disclosed anything.

4 THE COURT: About bad acts.

5 MR. PIKE: There's been no motion about bad acts or
6 anything.

7 MS. SIMPKINS: Right.

8 MS. BLUTH: That's in his statement, his statement.

9 MR. PIKE: But in --

10 THE COURT: Well, in --

11 MS. SIMPKINS: Well, it's still proven.

12 THE COURT: What's that?

13 MS. SIMPKINS: I still got to have a --

14 THE COURT: No, you're right. I mean, and that's why, I
15 mean, I always tell people despite what you think, a door may be
16 opened by you still revealing -- you need to have a conversation at the
17 bench before you go in to things or they will be otherwise inadmissible.

18 MS. BLUTH: Okay.

19 THE COURT: So like I said, I agree that they were asking
20 questions yesterday about people helping the homeless, et cetera and
21 then you get asked them, have you see Mr. McNair there as well, which
22 implied kind of a good character, he's over there helping the homeless
23 thing. So I didn't call anybody back to the bench yesterday when it
24 came up but like I said just want to make sure that we're not going to
25 keep going down the road --

1 MS. BLUTH: No.

2 THE COURT: -- or somebody is going to throw something out
3 about a specific matter.

4 MS. BLUTH: No, that's not going to happen.

5 THE COURT: Okay. All right.

6 [Bench Conference Concludes]

7 THE COURT: Okay. You can continue.

8 MS. BLUTH: Thank you.

9 BY MS. BLUTH:

10 Q Okay. After you -- so you start running and you hear these
11 shots, and I apologize, I think you said you heard you believed about five
12 shots, is that right?

13 A Correct.

14 Q And I'm going to zoom out now. What -- can you kind of show
15 me the way you ran?

16 A Essentially made a straight beeline through the tree line right
17 on down in to the rocks.

18 Q Okay. So for the record you ran from those rows of palm trees
19 that we were talking about, down the middle in to the rocks. Did you
20 make it down to the fence?

21 A I did get down to the fence.

22 Q Okay. When you got to the fence could you see if anyone had
23 been shot?

24 A Yes, the homeless male had been kind of rolled over to his
25 side, you could see that he was bleeding. I could not tell at the time if he

1 was breathing or not, began to get on the phone with 9-1-1.

2 Q Okay. Did see the other two individuals that you've identified
3 as employees, did you see which way they ran?

4 A They had started making their way towards Searles Street.

5 Q Okay.

6 A And on my cut line there is a tree line once again and there
7 were also shrubs so coming down through that and then getting in to the
8 rocks where the hill is because it was -- it's still undeveloped so it's kind
9 of an up and down hill.

10 Q All right.

11 A Caught sight of them making their way towards Searles Street
12 and that was it. I did hear a car screech off. I did see a vehicle.

13 Q What did you see? What type of vehicle?

14 A It was a white SUV kind of truck it looked like it had -- it was
15 larger, I could not give you a make or model, but it did have a large dent
16 in its side.

17 Q Okay. Could you tell whether or not one or both of those
18 individuals actually got in that vehicle?

19 A I could not.

20 Q Okay. Previously have you had the opportunity to review
21 video surveillance from inside the -- of the Flavors?

22 A Yes.

23 Q And when looking at the video did you see couple different
24 people walking around inside of the facility?

25 A Yes.

1 Q And did any of those individuals look familiar to you that you
2 had seen be involved that night?

3 A Yes, I did.

4 Q Okay. I'm going to show you what's already in evidence as
5 State's 1.

6 MS. BLUTH: And Judge, the CD is fast forwarded to 32
7 minutes and 50 seconds and I'm going --

8 THE COURT: You need to hit the button.

9 MS. BLUTH: Yeah. Oh, that button, I'm sorry.

10 THE COURT: You're welcome.

11 MR. PIKE: Your Honor, before that's played, may we
12 approach the bench?

13 THE COURT: Sure.

14 [Bench Conference Begins]

15 MR. PIKE: I know it's not my witness, but this is an overly
16 suggestive show up and so I'm may -- at this point in time, I did not know
17 that he had been shown the video surveillance --

18 THE COURT: Oh, okay.

19 MR. PIKE: -- and identified those items. There were no photo
20 lineups that were done. So we'd move to not allow this as in an overly
21 suggestive show up.

22 THE COURT: Well, I'll go ahead and allow him to testify. We
23 can make a bigger record of it when we take a break.

24 MR. PIKE: Okay. I'd --

25 THE COURT: Even though the bench conferences are

1 recorded. But I would allow.

2 MR. PIKE: I just want to make sure that we had a
3 contemporaneous objection.

4 THE COURT: Oh, no, no, no, that's fine.

5 MR. PIKE: Okay. Thank you.

6 [Bench Conference Concludes]

7 BY MS. BLUTH:

8 Q So before I hit play, you previously came to our office, is that
9 right?

10 A Correct.

11 Q And you had the opportunity to review the surveillance and
12 see multiple people walking around, is that right?

13 A Correct.

14 Q Before you were even shown the video -- well, first of all when
15 you met with police, your interview was recorded, is that right?

16 A Yes.

17 Q And in that interview did you give a description of the black
18 male adult?

19 A Yes, I did.

20 Q And was that the description you gave here today?

21 A Yes, I did.

22 Q And did you also -- and you had seen this individual as an
23 employee at Flavors while you had been working there?

24 A Correct.

25 Q Just one second because I need to move it back a little bit.

1 Okay. So I went -- I started at 26:32.

2 [Surveillance video playing]

3 BY MS. BLUTH:

4 Q You're going to see a few individuals walking in here. Do
5 either of those two individuals look familiar to you?

6 A Yes.

7 Q Okay. Which one?

8 A Starting with the black male with the short cut hair that had the
9 little end sticking out towards the back.

10 Q Okay.

11 A He has been seen on several occasions, once again, and then
12 the other Hispanic male with him, he is wearing red shoes and that was
13 one of the things that was passed along to that detective that night.

14 Q Okay. Thank you, Mr. Brennan.

15 MS. BLUTH: Your Honor, that concludes my direct. I'll pass
16 the witness.

17 THE COURT: Okay. Mr. Pike, Ms. Simpkins.

18 MS. SIMPKINS: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MS. SIMPKINS:

21 Q Mr. Brennan, I want to -- let me just start with the video you
22 just saw. Have you ever -- did the police ever show you any pictures of
23 any suspects?

24 A No.

25 Q Okay. You never did a lineup where you went down to the

1 police station --

2 A No.

3 Q -- and they showed you six people. They didn't show you
4 photos?

5 A No.

6 Q No. This is the first time you've seen it.

7 A Yes.

8 Q Was through the DA's office.

9 A Correct.

10 Q Okay. Now, this happened at night.

11 A Correct.

12 Q And you were at work obviously, right?

13 A Yep.

14 Q All right. And your job is to patrol the cemetery.

15 A Correct.

16 Q Do you do that on foot or do you do that in a vehicle?

17 A Foot.

18 Q Okay. And do you have a flashlight with you or spot lights or
19 anything like that?

20 A Spot light, correct.

21 Q Okay. Did you use your spot light that night?

22 A I did not.

23 Q Now, the lighting -- so then the lighting was only from the
24 street lamps in the area?

25 A Correct.

1 Q And you said that there were two guys that you saw one was
2 black about 6'1, 200 pounds give or take.

3 A Yes.

4 Q Okay. And he had the navy blue shirt and the short jeans.

5 A Short cut, yes.

6 Q Okay. And then the shorter guy was a head shorter.

7 A Yeah, about.

8 Q Hispanic, shave -- close shaved head. Okay. So how far
9 away were you when you observed this scuffle?

10 A From the start. Once again I was up on the hill, couldn't give
11 you that in meters, but it's a fair good distance.

12 Q Okay. Football field, longer than a football field.

13 A No, I wouldn't say that long, no.

14 Q Okay. So less than 100 yards away.

15 A Yeah.

16 Q Give or take.

17 A Yeah.

18 Q Okay. What is between you -- where -- from where you were
19 standing when you first observed the scuffle, is there anything between
20 you and the scuffle that was going on, for example, a fence or.

21 A Yes.

22 Q Okay. Shrubbery.

23 A Shrubbery, trees, and a fence.

24 Q Trees. Okay. And you tell the police that one of the men
25 pulled a gun and fired but you only heard the shots.

1 A Correct.

2 Q You didn't see who pulled the gun at all.

3 A Because I was once again making my way through the un --
4 part -- or the unconstructed part of the land.

5 Q And so you didn't see a gun at all then.

6 A Just the fires.

7 Q Okay.

8 MS. SIMPKINS: Nothing further. Thank you.

9 THE COURT: All right. Ms. Bluth.

10 MS. BLUTH: Nothing, Your Honor. Thank you.

11 THE COURT: Anything from our jurors? Yes.

12 [Bench Conference Begins]

13 THE COURT: Thank you. I don't think that's what he said.
14 She was with that homeless guy wasn't she?

15 MS. BLUTH: Yeah. I'll night.

16 THE COURT: Okay.

17 MS. BLUTH: Is that signed? What juror is that?

18 MS. SIMPKINS: I don't know, it doesn't say.

19 MS. BLUTH: This one isn't signed, Judge.

20 THE COURT: What's that?

21 MS. BLUTH: It's not -- are these all from the -- oh, they're all
22 from the same lady?

23 THE COURT: They're all from three different people so I got
24 to get the number for this, but I think this Ms. Devon.

25 MS. SIMPKINS: We're good with this.

1 MS. BLUTH: What?

2 MS. SIMPKINS: That's speculation.

3 MS. BLUTH: What would you do if she was. He -- I think

4 they're confused.

5 MS. SIMPKINS: Yeah. He could testify that she -- he'd been

6 mean.

7 MR. ROGAN: So don't ask that one you can just clarify.

8 MS. BLUTH: I'll just clarify it.

9 MS. SIMPKINS: Yeah.

10 MR. ROGAN: Okay.

11 THE COURT: What's that?

12 MS. SIMPKINS: [Unintelligible].

13 MS. BLUTH: We're not going to ask that one, but I'll clarify it.

14 THE COURT: You'll clarify that?

15 MS. BLUTH: Because they think it calls for speculation.

16 THE COURT: Oh, okay. Great. All right.

17 [Bench Conference Concludes]

18 **EXAMINATION BY THE COURT**

19 BY THE COURT:

20 Q Okay. Got a couple questions for you if I could, Mr. Brennan.

21 A Okay.

22 Q If you would confirm please, where was the female during the

23 initial scuffle that you described?

24 A I'd say just about laying next to him. He's --

25 Q Laying

1 A Few times I made passbys, usually they'll sleep together in
2 small camps of three to four people.

3 Q So she was laying --

4 A She was right -- almost --

5 Q -- on the ground next to the homeless gentlemen.

6 A Yeah, almost right next to him.

7 Q Got it. Okay. And do you know where she was when you
8 heard the gunshots?

9 A Sitting there screaming her head off.

10 Q Okay. Did you ever see her try and intervene in anything that
11 was going on at any point?

12 A No.

13 Q And if you could say again and I'm not sure if you said
14 originally but did you have an opinion as to the weight of the black male
15 that you saw?

16 A Give or take still pretty new to the job, I'd put it around like 200
17 pounds.

18 Q Okay.

19 A You know he wasn't really big, think, or heavy build, he was
20 kind of fairly skinny about your average Joe.

21 Q Okay. All right.

22 THE COURT: Ms. Bluth, any questions based on mine?

23 **FOLLOW-UP EXAMINATION**

24 BY MS. BLUTH:

25 Q Just to be clear the female who you believed to be with the

1 homeless male, not the two males that are --

2 A Correct.

3 Q -- approached the homeless male.

4 A She was with the homeless male.

5 Q Okay. And then --

6 A She --

7 Q I apologize.

8 A I was going to say she had been along the back fence for

9 about three of four weeks.

10 Q Okay. And then black male you said you put his weight at

11 200, but you said you thought he was more of a skinner type.

12 A Yeah.

13 Q And tall.

14 A Yes.

15 Q Okay. Thank you.

16 MS. BLUTH: Nothing further.

17 THE COURT: Ms. Simpkins.

18 MS. SIMPKINS: Nothing further, Your Honor.

19 THE COURT: All right. Mr. Brennan, thank you for your time,

20 sir. You are excused, appreciate it.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: State may call their next witness.

23 MS. BLUTH: Thank you. State calls Detective Quinteros.

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PAUL QUINTEROS

[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: Paul Quinteros.
P-A-U-L, Q-U-I-N-T-E-R-O-S.

THE COURT: Thank you. All right. Ms. Bluth.
MS. BLUTH: Thank you.

DIRECT EXAMINATION

BY MS. BLUTH:

Q Good afternoon, sir. How are you employed?
A I'm employed with Las Vegas Metropolitan Police Department.
Q How long have you been employed with the department?
A 13 years.
Q In what section do you work in now?
A Currently the Downtown Area Command Patrol Investigations.
Q Okay. And I used -- are you an officer or a detective?
A I'm a detective.
Q What's the difference?
A Officers normally in the patrol function where detectives conduct an investigative portions of any crime that occurs.
Q Okay. And in September of 2017, what were your job duties? Were you a patrol officer or were you a detective?
A I was a detective at the same time.

1 Q Okay. And were you still working in that same section of
2 town?

3 A Yes.

4 Q Could you give us the parameters so we have an
5 understanding of which Area Command you work over?

6 A I currently work the Downtown Area Command which is the
7 borders -- or the boundaries are from the 15 freeway all the way to 95,
8 Mohave area, and north from Owens all the way south to Sahara.

9 Q Okay. So would that cover the 1300 block of North Las Vegas
10 Boulevard?

11 A It does.

12 Q All right. So I'd like to turn your attention now to September
13 14th of 2017. That evening around 9:26 p.m., do 9-1-1 calls start coming
14 in, in reference to a shooting in that area and when I say that area, I
15 mean the 1300 block of North Las Vegas Boulevard.

16 A Yes, ma'am.

17 Q Where you working that evening in the capacity that you've
18 been discussing?

19 A Yes.

20 Q And where you assigned to respond?

21 A Eventually, I was.

22 Q When you are either a patrol officer or if you're an investiga --
23 like a detective before you go to a scene do you get preliminary
24 information so you know, hey this is where I'm going and that's why I'm
25 going there?

1 A Yes. We normally get it from dispatch.

2 Q What information did you receive from dispatch to know where
3 you're going and why?

4 A As far as the radio broadcast that we're given via the radio, it
5 was the area Searles and Las Vegas Boulevard refencing a shooting
6 where a victim was shot multiple times.

7 Q Okay. Now, was a suspect vehicle -- were you supposed to
8 be looking for a suspect vehicle upon on your arrival or at least
9 identifying the -- a suspect vehicle?

10 A Some of the information that was broadcasted was that the
11 suspect vehicle was a black truck and it was parked at the Flavors
12 property which was nearby.

13 Q All right. And then later were you also given information that
14 that truck belonged to one of the supervisors there?

15 A Yes. I'm not sure if it was dispatch or patrol officer but it was
16 broadcasted that it belonged to a supervisor.

17 Q Did you respond immediately upon getting that call from
18 dispatch?

19 A Typically when we hear that a violent crime occurred and
20 there is a victim or it's a verified that a crime occurred then we self-
21 dispatch and respond to the call.

22 Q All right. How much time between, you know, the 9-1-1 calls
23 around 9:26, do you think until you got there?

24 A I want to say around maybe 5 to 15 minutes.

25 Q Okay.

1 A Somewhere around that time.

2 Q Now, patrol officers in the area respond immediately, is that
3 right?

4 A Correct.

5 Q Can you explain to us the status of the scene upon your
6 arrival? What's going on?

7 A When I arrived the victim was already transported so he was
8 already gone from the scene. The patrol officers already put up the
9 yellow tape. And the intersection of Searles and Las Vegas Boulevard
10 and maybe a half a block south blocking of the scene of where the victim
11 was shot at. In that scene there was multiple officers securing the
12 scene; some were on the south, some were on the north, some were in
13 the Flavor's parking lot area, and then there was a officers with victims --
14 or excuse me, witnesses or other by standards that may have seen the
15 incident unfold.

16 Q Okay. So first I want to ask you State's Exhibit 3, I'm going to
17 zoom in a little bit so all we can see is the map, and it's also upside
18 down. All right. Could you give us an idea here about how much the
19 street was blocked off?

20 A I'd say from Las Vegas Boulevard -- excuse me, Las Vegas
21 Boulevard and Searles, I'd say about.

22 Q And if I need to zoom out I can.

23 THE COURT: Hold on just a second. Officer, you can
24 actually draw on the screen with the mouse --

25 THE WITNESS: Okay.

1 THE COURT: -- just left click and hold.

2 BY MS. BLUTH:

3 A In this area, maybe approximately to here, maybe even lower.

4 Q Okay.

5 A Possibly here so.

6 Q All right.

7 MS. BLUTH: So for the record, Judge, Detective Quinteros
8 has drawn a red line right at the intersects of -- intersection of North Las
9 Vegas Boulevard and Searles and then he drew another line going south
10 probably about right where it says Boulevard he drew two lines to show
11 where the block off started.

12 THE COURT: Look at the first line he would have erased if he
13 could, right. You were saying it was a little lower?

14 THE WITNESS: Somewhere in between there, Judge.

15 THE COURT: Okay. So the line that he was indicating that
16 he wished to go with I think was a little north of the Vegas Clown Motel
17 there.

18 THE WITNESS: Yes.

19 THE COURT: Okay. Thank you.

20 BY MS. BLUTH:

21 Q So that area was blocked off by the police officers, is that
22 right?

23 A Correct.

24 Q Okay. So when you get actually on to the, what I'm going to
25 refer to as the Flavor's property --

1 A Okay.

2 Q -- you said that witness had been separated.

3 A Correct.

4 Q Or identified and then separated.

5 A Correct.

6 Q And then what about were there any individuals that were
7 working inside of the Flavors? Where were they?

8 A It -- well, we were at the scene with the information that we
9 had -- the individuals inside were working inside the Flavors or
10 employees of the business.

11 Q So what did you guys do knowing that hey, we might have a
12 suspect that works inside the building?

13 A With my Sargent we just --

14 MR. PIKE: Objection, Your Honor, that was leading and that
15 wasn't part of the answer.

16 THE COURT: Well, why don't you rephrase the question?

17 BY MS. BLUTH:

18 Q Could you say your answer to me again, please? Your first
19 answer that.

20 THE COURT: Do you remember what the question was?

21 THE WITNESS: I do not.

22 THE COURT: That's okay.

23 MS. BLUTH: Okay.

24 THE COURT: All right. Start over.

25 ...

1 BY MS. BLUTH:

2 Q So at some point while you were there --

3 A Correct.

4 Q -- are the employees of Flavors pulled out the building?

5 A While I'm there, yes.

6 Q Okay. So that happened -- it didn't -- that did not happen
7 before you got there.

8 A Correct.

9 Q Okay. So while you are there, why is that decision made?

10 A Due to the information we had.

11 MR. PIKE: Objection, Your Honor, calls for hearsay, and
12 whether or not he made the decision.

13 MS. BLUTH: I don't --

14 THE COURT: Well, I'll overrule the objection and you can go
15 ahead.

16 BY MS. BLUTH:

17 A Due to the information we had referenced a black truck being
18 involved.

19 MR. PIKE: Objection, Your Honor, hear -- relies upon
20 hearsay.

21 THE COURT: Well, overruled. You can go ahead and
22 answer the question.

23 BY MS. BLUTH:

24 A We decided to freeze the premise -- or excuse me the
25 premises of the Flavor's factory and the black truck so we had officers

1 enter in to the business and escort all the employees out of the business
2 pending a search warrant.

