

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**MICHAEL McNAIR**

Appellant,

vs.

**THE STATE OF NEVADA**

Respondent.

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**Docket No. 78871**

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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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**APPELLANT'S APPENDIX VOLUME 7 OF 10**

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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL MCNAIR,

Defendant.

CASE NO. C-17-327395-1

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,  
DISTRICT COURT JUDGE

MONDAY, MARCH 04, 2019

**RECORDER'S TRANSCRIPT OF HEARING**  
**JURY TRIAL - DAY 5**  
**VOLUME V**

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RECORDED BY: SARA RICHARDSON, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Monday, March 04, 2019

[Trial began at 11:01 a.m.]

[In the presence of the jury]

THE MARSHAL: All rise for the jurors.

The panel's present, Your Honor.

THE COURT: Thank you, you all can seated.

We will be back on the record. Mr. McNair, attorneys, jurors  
are all present.

We're going to continue on with the State's case in chief. So  
the State, you all can call your next witness.

MR. ROGAN: The State calls Deanna Lopez.

Can I please approach?

THE COURT: Yes.

**DEANNA LOPEZ**

[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: Deanna Lopez; D-E-A-N-N-A, L-O-P-E-Z.

THE COURT: All right. Thank you, Ms. Lopez.

Mr. Rogan.

MR. ROGAN: Thank you, Your Honor.

...  
...

**DIRECT EXAMINATION**

BY MR. ROGAN:

Q Ms. Lopez, I know you're a little nervous this morning, is that right?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Okay. So a few things. We're just going to have a conversation. I'm going to ask you some questions about something that happened on the 14<sup>th</sup> of September in 2017, all right?

A Yes, sir.

Q All right. When I ask for a question, if it calls for a yes or no answer, you need to say yes or no, all right?

A Yes.

Q All right. Good.

So on September 14<sup>th</sup> of 2017, were you homeless?

A Yes, I was.

Q Where were you living?

A Right in front of the cemetery, across the street from Flavors.

Q Okay. Showing you State's Exhibit 3. If you could look on that computer monitor for me.

THE COURT: Is your screen on, ma'am?

THE WITNESS: Yes, sir.

THE COURT: Okay. It's kind of hard to see. He'll zoom it in so you can see things a little better.



1 BY MR. ROGAN:

2 Q Okay. So State's Exhibit 3, it's a map and --

3 A Right. I'm trying to find -- okay, here it is.

4 Q Okay. So do you see the intersection of North Las Vegas  
5 Boulevard and Searles?

6 A Yes, I do.

7 Q Okay. Where were you living in relation to that intersection?

8 A I was living at Bunker Hill, right across the street from Flavors  
9 in that -- in the gravel area.

10 Q Okay. So if you look just north of Searles, you see that  
11 there's -- Flavors is marked on the map, correct?

12 A Yes.

13 Q All right. And down on the other side, on the south side of  
14 Searles, Bunker is --

15 A Erase it -- I'm trying to -- is this a -- off to your left is this the  
16 cemetery too?

17 Q There's

18 THE COURT: You want to --

19 MR. ROGAN: Yes.

20 THE COURT: -- zoom it back out?

21 MR. ROGAN: I'll zoom back out for you.

22 THE COURT: Okay.

23 BY MR. ROGAN:

24 A I was in the rock area across the street on the west side.

25 Q Okay. The west side of North Las Vegas Boulevard.

1           A     Yes.

2           Q     South of Searles?

3           A     Yes.

4           Q     Okay. Thank you.

5                     Did you know a person by the name of Gordon Phillips?

6           A     Yes, I did.

7           Q     Did you know Gordon by his full name or just by his first

8     name?

9           A     Just by his first.

10          Q     How long do you think you'd known him?

11          A     Probably about over six months.

12          Q     Was he a friend of yours?

13          A     He was an acquaintance.

14          Q     Okay. Did you interact with him very often?

15          A     No, sir, Gordon was always gone.

16          Q     What do you mean by that?

17          A     He would get up at 5:00 in the morning and before anyone got

18     up he was gone, taking care of whatever Gordon took care of.

19          Q     Okay. Was he kind of a quiet person?

20          A     Very quiet.

21          Q     Okay. Did he live or reside or sleep very close to you?

22          A     Yes, sir, about 24 feet from me.

23          Q     Okay. To the south or to the north, west?

24          A     South.

25     ...

1 Q South, okay.

2 On the evening of the 14<sup>th</sup> of September in 2017, did you see  
3 Gordon where he was lying 24 feet to the south of you?

4 A Yes, I did.

5 Q Were you staying with anyone else right near you?

6 A Yes, I was.

7 Q Who were you with?

8 A I was with my boyfriend Tom at the time and then another  
9 gentleman named Anthony.

10 Q What is -- what's the name you know Anthony by or what do  
11 you call him?

12 A Ant-man.

13 Q Okay. And so at some point did you see Gordon get up from  
14 where --

15 A Yes, I did.

16 Q -- he was -- okay. And where did he go?

17 A He went east on Searles.

18 Q Okay. And do you see what he did -- were you able to see  
19 him where he was?

20 A No, sir.

21 Q What's the next thing that you remember?

22 A The next thing I remember is Gordon coming west on Searles,  
23 arguing with a couple of gentleman across the street on the Flavors side.  
24 And couldn't -- I could not hear anything because of the traffic. When  
25 the traffic cleared, Gordon came back over and he went on his spot --

1 Q Okay.

2 A -- where he laid, laid down for a second --

3 Q Let's -- let me stop you right there, all right? I have to ask a  
4 few follow-up questions --

5 A Okay.

6 Q -- if I could.

7 So when Gordon went over and walked westbound on  
8 Searles, the next thing you remember, he was arguing. Was he -- did  
9 you say he was arguing with one or more people?

10 A Two men.

11 Q Two men. Could you tell what race or nationality they were?

12 A They were Black.

13 Q But you couldn't hear anything that was being said.

14 A Yes, sir.

15 Q Now at some point you mentioned that Gordon came back  
16 over to the west side of North Las Vegas Boulevard, what did he do  
17 there?

18 A He came and laid down on his -- in his area.

19 Q On his mat or whatever he had?

20 A Cardboard.

21 Q Okay. What about those two men that he was arguing with,  
22 did they follow him immediately?

23 A It was less than five minutes before they came back over.

24 Q Okay.

25 A And Gordon got up.

1 Q All right. So is it the same two men, as far as you could tell?

2 A I believe so.

3 Q All right. Were they traveling on foot?

4 A Yes, sir.

5 Q Now, can you describe for us -- you spoke for -- you spoke  
6 with the police after everything went down, right?

7 A Yes.

8 Q And remember describing one person as taller and one  
9 person as shorter, right?

10 A Yes.

11 Q All right. Let's start with -- of the two Black men, let's start with  
12 the taller one. Can you remember today what he was wearing?

13 A Blue shirt, black pants.

14 Q What about his hair?

15 A Short.

16 Q And what about his build?

17 A Skinny.

18 Q Okay. And the other guy, do you remember what he was  
19 wearing?

20 A He was wearing all black.

21 Q And this other guy, what about his build?

22 A He was short.

23 Q And again, both of these are -- what race or nationality are  
24 both of these men?

25 A Black.

1 Q All right. So when these two men approach, do you see these  
2 two men come across North Las Vegas Boulevard as well?

3 A Yes.

4 Q And where do they go?

5 A Straight to Gordon.

6 Q And what happens then?

7 A The tall, skinny guy stayed on the curb, whereas the short guy  
8 came up to Gordon.

9 Q And what did Gordon do?

10 A Well when Gordon seen them coming over he stood up and  
11 he put his arms out and says we can handle it right here.

12 Q That's what Gordon said?

13 A Yes.

14 A The short guy hit Gordon in the face, so Gordon was starting  
15 to defend himself.

16 Q And what happened at that point?

17 A I think the short guy got in about two hits, where the tall  
18 dude -- the tall, skinny guy --

19 Q The one in the blue shirt.

20 A Yeah. Started shooting Gordon.

21 Q Where was he standing when he was shooting Gordon?

22 A On the curb, like out -- right out on the street where the curb  
23 is.

24 Q All right. So he's in the street, not on the sidewalk?

25 A Not on the sidewalk.

1 Q Okay. Did you ever see Gordon with a weapon that night?

2 A No, sir.

3 Q How many times do you think the tall man in the blue shirt  
4 shot Gordon?

5 A About five/six times.

6 Q And could you tell what kind of gun it was?

7 A It was a hand gun.

8 Q What happened to Gordon after he was shot?

9 A He fell to the ground.

10 Q And what did you do?

11 A I got Gordon's sheet and I put it over his wounds to stop it  
12 from bleeding.

13 Q Did anyone call 9-1-1?

14 A Yes, I have my friend Anthony call 9-1-1.

15 Q Ant-man?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q Did you see where the two Black men went?

20 A No, sir, I was focusing on Gordon.

21 Q Now, you wear glasses right?

22 A Yes, sir.

23 Q And what's your prescription, meaning do you have difficulty  
24 seeing things close up or further away?

25 A Further away.

1 Q So how far away were you from the man in the blue shirt when  
2 you saw him shoot Gordon?

3 A About 24 feet.

4 Q Based upon the distance from him, could you see his face  
5 very clearly?

6 A I was not focused on the skinny, tall guy, the shooter, but was  
7 more focused on the short guy and Gordon fighting.

8 Q Okay. Fair enough.

9 I want to change tracks for just a minute. Did you know  
10 someone by the name of Kenneth Saldana?

11 A Yes.

12 Q And who did Ken hang out with?

13 A He hung out with Steve, Denise, Dave, Michelle, Mama.

14 Q So he had a whole crew of people?

15 A Yes, he had a crew.

16 Q Okay. Now you testified before that Gordon was 24 feet to the  
17 south of you where he slept, right?

18 A Yes, sir.

19 THE COURT: Can I interrupt for a moment?

20 MR. ROGAN: Sure.

21 THE COURT: Are all those folks you mentioned also were  
22 homeless at the time living in that same --

23 THE WITNESS: Yes, sir.

24 THE COURT: -- kind of area?

25 THE WITNESS: Yeah, on the gravel line.



1 THE COURT: The west side of North Las Vegas --  
2 THE WITNESS: Yes.  
3 THE COURT: -- in that -- okay.  
4 THE WITNESS: That whole gravel line was filled with people.  
5 THE COURT: Okay. Thank you.  
6 MR. ROGAN: Thank you, Your Honor.  
7 BY MR. ROGAN:  
8 Q So a moment ago you testified that Gordon slept about 24 feet  
9 to the south of you?  
10 A Yes, sir.  
11 Q And then you were there to the north of Gordon and you were  
12 there with, I believe you testified it was Tom and Ant-man?  
13 A Yes.  
14 Q Where in relation to where you were sleeping would Ken and  
15 his crew sleep?  
16 A More north of me.  
17 Q So further away from Gordon?  
18 A Yes.  
19 Q Did you know Ken very well?  
20 A An acquaintance.  
21 Q Did you have an opportunity to -- or let me ask you this, did  
22 you -- what would Ken do at night with his group of people?  
23 A After they would get done volunteering, they would, you know,  
24 sometimes barbeque, drink, get rowdy.  
25 Q Did you have an opportunity to observe Ken get drunk on a

1 fairly consistent basis?

2 A Yes.

3 Q And how intoxicated would he get, meaning --

4 MR. PIKE: Objection, Your Honor, relevance.

5 THE COURT: Well, overruled, I'll allow it. You can go ahead.

6 BY MR. ROGAN:

7 Q Let me rephrase. Would he drink to excess?

8 A Yes.

9 MR. ROGAN: Court's indulgence.

10 Court's indulgence.

11 THE COURT: Okay.

12 BY MR. ROGAN:

13 Q Now this morning you met with Ms. Bluth and I, correct?

14 A Yes.

15 Q And you were asking about Anthony and Ant-man, as you  
16 described him?

17 A Yes.

18 Q And we showed you a picture of the person we identified to  
19 you as Anthony Razo, right?

20 A Yes.

21 Q That's not Ant-man, right?

22 A No, sir.

23 Q Okay. Also, did you ever see Gordon with a knife at all?

24 A No, sir.

25 Q Did he ever leave his property with you?

1           A     No, he left his sheet and his pillow with Danny.

2           Q     Okay. Did -- after the police came and went that evening, did  
3 you ever find a knife in the vicinity of where Gordon was residing?

4           A     No. I found his satchel and there was no weapon in it.

5           Q     Thank you.

6                 MR. ROGAN: Pass the witness.

7                 THE COURT: Mr. Pike? Ms. Simpkins?

8                                 **CROSS-EXAMINATION**

9     BY MR. PIKE:

10          Q     Hi, Ms. Lopez.

11          A     Hello.

12          Q     My name's Randy Pike. We haven't had a chance to meet  
13 before, have we?

14          A     No.

15          Q     And I'm going to be asking you a few questions this morning, if  
16 that's all right.

17          A     Sure.

18          Q     Now these people that were around you at the time, I guess  
19 Tom and the Ant-man, after all this happened they left. They didn't go  
20 and be interviewed by the police, did they?

21          A     I cannot tell you.

22          Q     Do you know their last names?

23          A     I do not know Anthony's last name.

24          Q     What about Tom's?

25          A     I'm drawing a blank.

1 Q Okay. And since you are no longer homeless,  
2 congratulations --

3 A Thank you.

4 Q You don't -- you haven't been keeping in touch with any of  
5 these individuals, have you?

6 A I did see Ant-man one time. The rest of the people, no.

7 Q Okay. Could you describe Ant-man for me, about how tall he  
8 was, what race he was?

9 A He was Italian -- or he is Italian and about 5'8.

10 Q All right. Now let me ask you some questions about the map  
11 that we have here if we may. I've got -- I'm kind of working this -- the  
12 arrow on that. You indicated that you were staying on -- in this area?

13 A I believe -- if that's the rock area, I believe so.

14 Q Okay. Well --

15 A It looks like it.

16 Q When you say --

17 THE COURT: For the record -- I'm sorry, Randy. You're on  
18 the west side of North Las Vegas Boulevard, a little south of Searles in  
19 the area right adjoining the roadway, correct?

20 THE WITNESS: I'm more --

21 BY MR. PIKE:

22 Q Let me know when I reach the right spot.

23 A I --

24 Q Oh --

25 A Go up --

1 Q -- that's the same thing --

2 A -- towards more of Searles, I'm more of where Searles is, over  
3 closer to Flavors.

4 Q Okay. So you're on --

5 A Around and then that generally area right there.

6 THE COURT: Tell you what, why don't you show me --

7 THE WITNESS: I'm around in this area.

8 THE COURT: So where he's got the pointer right now.

9 THE WITNESS: Yes, around in that --

10 MR. PIKE: Okay. Right --

11 THE WITNESS: -- general area.

12 MR. PIKE: -- in this area.

13 THE COURT: All right. So let's -- let's make a mark on this.

14 Randy, let me take --

15 MR. PIKE: Okay. Go ahead.

16 THE COURT: All right. So in about this area?

17 THE WITNESS: Just about in that general area?

18 THE COURT: Okay. So that's a little north of Searles, kind of  
19 across from the parking lot area of the building that includes Flavors.

20 THE WITNESS: I was -- there were palm -- excuse me.

21 THE COURT: It's okay.

22 THE WITNESS: Where Flavors' doors -- their second door --

23 THE COURT: Okay.

24 THE WITNESS: -- going more towards Searles, I was across  
25 from that.

1 THE COURT: Okay.

2 THE WITNESS: So that's how I generalize my area --

3 THE COURT: So kind of right --

4 THE WITNESS: -- you know, where I would go --

5 THE COURT: -- closer to the --

6 THE WITNESS: -- about --

7 THE COURT: -- corner of the building.

8 THE WITNESS: It's -- you're about in the general vicinity of

9 where I am.

10 THE COURT: Okay.

11 BY MR. PIKE:

12 Q So where you were at then, did you have a view down the

13 entire parking lot where the trucks would come into the back of Flavors?

14 Or were you further north so you didn't see the trucks?

15 A I could not see that trucks coming up and down until they got

16 to the stop sign.

17 Q Okay. So you're back to that area and you didn't see any

18 argument that Gordon was having with anybody prior to coming over

19 and setting up for the night when he was going to lie down and sleep?

20 A Gordon was on Searles across the street from where I was.

21 He was having an altercation with two gentlemen, two Black men.

22 Q So prior to that, did you ever see two individuals come out and

23 one that was wearing a, say a cap on his head, or anything like that?

24 A No, sir.

25 Q Okay. So you didn't see anything about that until you heard

1 some argument going back and forth?

2 A That's correct.

3 Q Okay. You were close enough to hear what you described  
4 what Gordon said at that time?

5 A I heard yelling.

6 Q Okay. You heard yelling going back and forth and you  
7 heard -- and you saw Gordon stand up --

8 A When I -- the altercation started across the street.

9 Q Okay. When you say --

10 A I heard yelling.

11 Q Okay.

12 A They were on Searles.

13 Q Okay. So and let me --

14 A On this side.

15 Q All right. Let's see if we can point --

16 THE COURT: Hold on

17 THE WITNESS: You want me to show you?

18 THE COURT: Sure. Do you want the mouse pointer?

19 THE WITNESS: It's a lot easier for me to show you --

20 THE COURT: Can you --

21 MR. PIKE: That works --

22 THE COURT: -- work the mouse --

23 MR. PIKE: That's great.

24 THE COURT: -- the little mouse over there by you?

25 MR. PIKE: Thanks.

1 THE WITNESS: I'll try to.  
2 THE COURT: Okay. So --  
3 THE WITNESS: Okay.  
4 THE COURT: -- hold on, hold on.  
5 THE WITNESS: Oh, let me --  
6 THE COURT: When it clicks up --  
7 THE WITNESS: -- get the little --  
8 THE COURT: Hold on, hold on, hold -- Deanna, hold on.  
9 THE WITNESS: Okay.  
10 THE COURT: All right.  
11 THE WITNESS: Oh, okay.  
12 THE COURT: So if you left click it and then draw. So you just  
13 show me where.  
14 THE WITNESS: Gordon and the gentlemen were right here.  
15 THE COURT: All right. So you're on the --  
16 THE WITNESS: -- having an argument --  
17 THE COURT: -- southeast corner of Searles and North Las  
18 Vegas Boulevard. Okay. Go ahead.  
19 THE WITNESS: Gordon came across the street, back to  
20 where he was laying.  
21 THE COURT: Okay.  
22 THE WITNESS: Laid down for a second. The two gentlemen,  
23 after the traffic cleared came across the street.  
24 MR. PIKE: Okay. And that's when you saw Gordon get up?  
25 THE WITNESS: Yes.



1 MR. PIKE: Okay.

2 THE COURT: All right. Thank you.

3 BY MR. PIKE:

4 Q So you were not sleeping near where Gordon was that night,  
5 you were further --

6 A I was 24 feet from where --

7 Q 24 feet away.

8 A -- Gordon was sleeping.

9 Q Okay. About 24 feet away. And at that point in time -- you  
10 called that Bunker Hill. Is -- let me kind of go up here, maybe it'll be  
11 easier. No, you can't see that screen.

12 THE COURT: What are you trying to do, Randy?

13 MR. PIKE: Okay.

14 THE WITNESS: He's going across the street on the  
15 Searles --

16 MR. PIKE: Right. We've got --

17 THE COURT: By the way guys, Mr. Lay is here.

18 MR. PIKE: -- Bunker's, Eden Vale --

19 THE WITNESS: No, not that one. I wasn't staying on that  
20 side.

21 BY MR. PIKE:

22 Q Okay. I know. But this is where Bunker Mortuary is at. And  
23 this is Palm Mortuary over here.

24 A Okay. Palm.

25 Q Okay. And then there's -- actually there's three cemeteries

1 within that area. There's one further up towards on the other side of  
2 Foremaster. You -- and you're familiar with the area, right?

3 A Yes.

4 Q And so were you staying -- you've indicated -- you call that  
5 area Bunker Hill, but it's not part of the Bunker Mortuary.

6 A The cemetery.

7 Q What?

8 A I'm sorry, the ceme -- we just call it a cemetery.

9 Q The cemetery, okay.

10 But when you tell me a hill, it indicates that there's some  
11 gradation to it, that it's going up. So were you sleeping down closer to  
12 the sidewalk or were you up higher closer to the fence where it's the dirt  
13 area up there? Where were you?

14 A The rocks.

15 Q The rocks, okay.

16 A In the rocks.

17 Q So you were on the rocks.

18 A Everyone slept in the -- were the rock -- in the rock area.

19 Q Okay. And that was between a fence and the sidewalk?

20 A Yes.

21 Q Well -- and were you -- a lot of individuals that are homeless,  
22 they have tents or shelters that -- temporary shelters that they put up.  
23 Did you have a temporary shelter like that?

24 A At that time no one had tents. It was too hot to have a tent.

25 Q Okay. So it was in September --

1           A     You slept flat on the ground.

2           Q     Okay. It was still warm enough so that nobody put up a tent or  
3 anything --

4           A     Yes, sir.

5           Q     -- and they were just all sleeping out on the ground like that.

6                     And you were with Ant-man and Tom, last name unknown,  
7 and the three of you kind of gathered together, kind of as protection --  
8 it's a dangerous place.

9           A     Yes.

10          Q     And you knew that they'd have your back and they'd watch out  
11 for you.

12          A     Yes.

13          Q     And you'd watch out for them as well.

14          A     Yes.

15          Q     During that period of time when this was happening it was in  
16 the evening time. Can you recall what time it was?

17          A     It was probably before 8:00.

18          Q     Okay. So you're going back to sometime before 8:00. And  
19 when it happened, then there was an immediate call from your friend for  
20 9-1-1?

21          A     I do not recall because I did not have a watch. It's a  
22 guesstimation.

23          Q     Okay. And during that period of time, were you also  
24 volunteering or doing other things to get food and/or some money?

25          A     No, sir. I'm disabled.

1 Q You're disabled, okay. So you were -- you had income  
2 coming in from disability?

3 A No, sir.

4 MR. ROGAN: Objection, relevance.

5 MR. PIKE: Okay. I'm just --

6 THE COURT: Well, she answered no. I'll go ahead and let  
7 that stand.

8 MR. PIKE: Okay.

9 THE COURT: Go ahead and move on.

10 MR. PIKE: Thanks.

11 BY MR. PIKE:

12 Q So you were there with Tom and Ant-man. Had you been  
13 drinking that night?

14 A No, sir.

15 Q Had you been taking any drugs?

16 A I don't do drugs.

17 Q Okay. Are you on medication for your disability?

18 A No, sir.

19 Q Okay. How about Tom or Anthony, were they drinking at that  
20 time?

21 A No, sir.

22 Q It's not uncommon for them to maybe have a beer or two after  
23 volunteering?

24 A They don't volunteer.

25 Q Okay. They don't vol --

1           A     Only certain people volunteer at the center.

2           Q     Okay. And when you say volunteer at the center, are those

3 individuals that would go over and work at some of the homeless

4 shelters that are over --

5           A     No, sir. The center is where everyone would congregate. We

6 call it the watering hole.

7           Q     And why do you call it that?

8           A     That's just what we do. We call it the watering hole.

9           Q     And where is that located at?

10          A     It's where the youth center used to be.

11          Q     The youth --

12          A     The old Shannon Youth Center used to be.

13          Q     Do you know the street that that's on?

14          A     It's on Las Vegas Boulevard and Foremaster.

15          Q     Okay. So it would be further north of Flavors and Anderson

16 Dairy --

17          A     Yes.

18          Q     -- on the other side?

19          A     Yes.

20          Q     And is that on the north side of the street?

21          A     It is on the same side that we were sleeping.

22          Q     Okay.

23          A     On the west side.

24          Q     All right. So it would be just up into the corner to the --

25          A     It was on the corner.

1 Q -- on there. Okay. Over all there.

2 Okay. And then about 8:30 you saw this commotion and it --  
3 your attention was drawn to that. And from where you were standing  
4 you were -- and have testified that you saw two Black individuals, two  
5 African Americans?

6 A Yes, sir.

7 Q On the shorter man, how long was his hair?

8 A His hair was short.

9 Q Did he have it in any kind of braids or any kind of a hair style  
10 that you could see?

11 A Not that I recall.

12 Q And the individual that was a little bit taller, you indicated that  
13 he had short hair as well? Is that a yes?

14 A Yes.

15 Q Thank you.

16 And you could see that he was not wearing a hat.

17 A Yes, sir.

18 Q Was his hair --

19 THE COURT: Sorry, which individual?

20 MR. PIKE: Oh, I'm sorry, the taller --

21 THE COURT: Okay.

22 MR. PIKE: -- gentleman.

23 BY MR. PIKE:

24 Q And he was not wearing a hat. Did he -- was his hair in any  
25 particular style that you could see?

1 A Just a short fro.

2 Q Just a short fro, okay.

3 And you were -- indicated that the man -- the male that you felt  
4 was taller was -- would be somewhere between 5'6 to 5'8?

5 A Yes, sir.

6 Q Okay. And you gave that description and information to the  
7 police and that's the height that you gave?

8 A Yes, sir.

9 Q Right. And the shorter man, you indicated how tall was he?

10 A I'd say from 5'3 to 5'5.

11 Q Okay. 5'4?

12 A In between.

13 Q In between there, okay. That was the same information that  
14 he was -- that you gave to the police at that time.

15 A Yes, sir.

16 Q Now you stayed around after all of this happened, the police  
17 started to come and you were there -- well it went until about 2:00 in the  
18 morning or --

19 A Sir, I did not have a watch.

20 Q Okay. Were you there until sunrise?

21 A No, sir.

22 Q All right. It was later -- or early in the morning probably when  
23 you talked to the police, would that be fair to say?

24 A Fair to say.

25 Q Okay. And the blue shirt that you saw, you said the taller man

1 was wearing, was that a pullover shirt or was it a --

2 A It was more like a button shirt -- some of what like you're  
3 wearing.

4 Q Okay. And while you were there, did you see any security  
5 trucks from Flavors come driving up? Any white trucks?

6 A Come up to where?

7 Q Come up in the parking lot to the corner of Searles and North  
8 Las Vegas Boulevard?

9 A No, sir, I was paying attention to an argument.

10 Q Okay. Was there just one argument or were there a couple of  
11 arguments?

12 A One across the street on the Flavors side and then starting  
13 over where we were.

14 Q Okay. Now in going through -- let me just catch my notes  
15 here.

16 When all this happened, where did Tom go? After this  
17 happened?

18 A Wherever the police took him. I cannot tell you. They took me  
19 and Ashley across the street on the Bunker Hill side.

20 Q Okay. And that would -- did you know Ashely's --

21 A They cleared --

22 Q -- last name?

23 A Excuse me?

24 Q Did you know Ashley's last name?

25 A No, sir.



1           Q     When you were there, did you and Ashley talk about what you  
2 had seen?

3           MR. ROGAN: Objection, Your Honor --

4           THE WITNESS: No, we were not allowed to.

5           THE COURT: Well, I'll let it stand.

6           MR. PIKE: I'm just ask --

7           THE WITNESS: I'm sorry.

8           THE COURT: That's okay.

9 BY MR. PIKE:

10          Q     I'm not asking any contact, I'm just asking if you're talking with  
11 other witnesses.

12               And you'd agree with me that at the time that this happened it  
13 was pretty dark?

14          A     Yes, sir.

15          Q     And there were a number of people that had blue shirts that  
16 were out around that area?

17          A     I wasn't paying attention to everybody else, sir.

18          Q     Okay. So you were looking at the argument, you were about  
19 that distance away and you named a number of other people. Do you  
20 know what Steve's last name was?

21          A     No, sir.

22          Q     Do you know Denise's last name?

23          A     I know none of their last names, sir.

24          Q     You don't know any of them?

25          A     No, sir.

1 Q Okay. Did you know Gordon's last name?  
2 A No, sir.  
3 Q Pretty much everybody just knows everybody by their first  
4 name?  
5 A Yes, sir.  
6 Q So the first person that had any physical contact was the  
7 shorter man?  
8 A Yes, sir.  
9 Q Okay. And he started punching?  
10 A Yes, sir.  
11 Q Okay. And when you saw this, did you stay up on the rocky  
12 area, did you move out to the street to see better --  
13 A It was all in the rock area. It all happened in the rock area.  
14 THE COURT: No, he was asking, did you move at all --  
15 THE WITNESS: No --  
16 THE COURT: -- from -- or you --  
17 THE WITNESS: I was --  
18 THE COURT: You stayed you were.  
19 THE WITNESS: I was where I was laying is -- I got up on my  
20 knees --  
21 THE COURT: Okay.  
22 THE WITNESS: -- and I was watching.  
23 THE COURT: Got it.  
24 All right. Mr. Pike.  
25 ...

1 BY MR. PIKE:

2 Q Do you know when these two individuals left, did you see  
3 where they -- whether they went north on the Boulevard or south on the  
4 Boulevard?

5 A I was not focused on them, I was focused on Gordon.

6 Q Okay. So you couldn't tell whether they went north or south?

7 A At that point I didn't care. I was focusing on Gordon.

8 Q Okay. So I'll take that as a yes, you didn't see which way they  
9 went?

10 A I did not see where they went.

11 Q You couldn't tell whether or not the individual that you  
12 described as the person who fired a gun, had the gun in his right or his  
13 left hand, could you?

14 A I was not paying attention -- I was paying more attention to the  
15 shorter guy and Gordon starting to fight.

16 Q Okay. And then you saw the flash of the gun being shot,  
17 right?

18 A I was looking at Gordon.

19 Q Okay. So you were focusing on Gordon because he was your  
20 friend?

21 A Yes.

22 Q And, you know, he was kind of a loner, I guess, from what  
23 you've described.

24 A Yes.

25 Q And so you -- it was somebody that you had seen enough time

1 over the six months that you've been out there that it was somebody you  
2 knew and would talk to.

3 A Yes.

4 Q And occasionally help out.

5 A Whenever I seen Gordon, I'd speak to Gordon.

6 Q Okay. You don't know what started the argument, do you?

7 A No, sir.

8 Q And at the time that you came over and then helped cover up  
9 Gordon, you didn't check his pockets, you didn't check anything else,  
10 you just wanted to try and help --

11 A I wanted --

12 Q -- stop the blood -- the bleeding?

13 A Yes, exactly.

14 Q Okay. So you don't know whether or not he had any weapons  
15 on him at the time that this happened, any knives or anything like that?

16 A When he was getting into the altercation with the shorter man,  
17 he just was using his fists.

18 Q But you'd agree with me that it would not be uncommon for  
19 people that were in that area that were homeless, they would carry  
20 knives or something to protect themselves, if necessary?

21 A Yes.

22 Q And at the time that this happened, what color shirt was  
23 Gordon wearing, if you can recall?

24 A Gordon had on a blue -- a dark blue shirt with a -- some kind  
25 of a pattern on it.

1 MR. PIKE: Court's indulgence.

2 THE COURT: Okay.

3 Ms. Bluth, Mr. Lay is back as well.

4 BY MR. PIKE:

5 Q So going back to the evening that this happened, you  
6 indicated that the police had taken you to the side and they were -- and  
7 they interviewed you, right?

8 A Yes.

9 Q And they asked you if it was okay if they recorded that  
10 interview.

11 A Yes.

12 Q When you met with the deputy district attorneys in this case,  
13 did you give -- did they give you a copy of the voluntary statement or the  
14 transcript of the statement that you gave the police?

15 A I don't recall. It's been so long.

16 Q No, I was just talking about the most recent time that you  
17 talked to them.

18 A Oh, the most recent?

19 Q Oh these are --

20 A Yes, I --

21 Q Yeah, these are the --

22 A Yes, I did.

23 Q -- DAs.

24 A Oh, I'm sorry. Yes.

25 Q That's okay.

1           A     I'm sorry, yes.

2           Q     Okay. So -- and you read that through this morning?

3           A     Yes, I did.

4           Q     Okay. Let me go -- and you agree with me that this did  
5 happen a long time ago and --

6           A     Yes, sir.

7           Q     -- when you were giving the police information you were trying  
8 to give them the best information that you could?

9           A     Yes.

10          Q     Okay. Do you recall telling the police that you do have some  
11 problems or -- that you wore glasses and that you had some sight  
12 issues?

13          A     Yes.

14          Q     And you told them that you were night blind?

15          A     Well I call it night blind because you can't see everything  
16 totally at night.

17          Q     Okay. So you have -- you didn't have your glasses on, you  
18 have difficulty seeing through the screen or that you were looking  
19 through. Would that be a fair statement as to what you told the police?

20          A     Screen?

21          Q     I mean, was there any -- when you were sleeping -- let's see.

22          A     I'm out in the open, there is no screen.

23          Q     Okay. You're out in the open. At that point in time, you had  
24 actually laid down and you were going to sleep, right?

25          A     I was laying there.

1 Q Okay. So you were laying down when this all happened?

2 A When I heard yelling is when I got up.

3 Q Okay.

4 A I wasn't standing up, I was on my knees.

5 Q Okay. So you were about that distance that you described,  
6 about 25 yards -- feet away?

7 A When I heard this -- the argument, the altercation, the yelling,  
8 they were across the street. That's when I got up on my knees and I  
9 was looking around to see who was around me.

10 Q Well did you have a stroller or anything that you kept your  
11 property in --

12 A No.

13 Q -- at that point in time?

14 A I had a short, small suitcase.

15 Q Okay. And where was that suitcase located at?

16 A In front of me.

17 Q In front of you and you were there with these other individuals  
18 who then left the scene? They didn't give any statements to the police  
19 that you saw?

20 A The police grabbed me so fast, I don't know where they put  
21 everybody.

22 Q Okay. Where did they -- where were they keeping you or  
23 holding you when you gave the statement?

24 A On the Bunker Hill side, on the east side of the street.

25 Q Okay. So on the east side of the street would be --

1           A     Up more -- up going towards Sinclair.

2           Q     Okay. And Sinclair is further north?

3           A     That is going south.

4           Q     Okay. Sinclair then is down past Bunker Memorial Park and  
5 they took you down --

6           THE COURT: On our map that's on the screen, is Sinclair  
7 down towards the bottom where you can't see it?

8           THE WITNESS: It's -- yes.

9           THE COURT: Okay.

10          THE WITNESS: It's --

11          THE COURT: Thank you.

12          THE WITNESS: Yes, exactly.

13          THE COURT: Got it.

14       BY MR. PIKE:

15          Q     Okay. And did they keep you there the entire time until you  
16 were done with the statement and then you went back and --

17          A     Yes.

18          Q     -- picked up your stuff? All right.

19                At that point in time, did you see anyone that was handcuffed  
20 or arrested?

21          A     They were too far down. They put us more up towards the  
22 Sinclair side.

23          Q     Okay. So you were just there during that period of time --

24          A     I was just there sitting there, me and Ashley.

25          Q     Okay.



1 MR. PIKE: I don't have any further questions.

2 THE COURT: Thank you.

3 Mr. Rogan.

4 **REDIRECT EXAMINATION**

5 BY MR. ROGAN:

6 Q Deanna, just a couple questions. Even though you weren't  
7 wearing your glasses, you can tell the difference between a -- you could  
8 tell relative sizes in someone who's taller and someone's who's shorter,  
9 right?

10 A Of course.

11 Q And you can tell the difference between blue and black?

12 A Yes, sir.

13 Q Thank you.

14 THE COURT: Anything further, Mr. Pike?

15 **RECROSS-EXAMINATION**

16 BY MR. PIKE:

17 Q So while you could make out shapes and heights and the rest  
18 of that, there was something that was, at least from my understanding,  
19 was impeding your vision and that was seeing underneath a stroller. Do  
20 you recall ever telling the police that there was a stroller around where  
21 you were at?

22 A We didn't have a stroller, we had a granny chart that was in  
23 front of Tom. I had my short suitcase in front of me. Ant-man had his in  
24 front of him.

25 Q Okay.

1 THE COURT: His meaning --  
2 THE WITNESS: I could see Gordon --  
3 THE COURT: His meaning Ant-man had a short suitcase as  
4 well?  
5 THE WITNESS: No, I had the short suitcase.  
6 THE COURT: What did Ant-man have?  
7 THE WITNESS: Ant-man had a taller Swiss suitcase.  
8 THE COURT: So --  
9 THE WITNESS: And that was --  
10 THE COURT: -- rolling suitcase --  
11 THE WITNESS: -- not even by me.  
12 THE COURT: -- as well, just bigger than yours.  
13 THE WITNESS: Yes.  
14 THE COURT: Got it, okay.  
15 MR. PIKE: And may I approach the witness, Your Honor?  
16 THE COURT: Sure.  
17 MR. PIKE: Page 10 and 11.  
18 BY MR. PIKE:  
19 Q If you could just this portion from about here --  
20 A Where do --  
21 Q Oh, right there.  
22 A Right here?  
23 Q Yeah, don't read it out loud, just to yourself.  
24 And I'm showing you what's the -- the transcript of your  
25 voluntary statement.

1 Do you --

2 A It was a granny cart.

3 Q Okay. So you described it as a stroller to the police in your  
4 statement but it was a granny cart?

5 A Yeah, granny cart. A little -- what the old -- little old people  
6 use to put their groceries in.

7 Q Okay. So it's like a basket and you pull it --

8 A Yeah, it's a little basket on four wheels.

9 Q Okay. And that was a basket that was -- it wasn't enclosed  
10 completely but it had like wire around it, like a little wire fence or  
11 something.

12 A Wire all the way around it.

13 Q Okay. And do you remember telling the police that you could  
14 see underneath the stroller and that's -- you -- that's the granny cart that  
15 you were describing?

16 A Right. That's when I -- you know, when I first heard yelling I  
17 could see, you know, the feet under there and then I got up to see what  
18 was going on.

19 Q Okay.

20 A Because I didn't know what was going on around me and I  
21 want to know who was around me. And that's when it started.

22 Q Because you don't know who's associated with who and it's a  
23 dangerous place.

24 A It's very dangerous.

25 Q All right. Thank you very much.

1           A       Uh-huh.

2           THE COURT: Anything further, Mr. Rogan?

3           MR. ROGAN: No, Your Honor.

4           THE COURT: Anything from our jurors? No? Yeah. Oh, put  
5 your hand up for me, thank you.

6                       [Bench Conference Begins]

7           THE COURT: [Unintelligible].

8           UNIDENTIFIED SPEAKER: [Unintelligible].

9           THE COURT: If I clarify her -- if she said that and when and  
10 what she can tell me about it, I'm sure she's just -- I don't know.

11          MS. BLUTH: While we're up here --

12          THE COURT: I'll ask the guy first.

13                     [Bench Conference Concludes]

14          THE COURT: I'm sorry you said -- what was meant by they  
15 came back over. When in her testimony -- what is it that you're asking?

16          JUROR NUMBER 12: Very early on.

17          THE COURT: Okay.

18          JUROR NUMBER 12: Very early -- she said that they came  
19 back over as though they had been there before. That's what I mean by  
20 that.

21          THE WITNESS: Oh, no, they weren't there.

22          THE COURT: They meaning --

23          JUROR NUMBER 12: The two --

24          THE COURT: -- the two individuals that were involved --

25          JUROR NUMBER 12: Yes.

1 THE COURT: -- with Mr. --

2 JUROR NUMBER 12: Yes.

3 THE COURT: -- Phillips?

4 JUROR NUMBER 12: Yes, Your Honor.

5 **EXAMINATION BY THE COURT**

6 BY THE COURT:

7 Q Okay. So if during your earlier testimony you used the phrase  
8 they came back over, what did you mean by that?

9 A I wasn't referring to anything. It's like they were across the  
10 street --

11 Q Okay.

12 A -- and they came over.

13 Q Got it. They had not been there earlier and came back?

14 A No.

15 THE COURT: Okay. All right.

16 Mr. Rogan, any questions based on that.

17 MR. ROGAN: No, Your Honor.

18 THE COURT: All right. Mr. Pike?

19 MR. PIKE: No, Your Honor.

20 THE COURT: Okay.

21 MR. PIKE: Your Honor, while we're up here.

22 THE COURT: Okay.

23 [Bench Conference Begins]

24 MS. BLUTH: So in regards to the Matt Lay situation --

25 THE COURT: We're done with her, right?

1 MS. BLUTH: Yeah.

2 [Bench Conference Concludes]

3 THE COURT: Deanna, you're done, you can -- you're  
4 excused. Thank you very much for coming to court, I appreciate it.