3 Q Okay. Now, at -- while you're on scene, do you become
4 notified that the victim has died?

5 A Yes.

6 Q At that point, does this become a homicide investigation?

7 A It does.

8 Q And when a victim dies or you believe a victim is going to die,
9 is Homicide called out to take over the investigation?

10 A They are.

11 Q And did that happen in this case?

12 A It did.

13 Q At any point in time, did a -- while you were there, did a
14 vehicle come on to property? When I say vehicle, a civilian vehicle.

15 A A vehicle came on to the Flavor's property while I was there.

16 Q All right. And did -- where you able to identify that individual
17 who's driving that vehicle?

18 A I did not. Another officer did.

19 Q Did you have any contact with that person?

20 A No.

21 Q Did you see where that was a male or a female?

22 A I believe -- I was advised it was a female.

23 Q Okay. After the investigation is turned over to
24 Homicide, do you have anything to do from that point on?

25 A No.

1 Q Are you responsible from -- for briefing Homicide once they
2 arrive on scene as to what's gone on up to that point?

3 A Yes. Briefing them on the preliminary information that we
4 received at that time.

5 Q And before Homicide gets there, are all of the witnesses -- are
6 they kept there and are they separated so they can't communicate with
7 one another?

8 A Both, yes.

9 Q Okay.

10 MS. BLUTH: That concluded my direct, Your Honor.

11 THE COURT: Thank you.

12 Ms. Simpkins.

13 MS. SIMPKINS: Thank you, Judge.

14 **CROSS-EXAMINATION**

15 BY MS. SIMPKINS:

16 Q Detective Quinteros?

17 A Yes, ma'am.

18 Q Is that correct? Okay. You are a patrol detective.

19 A Yes, ma'am.

20 Q Okay. Versus a homicide detective.

21 A Correct.

22 Q Okay. So you initially go out and then if -- when it becomes a
23 homicide, the homicide detectives come in and you have nothing further
24 do to with it.

25 A Correct.

1 Q Okay. So when officers cleared Flavors and brought all the
2 employees outside, employees were cooperative.

3 A I believe so.

4 Q Okay. Where -- you didn't help do that or.

5 A No, I did not.

6 Q Okay. So it was other officers that did it.

7 A Yes.

8 Q Okay. How long do you know -- if you know, how long the
9 employees were outside of Flavors waiting to go back in?

10 A I don't know.

11 MS. SIMPKINS: Nothing further, Judge. Thank you.

12 THE COURT: Thank you. Ms. Bluth, anything further?

13 MS. BLUTH: No, Your Honor. Thank you.

14 THE COURT: Anything from our jury? All right. Detective,
15 thank you very much for your time. I appreciate it, you're excused.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: State may call their next witness.

18 MS. BLUTH: May we approach, Judge?

19 THE COURT: Sure.

20 [Bench Conference Begins]

21 THE COURT: Not here yet.

22 MS. BLUTH: What?

23 THE COURT: We need a break.

24 MS. BLUTH: We do need a break.

25 THE COURT: All right.

1 [Bench Conference Concludes]

2 THE COURT: We'll take a quick break, Ladies and
3 Gentlemen, until we get on to the next witnesses.

4 During the recess you're admonished not to talk or converse
5 among yourselves or with anyone else on any subject connected with
6 the trial. Or read or watch or listen to any report of or commentary on
7 the trial by any medium of information including, without limitation,
8 newspapers, television, the internet, or radio. Or form or express any
9 opinion on any subject connected with the case until it is finally
10 submitted to you. No legal or factual research or investigation any
11 recreation of testimony nothing like that on your own.

12 And I will see you as soon as we get our witnesses here to
13 start back up. Okay. Thank you.

14 [Outside the presence of the jury]

15 THE COURT: Anything outside the presence?

16 MS. BLUTH: Do we want to make a more full record of that
17 issue?

18 THE COURT: Yeah, we're going to get to that as well. You
19 guys have anything else?

20 MS. BLUTH: Oh, no.

21 THE COURT: No.

22 THE COURT: Randy, what do you want to go ahead on Mr.
23 Brennan's testimony?

24 MR. PIKE: On Mr. Brennan's testimony there -- to the
25 knowledge of the Defense and upon the disclosure of the information

1 that has been provided by the DA's office including -- the file reviews
2 there were no photographic lineups, there was -- there were -- the only
3 show up that I was aware of was that in reference to the gentleman who
4 was basically identified then not identified and was released at the
5 scene. And that was subject to a conversation that we had up there.

6 But in reference to the identification or information regarding
7 Mr. McNair and the photographs that were shown of the videos that
8 were inside those were overly suggestive, unduly suggestive,
9 prejudicially suggestive in that they place an undue suggestion that
10 that's the man that Mr. -- I want to -- his first name Brian -- Brennan, I'm
11 sorry, that Mr. Brennan saw. And that wasn't shown to him any time
12 near the time that this happened and if by any detectives and it was just
13 clips that were shown to him by the District Attorney's office before he
14 came in and testified.

15 And that is extremely suggestive that hey, there's the guy, this
16 is the guy that we charged and this is who we want you to identify and it
17 does place a situation where I don't know who was in there? I don't
18 know who showed it to him? I don't know who pointed out whom or
19 what -- or when these were done? And without any detectives,
20 investigators or anybody else in here I think that there's kind of been a
21 crossing over where I almost have to call the DA's that were present at
22 the time that this was done to ask them those questions. So --

23 MS. SIMPKINS: If I could briefly add, Your Honor.

24 THE COURT: Sure.

25 MS. SIMPKINS: It was -- I believe it was Mr. Lesh, who

1 testified yesterday the same thing happened although we didn't raise a
2 contemporaneous objection, but the exact same thing happened at that
3 point in time so we would like to include that at this time as well.

4 THE COURT: All right.

5 MR. PIKE: And I think the proper remedy would be to strike
6 the entire testimony of Mr. Brennan.

7 THE COURT: All right. State.

8 MS. BLUTH: I'm unaware of any legal principal or case that
9 prevents us from showing either pictures or videos to our witnesses and
10 in, I mean, there's a couple facts, I think. Number one, Mr. Lesh and Mr.
11 Brennan had seen the Defendant multiple times, like this isn't just
12 someone that they saw only one time. They had seen -- those are one
13 person that works there every night besides two nights a week and one
14 person that lives there. They had seen Mr. McNair several times.
15 They'd also given very accurate descriptions of him, 6 foot, seen him in
16 the parking lot, one had him in a blue sweatshirt, one had him a blue
17 shirt, very lengthy, tall.

18 So when we played the video, we played big chunks of the
19 video which had Ramiro Romero, another Hispanic male that I can't
20 think of right now, as well as Matthew Stedeford in there, showed them
21 that, and immediately upon the Defendant walking in both said oh, that's
22 the guy right there that we've seen many times.

23 So I disagree about the overly suggestive. I also don't -- I
24 mean, we're not police officers, we're not doing our own investigation, I
25 don't think there's anything that says we can't show them pictures or our

1 case, videos of our case to see if they recognize somebody.

2 THE COURT: All right. Anything further?

3 MS. SIMPKINS: I think that's a little different from showing
4 them the video in court and my client's sitting here at the table.

5 THE COURT: Well, so there's a couple of things. First off,
6 with Ms. -- with regards to Mr. Lesh, I can't really address that because
7 without an objection to that at that point, I can't rule on what I think's
8 occurred so far whether it be appropriate to allow him to identify
9 anything.

10 But with regard to Mr. Brennan, there's two things that I think
11 are very, very important. Number one, he didn't identify the Defendant.
12 So he didn't testify in court that guy's sitting at the table is the guy, that's
13 the guy on the video, that's the guy that I saw. What he was saying was
14 looking at the video that person looks similar to the person that I saw
15 that night. And that's an important distinction in my mind.

16 More importantly, even than that those was the testimony that
17 Mr. Brennan had provided up to that point was that the incident that he
18 saw, the description of the person that he saw being 6' to 6'1, wearing
19 the blue shirt, and the blue jeans, approximate build which he testified
20 to. I can't remember what the original weight he referenced but later on
21 I think he said about 200 pounds, but that he was a taller and skinnier
22 gentleman, that he had short cropped hair or a do-rag or some type on
23 and then he described the other person as the Hispanic individual as
24 well. And he described that the taller black male adult that he witnessed
25 was somebody that he was familiar with because he had seen him on

1 several occasions interacting with the homeless people there.

2 At that point, I mean, I think there's a confidence level that
3 anybody could have shown him whether it's a lineup or anything else to
4 say can you identify this person and he would have been allowed to do
5 so. It's obviously preferable that the police do that, but I think Ms. Bluth
6 is right, there's nothing that prohibits the State from showing
7 photographs of the people as well if that hasn't been done before by way
8 of physical or photo lineup.

9 It kind of becomes a weight argument to be made about an
10 identification. But again, it never really was an identification, I mean,
11 obviously I'm assuming somebody at some point is going to come in and
12 identify, you know, Mr. McNair is the person that's in that video.

13 MS. BLUTH: Right.

14 THE COURT: But this witness wasn't making that connection.
15 He's just saying I looked at that video and yeah, that person looks
16 similar to what I'm describing as the person that I saw that evening.

17 And I think there was a sufficient foundation in the record for
18 him to do so. So that's why I went ahead and overruled the objection at
19 the bench and allowed the testimony to go forward. Okay.

20 MR. PIKE: Okay. Thank you, Your Honor.

21 MS. SIMPKINS: Thank you, Your Honor.

22 THE COURT: Sure.

23 MR. PIKE: Thank you for allowing us to make a
24 contemporaneous objection at the bench.

25 THE COURT: Yeah, all right. Okay. We'll be in recess guys.

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[Recess taken at 2:38 p.m.]
[Trial resumed at 2:59 p.m.]
[In the presence of the jury]

THE MARSHAL: All rise for the jurors.

THE COURT: Thank you. You all can be seated.

All right. We'll be back on the record Mr. McNair, his attorneys, State's attorneys, jurors are all present. We will continue on with the State's case-in-chief. You may call your next witness.

MS. BLUTH: State calls Tyler Coon

DOUGLAS TYLER COON

[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.

THE WITNESS: Douglas Tyler Coon. D-O-U-G-L-A-S, T-Y-L-E-R, C-O-O-N.

THE COURT: All right. Thank you, sir. Ms. Bluth.

MS. BLUTH: Thank you, Judge.

DIRECT EXAMINATION

BY MS. BLUTH:

Q Sir, how are you employed?

A I'm management at Unified Container.

Q Okay. Can you explain to us Unified Container? Is it -- is there kind of like a mother company that involves a lot of other smaller companies or how would you explain it?

1 A We share the same ownership as Anderson Dairy. So we're
2 directly adjacent to them, right next to them. On our side it's a -- one
3 building it's broken up in to four different companies; one's a
4 manufacturing of bottles which is Unified Container.

5 Q Okay.

6 A Crystal Peaks is the filling company which fills it and our
7 maintenance which is Hadado -- well, are -- they're associated with our
8 manager -- that's our management team that manages those as well as
9 Flavors, our retail store where we sell ice cream to the public.

10 Q Okay. That's all located on the corner of Searles and Las
11 Vegas Boulevard at 1300 North Las Vegas Boulevard.

12 A Correct.

13 Q All right. Now, explain to me though your specific position and
14 what you do for the company.

15 A At that time I was general manager of Unified Container.
16 We're a family business, so I had a lot of different duties, but with -- I
17 directly oversaw Unified Container mainly; operations, employees, you
18 know, getting in or out, if they're someone need to be fired or hired, just
19 day to day stuff like that.

20 Q Now, you said it's a family-owned company. Does your family
21 own Anderson Dairy?

22 A Yes.

23 Q Now, I want to -- you provided us kind of a blueprint of the
24 facility, is that right?

25 A Correct.

1 Q And.

2 MS. BLUTH: We're stipulating to this, is that right?

3 MR. PIKE: Yes.

4 MS. BLUTH: Your Honor, the parties are stipulating into
5 evidence State's Proposed 121.

6 THE COURT: Okay.

7 MR. PIKE: That's correct, Your Honor. We've been provided
8 a copy and have gone over it with the State.

9 THE COURT: All right. That will be admitted.

10 **[STATE'S EXHIBIT NUMBER 121 ADMITTED]**

11 MS. BLUTH: Thank you, and may I have permission to
12 publish, Judge?

13 THE COURT: Yes.

14 BY MS. BLUTH:

15 Q Okay. So I am going to put this up and zoom out, we used
16 highlighter that didn't necessarily -- it shows up pretty good on the actual
17 blueprint but not on the overhead so you're going to have to work with
18 me a little bit. Okay. So if --

19 THE COURT: Did you try and put anything underneath that to
20 see if it shows up any better?

21 MS. BLUTH: Yeah, let me try.

22 [Colloquy between Counsel and the Court]

23 BY MS. BLUTH:

24 Q All right. So let me ask you a few questions. First of all, on
25 the left side of the picture where my pen is right now, if we were outside,

1 that would be Las Vegas Boulevard, right?

2 A Correct.

3 Q It would be the west of the building.

4 A Correct

5 Q Okay. And then down below I have that written down here
6 that would Searles that would run east to west on the side of the
7 building.

8 A Correct.

9 Q Okay.

10 A On the southside of the building.

11 Q Where is the -- and I should start with this, so there's a mouse
12 in front of you -- Judge is going to make your pen is on.

13 THE COURT: Yeah, so you can just left click and draw any
14 where they ask you to if they're asking you to depict anything, sir.

15 A Okay.

16 Q So could you show us where the entrance to the building
17 would be?

18 A The main entrance that would be coming in for employees
19 would be this entrance right here.

20 Q Could you mark it for me?

21 MS. BLUTH: And so for the record, Judge, he drew a red
22 dot -- or a red line right -- I don't know how I'm going to explain this one.

23 THE COURT: Well, it's pretty much right smack dab in the
24 middle of the southside of the building, is that correct?

25 THE WITNESS: South side of the building, middle entrance,

1 heading north.

2 THE COURT: And it's right next to the corner of where there's
3 a green highlight.

4 MS. BLUTH: Okay. Thank you.

5 BY MS. BLUTH:

6 Q Now, is there an entrance for when you talked about your
7 retail store.

8 A Uh-huh.

9 Q Is there an entrance there like if I was coming into buy ice
10 cream, where would I enter?

11 A You would enter over here, right here.

12 Q And so that would be the upper left-hand corner of the pink
13 highlight that faces Las Vegas Boulevard.

14 A Correct.

15 Q All right. So if you wouldn't mind lets -- first let's talk about
16 Flavors so you said Flavors is your retail store, is that right?

17 A Uh-huh.

18 Q Could you draw -- it's in pink highlight but the pink highlight
19 doesn't show up that great. Would you mind showing us exactly where
20 Flavors is?

21 MS. BLUTH: And so for the record, Judge, I'm having him
22 draw the square but on the actual document itself, Flavors is highlighted
23 by a pink highlighted square, which will show up on the actual document.

24 BY MS. BLUTH:

25 Q Now, if you could explain -- just explain for us again, what is

1 Crystal Peaks?

2 A Crystal Peaks is a bottling company. We make the jugs right
3 here at Unified Container and on conveyor belts, come through a little
4 hallway, and they drop in to this room, where we fill them and make
5 water or juices, whatever we're manufacturing right there.

6 Q Can you use the red pen now to show us Crystal Peaks
7 please?

8 THE COURT: Let me -- hold on a second here, I'll change
9 this up for a little bit. Why don't you use the blue one? Thank you.

10 BY MS. BLUTH:

11 A Okay. And now you'd like to see Crystal Peaks?

12 Q Yes, please.

13 A As well as this little room right here. It's associated with
14 Crystal Peaks, not sure if that's relevant.

15 Q Okay. How is it associated with Crystal Peaks?

16 A It's where we filter our water. There's really no one in there,
17 it's a glass window, it's a very small room like the one next to it.

18 Q Okay.

19 A But yeah, there's a machine in there but there's only one
20 entrance in and out and it doesn't lead to anything.

21 Q Okay. And you highlighted that with a, it's supposed to be I
22 think a blue pen but on the actual document itself it's highlighted in
23 yellow, is that right?

24 A Correct.

25 Q And then if you could now show us Unified Container, please.

1 And you did that with a green highlight but also on the paper itself you
2 had highlighted with a green highlighter, is that right?

3 A Correct.

4 Q Okay. Now, Mr. Coon at the bottom of the document, if I
5 zoom in right here, I'm not going to because it's going to mess up our
6 diagram, but it says Blow Mold, is that right?

7 A Correct.

8 Q In the front we see this kind of rectangular object coming off of
9 the building. What is that?

10 A That's our dock area, when we make the jugs they get bottled
11 off in to the -- bags and we put them on trailers. Those trailers are
12 located right here facing south direction where they pull out in front of a
13 gate right here that we slide open when those trailers come out. So
14 that's our receiving and loading dock.

15 Q Okay. And when you said right here you were again, you
16 were pointing to this rectangular part of the green that comes out, is that
17 right?

18 A Correct, yes.

19 Q Okay. Now, right to the left of that we see, I don't know if it's a
20 dock or a staircase but we see a bunch of blacklines coming off, what's
21 that?

22 A We have a door right here that exits because we have a
23 grinder right on the outside of the door. Any jugs that we -- are not
24 deemed clean that we can use, they go in to a grinder right outside that
25 door. So you pop out that little door there's a little staircase that drops

1 you down to floor level, and directly to the left, right here there's a little
2 grinder where our guys are constantly going in and out to dispose of bad
3 jugs that we don't use.

4 Q Okay. Thank you. All right. So now I want to talk to you a
5 little bit about the timeframe September 2017, during that time period did
6 you employ an individual by the name of Michael McNair?

7 A Yes.

8 Q Okay. Do you see Mr. McNair in the courtroom today?

9 A I do.

10 Q Okay. Could you just describe an article of clothing that he's
11 wearing, please?

12 A Blue shirt, black shoes.

13 Q All right. And where in the courtroom is he seated?

14 MR. PIKE: We'll stipulate to the identification, Your Honor.

15 MS. BLUTH: Thank you.

16 THE COURT: Thank you.

17 BY MS. BLUTH:

18 Q Okay. Did you also employee an individual by the name of
19 Mitchell Johnson?

20 A Yes.

21 Q Was Mitchell Johnson terminated?

22 A Correct.

23 Q And what was his reason for termination?

24 A Mainly tardiness. He wasn't punching in and out for lunch
25 breaks, but it was mainly tardiness.

1 Q Okay.

2 A Absenteeism and tardiness.

3 Q What was Mike's position within Unified -- it was -- his position
4 was at Unified Containers, is that right?

5 A Correct.

6 Q And what was his job duties? What was his position?

7 A We started Mike off as what we call a bagger. It's an entry
8 level job on our production plant. Mike excelled with us so we gave him
9 a lot of different job duties throughout his time with us but at the end he
10 kind of, I'd say jack of all trades for us in Unified Container which
11 basically means we were training him on mechanical procedures so.

12 Q Okay.

13 A He was a little bit more advanced than the other guys.

14 Q Did any of his jobs have anything to do with security?

15 A No.

16 Q Did he have a --

17 A Other than general security which is, you know, if anyone sees
18 anyone on the property suspicious they're supposed to report it to
19 someone, but that's kind of general knowledge especially in our area.

20 Q Okay. So other than, you know, see something, say
21 something like contact a security guard, did he have any personal
22 responsibilities as -- in the course of his employment to secure the
23 grounds, control the homeless issue anything like that?

24 A No.

25 Q Did he have any job duties outside of Unified Container,

1 meaning did he ever work at Flavors at Golden Wheat at any of the
2 others?

3 A No. We did have him go across the street to check trailers,
4 which basically meant when we would fill trailers that was early on in his
5 job description. But no, he didn't have any reason to be in any of the
6 other companies, any other parts of the building.