5 MR. PIKE: Thank you, Ms. Lopez.

6 THE COURT: I didn't want to make you sit here while we're  
7 having this conversation.

8 [Bench Conference Begins]

9 THE COURT: All right. Go ahead.

10 MS. BLUTH: So Mitchell Johnson is here. He doesn't want to  
11 wait for Josh, he wants to testify today and he doesn't need Matt to sit  
12 here, so I told him, well I have to talk to Judge about that, I don't know if  
13 Judge -- it's Judge preference --

14 THE COURT: Well, I mean, how long is he going to be?

15 MR. PIKE: He'll --

16 MS. BLUTH: Mitchell? Well he's not going up right now and  
17 Ramiro's a long time.

18 THE COURT: Okay. All right. So --

19 MS. BLUTH: So if you want Matt -- I can tell Matt at what time  
20 to come back.

21 THE COURT: Yeah, well we -- I'm guessing that if we break  
22 at 12:30, we wouldn't be starting until --

23 MR. PIKE: And I don't think we can go forward without his  
24 attorney being present because --

25 THE COURT: Yeah, I'm going to have Matt come back but I

1 would tell him --

2 MR. PIKE: Yeah.

3 THE COURT: -- he doesn't need to be back until 1:45/2:00.

4 MR. PIKE: Okay.

5 MS. BLUTH: That's what we're going to tell Matt?

6 THE COURT: Yeah.

7 MS. BLUTH: Yeah. And -- well let me look at my witness list  
8 because I don't even know if Mitchell is the first one after lunch --

9 THE COURT: Oh --

10 MS. BLUTH: -- you know what I mean?

11 THE COURT: -- well then tell Matt that --

12 MS. BLUTH: I'll text him.

13 THE COURT: -- we'll call him and give him about 15/20  
14 minutes' heads up if that's okay.

15 MS. BLUTH: Yeah.

16 THE COURT: Or just ask him how much heads up does he  
17 want when I want him to come back.

18 MS. BLUTH: Sounds good.

19 THE COURT: Hey Matt, come here.

20 MR. LAY: Sorry.

21 THE COURT: No, it's okay. First off, I very much appreciate  
22 you helping.

23 MR. PIKE: Extra time.

24 MR. LAY: Yeah.

25 THE COURT: I know he doesn't want you to come back, but I

1 want you to be here.

2 MR. LAY: I'm happy to be here.

3 THE COURT: So how much lead time do you need to get  
4 over here?

5 MR. LAY: Ten minutes.

6 THE COURT: Okay.

7 MR. LAY: I'm across the street.

8 THE COURT: So they're not sure when they're going to call  
9 him --

10 MS. BLUTH: It'll be some time --

11 THE COURT: -- so go back to your office --

12 MS. BLUTH: -- this afternoon.

13 THE COURT: -- and when we get that figured out, I'll make  
14 sure we give you at least 20 minutes or something to come back.

15 MR. LAY: Thank you. I appreciate it.

16 THE COURT: Okay. All right.

17 MY. LAY: I'll be back.

18 THE COURT: Thank you.

19 [Bench Conference Concludes]

20 THE COURT: Okay. State can call their next witness.

21 MS. BLUTH: State calls Ramiro Romero.

22 Oh, okay, we're going to go option, Bianca Redden.

23 THE COURT: Pardon?

24 MS. BLUTH: We're calling Bianca Redden.

25 THE COURT: Different option, okay.



1 MS. BLUTH: Yeah.

2 **BIANCA REDDEN**

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

5 THE CLERK: Thank you. Please be seated.

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

7 THE WITNESS: Bianca Redden, B-I-A-N-C-A, R-E-D-D-E-N.

8 THE COURT: All right. Thank you, Ms. Redden.

9 Ms. Bluth.

10 MS. BLUTH: Thank you, Judge.

11 **DIRECT EXAMINATION**

12 BY MS. BLUTH:

13 Q Ms. Redden, having spoken with you before I know that your  
14 voice is actually kind of quiet, so that -- see that little red light in front of  
15 you, that's a microphone, so if you just keep your voice up a little bit, it'll  
16 pick your voice up and it'll be able to hear it, okay. I know that that's  
17 hard, I apologize.

18 So I'd like to ask you a few questions. Do you know an  
19 individual by the name of Mitchell Johnson?

20 A Yes.

21 Q And how do you know him?

22 A He's my boyfriend.

23 Q Okay. And how long have you and Mitchell been together?

24 A Eight years.

25 Q Eight years. And do you share some children together?

1           A     Yes.

2           Q     Now does Mitchell Johnson have a brother by the name of  
3 Michael McNair?

4           A     Yes.

5           Q     And do you see Mr. McNair in the courtroom today?

6           A     Yes.

7           Q     All right. Can you just describe an article of clothing that he's  
8 wearing, so we know who you're talking about?

9           A     Blue suit.

10          Q     Blue suit. And I see you looking in a certain direction, which  
11 table is he sitting at?

12          A     The left.

13          Q     Okay.

14                MS. BLUTH: Your Honor, may the record reflect the  
15 identification of the Defendant.

16                THE COURT: The gentleman on the left or the gentleman on  
17 the right at the table? They're both in blue suits.

18                THE WITNESS: Left.

19                THE COURT: Left, thank you.

20                All right. Yes, it'll reflect the identification of Mr. McNair.

21 BY MS. BLUTH:

22          Q     Thank you, Bianca.

23                I would like to turn your attention directly to September 14<sup>th</sup> of  
24 2017, the evening hours. Do you remember about what time you -- well  
25 first of all, were you working that evening?

1           A     Yes.

2           Q     And do you remember about what time you got off work?

3           A     9:00.

4           Q     9:00 p.m.

5           A     Yeah.

6           Q     All right. When you got off work, did you go directly home or

7 somewhere else?

8           A     We was on our way home and then my dude got a phone call.

9           Q     Okay. And I should have asked you, when you got off work,

10 did you have a vehicle to drive home in, or did your boyfriend come and

11 pick you up?

12          A     Came and picked me up.

13          Q     All right. So who was driving then?

14          A     Mitchell.

15          Q     Mitchell Johnson?

16          A     Uh-huh.

17          Q     All right. So you said that Mitchell came and picked you up

18 and you were on your way and you said your dude got a phone call?

19          A     [No audible response - nods head yes].

20          Q     Is that a yes?

21          A     Yes.

22          Q     All right. After he receives that phone call -- well first of all,

23 could you hear what was going on in that conversation?

24          A     No.

25          Q     All right. Did you know who was on the other end of that

1 phone call?

2 A After he hung up, yeah.

3 Q All right. After that phone call, do you and Mitchell go to meet  
4 the person that was on the other end of that phone call?

5 A Yes.

6 Q All right. And where do you go?

7 A To Anderson Dairy.

8 Q And who do you go there to meet?

9 A Michael.

10 Q Michael McNair?

11 A [No audible response - nods head yes].

12 Q Is that a yes?

13 A Yes.

14 Q I know, I'm sorry. We have all these rules in court.

15 Okay. So when you guys are driving there, can you explain to  
16 me, what does your vehicle look like?

17 A A white Suburban.

18 Q Does that Suburban -- do you know about what year it is?

19 A I think a '96/'95.

20 Q So a little bit older?

21 A Yes.

22 Q And does it have any damage on any part of the vehicle?

23 A The passenger side, a dent.

24 Q Are we talking a little dent or a pretty big gash?

25 A A big dent.

1 Q All right. When you guys pull up to the property, is Mitchell still  
2 driving?

3 A Yeah.

4 Q And how do you get on to the property?

5 A Mike goes at the gate to open it.

6 Q And does he in fact open the gate?

7 A Yeah.

8 Q And then when he opens the gate, do you guys drive in?

9 A Yes.

10 Q Okay. What happens once you guys enter into Flavors? Or  
11 you referred to it as Anderson Dairy?

12 A Mitchell got out the car to meet his brother at the gate.

13 Q Do you remember what Mitchell was wearing that night?

14 A Some jeans and a shirt.

15 Q When he got out of the vehicle, did he have his shirt on or off?

16 A Most likely off.

17 Q And when you say most likely off, why do you say that?

18 A Because he always have his shirt off.

19 Q Okay.

20 A He sweats.

21 Q So you said that he got out of the vehicle and went to meet  
22 Mike at the gate?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

1 Q And where were you seated in the vehicle?

2 A The passenger.

3 Q The front passenger?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 Q Okay. I'll just keep reminding you. I know it's annoying. I'm  
8 sorry.

9 All right. So when you're in the passenger seat, can you see  
10 after -- so when Mr. McNair and Mitchell are at the gate, can you see  
11 which way they go from the gate?

12 A No, I really wasn't paying no attention to them.

13 Q All right.

14 A I just sat in the car, I was playing on my phone.

15 Q Okay. Why did you believe -- or what did you believe Mitchell  
16 was going to do?

17 A Pick up some money.

18 MR. PIKE: OBJECTION, speculation.

19 THE COURT: Well --

20 MS. BLUTH: Did --

21 THE COURT: -- I'll sustain the objection.

22 BY MS. BLUTH:

23 Q Did Mitchell speak to you about what he was about to do?

24 A Yes.

25 Q And what did he say?

1           A     To pick up some money.

2                   MR. PIKE: Objection, Your Honor.

3                   MS. BLUTH: State of mind.

4                   THE COURT: Well, there are a variety of exceptions that I'll  
5 allow that under presence, impression, an existing state of mind, you  
6 can go ahead.

7                   MS. BLUTH: Okay.

8 BY MS. BLUTH:

9           Q     Go ahead. I'm sorry, say it again.

10          A     To pick up some money.

11          Q     From Michael?

12          A     Yes.

13          Q     Okay. While you were in the car, you said you were playing  
14 on your phone, right? You're not paying attention.

15          A     Uh-huh.

16          Q     At any point do you look up or look out of the car to see where  
17 they are or what's going on?

18          A     No.

19          Q     Do you ever hear anything that causes you to look up?

20          A     No.

21          Q     What is the next thing that kind of catches your attention?

22          A     Mitchell called me to come pick him up from outside the gate.

23          Q     All right. So when he calls you, do you move into the driver's  
24 seat?

25          A     Yes.

1 Q And then where do you go?

2 A Out the gate.

3 Q When you get out of the gate, do you pick up Mitchell?

4 A Yes.

5 Q Where do you pick Mitchell up at?

6 A Out the gate.

7 Q Okay. Like right at the entry-exit spot?

8 A No, like on the street, on -- coming out onto the side street?

9 Q So on Searles?

10 A Yeah.

11 Q Okay. Do you see Michael?

12 A I think he was at the gate.

13 Q Do you remember what Michael was wearing that night?

14 A No, because I really didn't even just like pay attention to him.

15 Q Okay. Is there a signature size difference between Michael

16 McNair and his brother, Mitchell Johnson?

17 A Yeah, in weight, but he taller.

18 Q Okay. Who is taller?

19 A Michael.

20 Q How would you say Michael McNair's body type, not talking

21 about height but more weight, how his body build is different than

22 Mitchell's?

23 A Slimmer.

24 Q When you pick up Mitchell, does he say anything to you about

25 what had just occurred in the street?



1           A     No, he said let's go.

2           Q     When he says let's go, does he seem kind of panicked or like  
3 let's go, let's get out of here, or anything like that?

4           A     No.

5           Q     No?

6           A     No.

7           Q     Okay. In the following day, do you see like news alerts that --  
8 like pictures of your vehicle?

9           A     No, because I really don't watch the news but I did get phone  
10 calls.

11          Q     And do you become aware that your vehicle is kind of being  
12 released and being shown on the news?

13          A     Yes.

14          Q     Do you have any conversations with Mitchell like why is our  
15 car out on the news?

16          A     Yeah.

17          Q     Does he discuss with you what had happened?

18          A     No, he just said some stupid stuff --

19               MS. SIMPKINS: Objection, hearsay.

20               THE COURT: Well -- all right, I'll sustain the objection.

21               MS. BLUTH: Okay.

22 BY MS. BLUTH:

23          Q     Do you know an individual by the name of either know him or  
24 know of him, by the name of Damar House?

25          A     Kind of but not really.

1 Q How do you know him?

2 A Mike, Tyesha, I think that's her cousin or somebody.

3 Q Okay. So Mr. McNair, has a wife by the name of Tyesha?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 Q And Mr. Damar House is related to Tyesha.

8 A Yes.

9 Q So I am -- there is a TV in front of you, right to your left.

10 A Oh.

11 THE COURT: It'll come up in just a minute, Ms. Redden.

12 MS. BLUTH: And what I'm going do -- Judge, this is State's 1.

13 THE COURT: Okay.

14 MR. PIKE: For the record, this has already been introduced

15 into evidence.

16 THE COURT: Yeah.

17 MR. PIKE: Thank you.

18 MS. BLUTH: Just give me one second so I can fast forward it

19 to the right time.

20 All right, Judge, I started it at 22:08 for the record.

21 THE COURT: Okay.

22 [Surveillance video playing]

23 BY MS. BLUTH:

24 Q Bianca, if you could watch off of the top of the screen where

25 the gate opens, I'm going to ask you a few questions in a moment,

1     okay?

2                     So right now at 22:23, we see a vehicle pulling up. Do you  
3     recognize that vehicle?

4             A     Yes.

5             Q     Is that your vehicle?

6             A     Yes.

7                     [Surveillance video continues playing]

8     BY MS. BLUTH:

9             Q     Now we see someone getting out of the driver's side at about  
10    22:48. Who's that person?

11            A     Mitchell.

12            Q     Okay. Does he have his shirt off?

13            A     Yes.

14            Q     Now, we see kind of a black something big on top of his head.  
15    What is that?

16            A     Probably a hat.

17            Q     Was it common for him to sometimes wrap his shirt around his  
18    head?

19            A     [No audible response - shakes head no].

20            Q     No? Okay.

21                    Keep watching.

22                    [Surveillance video continues playing]

23    BY MS. BLUTH:

24            Q     Did you see him just putting on something?

25            A     His shirt.

1 Q Okay. So now in looking at the vehicle right here -- well and I  
2 can back up. Did you see yourself in the front passenger or did you --

3 A Oh no, I had went in the back seat.

4 Q I'm sorry, say it again.

5 A That's at the point I went in the back seat to grab something.

6 Q Okay. So during this time period when Mitchell is outside of  
7 the vehicle, you're just in the back seat of the Suburban, on your phone?

8 A Yeah, I was looking for something.

9 Q Okay.

10 THE COURT: And just to be clear, are you talking about the  
11 middle row in a Suburban or the back, back?

12 THE WITNESS: The middle row.

13 THE COURT: Middle row, okay. Thank you.

14 [Surveillance video continues playing]

15 BY MS. BLUTH:

16 Q I'm going to let this play for a second, Bianca but I'm going to  
17 ask you a question. When Mitchell calls you, did you say that the only  
18 words he -- does he -- what does he say when he calls you for you to go  
19 get him?

20 A He just said come get me.

21 Q Did he tell you like where to come get him?

22 A Yeah, out the gate. He just said come out the gate and come  
23 get me.

24 Q Okay.

25 [Surveillance video continues playing]

1 BY MS. BLUTH:

2 Q At any point in time by the time Mitchell could -- I'm sorry, at  
3 25:27, is that you getting out of the back passenger and getting in?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 [Surveillance video continues playing]

8 BY MS. BLUTH:

9 Q When you get to that gate, how many people are at the gate?

10 A I didn't really pay attention.

11 Q I'm sorry?

12 A I really wasn't paying attention.

13 Q Was Michael at that gate?

14 A Yes.

15 Q And then after we just saw at about 26:10, you exit the  
16 property, where do you go from there?

17 A Home.

18 Q Thank you so much, Ms. Redden.

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

21 THE COURT: Okay. Mr. Pike or Ms. Simpkins?

22 MS. SIMPKINS: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MS. SIMPKINS:

25 Q Hi, Ms. Redden. My name is Melinda Simpkins and I help to

1 represent Mr. McNair. Now you know Michael, right?

2 A [Nods head yes]. Yeah.

3 Q Okay. I have to have you answer out loud because --

4 A Yes.

5 Q -- they're recording. Thank you.

6 And how long have you known him?

7 A A little bit before I met Mitchell.

8 Q Okay. How long ago was that?

9 A Eight years ago.

10 Q All right. So you've known Michael to have a stutter, right?

11 A Yeah.

12 Q Pretty severe isn't it, sometimes?

13 A [No audible response - nods head yes].

14 Q Is that a yes?

15 A Yes.

16 Q Okay. Thank you.

17 Now you did your interview with the police on September 19<sup>th</sup>,

18 2017, right? A few days after this incident at Flavors took place?

19 A Yes.

20 Q Okay. Thank you. And do you remember telling the police

21 officers -- well when they asked you if Mitchell had told you anything

22 about what happened they said no nothing -- couldn't nothing happen in

23 the two seconds while he was there. Do you remember saying that to

24 the police?

25 A Yes.

1 Q Okay. So you basically told police you came in, Mitchell got  
2 his ten bucks and you guys left, right?

3 A Yes.

4 Q Okay. And you also told police that you've never seen  
5 Michael with a gun before, correct?

6 A Yes.

7 Q And you also told police that Michael wasn't there initially and  
8 he showed up on the outside of the gate. Did you guys arrive before on  
9 video and then drive around and come back or was that the first -- do  
10 you understand what I'm asking you?

11 A [No audible response - shakes head no].

12 Q Okay. When you first pulled up to the gate, was that the first  
13 time you had been to the gate or had you been to the gate before then?

14 A That's the first time we went to the gate.

15 Q The first time, okay.

16 So when you told police that Michael wasn't there initially, is  
17 that not true?

18 A I must didn't see him coming in because I had my head  
19 down --

20 Q Okay. So --

21 A -- but he obviously goes --

22 Q -- by that time that you pull into the gate at Flavors, you are  
23 already in the back seat?

24 A Yes.

25 Q Okay. And so you really didn't see much of anything was

1 going on except Mitchell stopped and got out of the car.

2 A Yes.

3 Q Is that fair to say?

4 A Yes.

5 Q Okay.

6 MS. SIMPKINS: Court's indulgence.

7 BY MS. SIMPKINS:

8 Q Do you recall what Mitchell's phone number was at the time?

9 A 702-628-0805, same number it'd been.

10 Q 0805. And what was your phone number? Did you have the  
11 same phone number or --

12 A [No audible response - nods head yes].

13 Q Same phone number as --

14 A Oh, no. 702-472-5907.

15 Q 5907. Okay. And did Mitchell call Michael to get the \$10 or  
16 did Michael call Mitchell to get the \$10?

17 A Well, Mitchell called Michael earlier that --

18 MS. BLUTH: Objection -- sorry, I -- just -- once again I'm  
19 going to object as to speculation; only if she knows.

20 MS. SIMPKINS: Oh, if you know.

21 THE COURT: All right.

22 MS. SIMPKINS: If you don't know, tell me.

23 BY MS. SIMPKINS:

24 A From my knowledge is that he was supposed to call him  
25 earlier to ask him for it and he was supposed to call him back.



1 Q Okay. So when you say he was supposed to call him, was  
2 Mitchell supposed to call Michael?

3 A No, Michael was supposed to call Mitchell.

4 Q Michael was supposed to call Mitchell, okay --

5 A Uh-huh.

6 Q -- and tell him that he had the ten bucks, come get it.

7 A Uh-huh.

8 MS. SIMPKINS: No further questions. Thank you, Ms.  
9 Redden.

10 THE COURT: Okay. Ms. Bluth.

11 MS. BLUTH: I don't have any follow-up, Your Honor, thank  
12 you.

13 THE COURT: Anything from our jurors?

14 No, all right.

15 Ms. Redden, thank you very much for your time. I appreciate  
16 it, you are excused.

17 You all can call your next witness.

18 MS. BLUTH: Okay. And then if we could just approach  
19 briefly, Judge.

20 THE COURT: Sure.

21 [Bench Conference Begins]

22 MS. BLUTH: We do have our -- the witnesses lined up. I  
23 just -- the next witness is going to be Ramiro Romero and it's going to be  
24 a long one. I feel -- we feel fine starting him, I just didn't want -- I just  
25 wanted to make sure that was okay with the Court.