7 Q Okay. Did you have a security guard on the premises either
8 day or night?

9 A Yes.

10 Q And I should have asked you, is that during the day?

11 A Mainly night.

12 Q At night.

13 A Mainly night. I think they come on at 6:00 p.m. and they're
14 there all the way until 8:00 a.m.

15 Q And what was there one, or more than one?

16 A There would be one.

17 Q And what was his name?

18 A Dennis.

19 Q Okay. If someone had an issue on property, could they
20 contact -- well, first of all should they contact Dennis so Dennis can
21 handle the situation?

22 A Yes. We had -- security had a radio and a cell phone. The
23 number was in black sharpie on our whiteboard as well as a few other
24 numbers of important numbers to call if there was ever a problem.

25 Q Okay. If -- or you stated that Mr. McNair worked for Unified

1 Container as an employee of that specific business would he have a
2 uniform?

3 A At Unified Container, yes.

4 Q And what would that uniform be?

5 A It would have been a dark blue, plain uniform, button up, short
6 sleeve, it would have had his name and the name of the company on it
7 as well.

8 Q Okay. Showing you State's 46. Do you recognize the
9 individual in that photograph?

10 A Yes.

11 Q And who's that?

12 A Mike McNair.

13 Q Okay. And would this be the uniform that would be worn as
14 an employee of Unified Container?

15 A Yes.

16 Q So like you stated it would have his name on it like we're
17 seeing on the left-side of the picture which says Mike. And on the right
18 the patch that says Unified Container.

19 A That's our uniform.

20 Q Okay. Would there be any reason why Mr. McNair would
21 wear any other uniforms with any other emblems such as Gold Wheat,
22 Crystal Peaks, any shirts like that?

23 A No.

24 Q Showing you State's 39. Sorry, I'm having an issue focusing
25 today. What are we looking at here?

1 A That's our uniform rack.

2 Q Okay.

3 A You don't have the other picture up but directly next to the
4 Blow Mold room is where we keep our uniforms for all the companies
5 and there -- that's what you're looking at.

6 Q All right. So we see some burgundy ones. Where are the
7 burgundy uniforms?

8 A Those are Golden Wheat, those are drivers that we have for
9 our distribution company.

10 Q And then we already saw the light blue which was the Unified
11 Container. What's the dark blue?

12 A I think the dark blue was the Unified Container, the light one
13 may have been the Crystal Peaks possible.

14 Q Okay.

15 A I'm not positive.

16 Q I'm showing you State's 47, which would be a close up of Mr.
17 McNair. Would this be the lighter of the two shirts or the darker?

18 A Darker.

19 Q Okay. So in regards to the burgundy shirts that we see in
20 State's 39, would there be any reason why Mr. McNair should ever be
21 wearing a red shirt?

22 A No.

23 Q Now, I want to go back to the map that we were just
24 discussing which would be State's 121. And you were talking about
25 there is a uniform room that we were just looking at would you mind

1 using the --

2 A That would be this room right here. So if the main entrance --

3 Q Could you click on the --

4 A -- for where the employees come in is right here, the room
5 directly to the left there's another door and entrance right here.

6 Q You know what if you wouldn't mind just one second --

7 A I lost control.

8 Q -- I'm going to.

9 A Yep.

10 Q I'm going to give you the red pen so we can see what you're
11 doing.

12 A So there's two entrances to this room.

13 Q Okay.

14 A There's an entrance right here next to our main entrance, and
15 once you come in to the main entrance right here, there's another
16 entrance right here. The uniforms you would have seen would have
17 been located right around that area.

18 Q Okay.

19 MS. BLUTH: So just for the record, Your Honor, he drew two
20 points of ectra -- excuse me, two points of entrance next to the green
21 highlight that's on the west portion of the Bio Mold [sic] and then he
22 circled -- you can't see it but there's two words that say visitor hospitality
23 and that's where you put the circle of where the uniforms would be, is
24 that right?

25 A Correct.

1 Q Okay. So now I'd like to turn your attention specifically to
2 September 14th of 2017. I mean, obviously you're here today to talk
3 about some instance that occurred on that day between the hours of
4 8:00 p.m. to 8:00 a.m. Are any of those businesses that we've been
5 talking about, Crystal Peaks, Unified Container, Flavors on September
6 14th -- are any of those open? Is business going on?

7 A Unified Container would have been and there's not a set time
8 that they would have closed, it likely would have been around midnight
9 to 2:00 because that's based off how many jugs we had filled, if we met
10 our quota. That usually would have been -- we didn't go much further in
11 to the night at that point in our -- in that stage of our company.

12 Q All right. And how many people would work on Unified
13 Containers on that night shift?

14 A There would have been three guys inside the room.

15 Q At what point did you become notified that there was an issue
16 on your business on the property?

17 A Around 9:00 to 10:00, right in between there. Probably more
18 closer to 9:30 to 10:00, I would say.

19 Q And how does that call come to you? Who calls you?

20 A I got a call from my brother immediately followed by a few
21 others but got the call that there was some activity, that they had shut
22 down the streets and you should probably get down there.

23 Q Okay. And what's your brother's name for the record?

24 A Casey Coon.

25 Q Okay. And so do you then in fact after that phone call from

1 your brother -- and, you know, you said you got a couple other calls, do
2 you actually go down?

3 A Yes.

4 Q And explain to us as you're driving on the property what do
5 you see?

6 A As I'm coming on, I can see that Las Vegas Boulevard is shut
7 down from Washington to however far I can see. So I go down the
8 street, I come in to Anderson Dairy from the east entrance. Upon
9 arriving there, there was a lot of police cars, they had everyone in our
10 building which were -- Golden Wheat was our distribution company
11 which is located on the back end. It's actually a separate building that
12 you didn't have on that schematic.

13 Q Okay.

14 A But those employees, as well as the Unified Container and the
15 cleaning lady were all pulled out. Mike McNair was separated, being
16 questioned and from that point we went right inside and proceeded to
17 look at surveillance video for the rest of the night.

18 Q Okay. So I'm going to put the blueprint back up so that would
19 be 121. Can you explain to me where you drove up and what you just
20 stated where Golden Wheat is, please?

21 A So Anderson Dairy is located right here.

22 Q So to the east of the building.

23 A To the eastside of the building. I would have arrived not on
24 Searles Street but a little bit further down on Las Vegas Boulevard that
25 was all shut down. So when I arrived I came in on Searles from the

1 other end, the east entrance and I pulled in to Anderson Dairy.
2 Anderson Dairy shares the parking lot with these -- right through here.
3 So as I came in to Anderson Dairy I was then able to get to -- sorry, as I
4 pulled in to Anderson Dairy on this road, on our property I was able to
5 get to right here where I parked -- I'm sorry.

6 THE COURT: That's okay.

7 MS. BLUTH: That's okay.

8 BY MS. BLUTH:

9 A Here's our road making access to Anderson Dairy's parking
10 lot.

11 THE COURT: So you came in and parked next to the loading
12 dock on Unified Containers.

13 THE WITNESS: That's correct.

14 THE COURT: Okay.

15 THE COURT: Parked right here, went in right -- I'm sorry,
16 through our main entrance here, proceeded to the office where I was
17 accompanied by a lot of detectives, I assume, and we went through
18 video surveillance.

19 BY MS. BLUTH:

20 Q So the entrance that you took was that employee entrance
21 that you've been talking about that's on the south end of the Bio Mold?

22 A Yes, it is.

23 Q Okay. You stated that the -- your -- all of your employees
24 were outside of the building. Where were they located?

25 A Our employees were lined up on the sidewalk right here. Mike

1 McNair was behind a police car right around here.

2 Q Okay. So the employees were on the south side of Flavors
3 right, kind of right below the pink highlight and you have Mr. McNair a
4 little bit east of them by a police car.

5 A Separated, yes.

6 Q Okay. You stated that you go inside and you go to the video
7 surveillance room.

8 A Correct.

9 Q And you -- do you show detectives the video surveillance? Do
10 you allow them access to that?

11 A Yes. They used me as a reference because they didn't know
12 where the cameras were or what they were seeing. So yes, I allowed
13 them access to it all night and gave them whatever access they needed
14 from that point further.

15 Q Okay. I want to ask you on the blueprint that we're looking at
16 right now of the businesses being Flavor, Unified Container, and Golden
17 Wheat are there -- through the camera system can we see every piece
18 of that building? Does that make sense?

19 A No. No, yeah, you can only see the security cameras at that
20 time would only would have covered this green highlighted area, there's
21 no security cameras past that. We did have security cameras on the
22 backside of this back here but it's not listed in this schematic and this
23 backside is just a walkway. It's another breezeway. But --

24 THE COURT: So you're indicating the northside of this
25 building complex had exterior security cameras.

1 THE WITNESS: Correct.

2 THE COURT: Okay.

3 THE WITNESS: Yeah.

4 BY MS. BLUTH:

5 Q But otherwise it was just the parts of Unified Container that
6 you've outlined in green had video cameras.

7 A Only green had video cameras. We do have a video camera
8 placed right here B which allowed us to have some sight of people
9 walking through this hallway.

10 Q Okay.

11 A We could because we had glass windows, we're very visually
12 oriented company with our machines so you could see someone walking
13 through the hallway.

14 Q In between.

15 A Which.

16 Q The northern part of Unified Container and the south part of
17 Golden Wheat.

18 A Correct.

19 Q Okay. So you just referenced a Camera B which is on the
20 southeast side of Unified Containers, is that right?

21 A Correct.

22 Q We also have a camera that we listed as A. What part would
23 that show?

24 A That camera would be facing this direction and it would be
25 showing our mechanic/maintenance room where we just keep our

1 supplies, the computer --

2 Q Okay. So it faces --

3 A -- equipment.

4 Q -- south.

5 A It does face south.

6 Q Now, we also see a blue square or rectangle right where my
7 pen is right there, what were we notating there?

8 A Those were lockers. Those were little green lockers that we
9 had that were, you know, used for either equipment or for personal
10 storage.

11 Q All right. So --

12 A I'm sorry, mainly equipment. I don't recall us ever putting
13 personal storage in there.

14 Q Okay. Now, in regards to you allowed detectives access to
15 the video surveillance system. Did you also provide them with all of the
16 video surveillance?

17 A Yes.

18 Q And have you had the opportunity to meet with myself and Mr.
19 Rogan and look through that video surveillance to make sure it's a fair
20 depiction of the video surveillance or an exact copy of the video
21 surveillance you provided to us?

22 A Yes.

23 Q Okay.

24 MS. BLUTH: Your Honor, what's already in evidence as
25 State's 1 is what myself and Mr. Coon are discussing right now. And so

1 I'm going to publish that for Mr. Coon and I'm going to ask a few
2 questions.

3 THE COURT: Okay.

4 MR. PIKE: And, Your Honor, he's acting as a custodian of
5 record. And we'd agreed that those would come in and that he would
6 then perfect the admission.

7 THE COURT: Got it.

8 BY MS. BLUTH:

9 Q So Mr. Coon I'm not going to play the entire video with you but
10 I am going to stop it at certain portions just so I can ask you what we're
11 looking at if you don't mind. Okay.

12 A Okay.

13 [Surveillance video playing]

14 BY MS. BLUTH:

15 Q All right. So here, explain to us where we're at in the building
16 and what we're looking on to.

17 A So I talked about the main entrance that door would be right
18 here but you can't see it because it's right beneath us.

19 Q Could you hit that red pen for me?

20 A Yes. The main entrance is right.

21 THE COURT: Hold on let me grab that for you, there you go.
22 Okay. Go ahead.

23 BY MS. BLUTH:

24 A The main entrance would be right there.

25 Q Okay. So.

1 MS. BLUTH: And, Judge, I should have put the time on it -- I
2 stopped the video five seconds in.

3 THE COURT: Okay.

4 BY MS. BLUTH:

5 Q Mr. Coon has drawn basically a half square, we see a palm
6 tree and a little walkway. If you follow that walkway up in to the building
7 that's where the entrance door would be, is that right?

8 A Correct.

9 Q And another thing I should have started with, I apologize, in
10 the top right-hand corner we see a time for the video, that time is three
11 hours fast, correct?

12 A Correct.

13 Q And you discussed that with the detectives when you gave
14 them the surveillance.

15 A Yes.

16 Q So we're really looking at -- it's a 9:00 at -- and it say's a.m.
17 but we mean p.m., right? So it's 9:00 at night.

18 A Correct.

19 Q All right. And also, yeah, on the 14th, it's not the 15th. So it's
20 September 14th of 2017.

21 A Correct.

22 Q Okay. All right. So but the video camera if you look at the
23 bottom left-hand of the screen we see kind of a -- I wouldn't call it a ramp
24 but some railings, do you see that on the bottom left-hand.

25 A Bottom left-hand, right here?

1 Q Yeah.

2 A Okay.

3 [Surveillance video continues playing]

4 BY MS. BLUTH:

5 Q What is that?

6 A Those are the railings where I told you we have another door
7 that's right here where they come out to grind the jugs that are not
8 suitable to be filled. They come out here and that would be railings too
9 that -- a step way to get up there to grind the jugs.

10 Q Okay. And the street that we're looking at that's right in front
11 would that be Searles? Or do you say Searles or Sirles?

12 A Searles.

13 Q Searles.

14 A Searles Avenue, right there.

15 Q Okay. And then it runs in to Las Vegas Boulevard, is that
16 right?

17 A Yes, Las Vegas Boulevard is right there.

18 Q Now, we see a white truck with the car door open.

19 A That's our se --

20 Q Uh. Go ahead.

21 A That is our security pickup truck.

22 Q Okay. I'm going to go forward a little bit.

23 [Surveillance video continues playing]

24 BY MS. BLUTH:

25 Q Now, I'm going to pause it right here at 14 minutes, 18

1 seconds. Did you know which vehicle Mr. McNair drove? Did you ever
2 see him in his vehicle?

3 A Yes, it was a black truck

4 Q Okay. Do you see it here on the screen?

5 A Yes.

6 Q Okay.

7 A Right here.

8 Q Okay.

9 MS. BLUTH: And for the record, Judge, he hasn't drawn the
10 circle but the imaginary circle that he drew because the pen isn't
11 clicked -- is the left -- on the left upper hand-side, the black side.

12 THE COURT: Yeah.

13 MS. BLUTH: Okay.

14 BY MS. BLUTH:

15 Q Now, if Mr. McNair were on a break would -- can he be out in
16 the parking lot, is that okay?

17 A Yes. We never -- that was a loosely defined area, we did
18 have break areas for smoking and stuff; however, we were pretty lenient
19 with people so long as they were real close to the vicinity of the Blow
20 Mold room it was okay for him to be in the parking lot.

21 Q Okay.

22 [Surveillance video continues playing]

23 BY MS. BLUTH:

24 Q Now, I've stopped at 17 minutes, 19 seconds in.

25 MR. PIKE: 14 minutes is what it says.

1 BY MS. BLUTH:

2 Q All right. Now, I'm going to forward -- now we're at 17
3 minutes, 19 seconds on your screen. If we look on the right-hand
4 corner, we see the -- some -- the palm tree that we were just talking
5 about, is that right?

6 A Correct.

7 Q And so now we kind of have the view of the camera above
8 that entry door.

9 A The previous camera we were at an angle was right here and
10 yes, we're looking directly towards the other door. That's the grinder
11 where we put our jugs that are disposed of.

12 Q Okay. And then that's -- that little area where we see the two
13 individuals that would be that -- not -- I don't want to say ramp area but
14 the area where the people could exit and go in to -- and use the grinder,
15 is that right?

16 A Correct.

17 Q And again, if these two individuals are facing that street at the
18 top right-hand corner, that would be Searles.

19 A Yes.

20 Q Okay.

21 [Surveillance video continues playing]

22 BY MS. BLUTH:

23 Q Now, I'm at 25 minutes and 44 seconds. We see a white
24 Suburban on the lot. If we look behind the white Suburban and kind of
25 right under the time where it says 12:25:44, that gate right there, are

1 people who don't work there, are they allowed to access the lot through
2 that gate?

3 A No.

4 Q What is that gate for?

5 A That gate is for moving these trailers. When those jugs get
6 loaded in to trailers when they're filled, we get a tractor trailer comes
7 picks them up, pulls them around the corner, takes them down the street
8 to our dirt lot.

9 Q Okay.

10 A That gate is only open if we're moving those trailers. It is to
11 remain closed at all other times. Mainly because we're in a homeless
12 area where we do have a lot of people who are around there who
13 wonder on to the property.

14 Q Okay. Forgive me, I have to move it very slowly because
15 otherwise it's very temperamental. Okay. What -- I'm going to turn it on
16 at 31:06 we're going to be at the parking lot here for a second.

17 [Surveillance video continues playing]

18 BY MS. BLUTH:

19 Q Now, at 31:14 where are we at here?

20 A You're in the hallway. That's the main entrance from the other
21 side that we were just viewing that I marked out.

22 Q So.

23 A This is the room where the uniforms are at. There's another
24 door right on the other side of this and this is the inside entry door.

25 Q Okay. So I'm just going to make a record of the things you

1 just said. Okay. So at the top we see Exit and then a door right under it.

2 A This is the main employee entrance.

3 Q Okay. And so then we see an individual walking in, and I'm
4 sorry, is that where you said that those uniforms were --

5 A Correct.

6 Q -- kept?

7 A Correct.

8 Q Is there any camera inside that room?

9 A No, there's not.

10 Q Do you recognize that individual or do you need me to back it
11 up?

12 A It's Mike McNair.

13 Q Okay. Is there any reason why Mike McNair should have
14 changed his blue shirt in to a red shirt?

15 A No.

16 MS. BLUTH: And for the record, Judge, that was -- I stopped
17 it about 31:49.

18 THE COURT: Okay.

19 [Surveillance video continues playing]

20 BY MS. BLUTH:

21 Q Now, I'm at 31:54. Which area are we looking at right here?

22 A These are the loading bays that go on to those trailers that pull
23 out on to Searles Avenue. Where he is coming from that room, on the
24 other side of those glass windows would be where the uniforms were.

25 Q Okay.

1 A And he is now walking towards, you know, the corner of
2 property on the inside which would be the southeast. But this section is
3 where we load the jugs on to the trailers, that's where he's headed.

4 Q So is this area -- is this on the map where it says Blow Mold?

5 A Correct.

6 Q Now, this individual that we see him talking to, is this the same
7 individual that was out on the dock with him facing Searles?

8 A Yes.

9 Q And what is his name?

10 A Romero. I'm sorry I can't remember -- I believe we had him
11 down as Ramiro Romero. I believe.

12 Q Okay. And you said that's him walking in; him meaning Mr.
13 McNair.

14 A Yes.

15 Q Which way is he walking now? Where would that lead in to?

16 A He's leading in to our maintenance room, which would be
17 located just behind these stacked jugs, there's another entrance to a
18 maintenance room that goes in the back hallway back here.

19 Q Is there a camera in there?

20 A Yes, that was Camera A, I believe you depicted it with.

21 [Surveillance video continues playing]

22 BY MS. BLUTH:

23 Q Can't see it really clearly, but what is he working with right
24 there?

25 A That's our handwashing station.

1 MS. BLUTH: And that would be at 33:42, for the record,
2 Judge.

3 THE COURT: Thank you.

4 BY MS. BLUTH:

5 A Correct.

6 Q Okay. And we have 34 minutes -- well actually I'm going to
7 use the timing on your business, which would be 12:34 meaning 9:34
8 p.m. we already see, I don't know, 10 -- 5 to 10 police cars, is that right?

9 A Correct.

10 Q Right there we see Mr. McNair exiting -- that would be him
11 exiting the door entry looking over to where the police are at 34:43 on
12 the clock.

13 A Correct.

14 [Surveillance video continues playing]

15 BY MS. BLUTH:

16 Q Okay. I'm going to go back to minute 21:27, so I'm going to
17 start it at 21:17. Okay. So now, -- I'm sorry, I meant 27:31. Where are
18 we looking at here?