1 THE COURT: No. Let's just go ahead and do lunch now  
2 then.

3 MS. BLUTH: Okay.

4 THE COURT: It'll be a little longer today, so I'll tell them we're  
5 going to start back at 1:30.

6 MS. BLUTH: Okay.

7 THE COURT: Okay.

8 MS. BLUTH: Sounds good.

9 [Bench Conference Concludes]

10 THE COURT: All right, folks, we're going to go ahead and  
11 take our lunch recess now. The next witness is going to be a little bit  
12 longer and I don't want to have to start and stop that.

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

21 It's going to be a little longer today for lunch. I have a meeting  
22 to go to, I'm sorry. But we'll start back at 1:30, okay? Thank you very  
23 much.

24 THE MARSHAL: All rise for the jurors.

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[Outside the presence of the jury]

THE COURT: Anything outside the presence?

MR. ROGAN: Not from the State, Your Honor.

THE COURT: No.

MS. SIMPKINS: No, Your Honor.

THE COURT: Okay.

[Recess taken at 12:09 p.m.]

[Trial resumed at 1:44 p.m.]

[Outside the presence of the jury]

THE COURT: You guys have anything outside the presence?

MR. PIKE: No, Your Honor.

MR. ROGAN: Judge, I just -- we have three new exhibits, 123 through 125. I think we're going to move to admit them without objection from the Defense?

THE COURT: No objection?

MR. PIKE: No. Your Honor, the -- it's -- rather than play the entire video, they're -- it's -- one of them is just a component part. All of the videos are going back to the jury --

THE COURT: Okay.

MR. PIKE: -- the unedited ones, as well as the edited ones. And then the other ones are just photographs.

MR. ROGAN: Right.

THE COURT: Okay. So no objection?

MS. SIMPKINS: No objection.

MR. PIKE: Nope.

1 THE COURT: Okay. Those will be admitted.

2 **[STATE'S EXHIBIT NUMBERS 123 to 125 ADMITTED]**

3 MR. PIKE: It's a long way of saying no objection.

4 THE COURT: It's a long way of saying no objection, okay.

5 MR. PIKE: And I can't bill by the word anymore.

6 [In the presence of the jury]

7 THE MARSHAL: All rise for the jurors.

8 THE COURT: You all can be seated, thank you.

9 We will be back on the record. Mr. McNair, his attorneys,

10 State's attorneys are present. Jurors are present as well.

11 We're going to continue on with the State's case in chief. You

12 can call your next witness.

13 MR. ROGAN: The State calls Ramiro Romero.

14 **RAMIRO ROMERO**

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

16 follows:]

17 THE CLERK: Thank you, please be seated.

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

19 THE WITNESS: My name is Ramiro Romero.

20 THE COURT: How do you spell your first name, Mr. Romero?

21 THE WITNESS: R-A-M-I-R-O.

22 THE COURT: Last name?

23 THE WITNESS: R-O-M-E-R-O.

24 THE COURT: All right. Thank you very much.

25 Mr. Rogan.

1 MR. ROGAN: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 BY MR. ROGAN:

4 Q Mr. Romero, were you working at Unified Container here in  
5 Las Vegas, Clark County, Nevada, back on September 14<sup>th</sup> of 2017?

6 A Yeah.

7 Q Is that a yes?

8 A Yes.

9 Q Okay. How long have you had that job?

10 A I don't remember.

11 Q Okay.

12 A It was like probably four or five weeks.

13 Q Okay. And how did you get that job?

14 A I got recommended.

15 Q By whom?

16 A My brother.

17 Q What was the shift that you usually worked?

18 A Graveyard. Well not -- yeah, graveyard.

19 Q What time did you usually come on?

20 A 7:00 to 4:30. Most likely.

21 Q And what is it that you did at Unified Container?

22 A Pressed down plastic, make gallon containers, put them in big  
23 old plastic bags.

24 Q So you made milk jugs or --

25 A Yeah, milk and juice --

1 Q -- you carted out milk jugs.

2 A -- jugs, yeah.

3 Q Okay. And at the time that you -- by September 14<sup>th</sup> of 2017,  
4 did you have a uniform?

5 A No.

6 Q Showing you State's Exhibit 42. If you could look on that  
7 screen to your left, is that you, as you were dressed for work on  
8 September 14<sup>th</sup> of 2017?

9 A Yep. Yes, sir.

10 Q All right. And in this photograph are you wearing -- I  
11 apologize, the glare is difficult. Are you wearing a black t-shirt?

12 A Yeah, a black tee and just some jeans.

13 Q Okay. What color jeans are they, if you can tell?

14 A Gray, I guess.

15 Q And what color shoes?

16 A Red.

17 Q All right. I'm going to turn off that lamp to see if it's -- is that  
18 more clear with the lamp off the Elmo?

19 A Yeah.

20 Q Okay. Is that what you usually wore when you worked at  
21 Unified Container?

22 A Yeah, just some jeans and a shirt.

23 Q Okay. When you were working did you also have to wear  
24 some sort of a hairnet or something on your head?

25 A Yeah, and a beard net for my beard.

1 Q For your facial hair?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Who was your supervisor on the overnight shift?

6 A Mike.

7 Q Do you know Mike's last name?

8 A No, we're not that close.

9 Q Do you see Mike here in court?

10 A Yes, sir.

11 Q Could you please point to him and tell me something he's

12 wearing right now?

13 A A suit.

14 Q What color is the suit?

15 A Blue.

16 THE COURT: We have two gentlemen at the table are

17 wearing blue suits. Is he on the right or the left?

18 THE WITNESS: The left, I guess.

19 THE COURT: Okay. Thank you.

20 The record will reflect the identification of the Defendant.

21 BY MR. ROGAN:

22 Q Now, did Mike have a uniform?

23 A Yeah.

24 Q All right. Showing you State's Exhibit 46. Is this Michael

25 McNair depicted in that photograph?

1           A     Yes, sir.

2           Q     And is that the uniform that he would usually wear on the  
3 overnight shift?

4           A     Yes, sir.

5           Q     And is this how you remember Mr. McNair being dressed on  
6 the evening of September 14<sup>th</sup> of 2017?

7           A     Yes, sir.

8           Q     And so you agree with me that in this photograph he's wearing  
9 a light blue shirt that says Unified Container over the left chest and Mike  
10 on the right?

11          A     Yes, sir.

12          Q     And can you tell us if you can what kind of pants he's  
13 wearing?

14          A     Regular work jeans.

15          Q     And --

16          A     Blue work jeans.

17          Q     All right. And shoes?

18          A     Black shoes.

19          Q     And what about anything on his head?

20          A     A hairnet.

21          Q     Okay. So there's something on his head?

22          A     Yeah.

23          Q     All right. I'm going to turn the lamp off again if you could --

24               MR. ROGAN: Your Honor, may I approach the witness?

25               THE COURT: Sure.



1 BY MR. ROGAN:

2 Q Can you see this more clearly now, sir?

3 A Yeah, it's a do-rag.

4 Q It's a do-rag. What color is it?

5 A Black.

6 Q And can you describe Mr. McNair's hair for us?

7 A Braids.

8 Q All right. Do those braids extend down to about the neck?

9 A Yeah, I guess. I don't know the length of braids.

10 Q Now at some point on September 14<sup>th</sup>, 2017, when you're at  
11 work, does Michael come up to you and ask you to come outside?

12 A Yes.

13 Q Do you remember what you were doing just before that?

14 A Working.

15 Q Okay.

16 MR. ROGAN: For the record, Your Honor, this is the State's  
17 Exhibit 125.

18 BY MR. ROGAN:

19 Q Mr. Romero, prior to your testimony here today, did we just a  
20 short while ago review a video together?

21 A Yeah.

22 Q Okay. Is that a yes?

23 A Yes, sir.

24 Q All right. I'm going to start this video --

25 MR. ROGAN: Court's indulgence.

1 MR. PIKE: For the record, Your Honor, this has been  
2 introduced by way of stipulation and the Defense has a copy.

3 THE COURT: Okay. Thank you.

4 BY MR. ROGAN:

5 Q All right. For the record, this is State's Exhibit 125. It stopped  
6 at -- on this video itself says 12:15 -- 12 hours 15 minutes and 15  
7 seconds.

8 A Uh-huh.

9 Q Mr. Romero, you remember this happening a few hours before  
10 midnight, correct?

11 A Yes, sir.

12 Q All right. So what are you doing right now at this time in the  
13 video?

14 A Working.

15 Q Okay. And behind you, is that the milk jugs that you would  
16 cart up onto the trailer?

17 A Yes, sir.

18 Q Okay. I'm going to play it for a little bit.

19 [Surveillance video playing]

20 BY MR. ROGAN:

21 Q At 12:15 and about 24 seconds, you're talking to someone.  
22 Who is that person?

23 A My coworker.

24 Q Do you remember his name?

25 A No.

1 Q Did he have the same job as you did?

2 A Yes, sir.

3 Q And where's your coworker bringing those, what appear to be  
4 plastic jugs?

5 A In the trailer.

6 [Surveillance video continues playing]

7 BY MR. ROGAN:

8 Q Now, I'm stopping the video at 12:16 and 58 seconds. Can  
9 you describe for the record what you just did, Mr. Romero?

10 A Mike called me and I told him what's up.

11 Q So did you run from where you were loading the trailer up  
12 towards the bottom of the frame, up to the top of the frame to meet with  
13 Mr. McNair?

14 A Yes, sir.

15 Q Okay. And what did he say to you at that point?

16 A Hey, let's go handle something outside. There's people  
17 talking shit.

18 Q He said there's people talking shit, we need to handle  
19 something outside?

20 A Yes, sir.

21 Q Okay. And where do you go from here?

22 A Outside.

23 [Surveillance video continues playing]

24 BY MR. ROGAN:

25 Q All right. I'm stopping the video now at 12:17:02, where are

1 you now, Mr. Romero?

2 A Outside in the backyard -- I mean, in the parking lot.

3 Q Right. Now are you closest to us in this frame or further away  
4 from us?

5 A Closer.

6 Q In other words, are there two people outside?

7 A Yes.

8 Q All right. And are you the person that's closest to us?

9 A Yes.

10 Q All right. Wearing the hairnet?

11 A Yes.

12 Q And, again, who's on your -- what would be your left?

13 A Mike.

14 Q Mike McNair?

15 A Yes.

16 Q Okay. Where are you looking?

17 A To the gate?

18 Q Why?

19 A Because there's two people out there bothering us.

20 Q Were they saying anything to you at that point?

21 A They just kept on yelling. You know, crackheads, you know,  
22 they're just yelling. Causing commotion.

23 Q You're calling them crackheads causing commotion?

24 A Yeah.

25 Q And are --

1           A     You live in Vegas.

2           Q     Are you saying anything back to them?

3           A     No.

4           Q     What about Mr. McNair, is he saying anything back to them at  
5 that point?

6           A     Yeah.

7           Q     What is he saying?

8           A     He's telling them to step back away from the gate, can you  
9 please leave us alone? We're trying to work.

10                         [Surveillance video continues playing]

11       BY MR. ROGAN:

12           Q     All right. I stopped the video again, at 12:17:04. Can you  
13 describe for us what Mr. McNair just did?

14           A     He pointed at the gate.

15           Q     With what?

16           A     His phone, I don't know.

17           Q     Is there something --

18           A     It looks like his phone.

19           Q     There's something in his hand?

20           A     Yeah. It's black.

21           Q     And what is it?

22           A     I can't really see. This is not good framing.

23           Q     Okay. Well you remember testifying at a prior hearing, right?

24           A     Yeah.

25           Q     All right. And during that testimony we stopped at just about

1 the same spot in this video, remember that?

2 A Not really.

3 Q Okay. Do you remember describing for the record at that  
4 hearing, when I asked, where are you guys talking to about at this point  
5 and you answered he's pointed the gun that was causing the  
6 disturbance.

7 A Yeah. Now I remember, yeah.

8 Q All right. You remember testifying that it was a gun?

9 A Yes, sir.

10 Q Okay.

11 [Surveillance video continues playing]

12 BY MR. ROGAN:

13 Q I'm going to jump ahead a bit if I could.

14 Now, at some point, around 12:17 and 46 seconds where it's  
15 stopped now, at some point do you and Mike -- Mr. McNair walk away  
16 from where you're standing by the building towards the gate, correct?

17 A Yes, sir.

18 Q Why were you doing that?

19 A Because they kept on running their mouths.

20 Q Who did?

21 A Two people outside.

22 Q And how is that making you feel?

23 A Annoyed. I'm just trying to work.

24 Q What about Mike?

25 A Annoyed too.

1 Q So at about 12:18 and 6 seconds, can you describe for us  
2 what you're doing?

3 A I'm conversating with them at the gate.

4 Q With whom?

5 A With Mike.

6 Q All right. What about the, what you describe as two homeless  
7 men?

8 A Just doing what they do, just talk shit.

9 Q So you're still talking through that fence?

10 A Yeah. And this one they just started walking away.

11 Q Okay.

12 [Surveillance video continues playing]

13 BY MR. ROGAN:

14 Q At 12:18 and 30 seconds, where is Mr. McNair going to right  
15 now?

16 A Away.

17 Q Do you recall where he goes?

18 A No, to the parking lot I guess; to his car or his truck, whatever.

19 Q Do you remember what he did at his car? At his truck, rather?

20 A No, sir, I wasn't there.

21 Q All right. And you remember that -- stopping it now at 12:18  
22 and 51 seconds. Do you see that black truck in the screen right now?

23 A Yes, sir.

24 Q Is that Mr. McNair's truck?

25 A Yes, sir.

1 Q And that's -- you knew him to drive that truck?  
2 A What happened?  
3 Q You knew him to drive that truck?  
4 A Yeah.  
5 Q All right. And looking to the left, do you -- are you yourself a  
6 little bit away from that truck as well?  
7 A Yeah.  
8 Q And you're watching Mr. McNair?  
9 A Yeah.  
10 Q Is that a yes?  
11 A Yes, sir.  
12 Q So what is the plan at this point? Do you have one?  
13 A Not really.  
14 Q All right.  
15 A We have to call security at this point and that's why security  
16 came.  
17 Q That's what you intended to do?  
18 A That's what I thought Mike was going to do.  
19 Q What did you intend to do?  
20 A To follow Mike. He's my boss, I have to listen to him.  
21 [Surveillance video continues playing]  
22 BY MR. ROGAN:  
23 Q So it's now 12:19 and about 12 seconds. What's going on  
24 right now?  
25 A Me and Mike walked to the gate.



1 Q Who's in front?

2 A Mike.

3 Q So, again, you're following Mr. McNair?

4 A Yeah.

5 Q Yes?

6 A Yes, sir.

7 [Surveillance video continues playing]

8 BY MR. ROGAN:

9 Q What did Mike just do at 12:19 and 34 seconds?

10 A Open the gate for the security.

11 Q Is Mike the person that had the gate key?

12 A Yeah, him and the security guard always had the key. Or the  
13 supervisor in charge.

14 Q Did you have a gate key?

15 A No, sir.

16 Q So you were not able to open that gate if you wanted to?

17 A No, sir.

18 Q At 12:19 and 45 seconds, do you see a white truck that has  
19 pulled in --

20 A Yeah, it's a security truck.

21 Q All right. Sorry, I just need to finish the question before you  
22 answer it, all right?

23 A Okay. My bad.

24 Q Do you see a white truck that's pulled into the frame?

25 A Yes, sir.

1 Q And who's truck is that?

2 A The security's.

3 Q Okay.

4 [Surveillance video continues playing]

5 BY MR. ROGAN:

6 Q I'm stopping it at 12:20 exactly. Can you describe for us  
7 what's happening now?

8 A Me and Mike walking off the street -- the sidewalk.

9 Q Do you know what street that is?

10 A No.

11 Q Do you remember it being Searles?

12 A No.

13 Q Okay. But what's this street that it intersects with a little bit  
14 down the way?

15 A I don't know my streets like that.

16 Q Okay.

17 A I don't know none of the -- I'm still new to Vegas, so yeah, I  
18 don't know nothing about the streets like that. I just started working  
19 there too.

20 Q You've lived in Vegas since 11 or 12 years old, correct?

21 A Oh yeah but I'm still not used to the -- I don't drive, I don't --

22 Q Okay.

23 A -- do none of that so I don't know none of these street's  
24 names.

25 Q All right. Do remember talking with the police and they

1 describe the intersection as Searles --

2 A Yeah.

3 Q -- and North --

4 A Yes, sir.

5 Q -- Las Vegas Boulevard.

6 A Yes, sir.

7 Q Okay. So is fair to say at this point that you and Mike are  
8 walking in the direction of North Las Vegas Boulevard?

9 A Yes, sir.

10 Q Now, prior to you and Mike walking in that direction, had you  
11 seen where the -- what you described as the homeless, where they have  
12 gone to?

13 A Yeah, they crossed the street.

14 Q Which street? North Las Vegas Boulevard?

15 A I don't know. They crossed the street, I'm guessing  
16 jaywalking.

17 Q Okay. We'll get to that in a second.

18 Who's in front by the way?

19 A Mike.

20 Q And again, is that -- that security truck as you described it, is it  
21 following you slowly?

22 A He's talking to us, yeah. Or he --

23 Q The person inside's talking to you?

24 A Yeah.

25 Q Is that a yes?

1 A Yes, sir.

2 Q Okay.

3 [Surveillance video continues playing]

4 BY MR. ROGAN:

5 Q All right. At 12:20:16, is it fair to say that at this point you and  
6 Mike have crossed to the south side of Searles Street?

7 A Yes, sir.

8 Q All right. Now, it may be difficult to see, but is there a person  
9 that's walking in front of the two of you?

10 A Yes, sir.

11 [Surveillance video continues playing]

12 BY MR. ROGAN:

13 Q Okay. 12:20:28, is it fair to say that the person that was  
14 walking in front of you has now reached the intersection of North Las  
15 Vegas Boulevard and Searles?

16 A Yes, sir.

17 Q Now is that the -- one of the people that you were having  
18 words with outside?

19 A Yeah.

20 Q Is that a yes?

21 A Yes, sir.

22 Q Okay.

23 [Surveillance video continues playing]

24 BY MR. ROGAN:

25 Q At 12:20 and 44 seconds, are you saying anything to that

1 homeless man at this point?

2 A No, we -- it's a lost cause now.

3 Q I'm sorry, say that again, please.

4 A It's a lost cause now.

5 Q What do you mean by that?

6 A It's pointless to talk to him now. He crossed the street. What

7 am I going to chase him?

8 Q All right. So --

9 A I'm working.

10 Q -- at 12:20:44, he's crossed the street by now?

11 A Yeah, he already jaywalked.

12 Q He jaywalked across North Las Vegas Boulevard?

13 A Yes, sir.

14 Q All right. Now, in between the time that you and Mike were

15 following him down Searles towards North Las Vegas Boulevard, is --

16 are you saying anything -- you yourself saying anything to that man?

17 A No, sir.

18 Q What about Mike?

19 A No, sir.

20 Q Is that man saying anything to you?

21 A Yeah.

22 Q What's he saying?

23 A He's saying why you guys following me. I'm not trying to

24 cause any more trouble, I'm sorry. And then he just jaywalked.

25 [Surveillance video continues playing]

1 BY MR. ROGAN:

2 Q So now it's 12:21 exactly. What's going on right now?

3 A Me and Mike are walking back to work.

4 Q Okay. So as we watch you walk back to work, I just have a  
5 few questions. When you were following that one man to the  
6 intersection of Searles and North Las Vegas Boulevard, what was your  
7 intent in following him?