19 A That was the Camera A, I was referring to that's in our
20 maintenance department which on the other side of this door is the Blow
21 Mold room where you saw the jugs.

22 Q Okay. So north of -- or well, on the top of that picture.

23 A This is north facing south, correct.

24 Q Now, is that where employees can keep their stuff?

25 A No, that's where we keep mainly equipment.

1 Q Now, I'm going to go back to State's 121 and I'm going to
2 zoom out. Where is the mezzanine area on this map where the boxes
3 are kept?

4 A The lockers? Boxes?

5 Q Sorry. So I can get you a picture to explain exactly what area
6 I'm talking about.

7 A I understand where you were asking but you can refer to the
8 picture too.

9 Q Okay. Showing you State's 55. So I refer to it as the
10 mezzanine, maybe that wasn't the right terminology. But this area up
11 here on the top where these boxes are kept. Where is that area on our
12 blueprint, which is back to State's 121?

13 A That is located on this section of the building right here, right
14 up against this wall.

15 Q So to the west of let's see, which one was that that was
16 Crystal Peaks or Golden Wheat?

17 A This is Crystal Peaks.

18 Q Crystal Peaks. So the left -- so if we have the top part of the
19 yellow highlight which faces north, it would be right to the left of that, the
20 west part.

21 A Yes. Right along this wall right here facing the eastside is
22 where you were taking that picture. That picture you had was taken
23 from right here facing the west.

24 Q I'm sorry say right here again, so I can make a record of it.

25 A Right here where, sorry I've been watch ya.

1 Q That's okay.

2 THE COURT: So at the top part of the Crystal Peak building
3 that's outlined in yellow kind of is like a T on the top part of it, and you're
4 saying in the northwest part of that is where the mezzanine runs along
5 that west facing wall.

6 THE WITNESS: Yes. It runs north to south, that photo is from
7 someone standing right here taking a picture of this direction and that
8 mezzanine was right above here.

9 THE COURT: Thank you.

10 BY MS. BLUTH:

11 Q Would there be any reason why Mr. McNair would be in that
12 part of the building?

13 A No.

14 Q So if you wouldn't mind, now with the highlight I would like to
15 zoom in just so you could get a little bit better of the view. We saw Mr.
16 McNair go in to those lockers which we have as the blue rectangle, is
17 that right?

18 A Correct,

19 Q And then we saw him carrying a red backpack.

20 A Correct.

21 Q You've been -- you have watched the video in its entirety,
22 correct?

23 A Yes.

24 Q Did you see the way in which he walked after that?

25 A I know which way he did not go. So that really minimizes

1 there's only one way he could have gone.

2 Q So why do you know the way he did not go?

3 A You can see it, from Camera B it allows you to look in the
4 hallway. And we did not see him pass by there at any point in time
5 watching that angle.

6 Q So by hallway, you mean, you're referencing the white area
7 that's also called --

8 A Yes.

9 Q -- view isle in between --

10 A Correct.

11 Q -- Unified Container and Crystal Peak.

12 A This is a walkway right here going back and forth, yes. And
13 you can view that through the windows of the Blow Mold room right
14 here.

15 Q Okay. And so which way would Mr. McNair had to have taken
16 to get to the mezzanine area?

17 A From here he would have left this room and he would have
18 came through doors and out this direction where there are no cameras
19 and he would have come a -- come out here, he would have either gone
20 down through this door and come across and could have possible come
21 through this door and walked down through.

22 Q Okay.

23 A Either way they wouldn't have been within view of the camera.

24 Q All right. So if we go to the yellow highlighted area there's a --
25 on the western side of the picture, there's another view isle that is a

1 hallway that he could have entered that area through, is that right?

2 A Yes.

3 Q Or he could have.

4 A Would you like me to use the red -- I think I was supposed to
5 be doing that.

6 Q No, that's okay. As long as I just put it on the record. I could
7 see exactly where your --

8 THE COURT: So there's a couple of doorways on the eastern
9 north, south wall of the Crystal Peak building.

10 THE WITNESS: Correct.

11 THE COURT: Okay.

12 THE WITNESS: There's a doorway, there's a wall right here,
13 he would have come out and gone through to get to that point or he
14 could have taken a left down this hall way and gone through this door
15 and gotten down to that point.

16 THE COURT: Thank you.

17 BY MS. BLUTH:

18 Q So after this whole event happens and this investigation
19 ensues with police, do you do your own -- I don't want to use the terms
20 internal investigation, but do you speak with several employees like
21 Ramiro Romero and Dennis Simpson, the security guard, to find out, you
22 know, their involvement or what you should do from an employer's stand
23 point?

24 A Yes.

25 Q When you spoke with Ramiro Romero, had you already seen

1 the video?

2 A Yes.

3 Q In speaking with him, did you find his version of events to be
4 consistent or inconsistent with what you saw on the cameras?

5 A Very inconsistent.

6 Q Okay. Because of that was he terminated?

7 A Yes.

8 Q In regards to Mr. Simpson, the security guard, did you ask him
9 questions in regards to, you know, had he had any communication with
10 Mr. McNair that night?

11 A Yes.

12 Q And had he seen any people coming on and off property that
13 should not have been there like the white Suburban?

14 A Yes. He was questioned on that.

15 Q Okay. Because of his answers did you find those answers to
16 be inconsistent with both the video, as well as other information that you
17 received.

18 A Correct.

19 Q Was he also terminated because of that?

20 A Yes.

21 Q And Mr. McNair, was he also terminated?

22 A Correct.

23 MS. BLUTH: Court's indulgence, Your Honor.

24 Thank you so much, Mr. Coon.

25 That concludes my direct, Your Honor.

1 THE COURT: Mr. Pike.
2 MR. PIKE: Yeah. Thank you.
3 Pardon me for taking a little time here. May we have these
4 marked next in evidence?
5 THE COURT: Is that three?
6 THE CLERK: It's two pages.
7 THE COURT: Two pages. So H and I.
8 THE CLERK: Uh-huh.
9 THE COURT: Okay. Are you going to be moving those?
10 MR. PIKE: Yes.
11 THE COURT: Any objection to H and I?
12 MS. BLUTH: No, Your Honor.
13 THE COURT: Okay. So Defense H and I will be admitted as
14 well. You can publish, Randy.
15 **[DEFENSE EXHIBIT NUMBERS H and I ADMITTED]**
16 MR. PIKE: Thank you.
17 **CROSS-EXAMINATION**
18 BY MR. PIKE:
19 Q Good afternoon, Mr. Coon.
20 A Good afternoon.
21 Q My name's Randy Pike. I'll be asking you a few questions this
22 afternoon it that's all right.
23 A All right.
24 Q Okay. First of all, let me ask a little bit about some of the
25 businesses that are on there. The Anderson Dairy's been there forever.

1 A Correct.

2 Q Okay. And you indicated that it's a very visual accessible
3 commun -- or use the term that you used about visi -- about it being
4 visually accessible. Is that a term you used?

5 A I'm not sure if it was or wasn't. I'd be happy to refer back to it
6 but I'm not sure what you're referring to, I'm sorry.

7 Q Okay. That's okay.

8 THE COURT: I think you're referring to when he was
9 describing the hallway between Unified and Crystal Peak with the
10 windows in it. You said it was a very visual because of the machinery.
11 BY MR. PIKE:

12 A Yes, that would be inside Unified Containers, it's very visual
13 on the inside there, those hallways were meant for tours for children. If
14 anyone's been to Anderson Dairy, we're big on tours for the community.
15 And it was meant for people to be able to walk through, view our
16 machinery.

17 Q And you often have visitors from schools or scouts, girl scouts,
18 any community agency, or any locals that want to go through Anderson
19 Dairy and see the process of all your businesses.

20 A Correct.

21 Q Okay. You still have the talking cow?

22 A We do, Kelsie.

23 Q And in going through that so you made it an oppor -- a location
24 where employees can see each other when they're working particularly
25 in some of those different areas, right?

1 A Correct.

2 Q Okay. And Anderson Dairy grew over the years to include a
3 number of different business, and that would indicate the bottling
4 company that -- and the other business that occupy the Flavors building.

5 A Correct. They are all separate entities but, yes.

6 Q Okay. They're limited liabilities companies, aren't they?
7 LLC's.

8 A Yes.

9 Q Okay. You'd indicated that Mr. McNair was an employee of
10 Unified Container, LLC.

11 A Correct.

12 MR. PIKE: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MR. PIKE:

15 Q Let me show you what's been admitted in to evidence that's
16 Defense Exhibit Number I. As part of your responsibilities you handle
17 personnel issues with employees, including termination.

18 A Yes.

19 Q Okay. And in fact, you testified about termination of some
20 employees and Mr. McNair you indicated you terminated him. Well, he
21 was unable to come back to work because he was incarcerated.

22 A Correct.

23 Q Okay. Also, you -- would you be the person that may handle,
24 let's say worker comp claims or other employee issues?

25 A No.

1 Q Okay. That -- I have a document here indicating a claim --
2 notice of claim acceptance indicating that the employee of Mr. McNair at
3 that time was Golden Wheat Distributing, LLC.

4 A For Mike McNair?

5 Q Yes.

6 A He was employed by Golden?

7 Q The employer, yes.

8 A If he was, like I said I believe he was employed by Unified
9 Container, that's where we had him, that's where he started off, but at
10 some point, we may have moved him over to maintenance on that side
11 of the fence. To be honest with you, I'm not clear on that. So.

12 Q So it wouldn't be uncommon for somebody to -- Michael in
13 particular to go in and work on machines or any other items that may
14 involve Golden Wheat?

15 A Correct. Not Golden Wheat, but Crystal Peaks.

16 Q Crystal Peaks. Okay.

17 A Golden Wheat doesn't have any companies but all the
18 companies up there depicted, yes, he would be in there working on
19 those machineries if needed.

20 Q Part of the Golden Wheat, I guess is transportation of the filled
21 jugs or the empty jugs?

22 A We have a variety of different products that we distribute.
23 Golden Wheat is just a distribution company. There is a building not
24 connected to this building just north which is where our dry warehouse is
25 located, but there's nothing of Golden Wheat on this screen.

1 Q And you also indicated that the -- those trailers sometimes
2 have to be transported down to another area where there -- you have a
3 yard to maintain transportation vehicles, right?

4 A Correct.

5 Q So when those vehicles are being moved that's done under
6 Golden Wheats auspices?

7 A No. That's done under -- we have maintenance guys at night
8 who are qualified to do it but it wasn't Golden Wheat. Golden Wheat
9 has nothing to do with that, it was more or less our maintenance team
10 and personnel at Anderson Dairy that would move trucks back and forth.

11 Q Okay. Now, when -- because you deal -- your company deals
12 with foods and liquids that people will take in to their bodies.

13 A Consume.

14 Q You have to make sure it's a very clean area.

15 A Correct.

16 Q So if somebody's going in to the bottling area or going in to an
17 area where the jugs are being made you want them to wash their hands,
18 you want them to be clean.

19 A Yes, any standard practice.

20 Q Right, standard practice. In fact, that's why you have that
21 groun -- grinder our there. So if somebody sees like a jug that might
22 leak, or might have somehow become, in their mind, contaminated they
23 can take it back outside, put in in to the grinder.

24 A Correct.

25 Q And then it's reprocessed, cleaned and reformed and made in

1 to the jugs that you use.

2 A Yes, without getting in to too much detail, that plastic that
3 leaves the room is deemed contaminated it doesn't come back in to be
4 processed in to a new jug.

5 Q At all. Okay.

6 A At all.

7 Q All right. So is there a box making component to that as well
8 or is everything just placed in to those plastic bags.

9 A No, there is a box making component. Yes. We would also
10 put our product in to corrugated boxes for particular customers which is
11 basically a cardboard box.

12 Q All right.

13 A Which we made.

14 Q You made them there as well.

15 A Well, we would form them. We wouldn't actually make the
16 cardboard box. We would form them.

17 Q Okay. And Michael worked -- at sometimes and helped in that
18 area too, didn't he?

19 A Correct.

20 Q His direct supervisor was Lyle Galeener.

21 A Yes.

22 Q And you know Mr. Galeener.

23 A Yes, I do.

24 Q Okay. Mr. Galeener, is somebody I believe from his testimony
25 that goes around and helps take care of any machines in any different

1 areas that may be required.

2 A Yes, our lead maintenance would be an appropriate term.

3 Q And it was -- and Michael was kind of being trained or
4 becoming a jack of all trades so he -- it wouldn't be uncommon for him to
5 go in to where -- the areas where the tools were at?

6 A Correct.

7 Q And the tools were in that mezzanine area or in that area that
8 the State asked you to identify.

9 A Yes, there was some products up there, yes.

10 Q Okay. And in going through from one area to the other area
11 within the building there were no set requirements saying that you had to
12 go in certain areas or certain direction so you could access parts of the
13 building through anyway that was available and open.

14 A Yes. Now, at those hours we don't do a lot of work especially
15 that's not supervised by Lyle or one of our other head maintenance
16 guys. So there would not been a designated route, however, those
17 rooms are off at night that's why the lights are out in those rooms they're
18 not supposed to be entered without someone there.

19 Q Okay. When -- now, Mitchell Johnson, you indicated he was
20 fired for tardiness and absenteeism, that's if somebody doesn't -- is a no
21 call, no show that's a basis to have someone terminated.

22 A Yes.

23 Q And you have those requirements posted for the employees
24 so they can see what they're obligations and their duties are.

25 A Correct.

1 Q Did -- as being part of a jack of all trades did Michael on
2 occasion help move the trucks or the trailers into the other storage area
3 that you had down the street?

4 A I believe he did but I'm not comfortable saying that because I
5 can't fully remember if he was the one who was moving trailers. I do
6 know that we would send him out there to count trailers just to see
7 where we were at on inventory.

8 Q And he was working his way up through the -- through your
9 company to be a reliable employee.

10 A Correct.

11 Q Now, on the night that happ -- that we're talking about here
12 September 14th, you saw Michael during a short period of time, in a red
13 shirt, and then saw him washing his hands, right?

14 A No, it's not unusual for them to wash their hands.

15 Q Okay. At the time that he was in talking to the police though
16 when you first came in and saw him there, he was wearing a blue shirt.

17 A That I cannot recall the details of but I'll take your word for it.

18 Q I appreciate that, thank you. We have video in case you don't.

19 A I got ya.

20 Q Okay. And in -- so when you went over to that area that
21 evening if somebody wears a -- any sort of uniform, I mean, you have a
22 basket or a net basket where they're suppose to put that laundry so it
23 can be washed.

24 A Correct.

25 Q And did you go over and as part of your assisting the police

1 did you go over to that basket and see what may have -- the -- any shirts
2 that may have been in there?

3 A I walked them over and showed them where it was as to
4 pointing out any articles that I believed he added or removed. I have no
5 idea, I pointed to the area where he would have put his shirt.

6 Q Okay. And so you had -- and it was a red shirt in that area.
7 Do you remember that or not?

8 A In that area as in, in the basket?

9 Q In the basket. In the net.

10 A I don't recall that.

11 Q You don't recall. Okay. Did you have a police CSI following
12 you, taking photographs while you were doing this?

13 A I had several individuals following me. I don't recall if they
14 were taking photos or not. I don't know what they were do -- they were
15 following me, there's about two of them I believe, two or three that went
16 with me when we went to go look at that.

17 Q Now, it's not uncommon or -- let me ask it a better way, I
18 guess. In some of those photo -- the videos you saw Ramiro Romero
19 wearing a cap over his head. And what kind of cap would that be?

20 A I'm not sure to be honest with you.

21 Q It would be like a net to make sure that no hair got in to
22 anything.

23 A Oh, a hairnet, yes. I'm sorry --

24 Q And over a beard too.

25 A -- I thought there was an additional. Yes, we do have beard

1 nets and hair nets.

2 Q Okay. If someone is employed there and they choose not to
3 wear a hairnet is it allowable for them to wear what is called in the
4 community a do-rag?

5 A We were allowing it at the time, yes.

6 Q Okay. So that would be something that would not be
7 uncommon to have any African American employees or anybody that
8 wanted to wear a do-rag wearing that.

9 A No. We didn't encourage it, but we certainly --

10 Q Encourage.

11 A -- reprimand anyone for it. But we did consider it a hairnet.

12 Q Okay. Great. How long did you stay there that evening? Did
13 you stay there until the police finished everything and then let
14 everybody -- let your employees go home?

15 A Got there between 9:00 and 10:00 and I didn't leave till I
16 believe 9:00 a.m. -- 8:00 a.m. to 9:00 a.m.-ish.

17 Q Okay. Was that complete by the time the morning shift came
18 in and were they allowed to go in and begin work?

19 A Yes.

20 Q So you didn't lose a day's employment for all of your
21 employees. They were able to accommodate them and you feel that
22 they completed their investigation enough to allow the employees to
23 come in.

24 A Yes, I believe so.

25 Q I know that was a long question. I think --

1 A I was trying to recall. I don't want to say anything, you know,
2 just trying to recall the details. So yeah, that sounds right.

3 Q All right. While you were there did -- you gave the police a
4 consent to search the entire building.

5 A Correct.

6 Q And you had the authorization to do that because you were
7 one of the managers or owners of that -- all of those businesses.

8 A Correct.

9 Q And did you -- other than everything else that they went
10 through at that time, were you there when the firearm detection dog
11 walked through the property?

12 A Yes.

13 Q Okay. Did you see any hits that the dog made or anything
14 else?

15 A No. We were separated in to a room and were told to stay in
16 that room to not cause any confusion for the dog.

17 Q The area that all of these businesses encompass is that an
18 open area in that -- can employees during their lunchbreak leave the
19 premises and then come back in if they clock in and clock out
20 appropriately?

21 A Yes. They could leave the property for lunchbreaks. Outside
22 of lunchbreaks there's -- they wouldn't have any reason that we would
23 allow employees to exit the property.

24 Q Do you recall whether or not those clock in and clock out
25 records were provided to the police?

1 A I believe they were. I don't not recall.

2 MR. PIKE: Let me just ask my Co-Counsel a question.

3 Thank you very much, Mr. Coon.

4 I don't have any further questions.

5 THE COURT: Thank you. Anything further from the State.

6 MS. BLUTH: Yes, Judge. Court's indulgence, please.

7 Sorry about that we had to print out some documents. So I

8 just need to mark them real quickly.

9 THE COURT: 88.

10 THE CLERK: 122.

11 THE COURT: 122. What did I miss?

12 THE CLERK: Autopsy photos.

13 THE COURT: Oh, okay.

14 MR. PIKE: Your Honor, I've had the opportunity to review the

15 documents that the State has marked as next in order and have no

16 objection to the same.

17 THE COURT: Okay. 122 will be admitted.

18 **[STATE'S EXHIBIT NUMBER 122 ADMITTED]**

19 MS. BLUTH: Thank you.

20 MR. PIKE: Thank you.

21 **REDIRECT EXAMINATION**

22 BY MS. BLUTH:

23 Q All right. Mr. Pike had showed you Defendant's Exhibit

24 Detective Hoffman, which was this Berkley Net. Let me zoom in for you

25 so you could get a little bit closer. Okay. That showed some of the

1 policy and claim information and it says Dear Golden Wheat. Okay.
2 On -- date on that is showing -- and well, first of all it's showing an
3 accident of June 12th of 2017 and this letter was mailed on June 13th of
4 2017.

5 Okay. So I want to now go through some documents in
6 State's 122. The first page of this document is referred as an employee
7 incident report. And then it states that Mr. McNair while climbing down
8 the stairs he hit his knee on the handrail. So now I want to move to the
9 next paper which is Notice of Injury or Occupational Disease, same date
10 June 12th of 2017, name of employer is Unified Containers, LLC. Is that
11 correct?