8 A To beat his ass. I wanted to fight him.

9 Q What about Mike?

10 A Mike just wanted to see.

11 Q Wanted to see what?

12 A Me beat his ass.

13 [Surveillance video continues playing]

14 BY MR. ROGAN:

15 Q All right. It's now 12:21:51, is it fair to say that you and Mike  
16 are now approaching the south gate onto the Flavors property again?

17 A Yes, sir.

18 Q All right. At 12:22 exactly, what are you doing?

19 A Going back to work.

20 Q Are you running back into the same door that you exited from?

21 A Yes, sir.

22 [Surveillance video continues playing]

23 BY MR. ROGAN:

24 Q Now it's 12:22 and 15 seconds. What are you doing?

25 A Talking to my coworker.

1 Q The one who's name you can't remember?

2 A Yes.

3 Q And what are you talking to him about?

4 A About how we almost fought these two guys out there.

5 Q That's what you said to him?

6 A Yes, sir.

7 [Surveillance video continues playing]

8 BY MR. ROGAN:

9 Q Is it fair to say that you're very animated and --

10 A Very hyped, yeah.

11 Q All right.

12 [Surveillance video continues playing]

13 BY MR. ROGAN:

14 Q All right. I'm going to jump ahead. Do you go back to work  
15 doing what you were doing before?

16 A Yes, sir.

17 Q Okay.

18 [Surveillance video continues playing]

19 BY MR. ROGAN:

20 Q Okay. Stopping it now at 12:26 and 27 seconds. Can you  
21 describe for us how you just acted on this video, please?

22 A I was yelling.

23 Q You were yelling?

24 A Yeah.

25 Q And were you clenching your fists down by your side?

1 A Yes, sir.

2 Q Why were you doing that?

3 A Because I was still angry.

4 Q About what had just taken place outside?

5 A Yeah.

6 Q All right.

7 [Surveillance video continues playing]

8 BY MR. ROGAN:

9 Q All right. Stopping now at 12:26 and 29 seconds. What are  
10 we seeing from this camera angle?

11 A Me walking into the trailer for the cardboard, where we put the  
12 gallons in.

13 Q All right.

14 [Surveillance video continues playing]

15 BY MR. ROGAN:

16 Q Can you describe for us what you just did inside that trailer?

17 A Beat that box up -- that cardboard box up.

18 Q With your fists?

19 A Yes, sir.

20 Q And again, was it because you were angry about what had  
21 just taken place outside?

22 A Oh yeah and I have some personal issues of my own at home.

23 [Surveillance video continues playing]

24 BY MR. ROGAN:

25 Q All right. At 12:26 and 40 seconds, who has just come into the



1 same frame where we were looking at the trailer?

2 A Mike.

3 Q Mike McNair?

4 A Yes, sir.

5 Q And what is he wearing right now?

6 A Blue tee, blue jeans.

7 Q His blue uniform?

8 A Yes, sir.

9 Q Okay.

10 [Surveillance video continues playing]

11 BY MR. ROGAN:

12 Q Now is it fair to say that you're coming out of the trailer as he's  
13 walking past the trailer?

14 A Yes, sir.

15 Q Does he say anything to you while you're in that trailer?

16 A Yeah, he said come over here, bro. See if you can try and get  
17 this.

18 [Surveillance video continues playing]

19 BY MR. ROGAN:

20 Q All right. At 12:26 and 46 seconds, does Mr. McNair just turns  
21 towards you as you're both walking out of the frame?

22 A Yes, sir.

23 Q And what does Mr. McNair have in his hand?

24 A A gun.

25 Q And what does he say to you when he has that gun in his

1 hand?

2 A If I'm trying to cop it.

3 Q I'm sorry?

4 A Basically buy it.

5 Q He's asking you if you want --

6 A Yeah.

7 Q -- to buy that gun?

8 A Yeah.

9 Q Is there any reason why that he would ask you that?

10 A Yeah, because I asked him if I had any guns if I could buy.

11 Q You previous --

12 A I live in a bad spot.

13 Q You previously asked Mr. McNair if you could buy a gun?

14 A Well when I -- not previously that same day but like -- probably  
15 like a couple days ago, yeah.

16 Q A couple days before this took place.

17 A Yeah.

18 Q Why did you ask him that?

19 A Because I want to be protected where I'm at.

20 Q Is there any partic --

21 A You never know when you're going to die.

22 Q Is there any particular reason why you asked Mr. McNair?

23 A Yeah.

24 Q What's that?

25 A Well, yes, sir.

1 Q What's that? What's the reason that you asked Mr. McNair?

2 A Because he told me he used to serve in the Army so I don't  
3 know he's connected with a gun or so.

4 Q He also told you that he had guns, correct?

5 A Yeah. Yes, sir.

6 Q Okay.

7 [Surveillance video continues playing]

8 BY MR. ROGAN:

9 Q All right. At 12:26 and 50 seconds or so, it's fair to say that  
10 you've walked out of the scene from, what is this room called, the Blow  
11 Mold room?

12 A Yes, sir.

13 Q All right. So you and Mr. McNair, where did you go?

14 A At that time I'm on the other side of those gallons, I guess.

15 Q The other side of the gallons that are depicted in this frame?

16 A Oh yeah, the big old pack, yeah.

17 Q Is that a yes?

18 A Yes, sir.

19 [Surveillance video continues playing]

20 BY MR. ROGAN:

21 Q And your coworker there, he's still just doing his job, right?

22 A Yes, sir.

23 Q Okay.

24 [Surveillance video continues playing]

25 ...

1 BY MR. ROGAN:

2 Q All right. At 12:27 and about 10 seconds, have you now come  
3 back into the Blow Mold area where you perform your job duties?

4 A Yes, sir.

5 Q Do you know Mike McNair went?

6 A No, sir.

7 [Surveillance video continues playing]

8 BY MR. ROGAN:

9 Q Is it fair to say at about 12:27 and about 19 seconds, you're  
10 just back to doing your job?

11 A Yes, sir.

12 Q I'm going to fast forward.

13 [Surveillance video continues playing]

14 BY MR. ROGAN:

15 Q Okay. At 12:31 and 52 seconds, well, it looks like you're doing  
16 your job, right?

17 A Yes, sir.

18 Q What's that machine called, the unpacker?

19 A I don't know, I'm still new -- I was still new to the job.

20 Q Okay. And I guess straight back in this frame, is there a  
21 doorway that you can see?

22 A Yes, sir.

23 Q And has someone just come through that doorway?

24 A Yes, sir.

25 Q And who's that person?

1 A Mike.

2 Q Mike McNair?

3 A Yes, sir.

4 [Surveillance video continues playing]

5 BY MR. ROGAN:

6 Q What color shirt is Mike McNair wearing at this moment in  
7 time?

8 A Burgundy, I guess.

9 Q All right. And what is he carrying in his hands, if anything?

10 A A blue work shirt.

11 Q It appears as though you just had a conversation. What did  
12 Mr. McNair tell you right then?

13 A He's telling me about if there's any problems with the machine  
14 I could call him.

15 Q And why was he telling --

16 A Or if it --

17 Q -- you that?

18 A -- gets jammed. Excuse me?

19 Q Why was he telling you that?

20 A Because I'm still new to the job and so was the other guy  
21 working there too.

22 Q Okay. So prior to him saying if there's anything wrong with the  
23 machine, did he say anything before that?

24 A No, sir.

25 [Surveillance video continues playing]

1 BY MR. ROGAN:

2 Q About 12:32 and 23 seconds, where's Mr. McNair's gone right  
3 now?

4 A To home -- to his house, I mean.

5 Q What makes you think that?

6 A Because he told me he's clocking out so if I needed any help  
7 with anything or the other guy to call him.

8 Q Okay. So a moment ago when you're having a conversation  
9 with him, he tells you if you have any problems with the machine to call  
10 him because Mr. McNair was going to leave at that point.

11 A Yeah, he was clocking out.

12 Q Okay. So which -- did he go out the door at 12:32 and 23  
13 seconds?

14 A Yes, sir.

15 Q Okay. Let's watch a little bit.

16 [Surveillance video continues playing]

17 BY MR. ROGAN:

18 Q All right. And a few seconds later he comes back in, correct?

19 A Yes, sir.

20 [Surveillance video continues playing]

21 BY MR. ROGAN:

22 Q At 12:32 and 40 seconds, does he go back out that same  
23 door?

24 A Yes, sir.

25 [Surveillance video continues playing]

1 BY MR. ROGAN:

2 Q And at 12:32 and 49 seconds, does he come back into the  
3 Blow Mold room?

4 A Yes, sir.

5 Q And what is he doing right now?

6 A Just tying up his shirt.

7 Q Buttoning up his shirt?

8 A Yeah, buttoning up his shirt.

9 [Surveillance video continues playing]

10 BY MR. ROGAN:

11 Q And at 12:33 and 7 seconds, where has Mr. McNair gone?

12 A He walked away to the other side of the door.

13 Q Where there's no video?

14 A Yeah. Well there's basically another room over there that  
15 basically handles all the burnt -- or not the burnt, melted plastic.

16 Q Okay.

17 A I forgot what the room was called.

18 Q Okay. All right. It's 12:33 and 27 seconds. Has Mr. McNair  
19 reentered the scene?

20 A Yes, sir.

21 Q All right. At 12:33 and 33 seconds, what is he doing?

22 A It looks like he's washing his hands.

23 Q Now he previously had a blue shirt in his hand as you testified.  
24 Does he have the blue shirt with him right now?

25 A No, sir.

1 Q He's still wearing that burgundy shirt?

2 A Yes, sir.

3 [Surveillance video continues playing]

4 BY MR. ROGAN:

5 Q All right. At 12:34 and 6 seconds, he's finished washing his  
6 hands, correct?

7 A Yes, sir.

8 Q Where's he going now?

9 A To the other side of the room, where the other door's at, right  
10 there.

11 Q If you could just keep your eye on him, please.

12 A Yes, sir.

13 [Surveillance video continues playing]

14 BY MR. ROGAN:

15 Q 12:34 and 33 seconds, what is Mr. McNair doing right now?

16 A I have no idea.

17 Q Okay.

18 A He's walking out the door.

19 Q He's walking out that door --

20 A The back door, yeah.

21 Q Okay. Which room does that lead to, do you remember?

22 A The hallway. There's a little place where we could eat, like the  
23 employees.

24 Q Okay.

25 A It's basically the breakroom.



1 Q All right.

2 A A breakroom.

3 Q And on the other side of that hallway, is there another room?

4 If you remember.

5 A No, no.

6 Q Okay. You don't remember. Fair enough.

7 [Surveillance video continues playing]

8 MR. ROGAN: Court's indulgence.

9 BY MR. ROGAN:

10 Q Do you know why Mike -- did Mike ever tell you why he  
11 changed his shirt?

12 A No, sir.

13 Q When you were having a conversation with Mike after he  
14 came in with the gun, did he ever say anything about shooting anyone?

15 A No, sir.

16 Q After you had come back in from walking to the intersection of  
17 Searles and North Las Vegas Boulevard, did you ever go back outside?

18 A No, sir.

19 MR. ROGAN: Court's indulgence.

20 BY MR. ROGAN:

21 Q Now, Mr. Romero --

22 A Yes, sir.

23 Q -- while you were at work, at some point the police come and  
24 there's a heavy police presence outside the place -- your place of work,  
25 right?

1           A     Yes, sir.

2           Q     Now, later that morning -- I guess we're in the morning hours  
3 of the 15<sup>th</sup>, are you asked by police to give a statement?

4           A     Yes, sir.

5           Q     And you sit down with the police officer or detective to give a  
6 statement about what happened, right?

7           A     Yes, sir.

8           Q     Were you honest with that officer?

9           A     Yes, sir. Well what I could remember. I was like half asleep  
10 that day. I didn't have enough sleep that day.

11          Q     Okay. Fair enough. So you were half asleep. Had you had  
12 much to eat?

13          A     Nah.

14          Q     All right. So you're hungry --

15          A     I didn't get to take the lunch because they stopped me and  
16 interviewed me that whole night.

17          Q     Okay. Because of what happened you didn't get to eat your  
18 lunch?

19          A     No.

20          Q     Okay. So you sit down with the police and they started asking  
21 you questions about what you saw take place, correct?

22          A     Yes, sir.

23          Q     All right. And it's fair to say that you gave kind of several  
24 different statements about what happened, right?

25          A     Yes, sir.

1 Q All right. And you were not forthright with that detective when  
2 he was asking questions?

3 A Yes, sir.

4 Q You were or you weren't?

5 A I was.

6 Q Okay. So when you first sat down with the detective and he  
7 asked you questions, you said that previously you and Mike were  
8 outside, listening to music, and doing donuts in his black truck, right?

9 A Yes, sir.

10 Q Now that's -- wasn't true, correct?

11 A Yes, sir.

12 Q You were not outside with Mike when he was playing that  
13 music, right?

14 A No.

15 Q Mike was outside by himself?

16 A Yeah.

17 Q You said that you went outside with Mr. McNair and saw a  
18 homeless person out at the gate, correct?

19 A Yes, sir.

20 Q And that person never displayed a weapon to you?

21 A No, sir.

22 Q And was complaining about the music being loud, correct?

23 A Yes, sir.

24 Q And you say -- you told the detective that you told the  
25 homeless person, sorry, we'll keep the music down and that homeless

1 then walks off towards North Las Vegas Boulevard.

2 A Yes, sir.

3 Q And at that point you'd say to Mike I'm going back to work,  
4 right?

5 A Yes, sir.

6 Q And you didn't know where Mike went to.

7 A No, sir.

8 Q That wasn't entirely true, is it?

9 A No, the listening to music and doing donuts, no, sir.

10 Q Okay. But also the part about you actually going out to the  
11 intersection of Searles and North Las Vegas Boulevard, correct?

12 A What?

13 Q You didn't initially tell the detective that you went out to that  
14 intersection with Mike, right?

15 A Yes, because I did.

16 Q Right. Later you did. But initially you didn't, right?

17 A Yes, sir.

18 Q Okay. So when the detective tells you oh, there's video  
19 cameras all over the building, your story changes a little bit, correct?

20 A No, sir.

21 Q It doesn't?

22 A I mean, yes, sir. Sorry.

23 Q Okay. At that point that's when you admit that you went out to  
24 that intersection with Mike, right?

25 A Yes, sir.

1 Q Do you remember why you -- what reason you told the  
2 detective you went out to that intersection?

3 A No, sir. It was a long time ago, I'm sorry.

4 Q I understand. It's not --

5 A I don't have a good memory.

6 Q -- a problem.

7 You're aware that the detective recorded that statement that  
8 you gave to him, right?

9 A Yes, sir, he told me everything he was going to do.

10 Q Okay. Would it help your memory, would it refresh your  
11 recollection to review a portion of that transcript?

12 A Yes, sir.

13 MR. ROGAN: Page 23, Counsel.

14 May I approach the witness, Your Honor?

15 THE COURT: Yeah.

16 BY MR. ROGAN:

17 Q All right. So there's some highlighted portions that I have on  
18 page 23 starting at about seven or eight lines down. Read to yourself,  
19 please, from that point to the bottom.

20 A You want me to read out loud?

21 Q No, read to yourself.

22 A Okay.

23 Just the highlighted?

24 Q All the way down to the bottom.

25 All done?

1           A     Yes, sir.

2           Q     Do you remember what reason you gave the detective as to  
3 why you and Mr. McNair were walking to that intersection?

4           A     Yes, sir.

5           Q     And what was the reason you gave?

6           A     We were walking there because we heard like noise.

7           Q     What noise?

8           A     Like dogs barking.

9           Q     All right. And why would you -- why would that be of interest  
10 to you and Mr. McNair?

11          A     Because we see stray dogs all the time --

12          Q     Okay.

13          A     -- by the graveyard.

14          Q     But that wasn't the truth, was it?

15          A     No, sir.

16          Q     The reason that you went there was to --

17          A     We were following the homeless guys.

18          Q     Okay. Thank you.

19                Now when the detective asks you about whether Mike ever  
20 showed you a gun, you first told them you never saw Mike with a gun,  
21 correct?

22          A     Yes, sir.

23          Q     But that also wasn't the truth, right?

24          A     Yes, sir.

25          Q     Now after further questioning, you finally admitted that you

1     yourself had not been outside with Mr. McNair listening to music and  
2     doing donuts or drifting in the parking lot, right?

3             A     Yes, sir.

4             Q     Okay. And in fact it was -- you finally tell the detective that  
5     when Mr. McNair makes contact with you inside the building, Mr. McNair  
6     tells you --

7                   MR. PIKE: Objection, Your Honor, calls for hearsay. Also  
8     he's leading.

9                   THE COURT: Well, overruled. It's a party opponent  
10    statement, so you can go ahead.

11                  MR. ROGAN: Thank you.

12                  MR. PIKE: He's not -- Your Honor, respectfully, he's not a  
13    hostile witness, so he is leading.

14                  THE COURT: Well it's a statement by a party opponent  
15    though, so you can go ahead.

16                  MR. ROGAN: All right.

17    BY MR. ROGAN:

18             Q     So it's Mr. McNair that tells you there's some homeless guys  
19    out complaining?

20             A     Yes, sir.

21             Q     And it's Mr. McNair that called you outside?

22             A     Yes, sir.

23             Q     And Mr. McNair is upset that they are -- that this homeless  
24    was complaining?

25                   MR. PIKE: Objection, Your Honor, leading.

1 THE COURT: I will sustain the objection as leading now.

2 BY MR. ROGAN:

3 Q Is Mr. McNair upset at this point because the homeless  
4 person --

5 MR. PIKE: Objection, Your Honor --

6 MR. ROGAN: -- was complaining --

7 MR. PIKE: -- calls --

8 THE COURT: I'll sustain the --

9 MR. PIKE: -- for speculation --

10 THE WITNESS: Not upset, but -- like --

11 THE COURT: -- objection as lead --

12 THE WITNESS: -- like --

13 THE COURT: No, no. I'm going to strike the answer.

14 MR. PIKE: If we could have the witness testify --

15 THE COURT: I'll sustain it as leading.

16 MR. PIKE: -- that would be nice.

17 BY MR. ROGAN:

18 Q Can you describe for us how Mr. McNair was acting at the  
19 time that he made contact with you inside the building?

20 A Annoyed, I guess.

21 Q Okay. Now do you remember while you told -- I'm sorry.

22 MR. ROGAN: Court's indulgence.

23 BY MR. ROGAN:

24 Q So going back to when the homeless man was outside and  
25 you and Mr. McNair were looking at him from just south of the building,



1 you testified just today and previously that you took off after him  
2 because you wanted to fight him personally?

3 A Yes, sir. I have personal anger issues. I'm an angry child.

4 Q Now isn't it true that you gave a different reason as to why you  
5 followed that homeless man that evening to the detective when he  
6 interviewed you?

7 A Yes, sir.

8 Q Isn't it fair to say you said, Mike told me to get him. That's  
9 why I was trying to walk up -- walking up the side and trying to follow him  
10 then?

11 A No, sir.

12 Q You don't remember saying that?

13 A No, not to get him. I did it for my own personal purposes.

14 Q Okay. It's fair to say that's what you told the detective though.

15 A Okay, yeah. Whatever the detective wrote down, yes, sir.

16 Q All right. Do you want to take a look at your transcript to see  
17 it?

18 A Yes, sir.

19 Q All right.

20 MR. ROGAN: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 MR. ROGAN: All right. Page 6, Counsel.

23 MR. PIKE: I'm sorry, what page?

24 MR. ROGAN: Page 6.

25 ...