12 A Correct.

13 Q Okay. And these both of these documents -- sorry not both,
14 but the first page when the Employee Incident Report has to signed by
15 the employee making the claim, right? Mr. McNair.

16 A Correct.

17 Q And then again, this Note of Injury or Occupational Disease
18 which would be the second page where it says name of employer,
19 Unified Container also has to be a signature -- or signed by the disabled
20 employee which would be Mr. McNair, is that correct?

21 A Correct.

22 Q The third page in the same exhibit again, states the
23 employer's name as Unified Container and the first name of the
24 employee is Michael D. McNair, is that correct?

25 A Correct.

1 Q Page five would be Supervisors Report of Accident which
2 would be Michael McNair, name of employee and next to it company,
3 Unified Containers, is that correct?

4 A Correct.

5 Q Page six would be Employer Wage Verification Form, date of
6 injury would be June 12th of 2017, employee would be Michael McNair.
7 And if we go to the bottom the employer would be Unified Containers, is
8 that right?

9 A Yes.

10 Q And then lastly, would be the last page which I believe is
11 seven we have another -- a follow up letter from this same company this
12 Berkley Net, dated July 13th of 2017, to Mr. McNair and it states the
13 employer is Unified Container, not Golden Wheat, is that right?

14 A Correct.

15 Q Nothing further. Thank you, Mr. Coon.

16 THE COURT: Anything further, Randy?

17 MR. PIKE: No. I don't have anything further.

18 THE COURT: Anything from our jurors? Yes.

19 [Bench Conference Begins]

20 THE COURT: Thank you.

21 MR. ROGAN: His social security number is on that -- mark it
22 out.

23 MS. BLUTH: We'll have to print that picture on there.

24 MS. SIMPKINS: [Unintelligible].

25 MR. ROGAN: If he knows. If he has the foundation.

1 MS. BLUTH: If he knows, I'm fine with it but I haven't --

2 MS. SIMPKINS: We haven't talked about these at all.

3 He doesn't -- I don't know if --

4 THE COURT: So this one says that he could be dangerous.

5 MS. BLUTH: Yeah, I don't know the answer to that. So I can't
6 say.

7 THE COURT: I assuming you guys don't either. Yeah, it's not
8 [unintelligible] use to come in and --

9 MS. BLUTH: This one I think we should ask it just so he can
10 say I don't know.

11 THE COURT: Using our corporate name.

12 MR. PIKE: Well just that it has names on --

13 THE COURT: Was it a corporate name and an individual's
14 name?

15 MS. BLUTH: Yeah.

16 THE COURT: Okay. So, I mean, I need to clarify -- is this
17 person asking about the red shirt that was taken in to --

18 MR. ROGAN: I think so.

19 THE COURT: -- custody?

20 MS. BLUTH: Yeah.

21 THE COURT: Okay. Do we know if the names are on that
22 one?

23 MS. BLUTH: I would have.

24 MR. ROGAN: That must be impounded.

25 MS. BLUTH: I know it says Golden Wheat but it doesn't have

1 a name on it.

2 MR. ROGAN: It does.

3 MS. SIMPKINS: Yeah, it does.

4 MR. ROGAN: It does it's on the CSA report.

5 MS. BLUTH: Oh.

6 THE COURT: What's his name?

7 MS. BLUTH: Joe.

8 MR. ROGAN: Joe.

9 MS. BLUTH: Joe Mono.

10 THE COURT: All right. So is there somebody else that's
11 going to address that?

12 MS. BLUTH: There is now.

13 THE COURT: Okay. Bend -- I don't think we even asked him
14 about that particular shirt.

15 MR. ROGAN: No, that should have been a question for the
16 CSA.

17 THE COURT: All right. So I'll clarify that they are asking
18 about the particular shirt. And if so then he's not the guy to answer that.

19 MS. BLUTH: Yeah.

20 MR. ROGAN: Yeah. We don't even have --

21 THE COURT: And if it's just in general what's on the shirt
22 then he can answer that I would imagine.

23 MS. BLUTH: Yeah.

24 MR. ROGAN: Right.

25 THE COURT: Okay.

1 MR. PIKE: Sure.

2 MS. BLUTH: That's good.

3 THE COURT: All right.

4 [Bench Conference Concludes]

5 THE COURT: Who's was the question about the red shirt?

6 We don't have a juror number on it.

7 Okay. And are you asking just in general what would be on
8 the red shirts or on the particular red shirt that was referred to by the
9 crime scene analysts?

10 JUROR NUMBER 13: The one that was referred.

11 THE COURT: Okay.

12 JUROR NUMBER 13: I was just curious whose name was on
13 it?

14 **EXAMINATION BY THE COURT**

15 BY THE COURT:

16 Q Okay. There was previously testimony Mr. Coon about a shirt
17 that a crime scene analyst took out of the laundry basket. Did you see
18 that shirt at all?

19 A I did not. It would have had their name on it and then on the
20 other side it would have the company name on it like McNair's one that
21 you had photo of, it just would have been a different color.

22 Q Okay. So in general, the red shirts would have which
23 company name on it?

24 A The red shirts would --

25 Q Yeah.

1 A -- would say Golden Wheat on it.

2 Q And then it should have the individual's names --

3 A Yes.

4 Q -- whoever that shirt was assigned to. But you don't know
5 what was particular on the shirt that was taken by the police
6 department?

7 A No.

8 Q Okay.

9 THE COURT: All right. Any questions based on mine, State?

10 MS. BLUTH: No, Your Honor.

11 THE COURT: Randy?

12 MR. PIKE: No. Thank you.

13 THE COURT: Okay. Mr. Coon, I very much appreciate your
14 time.

15 THE WITNESS: I would like to comment, I do believe --

16 THE COURT: Well, hold on.

17 MR. PIKE: No.

18 THE COURT: You don't get to do that. This isn't open mic.
19 Okay. You just got to answer the questions. Okay.

20 THE WITNESS: It was concerning what -- my statement on
21 the red shirt.

22 THE COURT: Pardon.

23 THE WITNESS: Names weren't put on the red shirt, I believe,
24 in the very beginning. I'm not sure when we started putting names on
25 the red shirts.

1 THE COURT: Got it. All right.

2 THE WITNESS: Don't know if it happened at that time.

3 THE COURT: All right. But point being that -- whatever one

4 was taken by the police department, you don't know what was or wasn't

5 on that one because you didn't do that one.

6 THE WITNESS: Correct.

7 THE COURT: So somebody else maybe could address that.

8 THE WITNESS: Correct.

9 THE COURT: Okay. Got it. And I'm sorry I didn't mean to

10 interrupt you.

11 THE WITNESS: No problem.

12 THE COURT: You'd be surprised what some people say. All

13 right. Thank you, you are excused. I appreciate it.

14 THE WITNESS: Okay.

15 THE COURT: All right. State may call their next witness.

16 MR. ROGAN: State calls Glenn Davis.

17 **GLENN DAVIS**

18 [having been called as a witness and being first duly sworn, testified as

19 follows:]

20 THE CLERK: Thank you. Please be seated. Please, state

21 and spell your name for the record, please.

22 THE WITNESS: My name is Glenn Davis. G-L-E-N-N ,

23 D-A-V-I-S.

24 THE COURT: All right. Mr. Rogan.

25 ...

1 ...

2 **DIRECT EXAMINATION**

3 BY MR. ROGAN:

4 Q Good afternoon, sir. Thank you, for waiting. Sir, how are you
5 employed?

6 A I'm currently employed as a Forensic Scientist II with the Las
7 Vegas Metropolitan Police Department Forensic Laboratory.

8 Q Now, are you assigned to a particular section within the
9 forensic laboratory?

10 A I work within the firearms detail.

11 Q What are your duties as a Forensic Scientist II, in the firearms
12 detail?

13 A We have a number of duties including determining the
14 functionality of firearms submitted to the firearms detail. We do caliber
15 determination on fired bullets. We also do serial number restorations,
16 distance determination using gunshot residues as well as microscopic
17 comparison of fired ammunition components as well as toolmarks.

18 Q Okay. And what's your educational background that allows
19 you to do this type of work?

20 A I have a bachelors of science in genetics from Washington
21 State University. I have a second bachelors of science in genetics and
22 cell biology also from Washington State University and I have a masters
23 of science in forensic science from the University of New Haven.

24 Q How long have you been working with the Las Vegas
25 Metropolitan Police Department?

1 A I've been with the Las Vegas Metropolitan Police Department
2 for one year and two months.

3 Q And prior to being employed by Metro were you employed by
4 another crime lab?

5 A Yes, I was. I was employed by the Washington State Patrol
6 Crime Laboratory which is located in Spokane Washington and I was
7 with that laboratory for 15 years.

8 Q And what were you -- generally what were your duties at the
9 Washington State Crime Lab during those 15 years?

10 A The first four years and nine months of my time at the
11 Washington State Patrol Crime Laboratory, I worked in the DNA section.
12 I then had the opportunity to transfer over to the firearms and toolmarks
13 section so the remaining ten years and three months I worked in the
14 firearm section there.

15 Q When you were transferred or moved over in to the firearms
16 unit in the Washington State Crime Lab did you obtain training in order
17 to do your job there?

18 A Yes, I did. I underwent a rigorous inhouse training program
19 with an experienced examiner who had a great deal of experience. The
20 training manual that we used for my training is provided by AFTE which
21 is A-F-T-E. And it is a professional organization for people in my field
22 and AFTE stands for the Association of Firearm and Toolmark
23 Examiners.

24 This training manual covered things such as the design and
25 manufacturer of pistols, revolvers, rifles, and shotguns, the design and

1 manufacturer of ammunition components and ammunition, caliber
2 determination of fired bullets as well as distance determination using
3 gunshot residues, and a great deal of microscopic comparison of fired
4 ammunition components, and as well as toolmarks.

5 I've also had the opportunity to attend the FBI schools on
6 gunshot residue and toolmarks.

7 Q In addition to attending the FBI academies, do you also have
8 the opportunity to get training directly from manufacturers of firearms
9 and ammunition?

10 A Yes, we do. We attend things that are known as armor
11 classes. And these are classes put on by the manufacturer to gain
12 knowledge as to how the firearm functions, how to take it apart,
13 diagnose issues with it, as well as reassemble the firearm.

14 I've had a number of these classes including the Six Hour P-
15 series pistol, the Six Hour P320 pistol, the Glock pistol which I've
16 actually had three times in July of 2008, July of 2015 as well as June of
17 2018, the Heckler & Koch USP series pistol class, I've also attended
18 Colt M16, AR15 family of firearms, the Hi-Point pistol, the Rugar LC9
19 and LCS pistols, the Remington 870 pump action shotgun, the Benelli
20 SuperNova Pump Action shotgun and the Springfield XD and XD family
21 of pistols.

22 Q So a lot of guns.

23 A Lot of guns.

24 Q Okay. And how many times have you testified in court
25 regarding an examination of a firearm either for its functionality of for

1 microscopic comparison of either bullets or cartridge cases?

2 A I've testified approximately 68 times in Court regarding
3 firearms examination.

4 Q Thank you. Now, I want to talk to you about some
5 examinations that you performed for an investigation under Las Vegas
6 Metropolitan Police Department event number 170914-3919, all right?

7 A Okay.

8 Q The first is the functionality examination of a Glock pistol
9 impounded under that event number. Can you tell us what a
10 functionality examination is?

11 A A functionality examination consists of -- well, when I receive
12 it, I photograph the packaging and make note of how it's packaged. I
13 photograph the firearm. I make note of its manufacturer, its model, its
14 caliber, and its general condition. I also make note if any safeties are
15 present if they are functioning correctly. I also make note of -- I do a
16 measurement of the trigger pull which is the amount of force required to
17 pull the trigger to fire the gun. After I do those things and I've
18 determined that the firearm is indeed safe to fire, I can fire it at our range
19 at the forensic facility.

20 Q So is the whole purpose of this just to document the condition
21 of the firearm and then to determine whether it actually works?

22 A Yes, it is.

23 Q Okay. So the Glock firearm that you examined do you recall
24 the model and caliber?

25 A It is a Glock brand model 30 in 45 auto caliber.

1 Q All right. And what type of -- is this a pistol?

2 A This is a pistol.

3 Q What type of pistol is this, revolver, semi-automatic?

4 A This is what is known as a semi-automatic firearm. Which is a
5 type of firearm that requires a trigger pull for each firing of the shot. It
6 uses a portion of the energy of firing a shot to perform some action of
7 the cycle of fire.

8 Q So before we get in to anything else, using this exhibit which is
9 State's Exhibit 62 on the overhead. Can you give us a basic overview of
10 the anatomy of this firearm?

11 A Yes.

12 Q Showing us, you know, the grip, the trigger, the barrel, tings of
13 that nature.

14 A The tall rectangular item that is just above the ruler on the left
15 is the magazine and that is the storage facility for ammunition. The
16 operator puts cartridges that -- there's actually two of them to the left of
17 that item, and they are inserted into that magazine. That magazine is
18 then inserted into the grip of the firearm which is the kind of handle that's
19 protruding downward.

20 Q And let me stop you right there. There's actually a mouse
21 right in front of you.

22 A Oh.

23 Q If you left click on that mouse, you'll be able to circle the things
24 that you're talking about. So you previously talked about the magazine,
25 the storage container for the cartridges, can you circle that for us? And

1 for the record you've drawn a rectangular -- a rectangle around a long
2 black object to the -- directly below the firearm itself and to the right of
3 what you identified as cartridges. Can you now draw a circle around the
4 two cartridges that you previously discussed? Thank you.

5 And now the grip. Please, draw a circle around the grip.
6 Thank you. Please, continue you on your anatomy tour for us.

7 A Sure. So the magazine when loaded with cartridges is
8 inserted into the grip. The operator of the firearm then grabs the
9 serrations at the rear of the slide, here. And pulls the slide backwards
10 and lets it go. There's a spring inside of this firearm that pushes the
11 slide forward. As the slide goes forward it strips a cartridge from the
12 magazine which was inserted into the grip, from the magazine and loads
13 it in to the chamber. The firearm is now ready to fire. The operator pulls
14 the trigger, located here, which fires the gun.

15 Q If I could stop you there. So once the trigger is pulled by the
16 operator, what is happening -- what happens internally inside the
17 firearm?

18 A Inside of the slide there is a part known as a striker. When
19 you pull the trigger on this particular firearm it compresses the striker
20 against a spring and then releases it. The striker acts as a firing pen
21 which strikes a part on the cartridge which is known as a primer?

22 The cartridge is a basic unit of ammunition it's comprised of
23 four things; the bullet that gets fired out of the bore, the cartridge case
24 which is the brass piece, gun powder inside of the cartridge case, and a
25 primer which is a device on the back of the cartridge that sets the -- or

1 rather ignites the gunpowder. So the striker strikes the primer which
2 fires the cartridge. The gunpowder inside that cartridge burns very
3 quickly and creates a great deal of pressure that pushes the bullet out of
4 the bore of the firearm.

5 On this particular firearm it also pushes the cartridge case
6 against a portion of the slide known as the breach face. This pushes the
7 slide backwards against spring pressure. As that slide is moving reward
8 a part on the slide called the extractor pulls the cartridge case from the
9 chamber and then another part of the gun called an ejector tips it out of
10 the firearm. The slide continues reward compressing that spring when it
11 reaches the end of its travels, the spring pushes the slide forward and
12 strips the next cartridge out of the magazine into the chamber thus
13 reading it to be fired again.

14 Q So if a member of our jury were watching an operator pull that
15 trigger, they would see a bullet expelled from the front of the firearm,
16 correct?

17 A Bullets move very, very fast and often they are difficult to see
18 by the -- with the naked eye. But yes, the bullet comes out.

19 Q Okay. And they would also see the remaining cartridge case
20 expelled from the firearm as well?

21 A That's correct.

22 Q Okay. And you mentioned the cartridge case has a primer.
23 I'm going to show you State's Exhibit 83. Is this what you were
24 describing, or am I wrong about that?

25 A Yes. What we're looking at is the head of the cartridge which

1 is the part that is against the breach face of the firearm. May I?

2 Q Go. Yes, please.

3 A The primer is.

4 THE COURT: You got to click the little red.

5 MR. ROGAN: Sorry.

6 THE COURT: Pencil there and then left click and hold to
7 draw.

8 THE WITNESS: Thank you, Your Honor.

9 BY MR. ROGAN:

10 A So the primer is the circle in the middle of this cartridge. In the
11 middle of this cartridge there is thing that looks like a dent. That is
12 where the striker struck the primer of this cartridge thus firing the
13 cartridge.

14 Q Thank you. Returning back now to State's Exhibit 62. How
15 many cartridges did this magazine hold?

16 A This magazine holds ten cartridges.

17 Q Now, when you received it did you receive the firearm with the
18 magazine as well?

19 A The firearm and the magazine were different lab item
20 numbers.

21 Q I understand that. When you re -- when you began your
22 examination of the firearm did you -- were you provided with both the
23 firearm as well as this magazine?

24 A I'm sorry, I misunderstood. Yes. Yes, I was.

25 Q All right. And those two cartridges that you see here in this

1 photograph, were they also included in the magazine that you had or
2 was that kept separate?

3 A I believe those were kept separate.

4 Q Okay. Now, when you did what you described earlier as the
5 test fire of this Glock 30, was it functional?

6 A Yes, it was.

7 Q What did you do -- or how did you actually test fire it?

8 A At the forensic laboratory, we have a firing range within this
9 range is a water tank. In order to test fire this firearm, I obtained
10 ammunition that we have at work, loaded the firearm as I described and
11 went to our water tank which has an aperture through which you
12 could put the muzzle of the firearm and when you pull the trigger you fire
13 bullets into the water and the water slows the bullets down without
14 damaging them.

15 Cartridge cases, as we talked about, are ejected from the
16 firearm on to the floor. After test firing the firearm three times, I open the
17 lid of the water tank retrieved the bullets and then retrieved the cartridge
18 cases -- the fired cartridge cases from the floor of our range.

19 Q Did you note any malfunctions in this firearm at all?

20 A No, I did not.

21 Q So once you performed the functionality examination and you
22 retrieved both the test fired bullets from the water tank, as well as the
23 expelled cases from your test fires, did you then attempt or perform
24 comparisons of the cartridge cases or bullets to those tested fired
25 objects?

1 A The next step in my examination utilizes something called the
2 comparison microscope. And it's actually two microscopes in one. In
3 that there's a stage on the left and a stage on the right. And in order to
4 compare fired cartridge cases I could put a cartridge case on each one
5 of them and when you look through the eye pieces of this microscope
6 you see a field of view with a dividing line down the middle.

7 The object that is on the left stage is on the left-side of the
8 dividing line and the object on the right stage is on the right-side of the
9 dividing line. In this case, I looked at my tested fired cartridge cases first
10 and evaluated marks that were imparted to the cartridge cases by the
11 Glock pistol. I did this to determine that it was making reproducible
12 marks.

13 Q So were you provided with the six cartridge cases that were
14 recovered by a crime scene analyst at the crime scene under this event
15 number to compare to your test fired cartridge cases?

16 A Yes, I was.

17 Q All right. And showing you again State's Exhibit 83, this would
18 have been one of the items, Item 4 that you examined under that
19 comparison microscope, correct?

20 A That is correct.

21 Q Now, this item would have been one of the items -- one of the
22 cartridge cases that was collected by the crime scene analyst, right?

23 A I believe so.

24 Q Okay. Now, when you used the comparison microscope are
25 you permitted -- or does it enable you to take pictures of what you're

1 actually seeing at the time that you're looking through the microscope?

2 A The microscope does have a camera function. However, it --
3 because it's a camera it produces a 2D image of what I'm seeing in 3D.

4 Q Okay. So noting that difference. Showing you State's Exhibit
5 84. Is this a photograph that you took utilizing the comparison
6 microscope of lab Item 4 that being a cartridge case that was -- one of
7 the cartridge cases recovered from the crime scene, compared to one of
8 your test fired cartridge cases?