1 BY MR. ROGAN:

2 Q So just read silently to yourself that marked portion on page 6.

3 MR. ROGAN: About halfway down, Counsel.

4 MR. PIKE: Which statement's this --

5 MR. ROGAN: I'm sorry, Statement 2 --

6 MR. PIKE: 2.

7 MR. ROGAN: -- page 6. I apologize.

8 BY MR. ROGAN:

9 Q Do you remember saying that now?

10 A Yes, sir.

11 Q At some point do you, when confronted by the detective as to  
12 why you've had so many different variations of what happened that  
13 evening, do you remember telling him why --

14 MR. PIKE: Objection, Your Honor.

15 THE COURT: Hold on. Let me let him finish the question.

16 MR. ROGAN: I was finished with the question.

17 THE COURT: Do you remember telling him why you had  
18 different variations?

19 MR. ROGAN: Correct.

20 THE COURT: All right. That's okay. Go ahead. You can  
21 answer that.

22 BY MR. ROGAN:

23 A No, sir. Yes, sir, I was half asleep, half dead.

24 Q Okay. That's fair. But you also gave another reason, don't  
25 you?

1           A     I gave a lot of different statements that night.

2           Q     Yes.

3           A     I was going to have no sleep and they kept me up,  
4 investigated me for several hours with no food, no water.

5           Q     Okay. Do you remember saying something different that  
6 evening to the detective?

7           A     No, sir, I don't remember.

8           Q     All right. Would taking a look at page 38 of your first interview  
9 refresh your memory as to what you told the detective?

10          A     Please do. I want to get out of here.

11          Q     Is that a yes?

12          A     Yes, sir.

13          Q     All right.

14               MR. ROGAN: May I approach the witness, Your Honor.

15               THE COURT: I think it was please do, I want to get out of  
16 here.

17               THE WITNESS: Yes, because I've been waiting here forever.

18               THE COURT: Okay. Well we're --

19               THE WITNESS: You all had to take an hour --

20               THE COURT: -- working on that, cowboy.

21               THE WITNESS: to do lunch but --

22               THE COURT: Hey, hey --

23               THE WITNESS: -- I'm still out there.

24               THE COURT: Hey.

25               THE WITNESS: Sorry, Your Honor.

1 THE COURT: Thank you. Just hold on.

2 BY MR. ROGAN:

3 Q All right. So read the entirety of page 38, please, to yourself.

4 A All right.

5 MR. PIKE: May we approach the bench?

6 THE COURT: Yes.

7 [Bench Conference Begins]

8 MR. PIKE: If I'm -- and correct me if I'm wrong. I think the  
9 next question he's going into is about he didn't want to come testify  
10 because he didn't know that -- he was afraid of this man and if he had  
11 killed somebody that he could come after him, which would be --

12 MR. ROGAN: It doesn't go -- I don't think it goes that far. Just  
13 says I don't know him, I'm afraid of him and --

14 THE COURT: Well, that's -- I don't know this man very well so  
15 I don't know what he's capable of. I don't know if he killed a man, he  
16 didn't tell me, and he didn't talk like that.

17 I -- well, look, I know you don't like it but the fact that --

18 MR. PIKE: Well --

19 THE COURT: -- he's testifying the way he is in this thing, I  
20 mean, I think it's important that they're able to bring out that he said I  
21 don't know what he just did so I kind of really don't want to be talking to  
22 you.

23 MR. PIKE: Okay. But at the same token, the police  
24 threatened to arrest him for being an accessory after the fact, so I guess  
25 I get to get into that as well.

1 THE COURT: Sure. Yeah. Yeah, absolutely.

2 MR. PIKE: Thanks.

3 THE COURT: Okay.

4 [Bench Conference Concludes]

5 THE WITNESS: Can I get some water, I'm so thirsty.

6 THE COURT: Yeah, that's okay.

7 THE WITNESS: Thank you very much, Your Honor.

8 THE COURT: Yeah, you're welcome.

9 You don't got to raise your hand like you're at school.

10 THE WITNESS: I don't know. I don't -- I didn't want to yell.

11 THE COURT: That's all right. I didn't know I was hidden  
12 behind this, I thought it was sitting over there.

13 There you go.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 All right. Mr. Rogan, you can go ahead.

17 BY MR. ROGAN:

18 Q So the question was do you remember what else or what  
19 other reason you gave the detective as to why you had shifting stories  
20 that evening?

21 A Yes, sir.

22 Q And what was that?

23 A Because I really didn't know that man very well so if I gave a  
24 different statement he probably, I don't know do something. I don't really  
25 know him that well. So I gave the statement that I gave today and that

1 was my final statement.

2 Q Okay. so just to clarify, you told the detective you -- when the  
3 detective asked you about your differing statements, you said I don't  
4 know this man very well, I don't what he's capable, or who he know.

5 A Yeah. Yes, sir.

6 Q Okay.

7 MR. ROGAN: Court's indulgence.

8 BY MR. ROGAN:

9 Q And you're referring to Mr. McNair, correct?

10 A Yes, sir.

11 MR. ROGAN: Pass the witness, Your Honor.

12 THE COURT: All right. Mr. Pike.

13 MR. PIKE: Thank you.

14 THE COURT: Just a little while longer, okay?

15 MR. PIKE: Okay.

16 THE COURT: You'll be done today, I promise.

17 THE WITNESS: I'm going to miss work for this, man.

18 THE COURT: Yeah, it's okay.

19 THE WITNESS: I lost money today.

20 **CROSS-EXAMINATION**

21 BY MR. PIKE:

22 Q Hi, Mr. Romero. Do you remember me? We had occasion to  
23 talk at the time of the preliminary hearing.

24 A I don't remember none of the attorneys that were here last  
25 time I came, so.

1 Q Oh, okay.

2 A No offense, but no, I don't remember you.

3 Q That's okay. You'd trust me if I told you that I was there.

4 A Yeah, yeah. Yes, sir.

5 Q Okay. It says my name on the transcript anyway.

6 So I've got a few questions about what happened that

7 evening, if I can ask you that.

8 You indicated that you'd been working there about a month,

9 right?

10 A Yeah, about -- I was still new there. That's why I haven't got

11 my uniform.

12 Q Okay. And were you working there at the same time that

13 Mitchell Johnson had been working there?

14 A Yes, sir. I was still working there when he worked there.

15 Q And --

16 MR. PIKE: Court's indulgence.

17 BY MR. PIKE:

18 Q Showing you what's been admitted as Defendant's Exhibit G.

19 This picture Mitchell Johnson?

20 A Yes, sir.

21 Q And that's how he had his hair at the time that you were

22 working with him?

23 A Yes, sir.

24 Q Did you know the kind of car that Mitchell Johnson drove?

25 A It was a truck. Black truck.

1 Q A black truck, okay.

2 And he had been -- he wasn't working there at the night that  
3 this happened, was he?

4 A He was.

5 Q He was there.

6 A Yeah, he was working.

7 Q You saw Mitchell there?

8 A Yes, sir.

9 Q Okay. Now you told the police that you and Mike were out  
10 drifting in the truck, right?

11 A Yes, sir.

12 Q Okay. And drifting is another way of describing like donuts in  
13 a vehicle?

14 A Yes, sir.

15 Q Okay. The -- you had a chance to read over your -- both of  
16 your statements to the police, as well as your preliminary hearing  
17 transcript before you testified today?

18 A Yes, sir.

19 Q On the first statement, the longer one that you had --

20 A Yes, sir.

21 Q -- that indicates it was a surreptitious recording. Did you know  
22 you were being recorded when the Detective Williams was talking to  
23 you?

24 A No, sir.

25 Q Okay. So Detective Williams was out there and he took you



1 out of the building, you were out of the building --

2 A Yeah, I was working and then I was about to put the trash --  
3 well the gallons that fell on the floor that are dirty, put them in the other  
4 machine that you recycle and then that's when I got called up by the  
5 police.

6 Q And that was about 9:40/9:50?

7 A I can't remember what the time, I'm so sorry.

8 Q Okay. That's okay.

9 A It's been a long time.

10 Q It says that the recording is going to start at about 1:00 a.m.  
11 You'd been there at work and you had continued at work --

12 A Yeah.

13 Q -- and then everybody was pulled out.

14 A Yeah, everybody was pulled out from the job.

15 Q And you didn't -- you weren't allowed to get anything to drink.

16 A No, I didn't even take that lunch that day.

17 Q Okay. You didn't -- couldn't get anything to eat.

18 A Nope, or drink.

19 Q Couldn't go back in to go to the bathroom.

20 A No, sir.

21 Q You had to wait out there until the detective --

22 A I had to sit on the floor --

23 Q -- let you go.

24 A -- for hours.

25 Q Okay. So I take it at that point in time that you were not in a

1 very good mood. You'd had a bad day anyway --

2 A Yeah, I had a bad day and I was already half asleep. No food.

3 Q And it was getting worse.

4 A Yeah, it was getting worse by the hour.

5 Q The detectives were out -- or the detective was out talking to

6 you and he was asking you a lot of questions.

7 A Yeah, a lot.

8 Q And how would you describe his attitude toward you?

9 A I don't know. Just -- as a detective, just asking questions.

10 Where were you doing?

11 Q Okay.

12 A What happened here? What's this?

13 Q Went through and asked you some questions and kept --

14 A Yeah, just --

15 Q -- wanting to get around to well, you know, it's a pretty serious

16 matter.

17 A Yeah.

18 Q Okay. And did he ever make any innuendos or suggest that

19 you might be charged in this?

20 A Yes, sir.

21 Q What did he --

22 A He said that if I don't tell him the truth that I could go to jail.

23 Q Okay. And he told you -- well do you remember him saying

24 something like you know, you're going to have one of two things is going

25 to happen here, do you want to be a suspect or do you want to be a

1 witness.

2 A Yes, sir.

3 Q Do you remember being told that by the detective?

4 A Yes, sir.

5 Q Do you remember the detective telling you that you didn't  
6 actually have to be a shooter where you could actually be responsible  
7 for -- or be arrested?

8 A Yes, sir.

9 Q What did he tell you?

10 A That even if I was not on the video with a gun or nothing like  
11 that or if I didn't -- I don't have to be the shooter, I could still go to jail just  
12 for being a witness or a suspect in the case.

13 Q Just being a suspect or helping afterwards.

14 A Or a -- yeah, or even just talking to him.

15 Q Okay. And in fact, he told you that you could be charged as  
16 an accessory after the fact?

17 A Yes, sir.

18 Q So you on -- when you were talking with the detectives, even  
19 though you had not been anywhere near the shooting that had  
20 occurred --

21 A Uh-huh.

22 Q Is that a yes? You --

23 A I mean -- sorry, yes --

24 Q Okay. That's okay.

25 A -- sir.

1 Q That's okay. We're just getting through this.

2 A Sorry, I'm not proper.

3 Q Oh no, you're just fine. You're -- look, you're here, you're  
4 testifying, you took the oath. You're a proper witness at this point in  
5 time.

6 A Yes, sir.

7 Q We just want you tell us what happened.

8 So at that point in time when the detective was telling you  
9 these things and saying hey, you know, there's some bad things that  
10 could happen to you, you were feeling -- it would be fair to say that you  
11 were being -- you felt like you were being threatened with being  
12 arrested?

13 A Threatened and a little nervous.

14 Q Right. And you didn't want to get involved in this or testify --

15 A Yeah, because --

16 Q -- in court or anything else?

17 A -- I was just a man working.

18 Q All right. And that's what you've been doing since the time  
19 that this happened?

20 A Yes, sir.

21 Q Since the time that you testified?

22 A Yes, sir.

23 Q Nothing bad has happened to you?

24 A Other than I got fired from that whole situation.

25 Q You go fired from the job.

1           A     Yes, sir.

2           Q     And let's see cor -- is it -- was Corey [phonetic] the name of  
3 your supervisor?

4           A     I don't know the top, top. I was just still new then.

5           Q     Okay. Well they fired you because you went off of the  
6 premises without clocking out after.

7           A     Yeah.

8           Q     Is that what they told you?

9           A     That's what they told me. But I told them that could have been  
10 my break, you know, you -- it don't matter, I was -- that could have been  
11 my break.

12          Q     Okay. And so nothing other than you were fired, nothing bad  
13 happened to you after you testified at the preliminary hearing or anything  
14 else?

15          A     No, sir.

16          Q     Okay. So knowing -- you don't know much about guns, do  
17 you?

18          A     No, sir.

19          Q     Okay. What was shown to you by Michael McNair, what color  
20 was that?

21          A     I think it was like a gray/dark gray. I don't know.

22          Q     Okay. And you --

23          A     I don't know. It was like probably black. It was dark gray. I  
24 don't know. One of those two colors.

25          Q     Okay. You didn't try to fire it. Did you pick it up?

1           A     No.

2           Q     Okay. You just looked at it.

3           A     Yeah, I just looked at it.

4           Q     Okay. I'm not interested in that gun.

5           A     Yeah.

6           Q     I don't want to buy that gun.

7           A     Yeah.

8           Q     Okay. And so that was the end of that conversation?

9           A     Yes, sir.

10          Q     All right. At the time that you said Mike was showing you this,  
11 he wasn't in a hurry? Wasn't trying to hey, I'll give you a great deal on  
12 this or anything else?

13          A     No, he just told me if you want it, bro, just let me know.

14          Q     Okay. And you'd indicated that you wanted to buy a gun  
15 because you'd been -- for your own protection?

16          A     Yeah, I live a lot of -- not -- no disrespect, I live around a lot of  
17 crackheads.

18          Q     Okay.

19          A     A lot of jerk people, yeah.

20          Q     Well there were a lot of crackheads around your work too.

21          A     Yes, sir.

22          Q     And it's not uncommon to have some of those crackheads be  
23 dangerous.

24          A     Yes, sir.

25          Q     And that's not to say --

1           A     One of them threw a rock through my window though so I was  
2 mad with the previous -- pre -- that day, I was just angry.

3           Q     Okay. They'd thrown a rock through your windshield at work?

4           A     Yeah. No, no, not at --

5           Q     Oh.

6           A     When I was working that -- for -- I was mad because of that  
7 situation that happened the other day.

8           Q     Oh, okay.

9           A     Yeah.

10          Q     And so -- and you still carried that emotion --

11          A     Yeah.

12          Q     Okay. You weren't intoxicated, you hadn't been drinking, or  
13 anything?

14          A     No, sir.

15          Q     Okay. You just had a bad day?

16          A     Yeah. Yes, sir.

17          Q     All right. And when you went outside with Michael and you  
18 were standing there, just to the left of where you and Michael were  
19 standing, is that where they put the jugs that had to be shredded?

20          A     Yes, sir.

21          Q     Okay. So it wasn't -- that was an area that was always open;  
22 you'd go in and out and in and out?

23          A     Yeah.

24          Q     And also next to that, wasn't that where there were loading  
25 docks --

1           A     Yeah, big old trailer for the gallons.

2           Q     When those -- you've put the big gallon jugs, I saw you  
3 hoisting them up, they --

4           A     Yeah, yeah.

5           Q     -- obviously weren't too heavy.

6           A     No, they're not heavy at all.

7           Q     Okay. You're going back in, you're loading them up, and your  
8 coworker was doing that with you?

9           A     Yes, sir.

10          Q     Do you remember his name?

11          A     No, we -- he was new there and I was new there, so yeah.

12          Q     All right. And when that truck got full, was it necessary to  
13 have that truck moved over to another lot that the company owned?

14          A     Yes, sir. As soon as that gets full [sic], we -- they transfer  
15 another trailer. They move that one that's full and they bring another  
16 trailer from the other department.

17          Q     And you saw during the time that you worked there that  
18 Michael would sometimes drive that truck and take it over?

19          A     Yes, sir.

20          Q     Okay. Open up the gate, connect it, and drive it all out?

21          A     Yes, sir. That's why he have the access to the keys of the  
22 gate.

23          Q     And it wasn't uncommon to change and put on the red shirt  
24 when he was going to drive that vehicle?

25          A     No, sir.



1 Q Okay. And then when he was back working, put back on his  
2 blue shirt?

3 A Yeah, I guess so. I don't know how that whole truck situation  
4 but yeah. Yes, sir.

5 Q Okay. And so it was not something that was uncommon  
6 where you may see Michael wearing two different shirts during a shift?

7 A Nah, I see a couple wearing different shirts -- other people do  
8 it too, I guess.

9 Q Okay. When you went back into work after you had gone  
10 out -- well let me -- let's -- let me walk you through the whole process  
11 that you did. You went out there with Mike, you went over to the gate,  
12 and at that point in time when the gate opened, am I correct in saying  
13 that the security truck was right there beside you guys?

14 A Yeah.

15 Q And did you talk to the security man that was driving that  
16 truck?

17 A I don't remember really talking to him.

18 Q Okay. Do you remember his name?

19 A I don't remember his name. No, I definitely didn't remember  
20 this kid's name.

21 Q All right. And as the two of you are walking down the street,  
22 were -- was anybody yelling at you? Any of the homeless people, the  
23 crackheads that you were talking about?

24 A No, they just started walking off.

25 Q Okay. So they started to walk off and you were just following

1 behind them with Mike?

2 A Yes, sir.

3 Q Mike didn't pull out a weapon?

4 A No, sir.

5 Q You didn't pull out a weapon?

6 A No, sir, other than my fist.

7 Q Okay. You kept -- in fact you kept your beard net on.

8 A Yeah.

9 Q Did you keep your hair net on too?

10 A Yeah, I kept everything on.

11 Q Okay.

12 A Yeah, I still had my work morgue stuff on, yeah.

13 Q All right. So you were -- you kept your work clothes on.

14 A Yes, sir.

15 Q Mike McNair kept his work clothes on.

16 A Yes, sir.

17 Q You had a security truck that was driving alongside of you?

18 A Yes, sir. He was following us, making sure nothing happened.

19 Q Right. And you walked to the end of that corner and you  
20 turned around and came back?

21 A Yes, sir, I went back to work.

22 Q Went right back to work.

23 A Yes, sir.

24 Q And you didn't see anything else that happened that night  
25 outside from there?

1           A     No, sir.

2           Q     When you went over to that corner of Searles and Las Vegas  
3 Boulevard North, you had to walk past -- it looked like there were a  
4 number of homeless people over --

5           A     Yeah, on the sidewalk, yeah. There's a gang of them.

6           Q     Okay. And as you walked down there and reach the North  
7 Las Vegas Boulevard, you looked across that and there was a bunch of  
8 homeless people out there as well?

9           A     Yes, sir. There's homeless people everywhere I don't -- they  
10 always slept by the graveyards.

11          Q     And you -- even though you're pretty well-built and strong --

12          A     Yeah. Thank you.

13          Q     You -- there are people that you're wary of?

14          A     Yes, sir.

15          Q     They could be dangerous.

16          A     Yes, sir. You never know what they could be carrying.

17          Q     So after that was done and the police -- or the detectives had,  
18 you know, more or less indicated that hey, you know, you could -- we  
19 could arrest you right now.

20          A     Yes, sir.

21          Q     Let me ask you this. When the detective -- oops, sorry. When  
22 the detective was interviewing you, do you remember whether he read  
23 you your rights?

24               MR. ROGAN: Objection.

25               THE WITNESS: No, sir.

1 THE COURT: Well, that's okay. I'll allow it.

2 BY MR. PIKE:

3 Q And when they say rights, did he say you have a right to  
4 remain silent, anything --

5 A No, sir. He just --

6 THE COURT: He said he didn't remember.

7 THE WITNESS: -- interviewed me.

8 THE COURT: So --

9 MR. PIKE: Okay.

10 THE COURT: I mean, you can show him his statement if you  
11 need to but.

12 MR. PIKE: Thanks.

13 BY MR. PIKE:

14 Q Did you feel at that time that you were free to leave?

15 A No, I was not free to leave.

16 Q How did -- what makes you say that?

17 A Because they had me sit down on the floor for more than an  
18 hour.

19 Q And did -- and so once you had given that surreptitiously  
20 recorded statement, then you were allowed to leave?

21 A No, they brought me in from the -- back to work and took  
22 pictures of me and researched me again, and then they told me I could  
23 leave.

24 Q Okay. So when you're -- when you say that they search you,  
25 did they pat you down?

1           A     Yes.

2           Q     Okay. The photograph of you --

3           A     That night, is the ones they took.

4           Q     Okay. Where was that photograph taken?

5           A     In the Blow Mold room, where I was putting the gallons up.

6           Q     Okay. So they took your picture. And that's the same place

7     that they took Mike's picture.

8           A     Yes, sir.

9           Q     Now had Mike been your supervisor since the time that you

10   started work there?

11          A     I think so, yeah. Yes, sir.

12          Q     And you noticed that Mike had a stutter.

13          A     Yes.

14          Q     Okay.

15          A     He did.

16          Q     And when you were going out there to tell these people to

17   leave, maybe get into a fight with them --

18          A     Yeah.

19          Q     -- you were going to be the one that's talking.

20          A     Yeah, I was the one talking.

21          Q     When the detective was talking to you though during that

22   surreptitious -- and you know what surreptitious means?

23          A     No, I don't --

24          Q     Oh, okay.

25          A     -- I'm not very --

1 Q All right. Let's --

2 A -- educated, my bad.

3 Q No, you're fine. You're -- it's an archaic term. It means that  
4 you had no idea that it was a hidden recorder. You didn't --

5 A No.

6 Q You didn't see --

7 A No, sir.

8 Q -- a recorder, right?

9 A No, sir.

10 Q So when the detective was questioning on that recording that  
11 you didn't know was happening, he'd already seen the videos, right?

12 A I'm guessing yeah --

13 MR. ROGAN: Objection --

14 THE WITNESS: -- he told me he saw --

15 MR. ROGAN: -- speculation.

16 THE COURT: Well --

17 THE WITNESS: -- camera work.

18 MR. ROGAN: Objection.

19 THE COURT: I'll sustain the objection.

20 BY MR. PIKE:

21 Q Did the detective tell you that he had already seen the --

22 A Yeah, he told me we have camera work -- we have cameras  
23 and we already saw the video. You're in it.

24 Q At that time did you believe he was trying to get you to  
25 somehow incriminate yourself?

1           A     Yes, sir.

2           Q     When -- you saw the picture of Michael it was taken -- and  
3 was that taken in your presence when you were against the wall and  
4 then Michael --

5           A     No --

6           Q     -- was against the wall?

7           A     -- it was separately.

8           Q     It was done separately, okay.

9                     You never saw Michael put his blue shirt back on, did you?

10          A     No, sir.

11          Q     But that was the same shirt that he was wearing when you  
12 walked out with him.

13          A     Yes, sir.

14                     MR. PIKE: Court's indulgence.

15                     Court's indulgence.

16          BY MR. PIKE:

17          Q     The area that you worked, that was a sterile area, right?

18          A     Yeah.

19          Q     So whenever somebody was in there -- well whenever you  
20 were in there and you'd handled something that may have been dirty or  
21 had gotten your hands dirty --

22          A     Or chemicals yeah.

23          Q     And that's --

24          A     Or unclean.

25          Q     -- the reason they had a washing area right there inside of --

1           A     Yeah.

2           Q     -- where you were working?

3           A     Yes, sir.

4           Q     Okay. Because liquids were going to go in those jugs?

5           A     Yes, sir.

6           Q     And it was -- as part of your training, were you trained that you

7 wash your hands regularly?

8           A     Yes, sir.

9           Q     You would go back in, wash your hands, and then go back to

10 work?

11          A     Yes, sir. We had to make sure we were sanitized. We were

12 touching a lot of gallons.

13          Q     And even when you went out to a lunch break and came back

14 in, you were instructed to wash your hands?

15          A     Yes, sir.

16          Q     They had a lunch area where you could go and eat --

17          A     Yes.

18          Q     -- as an employee. But for your lunch break you would have

19 to clock in and clock out.

20          A     Yes, sir.

21          Q     When you would take a lunch break, were you free to leave

22 the premises?

23          A     Yes, sir.

24          Q     But again, that's just if you clocked in and clocked out?

25          A     Yeah, you have to clock out.



1 Q And you knew as an employee that there were video cameras  
2 in the area that you were working?

3 A Yes, sir.

4 Q And that there video cameras around the outside of the  
5 building?

6 A Yes, sir. The boss told me that on the first day.

7 Q Okay.

8 MR. PIKE: I don't have any further questions. Thank you, Mr.  
9 Romero.

10 THE COURT: Mr. Rogan.

11 **REDIRECT EXAMINATION**

12 BY MR. ROGAN:

13 Q Mr. Romero, just a few things that I need you to clarify for me, if  
14 you could. So you knew Mitchell Johnson?

15 A Is that the boss, the white dude?

16 Q I don't know, you tell me. Who's Mitchell Johnson?

17 A I don't know.

18 Q Well you testified on cross-examination that you saw Mitchell  
19 Johnson that night.

20 A Mitchell. I don't remember that.

21 Q Okay.

22 A Mitchell Johnson? I never heard that name.

23 Q Defense Exhibit G, do you remember him showing you this  
24 photograph? Who's that person to you?

25 A Mike?

1 Q This is Mike?

2 A I don't know who that is. I thought that was Mike.

3 Q So you don't know who Mitchell Johnson is?

4 A No.

5 Q Okay. That clears a lot of things up for me.

6 A Mitchell Johnson? Was he a coworker?

7 Q Don't worry about it.

8 A Okay.

9 Q It's okay.

10 So let's talk about those shirts that people wore at Unified  
11 Containers.

12 THE WITNESS: Your Honor, may I get some more water,  
13 please?

14 THE COURT: Go ahead. You don't got to ask, just whenever  
15 you need it, go ahead.

16 It's fresh. Sometimes that stuff stays in there for weeks but  
17 that's a good jug.

18 THE WITNESS: Appreciate it.

19 BY MR. ROGAN:

20 Q So showing you State's Exhibit 123. Does this appear to be a  
21 burgundy shirt similar to the one that Mr. McNair was wearing in the  
22 video that you saw that night?

23 A Yes, sir.

24 Q Okay. And this is the shirt that the truck drivers would wear,  
25 correct?

1           A     I don't know.

2           Q     You don't know?

3           A     No.

4           Q     All right.

5           A     I was still new, I don't know what the truck drivers really -- I  
6 don't know that they have a specific uniform.

7           Q     Okay. Now you testified on cross-examination that guys  
8 would change their shirts?

9           A     Yeah, sometimes people change their shirts, I don't know.

10          Q     Into different colored shirts?

11          A     I'm guessing.

12          Q     You're guessing or do you know?

13          A     I'm guessing. I'm -- because I'm still new there, I don't really  
14 know how the whole job --

15          Q     Okay.

16          A     -- thing works. I don't know if you have to switch your uniform  
17 just to do this or you have to wear something specific to do this.

18          Q     Let's make it easy for you. So you knew that Mike changed  
19 his shirt that night?

20          A     Yes, sir.

21          Q     Had you seen anyone there before change shirts from one  
22 color to another?

23          A     Yes, sir.

24          Q     Who?

25          A     I don't know. I got to point out somebody? I'm going to have

1 to point out somebody?

2 Q Yep, who?

3 A I don't know.

4 Q How many times?

5 A I don't know. I was still new there, Bro. You all act like I  
6 worked there for so long that I see everybody, pay attention to every  
7 person. Switch -- oh this guy switched, oh, Johnson, of yeah, he  
8 switched his shirt or Joe, oh, he switched his shirt.

9 Q So how many times?

10 A I don't know, sir. I was still new to the job. You're asking  
11 questions that are kind of impossible, no offense.

12 Q That night when they took pictures of you, this is the picture  
13 that you took. Exhibit 42, right?

14 A Yes. That was after -- pointless, obviously my face.

15 Q All right. Is that a yes or no, Mr. Romero?

16 A Yes, sir.

17 Q Thank you. And State's Exhibit 43, yes or no, that's also --

18 A Yes, sir.

19 Q -- a picture that they took?

20 And they also took a picture of your hands, Exhibit 44, that's --

21 A Yes, sir.

22 Q -- the top part of the hands? If you could wait --

23 A Ooh, I needed to cut those nails.

24 Q -- until the question is asked, please.

25 A Oh, my bad.

1 Q Are those your hands, sir?

2 A Yes, sir.

3 Q All right. And now State's Exhibit 45, palms up, are those also  
4 your hands?

5 A Yes, sir.

6 Q Okay. So when you were walking towards the intersection of  
7 Searles and North Las Vegas Boulevard, you'd already seen Mike with  
8 the gun previously, right?

9 A No, sir.

10 Q You hadn't seen him?

11 A No, sir.

12 Q Didn't we show the video earlier when the two of you are  
13 looking out south from the building, and you see Mr. McNair pull out a  
14 gun and point it at the fence?

15 A I didn't see him pull out no gun. I don't know what his -- had --  
16 he had in his hand. The camera didn't really show.

17 Q Okay. Well you remember I also asked you the question  
18 didn't you testify previously that Mr. McNair had a gun in his hand at that  
19 time to which you said yes?

20 A No, sir.

21 Q So your testimony now has changed again, now you don't --  
22 you say that he didn't have a gun in his hand, at that time?

23 A Are you talking about the part when he walked in after --

24 Q No.

25 A -- when he showed me the gun when we were in the

1 workroom?

2 Q No. Previously, the two of you -- Mr. McNair comes in, he tells  
3 you what's going on outside, the two of you go outside, and the two of  
4 you are looking at the homeless man on the other side of the fence.

5 A Uh-huh.

6 Q Do you remember that?

7 A Yes, sir, I do remember that.

8 Q And you remember watching that video together --

9 A Yes.

10 Q -- just today?

11 A Yes, I remember. Yes, sir.

12 Q And I asked you what does he got in his hand?

13 A Yes, sir.

14 Q What did he have in his hand?

15 A I don't know. I still don't know.

16 Q All right.

17 A The picture's not clear. I can't see what's in his hand.

18 Q But you previously testified that he had a gun in his hand,  
19 right?

20 A I don't remember that.

21 Q Okay. Let's leave it at that then.

22 So then you two walk to the intersection of Searles and North  
23 Las Vegas Boulevard, right?

24 A Yes, sir.

25 Q Now you said something interesting in cross-examination.

1 You said Mike told me to talk, right?

2 A Yeah, to handle it.

3 Q Is that what happened?

4 A Yeah, Mike told me to talk to them.

5 Q Mike told you to talk to them?

6 A Yeah, the guy that we were chasing.

7 Q But you never said that to the police previously, right?

8 A No, sir.

9 Q And you never testified to that at preliminary examination?

10 A I don't know what that is.

11 Q The prior time that you testified, you never said that Mike told  
12 me to talk to the homeless guy?

13 A I'm guessing no.

14 Q All right. So now after I've asked you these questions during  
15 trial, now your story has changed again to include that small fact, right?

16 A Changed like what? Changed like how?

17 Q Now you're adding an additional fact that we didn't know  
18 before; that being that Mike told you to talk to the homeless guy?

19 A Well, no. What do you mean tell me to talk to him. I was just  
20 hey, Bro, handle that. He's bothering us. I wanted to fight him in  
21 general so I didn't care.

22 Q Same difference, I think.

23 Now I want to talk to you about your interview with the police  
24 officer, Mister -- I'm sorry, Detective Williams. Now, Mr. Pike asked you  
25 a lot of questions about the circumstances regarding that interview.

1           A     Yeah. It's still --

2           Q     One of them --

3           A     -- blurry.

4           Q     -- he asked, didn't he threaten you with -- something along the  
5 lines of threatening to arrest you, is that right?

6           A     Yes, sir.

7           Q     So you remember him threatening to arrest you specifically?

8           A     Not to arrest me but he said I could be caught in the case and  
9 I could go to jail.

10          Q     Okay. Because Mr. Pike said he threatened to arrest you and  
11 you said yes, so that's -- that was inaccurate?

12          A     Well bas -- yeah, he said he'd arrest me if you want that.

13          Q     Okay. Now do you remember that -- did you ever review your  
14 recorded statement with the police prior to your testimony today?

15          A     Did I review it, yes, sir.

16          Q     When did you review it?

17          A     Right now when you were showing it to me.

18          Q     Okay. Other than here in court, prior to your testimony today,  
19 did you ever read it?

20          A     No, sir.

21          Q     So you're going off your memory, from September 14<sup>th</sup>, 2017,  
22 about the conduct of that interrogation, right?

23          A     Yes, sir.

24          Q     Okay. Do you remember the detective confronting you about  
25 the differing stories that you had told him?



1           A     Yes, sir.

2           Q     All right. When he in fact told you that I know you didn't kill  
3 anybody?

4           A     Yes, sir.

5           Q     All right. But then he's going on to say I'm concerned about  
6 you not telling the truth?

7           A     Yes, sir.

8           Q     Okay.

9                   MR. ROGAN: And Counsel, I'm on page 32 of his first.

10          BY MR. ROGAN:

11          Q     And then he's essentially imploring you, asking you to be  
12 straight; tell the truth, right?

13                   MR. PIKE: Objection as to imploring. That looks a lot more  
14 like a threat to me.

15                   THE COURT: Well it's the same objection.

16                   MR. ROGAN: All right.

17          BY MR. ROGAN:

18          Q     He's saying to you it's important to tell the truth, essentially?

19          A     Yes, sir.

20          Q     Okay. And he tells you if you lie, it's not okay?

21          A     No, he tells me if I lie, I could go to jail.

22          Q     All right.

23                   MR. ROGAN: Court's indulgence.

24          BY MR. ROGAN:

25          Q     Okay. So I'm sorry -- so he says he's going to take you to jail?

1           A     Yes, sir.

2           Q     All right. When do you remember him saying that?

3           A     When he interviewed me.

4           Q     Okay. Isn't it fair to say that he -- when he was talking to you

5     about something called accessory after the fact, right? Mr. Pike brought

6     that up, that he says: I'm not trying to threaten you with that, I just want

7     to make sure you're aware of it that keeping --

8           A     No, sir.

9           Q     You don't remember this?

10          A     I don't have no memory of that, sir. No, sir.

11          Q     So you don't remember his specifically saying he's not trying

12     to threaten you?

13          A     No, sir.

14          Q     What does the word incriminate mean?

15          A     Are you asking me?

16          Q     Yeah.

17          A     I'm guessing you could go to jail or you're a part of the

18     interrogation or whatever -- the case, I guess.

19          Q     What do you understand it to mean?

20          A     I don't know.

21          Q     So when Mr. Pike --

22          A     You're asking the wrong question.

23          Q     -- asked you, you believed that you were going to incriminate

24     yourself, you really had no understanding of what that word meant?

25          A     I'm guessing I -- putting myself in jail, I guess that's what I --

1 Q Okay. So --

2 MR. ROGAN: Court's indulgence.

3 I have nothing further, Your Honor.

4 THE COURT: Thank you. Mr. Pike, anything?

5 **RECROSS-EXAMINATION**

6 BY MR. PIKE:

7 Q Almost done, Mr. Romero.

8 A Oh, man.

9 Q This is an uncomfortable situation, isn't it?

10 A Yeah, I've been here twice already. And they won't leave me  
11 alone, they keep coming to my house, subpoenas --

12 MR. ROGAN: Objection --

13 THE WITNESS: -- warrants, and all that.

14 MR. ROGAN: -- there's no question pending.

15 THE COURT: All right. Yeah, let's just -- let's not editorialize.

16 Let's just answer the questions and get the gentleman on his way,  
17 please.

18 MR. PIKE: Okay. Thank you.

19 BY MR. PIKE:

20 Q Just to make sure that we're all on the same page here, which  
21 is page 32 or page 33, let me -- do you recall the detective, Detective  
22 Williams, saying:

23 Question: Now you're held accountable for everything you  
24 say and if you lie, it's not okay.

25 A Yes.

1 Q You getting too cold?

2 A Yes, sir.

3 Q And you answered -- do you recall your answer?

4 A No, sir.

5 Q Okay. Would it refresh your recollection if I let you read a  
6 portion of that interrogation?

7 A Yes, sir.

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

9 THE COURT: Yes.

10 MR. PIKE: Page 32 through 33.

11 MR. ROGAN: Thank you.

12 BY MR. PIKE:

13 A Okay.

14 Q Okay. Now that you've had an opportunity to read that, Mr.  
15 Romero, did it refresh your recollection regarding that portion of the  
16 interrogation by Detective Williams?

17 A Yes, sir.

18 Q And when he asked you the question because assist -- and  
19 I'm quoting at this point in time: Okay. Because assisting somebody  
20 after the fact, I'm sure you've watched TV enough to know what it's  
21 called.

22 Did you know what that was called at that time?

23 A Conspiracy to murder, I think.

24 Q Well, didn't the detective at that time question you, if you help  
25 somebody after a murder?

1           A     Yes.

2           Q     And he then said, called accessory after the fact.

3           A     Yes, sir.

4           Q     Okay. And then he explains it to you and said that that's --

5     okay, that has its own penalty.

6           A     Yes, sir.

7           Q     He said he's not trying to threaten you with that, I just want to

8     make sure you're aware of that.

9           A     Yes, sir.

10          Q     Did you take that as a potential threat?

11          A     Yes, sir.

12                MR. PIKE: I don't have anything further questions?

13                THE COURT: Anything?

14                MR. ROGAN: Yes, Your Honor. May I approach your clerk?

15                THE COURT: Yeah.

16                MR. ROGAN: May I approach the witness, Your Honor?

17                THE COURT: Sure.

18                MR. ROGAN: Sir, I'm showing you --

19                THE COURT: Did you show Counsel whatever that is?

20     That's not --

21                MR. ROGAN: Yes, I'm sorry. Same --

22                THE COURT: -- marked --

23                MR. ROGAN: -- pages.

24                MR. PIKE: Same pages.

25                THE COURT: Okay. Got it.

1 **FURTHER REDIRECT EXAMINATION**

2 BY MR. ROGAN:

3 Q Showing you pages 32 and 33 of the recorded statement that  
4 you gave the detective. Are those the same two pages that you just  
5 reviewed with Mr. Pike a moment ago?

6 A Yes, sir.

7 Q All right. And that was to refresh your memory about your  
8 interview with the detective, right?

9 A Yes, sir.

10 MR. ROGAN: All right. I would move to admit State's  
11 Proposed -- it says 125. Is it 125 or 126?

12 THE CLERK: I'm sorry, it's 126.

13 MR. ROGAN: Okay. May I approach your clerk?

14 THE COURT: Yes. Is there any objection?

15 MR. PIKE: Yes, there is, Your Honor.

16 THE COURT: Okay.

17 MR. PIKE: Best evidence, there's a recording.

18 THE COURT: Yeah, what's the purpose of enter --

19 MR. ROGAN: If we could approach?

20 THE COURT: Sure.

21 [Bench Conference Begins]

22 MR. ROGAN: Two things, it was used to refresh his memory  
23 of what took place so he's adopted an authenticity -- that this is an  
24 authentic statement that he gave. It's an accurate recording.

25 THE COURT: Right.

1 MR. ROGAN: Also, it's -- I'm using it to admit the fact that the  
2 detective never said anything about you can go to jail for this.

3 THE COURT: Well I don't think that it's appropriate to admit  
4 two pages of a guys' statement. I mean, you guys can ask him about it.  
5 You can ask the detectives about it, what was said or not said. Because  
6 we're going back and forth --

7 MR. ROGAN: I understand.

8 THE COURT: -- and people get their refresh -- refresh their  
9 recollections and have been inadmissible stuff all the time, but.

10 MR. ROGAN: Right. I think the rules of evidence permit the  
11 opposing party to admit the actual portion of the statement that was  
12 used to refresh recollection. I've managed to go into it with him but the  
13 fact remains the jury has to make a determination about --

14 THE COURT: Well --

15 MR. ROGAN: -- what --

16 THE COURT: We can make a record later if you want --

17 MR. ROGAN: Sure.

18 THE COURT: -- but I'm not going to --

19 MR. ROGAN: That's fine.

20 THE COURT: -- admit it.

21 MR. ROGAN: Yeah.

22 MS. BLUTH: Can we talk about timing while we're up here?

23 MR. ROGAN: Yeah.

24 THE COURT: Pardon?

25 MS. BLUTH: Is that okay? Can we talk about timing while

1 we're up here?

2 THE COURT: Uh-huh.

3 MS. BLUTH: So we have Mitchell Johnson out front --

4 THE COURT: Okay.

5 MS. BLUTH: -- and it's what is it 3:15?

6 THE COURT: Yeah.

7 MS. BLUTH: So he's going to get up and take the stand. Do  
8 you guys want -- the homicide detective just waiting across the street, do  
9 you want me to have him -- are we going to go late tonight, I guess is my  
10 point.