9 A Yes, that's what this image is.

10 Q Okay. So can -- you mentioned before when you're using the
11 comparison microscope you're looking for markings and comparing the
12 image on the left to the image on the right, correct?

13 A Yes.

14 Q Can you use the mouse again and show us an example of
15 markings that you found to either match or not match on this exhibit?

16 A To understand the marks depicted in this photograph we need
17 to go back to the gun. Earlier I spoke of a part on the gun called the
18 breach face that the cartridge pushes against. Within the breach face is
19 a rectangular aperture through which the firing pin moves in order to fire
20 the cartridge. When the cartridge fires there's a great deal of pressure
21 inside of that cartridge that causes a portion of the primer to flow back in
22 to that rectangular aperture. As the slide is coming back, the barrel
23 drops a little bit to unlock. It produces a shear from that rectangle.

24 This rectangular area that I've indicated on the screen is that
25 shear. If we were imagining the cartridge case in the firearm, the barrel

1 dropping, the cartridge case has actually been rotated 90 degrees to the
2 left so we can better see it. In the middle of this image there's the
3 dividing line I spoke about. If we look on the left-side of the dividing line,
4 we can see marks that are similar to the marks on the right-side. The
5 similarity of these marks enabled me to make what was known as an
6 identification, meaning that these two cartridge cases came from the
7 same source. That they were both fired in the Glock 30 in this case.

8 Q Okay. Let's back that up just a little bit. So I think what you're
9 telling me is that when someone pulls that trigger on that Glock and the,
10 I think it was the striker strikes the primer which is what we're looking at
11 here, correct?

12 A Yes.

13 Q There's going to be some marks imparted on the cartridge
14 case by that movement, right?

15 A Yes.

16 Q Okay.

17 A If I may that is this cavity here.

18 Q Okay. And then the subsequent movement of the internal
19 mechanism of that firearm will also leave other marks which you have
20 circled on this exhibit, correct?

21 A That is correct.

22 Q All right. So when you're looking at the image on the left and
23 the image on the right to determine whether they were both fired from
24 the same pistol, are you looking for similar markings as you've circle?

25 A That is correct.

1 Q Okay. So based upon those similar markings that you found
2 on both photographs -- or both examinations you were able to determine
3 that the cartridge case Item 4 was fired from the Glock 30 pistol.

4 A That is correct.

5 Q The same pistol that you test fired.

6 A Yes.

7 Q Okay. And did you perform this same examination for all six
8 cartridge cases that were provided to you all that were recovered from
9 the crime scene?

10 A I did.

11 Q And were all six identified as it being fired from that same
12 Glock 30 pistol?

13 A Yes, all six were.

14 Q I want to turn now to your comparison of three bullets. Did
15 you perform a similar examination of expended bullets and compare
16 those expended bullets to your test fired bullets in the crime lab?

17 A Yes, I did.

18 Q And did you use that same comparison microscope?

19 A I did.

20 Q Going through that same process of looking at your bullet from
21 the crime scene on the left compared to your test fired subject on the
22 right.

23 A I did.

24 Q All right. So when a bullet is fired from a firearm like the Glock
25 30 are there markings imparted on that bullet itself by the firearm?

1 A There are. Within the inside of the barrel there are things
2 known as lands and grooves. If you've ever seen the beginning of a
3 James Bond movie there's that circle with the twisted marks that goes
4 about -- before the spy turns to shot the viewer, that's what the inside of
5 a gun barrel looks like. Those lands and grooves are there to impart a
6 gyroscopic spin to the bullet so that the bullet flies straight and true. The
7 marks from the lands and grooves are imparted to the bullet as it passes
8 down the barrel.

9 Q Thank you. Now, showing you State's Exhibit 85, which is
10 identified in the exhibit itself as Item 7. Does that appear to be an
11 expended bullet?

12 A That is a fired bullet.

13 Q All right. Now, can you see on the bullet itself, and I'll zoom in
14 for you, those lands and grooves that you were talking about that were
15 imparted -- or the markings that were imparted on the bullet itself by the
16 lands and grooves?

17 A There a little difficult to see due to the damage on the bullet.

18 MR. ROGAN: For the record you've made five parallel
19 markings on the bullet itself stretching from left to right across the bullet.
20 BY MR. ROGAN:

21 A Yes and those are denoting the edges of lands and grooves.

22 Q Okay. Now, when you placed your -- when you placed Item 7
23 under the microscope on the left-hand side and compared it to your test
24 fired bullet, I'll zoom out here, were you able to analyze those lands -- or
25 those -- did you call them lands and grooves on the bullet themselves or

1 what did you call them?

2 A Both lands and grooves are imparted to the bullet.

3 Q Okay.

4 A We use land impressions for microscope comparison.

5 Q All right. So were you able to examine those lands on Item 7?

6 A Yes, I was.

7 Q All right. And did you compare them to lands on one of your
8 tested fired bullets?

9 A Yes, I did.

10 Q And can you -- are -- is that what we're looking at here on
11 State's Exhibit 86?

12 A Can you zoom out so I can see the caption?

13 Q Yes.

14 A Yes, that is what we are looking at here.

15 Q Okay. And can you actually use the pen to highlight for us the
16 separation between Item 7 and the test fired bullet, please?

17 A Okay. Much like the other image that we looked at there's a
18 dividing line down the middle of it. I'll do my best to draw that.

19 Q Thank you. Now, when you examined Item 7, one of the
20 bullets from the crime scene, were you able to find similar markings on
21 Item 8 which is Item 8A which is one of your tested fired bullets?

22 A Yes, I was.

23 Q And based upon your examination of the this -- of both bullets
24 in total were you able to identify Item 7 as having been fired from that
25 Glock 30 as well?

1 A Yes, I was.

2 Q And you examined how many bullets in total for this -- under
3 this event number?

4 A In this case there was a total of three bullets I examined.

5 Q And were all three identified by you as having been fired from
6 that Glock 30 pistol?

7 A They were.

8 Q Thank you.

9 MR. ROGAN: I'll pass the witness, Your Honor.

10 THE COURT: Ms. Simpkins.

11 MS. SIMPKINS: Thank you, Judge.

12 **CROSS-EXAMINATION**

13 BY MS. SIMPKINS:

14 Q Mr. Davis, hi. My name is Melinda Simpkins and I'm
15 representing Mr. McNair.

16 A Hello.

17 Q I won't have too many questions for you I just want and forgive
18 me, I'd -- the terminology that you use I'm just going to use standard lay
19 person terminology because I don't know what all this special stuff is,
20 okay?

21 A Okay.

22 Q All right. Now, you test fired the gun obviously you compared
23 those casings to the one that were found at the crime scene, you found
24 them to be the same. The question is there were -- there's a difference
25 between class characteristics of the gun and individual characteristics,

1 correct?

2 A Yes.

3 Q Okay. Can you explain what that means?

4 A Class characteristics are characteristics that are manufactured
5 into an item. It has to do with shape, dimension and that kind of thing.
6 Unique characteristics or individual characteristics are the
7 characteristics that are imparted to that item as a result of the toolmarks
8 that are left behind when an item is manufactured.

9 Q Would class characteristics include like the caliber of the
10 weapon?

11 A Yes.

12 Q Okay. And in this case, it was a .45 caliber Glock pistol,
13 correct?

14 A It was a .45 auto caliber pistol.

15 Q Okay. And .45 caliber really is just the circumference of the
16 bullet, right?

17 A .45 auto is what's known as a specific caliber. And it refers to
18 the over all design of the cartridge, .45 auto has a bullet that is
19 approximately .450 inches in diameter.

20 Q Okay. Now, how many individual characteristics did you find
21 that matched between the known cartridge that was fired from the gun
22 that you fired or -- and the ones that were found at the scene?

23 A We don't quantify those.

24 Q Okay. And so you don't have a set number of individual
25 characteristics that you need to find in order to make a match?

1 A That is correct.

2 Q So you're just looking at the two images side by side and
3 determining whether it's a match or not.

4 A Well, as I mentioned before we're actually doing it in 3D and
5 the image that we looked at early is just one area of the cartridge case
6 that I used to make this conclusion.

7 Q Now, this -- I'm showing you what's been marked as
8 Defendant's Exhibit A, I believe it's a duplicate of the State's exhibit.

9 MS. SIMPKINS: Court's indulgence.

10 BY MS. SIMPKINS:

11 Q It's a duplicate of State's Exhibit 62. Is that how the weapon
12 came to you in that condition?

13 A The firearm came to me packaged.

14 Q Okay. Was it, I guess, maybe let me make this, I mean, a
15 better question, was it -- was the magazine in the gun and the cartridges
16 just separate or did it come to you in the three pieces -- or three or four
17 pieces that we see there?

18 A The firearm came to me in one package, the magazine came
19 to me in another package, and as I recall I did not receive the two
20 cartridges depicted in this image.

21 Q Okay. Thank you. Now, this being a semi-automatic we
22 talked about -- or you talked about those shells being ejected from the
23 gun. When someone is firing the gun the shells are ejected to the left,
24 correct?

25 A No.

1 Q No. They're ejected to the right?

2 A Yes, they -- well, I -- it depends on the person is holding the
3 firearm. If the person firing the firearm has what we call a normal grip
4 where the grip is down and the slide is on top the Glock typically ejects
5 them to the right. However, if you twist the Glock, it will eject to the right
6 of the firearm, if I turn it to the left 90 degrees it will eject upward, if I
7 continue to turn it, it will eject to the left.

8 Q Okay. So it is ejecting to the side of the firearm -- obviously
9 it's not going forward or backward.

10 A The eject -- it depends on the firearm. The Glock typically
11 ejects to the right and typically slightly forward though some Glocks can
12 eject to the right and up. It just depends on the combination of the
13 firearm and the ammunition.

14 Q Now, just let me go back to my exhibit here -- I'm going to use
15 the State's exhibit -- State's Exhibit 62 is the one I'm showing you. You
16 mentioned the magazine itself. Can you show me where the base of
17 that magazine would be? Would that be the rubber part on the bottom
18 there?

19 A May I draw on the image?

20 Q Sure, please. Yes, please. All right. Thank you. And for the
21 records it's I -- he is drawing on the base of the magazine, the very long
22 rectangular piece that is shown in State's Exhibit 62.

23 THE COURT: Correct.

24 BY MS. SIMPKINS:

25 Q Now, the slide serrations that you mentioned, those -- could

1 you circle those for me, please? And again, that's towards the back of
2 the gun on the top right-hand side. Now, also is there a part of a -- of
3 the gun called a feeding ramp?

4 A There is a portion of the barrel that is called the ramp.

5 Q Okay. Where would -- would that be inside or outside or can
6 you see it in this picture at all?

7 A We cannot see it in this picture.

8 Q Okay. So that is inside the gun itself.

9 A Yes, it is.

10 Q Okay. Now, there is -- you mentioned you also do gunshot
11 residue -- what type -- what do you do with gunshot residue?

12 A In the event that say somebody is shot and they're wearing
13 clothes, gunshot residues which are the combustion products of the
14 primer and the gunpowder can be emitted from the muzzle along with
15 the bullet. Depending on how far away the muzzle is to the garment if
16 there is a pattern of gunshot residues and we have the firearm as well
17 as the ammunition, we can test fire the firearm and the ammunition at
18 known distances and visually and chemically process both the item of
19 clothing with the hole in it as well as our test patterns and arrive at
20 approximate muzzle to target distance.

21 Q Do you also do gunshot residue testing taken from swabs on a
22 person hand?

23 A No, we do not.

24 Q Okay. Do you know if these bullets and casings were ever
25 submitted for DNA testing before they got to you?

1 A I do not recall.

2 Q Okay. And is there anything -- well, there's nothing that you
3 discovered in your investigation that could tell you who fired that
4 weapon, correct?

5 A That is correct.

6 MS. SIMPKINS: No further questions, Your Honor.

7 THE COURT: Thank you. State.

8 MR. ROGAN: Yes, just a few follow up questions.

9 **REDIRECT EXAMINATION**

10 BY MR. ROGAN:

11 Q Just because some DNA swabs were done on this firearm and
12 later analyzed by DNA a analyst, Ms. Simpkins asked you about
13 something called a feeding ramp, is that what is was? A ramp of some
14 kind?

15 A I believe she asked about the feeding ramp.

16 Q Okay. And you said you don't see it here, correct?

17 A That's correct.

18 Q Where would it be -- if -- generally using State's Exhibit 62.
19 Okay.

20 A Inside of the slide, at the base of the chamber there is a ramp
21 that as the slides coming forward earlier, I mentioned is strips a cartridge
22 out of that magazine. The ramp at the base of the chamber helps feed
23 that cartridge into the chamber.

24 Q So it's located on the top of the firearm.

25 A It's actually inside the firearm. On the other side of the slide of

1 this firearm there is a rectangular aperture called the ejection port. With
2 the slide back if we could see the other side of the firearm or rather see
3 if from the top, we might be able to see the ramp.

4 Q Thank you. Sir, also just with regard to the questions
5 regarding gunshot residue. There are guidelines that the Metropolitan --
6 Las Vegas Metropolitan Police Department Laboratory has about when
7 to perform gunshot residue examinations, correct?

8 A Yes.

9 Q And so those are essentially boxes that have to be checked
10 before -- let me rephrase, so those are essentially when evidence is
11 collected and there's to be gunshot residue examination done that --
12 there's certain prequalifications that have to be met for that evidence to
13 be tested, right?

14 A Yes.

15 Q So what -- give me an example of that?

16 A Well.

17 THE COURT: Just to be clear are you asking about gunshot
18 residue on garments like he referred to or on hands like Ms. Simpkins --
19 well, she actually talked about both.

20 MR. ROGAN: Right.

21 THE COURT: But which one are you talking about?

22 BY MR. ROGAN:

23 Q Let's talk about hands. Say for example, the operator, if you
24 were to perform a gunshot residue examination on a swab and take --
25 taken of someone's hands?

1 A I'm not -- truthfully, I'm not aware of the Las Vegas
2 Metropolitan Police Department does that examination.

3 Q It doesn't do it at all.

4 A It doesn't.

5 Q Okay.

6 A To my knowledge, no. My old agency didn't do it either.

7 Q Okay. And what about are there any prequalifications to
8 performing an examination of gunshot residue that's left on a garment.

9 A It's my understanding that the distance between the people
10 has to be a pertinent fact to the case and we -- as I mentioned we have
11 to have the firearm as well as the ammunition used in that situation.

12 MR. ROGAN: Nothing further, Your Honor.

13 THE COURT: Anything, Melinda?

14 MS. SIMPKINS: No.

15 THE COURT: No. Anything from our jurors?

16 [Bench Conference Begins]

17 THE COURT: Thank you.

18 MR. ROGAN: That goes to what you were getting at.

19 MS. BLUTH: I think they're smart questions. I think they're
20 good.

21 MR. ROGAN: I agree.

22 THE COURT: We're good?

23 MR. PIKE: Yeah.

24 [Bench Conference Concludes]

25 ...

1 ...

2 **EXAMINATION BY THE COURT**

3 BY THE COURT:

4 Q All right. Mr. Davis, got a couple of questions for you. Could
5 all Glock 30's have the same markings on the bullets or does each gun
6 leave its own markings?

7 A Each gun leaves its own markings.

8 Q And could holding the gun differently make a difference of the
9 amount of residue that comes out and how much comes out?

10 A It would depend on a number of factors. Factors that are
11 contributed by the ammunition and the gun itself as well as proximately
12 of where the gun is to what is being tested. And I'm not sure if that
13 question is referring to garment testing or the hands testing.

14 THE COURT: Garment or hand, Ms. Padilla?

15 JUROR NUMBER 11: I guess, both.

16 THE COURT: Both, okay.

17 BY THE COURT:

18 A With hands it's difficult to say. Gunshot residues are what are
19 known as hygroscopic in that they pull moisture fro -- out of the air and
20 actually dissolve themselves. They can be washed away by simply
21 washing your hands or if you have sweaty hands they can go away.

22 The distance determination gunshot residue is obviously the
23 closer that a garment is to the muzzle the smaller the cone will be that's
24 emitted from the muzzle, it will be more dense. The further away you
25 get from the garment, the larger and more defused the pattern will be to

1 a point where the gunshot residue drop off and are not transmitted to the
2 garment.

3 THE COURT: Any further questions, State based on mine?

4 MR. ROGAN: No, Your Honor.

5 MS. SIMPKINS: Very briefly.

6 THE COURT: Okay.

7 **FOLLOW-UP EXAMINATION**

8 BY MS. SIMPKINS:

9 Q Can gunshot residue if I were to shoot a gun be left on my
10 clothing as well?

11 A Potentially. It depends on your proximity to the firearm.

12 Q Okay.

13 MS. SIMPKINS: No further questions.

14 THE COURT: Anything?

15 MR. ROGAN: No.

16 THE COURT: Mr. Davis, thank you for your time. I appreciate
17 it. You are excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Well, why don't you --

20 MR. PIKE: May we approach?

21 THE COURT: Yes, please. Thank you.

22 MR. PIKE: Thank you

23 [Bench Conference Begins]

24 MS. BLUTH: So we put a lineup for Monday and we assessed
25 the situation and we think an 11:00 start would be best.

1 THE COURT: 11:00.

2 MR. PIKE: Yeah.

3 THE COURT: So let me -- I'll go ahead and tell them 10:30ish

4 to be here. And then we'll get started shortly thereafter. If we get done

5 a little bit early that's fine. But I just didn't want a big huge gap of like

6 three hours in the afternoon or something.

7 MS. BLUTH: Yeah, no. I don't -- we won't have that.

8 THE COURT: Okay. All right.

9 MR. PIKE: Right. And I -- and I guess there is Mr. Ramiro

10 Romero if the State can't find him and.

11 MS. BLUTH: We got him. Sorry.

12 MR. PIKE: Oh, you got him. Oh, okay.

13 MS. BLUTH: We got him this afternoon. Yeah.

14 MR. PIKE: Then he'll be here.

15 THE COURT: So we can -- I just kind of want to give them an

16 update on where we are. So right now does it look like you that you'd

17 probably be able to argue the case on Wednesday?

18 MS. BLUTH: So, Tuesday we have a 1:00 start, right?

19 THE COURT: Yeah.

20 MS. BLUTH: And then Wednesday probably 10:30.

21 THE COURT: Yeah, Wednesday homicide day. Yeah, I,

22 mean, I could probably get us there by 10:30, maybe a little bit later.

23 MS. BLUTH: I think -- do you -- what it -- give me out of ten

24 what the thought are on him testifying?

25 THE COURT: Well, I thought you only have two witness left

1 for Tuesday, right?

2 MR. ROGAN: Yes, we do.

3 MR. PIKE: Yeah.

4 THE COURT: Dr. Mancini and --

5 MR. PIKE: No, I don't anticipate him testifying.

6 MS. BLUTH: Yeah. Wednesday.

7 THE COURT: Okay.

8 MR. PIKE: Wednesday.

9 THE COURT: Thank you.

10 [Bench Conference Concludes]

11 THE COURT: Okay, folks, so we're going to start at 10:30 on
12 Monday moving forward I will tell you that Tuesday is going to be a 1:00
13 day but as I said yesterday, we're kind of ahead of schedule which is a
14 good thing. So right now, and you -- I can't promise you this but right
15 now talking to the attorneys it's anticipated that we would probably be
16 able to get to closing arguments on Wednesday. Okay. So that's just
17 kind of as you know moving forward a little bit. And with that I will see
18 you on Monday.

19 During the recess you're admonished not to talk or converse
20 among yourselves or with anyone else on any subject connected with
21 the trial. Or read or watch or listen to any report of or commentary on
22 the trial by any medium of information including, without limitation,
23 newspapers, television, the internet, or radio. Or form or express any
24 opinion on any subject connected with the case until it is finally
25 submitted to you. No legal or factual research or investigation recreation

1 of testimony on your own.

2 Thank you very much for your time this week. Have a good
3 weekend. And I'll see you Monday. Thanks.

4 [Outside the presence of the jury]

5 MS. BLUTH: Judge, could I make a record of one thing really
6 quickly?

7 THE COURT: Yes.

8 MS. BLUTH: Right at the end of the last recess we thought
9 we were on record just for a small portion of it and so I just want to put
10 on the record. We did as the record will show -- we talked about things
11 at the bench in regards to, you know, perhaps if questioning gone any
12 further in regard to interactions with -- negative interactions between the
13 Defendant and the homeless that we maybe go in to bad -- possible go
14 in to bad act territory.

15 THE COURT: Right. Well, just to be clear what had occurred
16 earlier in the case was when Mr. Pike was asking some questions about
17 a witness about interaction between employees and the homeless,
18 assisting the homeless, providing them with things, and I guess, and
19 there had been a question about whether that witness had ever seen Mr.
20 McNair interacting with the homeless. I think was the characterization.

21 And the State followed that up by asking that witness about
22 that interaction and the witness said it was a negative interaction. So
23 when that came up again with the gentleman on the stand Mr. Brennan,
24 who I don't think your question was designed to solicit that but he said
25 he recognized him, had seen him interacting with the homeless in a

1 negative fashion.

2 So when we came up to the bench at that point what I was
3 trying to make sure of was that nobody was going to start going in to
4 specifics of anything that would arguable value bad act evidence that we
5 needed to be having a hearing outside the presence on.

6 And my concern was, was this guy going to say something
7 that he shouldn't say not based on a question but because he was just
8 kind of adding things in.

9 MS. BLUTH: Yeah.

10 THE COURT: At which point it was explained that he had
11 been admonished not to go in to any kind of what it was that he saw.

12 MS. BLUTH: Right and so the only thing that I wanted to say
13 was that after we made clarification that -- hey, we -- though we are
14 aware of specifics we had admonished --

15 THE COURT: Sure.

16 MS. BLUTH: -- each of the witness not to go in to those. And
17 so Mr. Pikes position is that they were letting that go -- just that we
18 weren't going any further and that they were letting that go at that point.

19 THE COURT: Yeah, I think that's --

20 MR. PIKE: And that would not have been inconsistent with
21 the fact that previous comments that I made concerning product
22 protection or anything like that.

23 THE COURT: Right.

24 MR. PIKE: So I think -- I don't think that the State crossed any
25 lines and it was stopped at an appropriate time.

1 THE COURT: Yeah, there wasn't any request made for me to
2 say anything to the jury and I didn't feel like -- to respond to any to say
3 anything to the jury. I just wanted to make sure we weren't going to get
4 any further down the road on something like that that was going to cause
5 an issue.

6 MS. BLUTH: Yeah. So I just wanted to make sure that that
7 second part is on the record.

8 THE COURT: Okay.

9 MS. BLUTH: Thank you.

10 MR. PIKE: All right.

11 MR. ROGAN: Your Honor, just before we recess, I think -- I
12 don't know if we ever moved to admit State's 122.

13 THE COURT: We did.

14 MR. ROGAN: Okay. There is listed on several documents
15 the Defendant's social security number. I'm going to sit down with Mr.
16 Pike and we're going to black those out so that the jury can't see that
17 part.

18 THE COURT: Yeah, on things that have already been
19 admitted?

20 MR. ROGAN: On 122, that was already admitted.

21 THE COURT: Oh, okay.

22 MR. ROGAN: We had to print it last minute and bring it up.
23 We didn't have the opportunity to redact.

24 THE COURT: So did we give them back the exhibit?

25 MR. ROGAN: I have it.

1 THE COURT: Okay. So we'll release the exhibit back to you
2 to redact that personal ID information --

3 MR. ROGAN: Thank you.

4 THE COURT: -- and then you guys can just provide it back to
5 the Court.

6 MS. BLUTH: Sounds good.

7 MR. ROGAN: Thank you.

8 THE COURT: All right. Thank you.

9 MR. PIKE: We'll see you on Monday.

10 [Evening recess at 4:57 p.m.]

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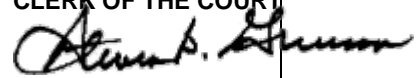
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
ability.

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24

25


Brittany Mangelson
Independent Transcriber



RTRAN

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
FRIDAY, MARCH 1, 2019

**RECORDER'S TRANSCRIPT OF HEARING RE:
PARTIAL TRANSCRIPT: TESTIMONY OF JAMELLE SHANNON
ONLY - JURY TRIAL**

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. Chief Deputy Special Public Defenders

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 **Las Vegas, Nevada; Friday, March 1, 2019**

2 [Testimony commenced at 1:12 p.m.]

3
4 **JAMELLE SHANNON**

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

7 THE CLERK: Thank you. Please be seated. If you could
8 state and spell your name for the record, please.

9 THE WITNESS: My name is Jamelle Shannon, J-A-M-E-L-L-
10 E, S-H-A-N-N-O-N.

11 THE COURT: All right. Mr. Rogan.

12 MR. ROGAN: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 BY MR. ROGAN:

15 Q Good afternoon, Ms. Shannon.

16 A Hi.

17 Q How are you employed?

18 A I am a crime scene analyst with the Metro Police Department.

19 Q What is a crime scene analyst?

20 A A crime scene analyst -- it's kinda like the TV show. You go
21 in, you investigate crime scenes, collect evidence, take photographs, that
22 sort of thing.

23 Q That sort of thing, but you don't interview witnesses or
24 anything of that nature?

25 A No.

1 Q Okay. How long have you been a crime scene analyst?

2 A I've been a crime scene analyst for three years.

3 Q How long have you been with the Las Vegas Metropolitan
4 Police Department?

5 A I've been on the department for ten years.

6 Q What did you do before you were a crime scene analyst?

7 A Before I was a crime scene analyst, I was a law enforcement
8 support technician with our records department and also with our
9 evidence vault.

10 Q Did you have to undergo some training in order to become a
11 crime scene analyst?

12 A Yes. That's correct. I underwent 270 hours of our crime
13 scene academy as well as a 12-week field training course.

14 Q And once you became a crime scene analyst, have you had
15 the opportunity to respond to numerous crime scenes to collect evidence
16 and document the scene?

17 A Yes, I have

18 Q And has that included homicides?

19 A Yes, it has.

20 Q I want to direct your attention to the overnight hours of
21 September 14th through September 15th of 2017. During that timeframe,
22 did you respond to the intersection of North Las Vegas Boulevard and
23 Searles here in Las Vegas, Clark County, Nevada, in reference to a
24 homicide that had taken place?

25 A Yes, I did.

1 Q Now, were you there in your capacity as a crime scene
2 analyst?

3 A Yes, I was.

4 Q Were there other crime scene analysts that accompanied you
5 there or met you there as well?

6 A Yes, there were.

7 Q Is that generally what happens, at least at a homicide crime
8 scene?

9 A Yes, it is.

10 Q And why is that?

11 A A homicide scene is usually too large for one crime scene
12 analyst to complete. Our supervisor is there to make sure that we collect
13 evidence and document the scene in the appropriate manner.

14 Q When you arrive at the crime scene, is it generally considered
15 to be what is called static?

16 A Yes. By the time we arrive, it's a static scene.

17 Q And what is a static scene?

18 A A static scene means that it's usually roped off with crime
19 scene tape. No one is allowed in or out. There are -- there's no
20 immediate threat to anybody within -- within the scene. Everything has
21 been, essentially, frozen.

22 Q Now, with the other crime scene analyst, do you recall what
23 the first thing is that you did when you arrived at that scene?

24 A Yes. Usually, we'll get a brief from the arriving officers on the
25 scene so that we get an idea of what type of crime it is, who the victims

1 are, and what exactly happened.

2 Q At that time, do the detectives or patrol officers also indicate
3 whether any evidence has already been found?

4 A Yes, they do.

5 Q Okay. Do you recall, with regard to this particular event, what
6 you were told when you arrived at the scene?

7 A We were told that there --

8 MR. PIKE: Objection, that this calls for a yes or no answer
9 and anything more would be hearsay.

10 THE COURT: Mr. Rogan.

11 MR. ROGAN: That is correct.

12 THE WITNESS: Yes, that's correct.

13 BY MR. ROGAN:

14 Q All right. So you received that briefing and you were given
15 information. At that point, did you begin your tasks that evening?

16 A Not right away --

17 Q Okay.

18 A -- the crime scene analyst who was tasked with taking
19 photographs of the scene photographs the scene first before any
20 evidence is collected.

21 Q All right. And that was not you?

22 A That's correct.

23 Q Who was that?

24 A Olivia Klosterman was the photographing crime scene analyst.

25 Q And what tasks were assigned to you?

1 A I was assigned with the -- with creating the diagram and
2 collecting evidence.

3 Q What do you mean by diagram?

4 A When -- with major scenes such as homicides, a
5 computerized diagram is -- a sketch is created of the scene for court
6 purposes and then, later on, a computerized -- a computerized sketch is
7 done afterwards.

8 Q All right. I'm going to show you State's Exhibit 3 and zoom in
9 as best I can. Does this appear to you to be -- depict the intersection of -
10 - what we've been calling East Searles Avenue and North Las Vegas
11 Boulevard?

12 A Yes, it does.

13 Q All right. And is that the area that you responded to in the
14 overnight hours between the 14th and 15th of September?

15 A Yes, it is.

16 Q Showing you State's Exhibit 4 now. What is depicted here in
17 State's Exhibit 4?

18 A It is depicting the scene of the intersection of North Las Vegas
19 Boulevard and Searles Avenue.

20 Q A moment ago, you were discussing what a crime scene
21 diagram was. Is this a crime scene diagram?

22 A Yes, this is the crime scene diagram that I did.

23 Q And this is the one that you generated on the computer?

24 A That's correct.

25 Q Okay. And what -- what information do we have or do you list

1 on the crime scene diagram like this?

2 A We list the -- the location as well as any evidence that's
3 collected during the crime scene investigation.

4 Q Thank you. So I want to divide the -- what is depicted on this
5 diagram into two parts, if I could; all right?

6 A Okay.

7 Q So first, I want to talk about the outside location that is
8 depicted on the crime scene diagram that is the intersection of Searles
9 and Las Vegas Boulevard. And then later, I want to talk with you briefly
10 about the building located at 1300 North Las Vegas Boulevard; all right?

11 A Okay.

12 Q So this outside area, I'll call the first scene, okay. Did you
13 collect the evidence, if any, that was located there?

14 A Yes, I did.

15 Q All right. And did you document it on this crime scene
16 diagram?

17 A Yes, I did.

18 Q All right. What type of evidence do you recall collecting?

19 A We had cartridge cases, a bullet, clothing, it's all listed; a
20 lighter, a shoe on the -- in the crime scene.

21 Q So on the right-hand side or I should say, center of the
22 document, lists the evidence that was collected and its corresponding
23 identifying number; right?

24 A That's correct.

25 Q And on the diagram, does it also -- on the left-hand side, does

1 it have the corresponding numbers where the item was found?

2 A That's correct.

3 Q All right. So for example, if you could -- you listed items 1
4 through 6 as cartridge case; correct?

5 A That's correct.

6 Q And on the left-hand side with the item numbers 1 through 6
7 indicate where you found cartridge cases?

8 A Yes, that's correct.

9 Q Okay. We'll get back to that in a moment. I'd like to run
10 through some photographs of that outside scene if I could. Showing you
11 State's Exhibit 5, now I know you didn't take these photographs, but if
12 you can, can you describe what we are looking at?

13 A This is the west side of Las -- it looks like Las Vegas
14 Boulevard, facing towards the building 1300 and it is about the
15 approximate area where evidence was located.

16 Q Okay. And State's Exhibit 6, what are we looking at here?

17 A This is the north facing view, again, on the west side of Las
18 Vegas Boulevard where evidence was collected.

19 Q Okay. Now, I want to direct your attention to the center of this
20 photograph. You see the crime scene tape; correct?

21 A Correct.

22 Q Now, are -- does it appear to be that there's some sort of
23 orange cones by that light post?

24 A Yes, it does.

25 Q And what are those orange cones?

1 A Those orange cones are marking off where we picked up --
2 where I picked up the cartridge cases.

3 Q Okay. And just to the left of those orange cones that you see
4 in the street, is that the sidewalk there that runs north and south?

5 A Yes, that's correct.

6 Q All right. And what's -- what's to the immediate west of that
7 sidewalk?

8 A To the immediate west is -- it looks like it'd be the homeless
9 camp that was along the fence line.

10 Q Okay. And the homeless encampment, you mean the tents
11 and other structures that appear to be there?

12 A That's correct.

13 Q And there's also a fence to the immediate west of the
14 homeless encampment; correct?

15 A Yes, that's correct.

16 Q What's on the other side of that fence?

17 A I believe that's a cemetery.

18 Q Okay. Showing you State's Exhibit 7, is this a poster
19 photograph of the -- some of the orange cones indicating where evidence
20 was collected?

21 A Yes, it is.

22 Q Okay. And what do we see here in State's Exhibit 8?

23 A This is just another view. I think that's going to be south --
24 pointing southeast of the cones and the cartridge cases.

25 Q Okay. And we see the orange cones, as well, that were

1 previously identified in the prior photos; correct?

2 A Correct.

3 Q And what is this in the, I guess, the lower right-hand corner of
4 the photograph?

5 A That also looks like more -- more belongings of the homeless
6 camp that was on that side of the road.

7 Q All right. We'll get to that in a moment too. I want to talk to
8 you about what you found, if anything, in the street that's marked by
9 those orange cones in State's Exhibit 9; all right? So on your crime
10 scene diagram, you marked -- or later numbered those cones in the
11 street south on the west-hand side or the west side of North Las Vegas
12 Boulevard with the numbers 3, 4, 5, and 6.

13 A Yes.

14 Q What are 3, 4, 5, and 6?

15 A 3, 4, 5, and 6 are cartridge cases.

16 Q Can you tell us what cartridge cases are?

17 A They're part of -- they're part of the cartridge that goes into a
18 gun. The end part is the bullet and then what's leftover is the cartridge
19 case. It gets ejected out of the gun.

20 Q When you say gun, you mean a semi-automatic; is that
21 correct?

22 A That's correct.

23 Q All right. Did you also find two other cartridge cases?

24 A Yes.

25 Q And where were they found?

1 A They were found in the dirt area where the homeless camp
2 was.

3 Q All right. And they're marked as numbers 1 and 2 on your
4 crime scene diagram?

5 A That's correct.

6 Q Okay. Did you document or did -- I'm sorry, did Ms.
7 Klosterman document the cartridge cases that were found at the scene
8 through photography?

9 A Yes, she did.

10 Q All right. And you later collected those?

11 A Yes, I did.

12 Q Okay. So I'm going to show you State's Exhibit 10. Is this
13 one of the cartridge cases that you collected at the scene that evening?

14 A Yes, it is.

15 Q All right. What is a headstamp of a cartridge case?

16 A The headstamp is the markings that are on the end that show
17 what type -- what caliber it is and who manufactured it.

18 Q And is it normal for the crime scene analyst who's taking
19 photographs to -- in addition to taking the photo of the case as it was
20 found, to also photograph the headstamp?

21 A Yes, it is.

22 Q All right. And showing you State's Exhibit 11, is this a
23 photograph of that same headstamp on that cartridge case?

24 A Yes, it is.

25 Q And can you identify for us, using the exhibit, the manufacturer

1 and caliber of this case?

2 A It's kind of hard to read, but it --

3 Q I'll zoom in.

4 A Thank you. So it's a .45 auto and the manufacturer is CBC.

5 Q Thank you. And photographs of all six cartridge cases were
6 taken *[sic]* -- I'm sorry, were taken in the location where they were found
7 and also the photographs of each of those headstamps; correct?

8 A Yes, that's correct.

9 Q All right. So I don't need to go through all of those with you
10 then. Were they all of the same manufacturer?

11 A I believe so, yes.

12 Q Showing you State's Exhibit 20, you mentioned that there
13 were two cartridge cases found in the gravel area west of the sidewalk.
14 Are those two cones there where those cartridge cases were discovered?

15 A Yes, that's correct.

16 Q All right. I want to draw your attention to the right of those
17 cones. Can you tell us what we see on the right-hand side of this
18 photograph which is State's Exhibit 20?

19 A It looks like a blanket or some sort of sheets.

20 Q Okay. Now, showing you State's Exhibit 21, I'll zoom in some
21 more, when you were investigating that sheet, did you notice anything
22 that you would identify as apparent blood?

23 A Yes.

24 Q What is apparent blood?

25 A Apparent blood is what we call blood that we see. It's obvious

1 that it's blood if it -- if there -- if it's in an area where a victim was picked
2 up or you know that someone was hurt and they're bleeding, then that's
3 going to be apparent blood as opposed to something that is a reddish-
4 brown stain where you're not really sure where it came from, then that
5 would have to be tested.

6 Q Okay. And so if it were a reddish-brown stain, you would
7 identify it as a reddish-brown stain; correct?

8 A That's correct.

9 Q Okay. Now, near that sheet with the apparent blood -- you
10 know what, actually, let me -- do you see the apparent blood more clearly
11 now in State's Exhibit 24?

12 A Yes, I do.

13 Q Can you -- can you use that mouse that's right there on the
14 witness stand --

15 THE COURT: Have you used this one yet?

16 THE WITNESS: I have not.

17 THE COURT: Okay. So, unfortunately, our touchscreens are
18 gone now --

19 THE WITNESS: Oh.

20 THE COURT: -- but if you just left click and hold it down you
21 can kinda draw circles and whatnot.

22 THE WITNESS: Oh, okay.

23 BY MR. ROGAN:

24 Q So if you could just circle where you saw the apparent blood.
25 Thank you.

1 THE COURT: So you've circled an area that's -- is that the
2 sidewalk portion?

3 THE WITNESS: That's correct.

4 THE COURT: All right. So on the west part of the sidewalk
5 right as it abuts the apparent gravel dirt area.

6 BY MR. ROGAN:

7 Q To the left of that, though, right next to the sheet, is there also
8 apparent blood there; can you tell?

9 A I can't tell.

10 Q Okay. Let me clear the screen and zoom in. Actually, I'm
11 looking right on the sheet.

12 A Okay. Yes, there is.

13 Q All right. And can you describe what you're seeing and
14 identifying as apparent blood?

15 A I'm seeing red -- it looks like reddish drops that are on the
16 sheet.

17 Q Thank you.

18 A On the corner there.

19 Q Now, directly or almost directly to the west of the sheet, did
20 you find an article of clothing?

21 A Yes, there was a shoe.

22 Q And do you remember the brand of that shoe?

23 A It was a Vans.

24 Q Okay. Now, near that shoe, did you also see what you
25 identified as part of the homeless encampment?

1 A Yes.

2 Q All right. And showing you now State's Exhibit 29, can you
3 describe what you found there near that shoe? And I can zoom in --

4 A Okay.

5 Q -- you know what, sometimes this light too is not quite -- not
6 helpful. What do you see?

7 A I see a cardboard, like, a flattened piece of cardboard box, a
8 pillow, a bag, a water bottle of some sort.

9 Q Okay.

10 A And going back to your crime scene diagram, I want to move
11 now to the southeast corner at the intersection of Searles and North Las
12 Vegas Boulevard. You seem to have found two items of evidence there;
13 correct?

14 A Correct.

15 Q And do you recall what numbers you marked them?

16 A 7 and 8.

17 Q And what was item 7 that you found?

18 A Item 7 was a bullet.

19 Q What about item 8?

20 A And item 8 was a lighter.

21 Q All right. And those were also marked by cones; correct?

22 A That's correct.

23 Q All right. So on State's Exhibit 31, what is depicted there?

24 A The -- the items of evidence being marked by orange cones.

25 Q Okay. And State's Exhibit 33, what do we see in this

1 photograph?