11 THE COURT: I don't know how long he's going take. I mean,  
12 Matt's been here for an hour. And I'm assuming you texted Matt and  
13 told him to come over?

14 MS. BLUTH: Yeah, I didn't -- yeah.

15 THE COURT: We're going to take a break before Johnson  
16 testifies.

17 MR. ROGAN: Okay. Thanks.

18 MS. BLUTH: But so let homicide go.

19 THE COURT: Yeah. Well I don't want to run out of time.

20 So --

21 MR. ROGAN: Yeah.

22 THE COURT: -- okay.

23 [Bench Conference Concludes]

24 THE COURT: So you're --

25 MR. ROGAN: Nothing further, Your Honor.



1 THE COURT: You're done.  
2 Wait, anything from our jurors?  
3 Yeah, you're almost done.  
4 THE WITNESS: I just have to pee, that's all.  
5 THE COURT: You got to go to the bathroom?  
6 THE WITNESS: Yeah.  
7 THE COURT: Hold on one second.  
8 Quick, J.R. I'm sorry.  
9 [Bench Conference Begins]  
10 THE COURT: I wasn't trying to be rude, I'm sorry.  
11 MS. BLUTH: I'd be careful of the last one.  
12 MS. SIMPKINS: Yeah, the last one.  
13 MR. ROGAN: I think the numbers of the last two.  
14 MS. BLUTH: 1 and 2 are okay.  
15 MR. ROGAN: Okay.  
16 MS. BLUTH: Right?  
17 MR. PIKE: I just hate the word control.  
18 MS. BLUTH: Okay. So you guys only want 1?  
19 MR. PIKE: Yeah, 1's not a problem.  
20 MS. BLUTH: Okay.  
21 THE COURT: Okay. Just 1.

22 [Bench Conference Concludes]

23 **EXAMINATION BY THE COURT**

24 BY THE COURT:

25 Q All right. I got a quick question for you, Ramiro, if I could,

1 please?

2 A Yes, sir.

3 Q That evening, did it look or appear to you that Mike was trying  
4 to hide anything with or within his work shirt?

5 A No, sir.

6 THE COURT: Okay. Any questions based on mine? State?

7 MR. ROGAN: No.

8 MR. PIKE: None by Defense.

9 THE COURT: All right. Ramiro, you're all done, sir. I  
10 appreciate your time and your patience. I'm sorry you had to wait  
11 around so long, okay?

12 THE WITNESS: It's cool.

13 THE COURT: But you're excused.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: All right. You're welcome.

16 We're going to take a quick recess, Ladies and Gentlemen,  
17 before we continue on.

18 During the recess you're admonished not to talk or converse  
19 among yourselves or with anyone else on any subject connected with  
20 this trial. Or read or watch or listen to any report of or commentary on  
21 the trial by any medium of information including, without limitation,  
22 newspapers, television, the internet, or radio. Or form or express any  
23 opinion on any subject connected with the trial until the case is finally  
24 submitted to you. No legal or factual research or investigation on your  
25 own.

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Thank you.

THE MARSHAL: Rise for the jurors.

[Outside the presence of the jury]

THE COURT: So the short answer is yeah, I have no idea how long Mitchell Johnson's going to take so I want somebody over here in case he gets done and we can put him on.

MS. BLUTH: You do -- you say you do want the --

THE COURT: Yes.

MS. BLUTH: Okay.

THE COURT: Yeah. If he has to wait around, too bad.  
All right. We'll be in recess.

[Recess taken at 3:12 p.m.]

[Trial resumed at 3:27 p.m.]

[Outside the presence of the jury]

THE COURT: Okay. What do you got outside the presence?

MR. ROGAN: Your Honor, this I just with regard to the last bench conference we had at -- with Mr. Romero.

THE COURT: Okay.

MR. ROGAN: I was marking State's Proposed Exhibit 126.

THE COURT: Correct.

MR. ROGAN: And the reason I was marking it is because it had been used to refresh recollection and it'd also been referred to by the witness as the point in the interrogation where they were discussing the alleged threats that the detective was making to Ramiro to induce him to tell his side of the story.

1 THE COURT: Okay.

2 MR. ROGAN: So I went to admit it for that purpose but most  
3 importantly that it was a writing used to refresh memory. NRS 50.125  
4 says that an adverse party is entitled to admit that portion of the testi --  
5 or that portion of the recorded statement that was used to refresh the  
6 recollection as it relates to the testimony of the witness. That's the  
7 reason I was admitting it.

8 To it -- I believe it's ultimately up to the jury, for them to  
9 determine whether or not Detective Williams threatened Ramiro Romero  
10 or not. And having that portion of the testimony so that they could see --  
11 or of the transcript so that they could see for themselves what's the  
12 reason that I was doing that.

13 THE COURT: Okay. Mr. Pike.

14 MR. PIKE: My cross-examination in relationship to that  
15 witness for the State had to do with the fact -- deal with the fact that he  
16 felt he was threatened, even though the -- the detective in that portion I  
17 actually read said I'm not trying to threaten you but he felt like he was  
18 being threatened.

19 So I did include that portion of the proposed exhibit, which the  
20 State can now argue it's not the best evidence they -- the manner, the  
21 tone, the how he was being addressed, all of those would be better  
22 served by way of the recording or the detective coming in.

23 THE COURT: Okay. Well a couple things. Number one, it's  
24 not a writing. So even the 50.135, I think which deals with witness  
25 statements, kind of delineates between written statements and

1 statements of witnesses. So the statute side of this deals with writings.

2 But more importantly, I think there are a variety of things that  
3 were -- from that statement that were discussed with the gentleman to  
4 help refresh his recollection. I mean, both sides were using portions of  
5 that statement and I think it would be inappropriate to admit two pages of  
6 it and somehow infer to the jury that those two pages were more  
7 important than any other aspects of what was being used to impeach  
8 him.

9 And you -- I mean, you guys, when you call a detective, you  
10 can use the detective to address that, you can even play that audio  
11 portion. But I didn't think it was appropriate to admit the two pages of  
12 the transcribed statement.

13 Okay. Anything else?

14 MR. ROGAN: No.

15 MS. BLUTH: No, Your Honor.

16 MR. PIKE: No.

17 THE COURT: Okay. You can go ahead.

18 MS. BLUTH: Wait, Judge.

19 MR. PIKE: You have --

20 THE COURT: Yeah.

21 MR. PIKE: Just very quickly. Mitchell Johnson, who's being  
22 called to the stand has appointed Counsel representing him. I -- and  
23 that's based upon the fact that there was the amendment in the  
24 pleadings with an unknown individual doing the shooting.

25 THE COURT: Correct.

1 MR. PIKE: And based upon the testimony at the time of the  
2 preliminary hearing. Just so we're clear, it's my belief that the State has  
3 not made any agreement with Mr. Mitchell or with his Counsel that he  
4 will not be prosecuted. If I'm incorrect --

5 THE COURT: Correct.

6 MR. PIKE: -- with anything like that I just want to put that on  
7 the record before we --

8 THE COURT: Okay.

9 MR. PIKE: -- begin.

10 THE COURT: Correct?

11 MS. BLUTH: I've made very clear to both Counsel, as well as  
12 Mr. Johnson that I don't have any evidence that he was involved in this  
13 and therefore I can immunize him for something that I have no idea or  
14 evidence that he was involved in, in the crime.

15 THE COURT: Okay. And did you understand that as well,  
16 Matt?

17 MR. LAY: That's correct, Your Honor, that's what I --

18 THE COURT: Were you able -- I know that we originally  
19 appointed Mr. Tomsheck through Mr. Christensen's office but Mr.  
20 Tomsheck is out of the jurisdiction, so again, publically I'll thank you.

21 But did you have a conversation with Mr. Johnson about that  
22 fact that there is no immunity agreement for anything?

23 MR. LAY: I did, Your Honor.

24 THE COURT: Even though the State has represented that  
25 they don't have any evidence to suggest that he was involved, to

1 immunize him from anything, you still went through that with him?

2 MR. LAY: That's correct, Your Honor.

3 THE COURT: And you're comfortable that he understands  
4 that?

5 MR. LAY: I am, Your Honor.

6 THE COURT: Okay.

7 MS. BLUTH: And to make a correction, Judge, I obviously do  
8 have evidence that he punched Mr. Phillips, but that --

9 THE COURT: Well the shooting.

10 MS. BLUTH: The -- right, I just want to make --

11 THE COURT: Okay.

12 MS. BLUTH: -- clear that I was being completely forthcoming  
13 on the record.

14 THE COURT: Okay.

15 MR. PIKE: But we do have direct evidence from a witness,  
16 eyewitness that said it was the shorter man that shot and killed him.

17 THE COURT: Well --

18 MR. PIKE: So --

19 THE COURT: -- the point is the State's represented that they  
20 are not offering him any type of immunity or any benefit to his testimony  
21 and you've been able to discuss that with him, correct?

22 MR. LAY: That's correct, Your Honor.

23 MR. PIKE: And if he's going to invoke his Fifth Amendment  
24 that I don't believe that'd be appropriate to do in the presence of the jury.

25 THE COURT: I agree on that. I mean, you have the

1 understanding that he's still going to testify?

2 MR. LAY: Yes, that's correct.

3 THE COURT: Okay. That he's not just going to get up here  
4 and say he doesn't want to answer questions.

5 MR. LAY: That's my understanding.

6 THE COURT: Okay. All right. Then we'll get started. Thank  
7 you.

8 [In the presence of the jury]

9 THE MARSHAL: All rise for the jurors.

10 THE COURT: All right. You all can be seated, thank you.

11 We'll be back on the record. Mr. McNair is here with his  
12 attorneys, State's attorney are present, jurors are present. We'll  
13 continue on with the State's case in chief. Your next witness is?

14 MS. BLUTH: Mitchell Johnson.

15 **MITCHELL JOHNSON**

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

18 THE CLERK: Thank you. Please be seated.

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

20 THE WITNESS: Mitchell Johnson.

21 THE COURT: How do you spell your first name?

22 THE WITNESS: M-I-T-C-H-E-L-L.

23 THE COURT: And your last name?

24 THE WITNESS: J-O-H-N-S-O-N.

25 ...



1 THE COURT: All right, Mr. Johnson, thank you.

2 Ms. Bluth.

3 MS. BLUTH: Thank you, Judge.

4 **DIRECT EXAMINATION**

5 BY MS. BLUTH:

6 Q Mr. Johnson, I know your voice is actually -- you speak very  
7 quietly and so I just want to let you know that everything you and I are  
8 saying is going into these microphones. So if you would do your very  
9 best to try to keep your voice up so everybody can hear you and I'll try to  
10 remind you throughout, okay?

11 Mr. Johnson, did you at some point in 2017, work at a place  
12 called Unified Containers?

13 A Yes.

14 Q And how long did you work there for?

15 A A year and a half.

16 Q And how was it that you got the job there?

17 A My brother.

18 Q And what's your brother's name?

19 A Mike -- Michael.

20 Q And what's his last name?

21 A McNair.

22 Q All right. Now are you and Mr. McNair, are you full brothers,  
23 meaning you share the same mother and father?

24 A No, same mother.

25 Q Okay. So you have obviously different last names.

1 A Fathers. Yeah.

2 Q And different fathers.

3 A Yeah.

4 Q All right. In September of 2017, were you about the same  
5 height and weight as you are today?

6 A Yes.

7 Q And how tall are you?

8 A 5'7.

9 Q Okay. And how much do you weigh?

10 A 180.

11 Q And what about Mike, in September of 2017, how tall about --  
12 how tall was your brother, about -- approximately?

13 A Like 6 feet.

14 Q Okay. Any idea on how much weighs -- or weighed?

15 A No.

16 Q Okay. Now you worked at Unified Containers, you stated for a  
17 period of time. How was it that you stopped working there?

18 A I got let go.

19 Q All right. And what did you get let go for, do you know the  
20 reason?

21 A No.

22 Q All right. And you were subpoenaed to come here and testify  
23 today by the District Attorney's Office, the State of Nevada, is that right?

24 A Yes.

25 Q Fair to say you don't really want to be here?

1 A Yes.

2 Q Fair to say that you have to be here?

3 A Yes.

4 Q I want to talk to you now about -- specifically about September  
5 14<sup>th</sup> of 2017. Now earlier in that day -- in a moment we're going to talk  
6 about some things that happened around nighttime, but before that I  
7 want to talk about earlier in the day, had you had some conversations  
8 with your brother about him giving you some money?

9 A Yes.

10 Q What time -- and I don't need you to give me exact, like 2:00,  
11 but would you say it was in the morning, the afternoon, and -- when you  
12 guys had this conversation?

13 A I want to say it was afternoon.

14 Q All right. And was that conversation in person or was it over  
15 the phone?

16 A Over the phone.

17 Q And what was the conversation about specifically?

18 A I just called and asked him can I borrow \$10.

19 Q All right. And what did he say when you asked him if you  
20 could borrow \$10?

21 A He said yeah, he was going to call me.

22 Q That he would call you?

23 A Yes.

24 Q But when you say he would call you, was he going to call you  
25 in regards to what? Like when you could get it or what?

1           A     I guess when I can get it.

2           Q     When you could get it from him.

3           A     Yeah.

4           Q     Okay. Now do you speak to him later in the evening again,  
5 about this money?

6           A     Not until he called me up there.

7           Q     All right. So he calls your phone?

8           A     [No audible response - nods head yes].

9           Q     Is that a yes?

10          A     Yes.

11          Q     And what does he say?

12          A     He told me to come up there?

13          Q     Come up to where?

14          A     To the job.

15          Q     To the job. So that -- Unified Container?

16          A     Yes.

17          Q     And what was your understanding of why you were going to  
18 be going up there?

19          A     To get ten dollars.

20          Q     Okay. So when you're on the phone with that evening, does  
21 he specifically say hey, I got the money now, come up here?

22          A     No, like -- he was just like come up here.

23          Q     All right. So in your head though, did you believe you were  
24 going there to get the money?

25          A     Yes.

1 Q At that point in the evening, where were you located?

2 A When he call --

3 THE COURT: When he got the phone call?

4 MS. BLUTH: Yes, sorry.

5 BY MS. BLUTH:

6 A I think I was over -- just picking up Bianca from work, I think.

7 Q All right. Bianca's your girlfriend, is that right?

8 A Yes.

9 Q And so after you pick up Bianca from work, where do you guys

10 go?

11 A To the job.

12 Q And who's driving?

13 A I am.

14 Q And why type of vehicle are you driving?

15 A A Chevy Suburban.

16 Q What type of make -- mod -- or what type of model is it? Like

17 year, I guess is what I'm asking.

18 A '99.

19 Q Are -- is there any damage to any part of that vehicle?

20 A Yes.

21 Q Where is that damage?

22 A The whole right side.

23 Q When you get to the property, are you still driving the vehicle?

24 A Yes.

25 Q How is that you get on to the property?

1           A     I drove.

2           Q     Okay. Are there gates that surround --

3           A     Oh yeah.

4           Q     So how was it that you get on the other side of the gate?

5           A     I drove through the gate.

6           Q     Was the gate already open or did someone have to open it for

7 you?

8           A     Mike opened it.

9           Q     After Mike opens the gate and you drive on, what's the -- drive

10 in, what's the next thing that happens?

11          A     He said walk to the corner with me.

12          Q     Okay. What are you wearing that night when you get out of

13 the car?

14          A     When I get out the car?

15          Q     Yes.

16          A     Some shoes and a pair of pants. I was putting my shirt on as I

17 was getting out.

18          Q     All right. What color was your shirt?

19          A     Black.

20          Q     And when you get to the -- when you walk over to meet Mike

21 at the gate, you stated that he said walk to the corner with me?

22          A     Yeah.

23          Q     When he said that do you go with him?

24          A     Yes.

25          Q     Okay. And where do the two of you go?

1           A     To the corner by the end of the drive.

2           Q     All right. So that street that you drove on to get on the  
3 property, that's referred to as Searles?

4           A     Yes.

5           Q     So when you say you walked to the corner, is that the corner  
6 of Searles and Las Vegas Boulevard?

7           A     Yes.

8           Q     Okay. What is Mike wearing that night?

9           A     His work uniform.

10          Q     And what does his work uniform consist of?

11          A     His name tag and the name of the job.

12          Q     Okay. Showing you State's 46. And the glare's -- not glares --  
13 the glare is kind of bad sometimes with this light. But is that Mike?

14          A     Yes.

15          Q     And then is this the uniform that he would wear, this blue shirt  
16 and the dark blue pants?

17          A     Yes.

18          Q     Okay. So did you in fact make it all the way to the corner of  
19 Searles and Las Vegas Boulevard?

20          A     Yes.

21          Q     And what happens from there?

22          A     We walk across the street.

23          Q     Okay. When you walk across the street, is there someone  
24 that you are walking towards?

25          A     There was a couple people out there.

1 Q All right. Is there an individual that talks to you guys while  
2 you're approaching?

3 A Yeah, some man. Some -- a Black male.

4 Q All right, a Black male. How tall would you say that guy was, if  
5 you could remember or if you could approximate?

6 A Shit, I wouldn't know.

7 Q Okay. But you said he was a Black male. Did he have any  
8 facial hair?

9 A Yes.

10 Q What did he have?

11 A A beard.

12 Q Okay. Do you remember any of the color of his clothing?

13 A No.

14 Q When you're walking over there, is that man -- is he laying  
15 down or is he standing up?

16 A Sitting up.

17 Q Sitting up?

18 A [No audible response - nods head yes].

19 Q Is that a yes?

20 A Yes.

21 Q Does he ever get all the way to his feet?

22 A Yes.

23 Q And when he gets all the way to his feet, does he say anything  
24 to the two of you?

25 A He said a couple words.



1 Q What did he say?

2 A I really can't remember.

3 Q Okay.

4 MS. BLUTH: Counsel, page 55.

5 BY MS. BLUTH:

6 Q Do you remember -- okay, so at some point you speak to the  
7 police, is that correct, on, I believe, it's September 19<sup>th</sup>. The police come  
8 and you speak to them, is that right?

9 A Yes.

10 Q And you -- when you do speak to them they ask you what, if  
11 anything, the man said, and you said that that man said man, we just  
12 going to leave it alone. Do you remember him saying that?

13 A Yes.

14 MR. PIKE: I'm sorry, Counsel, 55?

15 MS. BLUTH: Yeah, one second. Let me get it.

16 You know what, I'm sorry, Judge, that's the incorrect page  
17 number. I'll get the right one for you just in one second.

18 I'm going to come back to that in one second, okay?

19 BY MS. BLUTH:

20 Q Okay. Now while you were walking towards that man -- first of  
21 all, did -- from the looks of that man and from where he was staying, did  
22 that man look to be like a homeless individual?

23 A Not really.

24 Q Okay. So you weren't sure.

25 A Yes.

1 Q All right. So as that individual is standing up, does he ever  
2 walk towards you?

3 A Yes.

4 Q And when he walks towards you, what did you do?

5 A Hit him.

6 Q All right. Where did you hit him?

7 A In his neck.

8 Q Why did you hit him?

9 A He got too close.

10 Q When you're saying he got too -- when he said to you, man,  
11 let's just leave it alone or whatever the words he said, was that before or  
12 after you hit him?

13 A That was before.

14 Q Okay. So you hit him in the neck. Does he fall to the ground?

15 A No.

16 Q What happens after you hit him?

17 A I kind of backed away because I started thinking about what I  
18 was doing and I started walking away.

19 Q All right. And when you start to walk away, what's the next  
20 thing that happens?

21 A I hear gunshots.

22 Q How many gunshots did you hear?

23 A About four.

24 Q Okay. When you hear the gunshots, what do you do?

25 A I keep walking and call my girl, tell her to come pick me up.

1 Q Okay. Did you turn around and see the man fall to the  
2 ground?  
3 A No.  
4 Q You never turned around and saw the man fall to the ground?  
5 A [No audible response - shakes head no].  
6 Q Is that a no?  
7 A No.  
8 Q Okay. And you never saw who it was that shot?  
9 A No.  
10 Q Okay. Now you would disagree with me that that is not what  
11 you told the police, is that right?  
12 A Yes.  