2 A That is a bullet.

3 Q Is that the bullet that you marked with -- as number 7 on your
4 crime scene diagram?

5 A That's correct.

6 Q And State's Exhibit 34, is that the lighter that you marked as
7 item 8 on your crime scene diagram?

8 A Yes, it is.

9 Q Now, I want to move towards the building of 1300 North Las
10 Vegas Boulevard. You identified a vehicle on your diagram, correct?

11 A Correct.

12 Q And where is that vehicle located?

13 A That vehicle was located in the south parking lot of the
14 building.

15 Q So directly south of the parking lot?

16 A Correct.

17 Q I'm sorry, directly south of the building?

18 A Yes.

19 Q All right. And do you remember what the make, model, color
20 of that vehicle was?

21 A It was a Dodge Ram. I think it was a dark color; I don't
22 remember.

23 Q All right. Let's take a look at some photos. Well, first of all,
24 describe for me how it was parked?

25 A It was parked not -- not completely in a space. It was parked

1 at a diagonal in between two vehicles.

2 Q Was it covering several spaces?

3 A Yes, it was.

4 Q All right. Showing you State's Exhibit 51, what is depicted in
5 that photograph?

6 A That is the vehicle that I diagrammed in.

7 Q And what color is it?

8 A It looks like it's black.

9 Q Okay. State's Exhibit 53, is that just another angle of that
10 same vehicle, this time looking, I guess, northeast?

11 A Yes.

12 Q All right. And at some point, were the contents of -- or some
13 of the contents of that vehicle photographed by your crime scene
14 analyst?

15 A Yes.

16 Q All right. Showing you State's Exhibit 54, is this a torn
17 registration certificate from Nevada DMV?

18 A Yes, it is.

19 Q All right. And if you could identify for us, I'm going to -- this is
20 State's Exhibit 54, by the way. To whom is this -- does this registration
21 belong? If you could read it for us, please.

22 A Tisha McNair.

23 Q Thank you.

24 A During the course of your duties as a crime scene analyst, is it
25 typical, if directed by a police detective, to take photographs of

1 individuals?

2 A Yes, it is.

3 Q And that that is to show their appearance as they are at that
4 very moment?

5 A Yes.

6 Q And that may include the tops of hands and the palms of
7 hands, as well?

8 A Yes, that's correct.

9 Q And to your knowledge was that done, as well, that evening of
10 a few individuals?

11 A Yes, it was.

12 Q All right. Showing you State's Exhibit 42, do you know who
13 this person is?

14 A I do not.

15 Q All right. So Ms. Klosterman took this photograph, as well?

16 A Yes, she did.

17 Q Okay.

18 MR. PIKE: Counsel, it's kind of dark on my screen. Can you
19 lighten that a little bit?

20 MR. ROGAN: Of course. Is that better?

21 MR. PIKE: Now -- just a little bit more. I'm sorry. I appreciate
22 it. Thank you. Thank you. Thank you very much.

23 MR. ROGAN: All right.

24 BY MR. ROGAN:

25 Q And showing you State's Exhibit 46, you didn't take this

1 photograph, as well?

2 A No, I did not.

3 Q Okay. You did however take some photographs of the
4 evidence that was collected; right?

5 A Yes, I did.

6 Q And did that include a light blue shirt belonging to a person
7 named Mike?

8 A Yes, I did.

9 Q All right. I'm showing you State's Exhibit 70. Is this the
10 photograph that you took of that shirt?

11 A Yes, it is.

12 Q Okay. And then also did you photograph, in State's Exhibit
13 71, a set of keys that were recovered from a person identified as Mike
14 McNair?

15 A Yes, I did.

16 Q And did that include two keys to vehicles, one being a Dodge
17 key?

18 A Yes.

19 Q Did you have an opportunity to go through the building located
20 at 1300 North Las Vegas Boulevard?

21 A I did.

22 Q Did you photograph there or did Ms. Klosterman do that?

23 A Ms. Klosterman did.

24 Q Okay. So the photographs that we have detailing the interior
25 of that building were all taken by her?

1 A Yes.

2 Q Okay.

3 MR. ROGAN: Court's indulgence.

4 BY MR. ROGAN:

5 Q Did you, during the course of your duties that night, notice that
6 some of the rooms inside the building had security cameras mounted?

7 A I did.

8 Q And were some on the exterior and some on the interior?

9 A Yes.

10 Q During your investigation of the building, did you notice
11 whether every room had a camera?

12 A I did not.

13 Q All right. So some rooms had some and some rooms did not?

14 A Yes.

15 Q Okay. And were those photographed -- those cameras,
16 themselves, photographed by Ms. Klosterman?

17 A I believe so, yes.

18 Q Okay. Getting back to the collection of evidence, if I could.
19 Those bullets and cases and shirts and things that you collected as
20 evidence, what do you do with those?

21 A They get packaged and, in terms of the cartridge cases, they
22 get packaged into individual vials and then put into a bag we seal with
23 evidence tape, put an evidence label on the front saying what's inside the
24 bag, and then we drop it into a secure evidence location.

25 Q So I'm going to use State's Exhibit 80 as an example. I

1 believe this is a package that was created by a different crime scene
2 analyst; is that right?

3 A Yes, that's correct.

4 Q All right. We're just going to use this to walk the jury through
5 what you do with this. Now, is this the package that you were describing
6 just a moment ago?

7 A Yes, that's correct.

8 Q All right. And what do you see on the front of that package
9 with the -- it looks like prepared sticker that's on the envelope itself?

10 A Yes, that's our evidence label. The date is the day that the
11 item was collected along with the time that we arrived on scene. It has
12 the event number as well as the name and personnel number of the
13 person who collected it, a location, a description of the crime, and the
14 description of the items inside.

15 Q Okay. So let's walk through that a little bit. So I'm going to
16 use the mouse to highlight an area. So on the left-hand side of the
17 sticker in the upper left-hand side, you indicated that there's a date of
18 LVMPD possession; is that the date that it was recovered?

19 A Yes, that's correct.

20 Q So in this particular example, it was September 16th of 2017.

21 A Yes.

22 Q All right. And to the right would be the time; correct?

23 A Correct.

24 Q All right. Now, what is an event number?

25 A That's an individual number that is generated any time Metro

1 is called out to an incident. And that's the event number for this particular
2 incident.

3 Q And why is an event number important in -- for your job in
4 collecting evidence?

5 A It helps keep items of evidence separate so that it goes to the
6 correct -- the items of evidence goes to the correct event and aren't
7 mixed up with anything else.

8 Q Okay. So this event -- this homicide event that you responded
9 to that evening, what was the event number that corresponded to it?

10 A 170914-3919.

11 Q So would every piece of evidence that's packaged have a
12 label such as this listing the event number?

13 A Yes, it would.

14 Q Okay. You also said that there was an opportunity for the
15 person who collected the piece of evidence to put their P Number on it?

16 A Yes.

17 Q And what is a P Number?

18 A That our -- our individual personnel numbers that you know
19 which person did -- did the collection.

20 Q All right. I'm going to circle a portion of that sticker. Is that
21 where the person who collected these items of evidence placed their P
22 Number?

23 A Yes, that's correct.

24 Q So in this particular case, it's D12712C?

25 A Yes.

1 Q Okay. What is your P Number?

2 A 13482.

3 Q So where do the letters come into play there?

4 A The letters are our first initial and -- the first initial of our first
5 and the last initial of our last -- or the first initial of our last name.

6 Q All right. So on packages that you have filled out, you would
7 start with your first initial, J?

8 A Correct.

9 Q Then that P Number and then your last initial, S.

10 A Yes.

11 Q Okay. And then you would also sign the -- the sticker on the
12 package as well?

13 A Yes.

14 Q Okay. And then down where it says impounded item
15 description, you mentioned that's where you place or you write the
16 contents of the package itself; right?

17 A That's correct.

18 Q Okay. Thank you. Do you know who collected these two
19 bullets it appears?

20 A I believe that's Danielle Courtney.

21 Q Thank you.

22 MR. ROGAN: Court's indulgence.

23 BY MR. ROGAN:

24 Q Now, when you were accompanying Ms. Klosterman through
25 the building at 1300 North Las Vegas Boulevard as she was taking

1 photos, did there come a time when you both came across a maroon
2 shirt and a green mesh laundry bag?

3 A Yes.

4 Q And that was photographed; right?

5 A Yes, it was.

6 Q Were you told to take a photograph of that by -- by detectives?

7 A I was not told to take a photograph of it.

8 Q Okay. I'm sorry, was Ms. Klosterman told to do that?

9 A I believe she was, yes.

10 Q Okay. And do you know what the reason was for that?

11 A I believe that they weren't sure what shirt the -- the subject
12 was wearing at the time of the incident.

13 Q Okay. I -- here it is. Showing you State's Exhibit 40 --
14 showing you State's Exhibit 40 -- turn off the lamp. Is that the green
15 laundry bag?

16 A Yes, it is.

17 Q And State's Exhibit 41, is this the maroon shirt that was inside
18 that green laundry bag?

19 A Yes.

20 Q Oh, one more thing. Surrounding the particular North Las
21 Vegas Boulevard property, on your crime scene diagram, you seem to
22 have this black line --

23 A Yes.

24 Q -- what is that?

25 A That's a fence that's around the property.

1 Q All right. Do you know how -- how did you get inside that
2 fence, if you remember?

3 A The gate was already open.

4 Q Was it a gate to a -- a driveway gate?

5 A Yes.

6 Q Did it appear to be one of those electronic gates?

7 A I can't -- I don't recall.

8 Q Okay. And then, finally, were buccal swabs collected that
9 evening of certain individuals?

10 A Yes, they were. Yes, they were.

11 Q Can you tell us what a buccal swab is?

12 A So a buccal swab is a -- kind of like a long Q-tip. It's got
13 cotton on the end that we use to swab the inside of a person's cheek to
14 collect the cells inside in order for DNA to be tested.

15 Q Did you perform that or did someone else?

16 A I believe I did, yes.

17 Q All right. And did you perform that on a person identified to
18 you as Michael McNair?

19 A Yes, I did.

20 Q And also someone named Romiro Romero.

21 A Yes.

22 Q And did you impound that buccal swab in the normal -- in the
23 ordinary course that you described for us previously using the
24 photograph example?

25 A The buccal swab kit is a little different. It's a pre-printed

1 envelope and the cotton swab -- the cotton swabs go inside a paper box
2 so that they can air dry while they're being impounded.

3 Q Thank you.

4 MR. ROGAN: Court's indulgence.

5 BY MR. ROGAN:

6 Q One last question, showing you State's Exhibit 49, the
7 individual identified as Mike in this photograph wearing that light blue
8 shirt; what is he wearing on his head?

9 A He is wearing a black do-rag.

10 Q And you impounded that as well; correct?

11 A Yes, that's correct.

12 MR. ROGAN: I'll pass the witness, Your Honor.

13 THE COURT: Okay. Ms. Simpkins

14 MS. SIMPKINS: Thank you, Judge.

15 **CROSS-EXAMINATION**

16 BY MS. SIMPKINS:

17 Q Hi, Ms. Shannon.

18 A Hello.

19 Q My name is Melinda Simpkins and I represent Michael McNair.

20 And this is your first time testifying in court, isn't it?

21 A No.

22 Q No.

23 A It's not.

24 Q How many times have you testified before?

25 A Two other times.

1 Q Okay. I won't be too hard on you. And you just impounded
2 the evidence from the crime scene here?

3 A Yes.

4 Q Okay. You took some photos inside Flavors or no?

5 A I did not take any photos.

6 Q No photos. Okay. So that would've been the cartridge
7 casings, the bullets, the clothing, the money, et cetera; right?

8 A Correct.

9 Q Okay. And then you did a crime scene diagram?

10 A Yes.

11 Q All right. Were you present when they executed the search
12 warrant inside Flavors?

13 A The -- the night that we were there, yes, I was there.

14 Q Okay. Were you present when the firearm dog was brought
15 around inside Flavors?

16 A I do not recall a firearm dog that night.

17 Q Don't recall. Okay. And when you impounded evidence, did
18 you impound evidence from inside Flavors, as well?

19 A Yes, I did.

20 Q Okay. Now, you never impounded a gun that night, did you?

21 A I did not.

22 Q All right. And -- now, Mr. Rogan was showing you some
23 photos -- I'm sorry, I'm jumping around. I apologize. Taking you back
24 outside now, he was showing you photos of a sheet and some apparent
25 blood on a sidewalk; remember those -- those photos?

1 A Yes.

2 Q Okay. And you didn't impound any apparent blood sample?

3 A We did not.

4 Q Okay. And you didn't impound the sheet?

5 A We did not.

6 Q And did someone or a detective direct you what to impound

7 and what not to impound?

8 A No.

9 Q And so that's your call?

10 A Yes.

11 Q Were you asked to submit any of the evidence that you did

12 impound for DNA testing, fingerprint testing, anything like that?

13 A That's not my job.

14 Q Okay. So you just impound it and then they do whatever they

15 need to do with it. It goes in the evidence vault.

16 A That's correct.

17 Q Okay. Now, when you impounded, you said you impounded

18 the -- the cartridge casing, you impounded the bullet. You -- you

19 package each one of these individually, don't you?

20 A Yes, that's correct.

21 Q And is there a reason for that?

22 A So that there's no co-mingling of evidence. If they would need

23 to be tested for fingerprints or for DNA so that they don't get mixed up

24 together.

25 Q Mixed up together for cross-contamination purposes?

1 A Correct.

2 Q Okay. And by cross-contamination, DNA from one can be
3 transferred onto the other if they were packaged together?

4 A Yes, that's correct.

5 Q So they need to be kept separate?

6 A That's correct.

7 Q Okay. Now, when you -- you've -- did you photograph the
8 laundry bag or was that Olivia Klosterman?

9 A It was Olivia Klosterman.

10 Q Okay. But you were -- you were the one that impounded or --
11 tell me what you did with the laundry bag again, I'm sorry.

12 A I impounded the shirt that was inside the laundry bag.

13 Q Okay. When you found the laundry bag, you found the shirt,
14 how many shirts were in that laundry bag?

15 A I don't recall.

16 Q Were there other shirts in the laundry bag; right?

17 A I don't recall.

18 Q Okay. And, obviously, you didn't photograph or nobody
19 photographed any other shirts or anything else that was found in the
20 laundry bag, just that one red shirt?

21 A Not that I'm aware of.

22 Q Okay. Now, you did DNA swabs, I believe, it was on Mitch --
23 Michael McNair and Romiro Romero.

24 A Yes, that's correct.

25 Q Did you DNA swab anyone else?

1 A Not that I recall.

2 MR. ROGAN: Objection. Can we approach, please?

3 THE COURT: Pardon?

4 MR. ROGAN: Can we approach, please?

5 THE COURT: Sure.

6 [Bench conference was held at 1:48 p.m.]

7 MR. ROGAN: So she also DNA swabbed Alonzo Anderson, the
8 person that was misidentified by a witness as the suspect, but since we
9 don't have that person, the witness identifying -- misidentifying that person
10 testifying, it's not relevant.

11 THE COURT: So is -- is that the --

12 MS. SIMPKINS: Her answer was, I do not recall, her answer -

13 THE COURT: Well, yeah, I think her answer was I don't recall.

14 MS. SIMPKINS: Yeah.

15 MR. ROGAN: Okay.

16 THE COURT: But is that the only other guy or is it just three
17 people?

18 MR. ROGAN: There's just those three people, yeah.

19 THE COURT: Okay.

20 MS. SIMPKINS: I don't know -- didn't she --

21 MR. ROGAN: What's that?

22 MS. SIMPKINS: -- didn't she also swab [indiscernible]?

23 MR. ROGAN: I don't think so.

24 MS. SIMPKINS: Okay. Well, she said she didn't recall --

25 THE COURT: Well, was Mitchell swabbed just not her?

1 MR. ROGAN: Yes.

2 THE COURT: Okay. And is that what you were getting at was
3 Mitchell Johnson or --

4 MS. SIMPKINS: I thought she had swabbed him [indiscernible],
5 I was mistaken, obviously.

6 THE COURT: Okay.

7 MS. SIMPKINS: I wasn't planning on asking her any specifics.

8 MR. ROGAN: Okay.

9 MS. SIMPKINS: Her answer was do not recall --

10 THE COURT: About the other guy?

11 MS. SIMPKINS: Yeah, I wasn't going to ask. I wasn't --

12 THE COURT: Okay. Maybe you can ask her if she swabbed
13 Mitchell Johnson if that's what you're getting at, that's fine.

14 MS. SIMPKINS: Okay.

15 MR. ROGAN: Yeah.

16 MS. SIMPKINS: Well that's -- she said she didn't recall if she
17 swabbed anybody else, so I think she's asking [indiscernible] --

18 THE COURT: Okay.

19 MR. ROGAN: Okay. Thank you.

20 THE COURT: Thank you.

21 [Bench conference concluded at 1:50 p.m.]

22 THE COURT: Okay. Ms. Simpkins.

23 BY MS. SIMPKINS:

24 Q Do you recall if you did a DNA swab on Mitchell Johnson?

25 A I don't recall.

1 MS. SIMPKINS: I pass the witness, Your Honor. Thank you.

2 THE COURT: Okay. Mr. Rogan.

3 MR. ROGAN: One moment, please, Your Honor. I have no
4 other questions, Your Honor. Thank you.

5 THE COURT: Anything from our jurors? Yes.

6 [Bench conference was held at 1:50 p.m.]

7 MR. ROGAN: That's fine.

8 MS. SIMPKINS: That's fine.

9 THE COURT: I can clarify when she said she placed cones
10 by the casings; right? [Indiscernible]

11 MR. ROGAN: She -- by each piece of evidence she collected.

12 MS. SIMPKINS: [Indiscernible].

13 THE COURT: All right. Good? Okay.

14 [Bench conference concluded at 1:50 p.m.]

15 THE COURT: A couple more questions for you, if I could,
16 ma'am. Is there a second person or supervisor that double-checks the
17 evidence collected?

18 THE WITNESS: Our supervisor is there with us when we
19 collect the evidence.

20 THE COURT: Okay. And then if you could please validate
21 the number -- the gentleman was asking about bullets, but I think what
22 you said the cones at the scene were placed by casings, right, not by
23 bullets, themselves?

24 THE WITNESS: There was one cone placed by a bullet, but
25 the cartridge cases were also -- had cones placed by them.

1 THE COURT: Okay. I apologize. Can you validate the
2 number -- why don't you do both then, the number of bullets you placed a
3 cone by and the number of casings you placed a cone by?

4 THE WITNESS: There was one bullet and six casings.

5 THE COURT: Got it. And is it normal procedure to place a
6 cone by each bullet or casing?

7 THE WITNESS: We can either place a cone or we also have
8 numbered placards that can go next to the items.

9 THE COURT: Okay. State, any questions next based on
10 mine?

11 MR. ROGAN: Just in response to the supervisor question,
12 please, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. ROGAN:

15 Q It's normal for when a trial takes place to have one crime
16 scene analyst come in and testify to the job duties that most crime scene
17 analyst conducts; correct?

18 A Yes, that's correct.

19 Q Okay. And that's you?

20 A Yes.

21 Q All right. Thank you.

22 THE COURT: Melinda, anything?

23 MS. SIMPKINS: No, nothing further, Your Honor.

24 ///

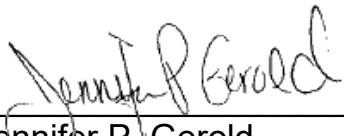
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THE COURT: Okay. All right. Thank you very much, ma'am.
I appreciate your time and I appreciate you coming in. You are excused.

[Witness excused at 1:52 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber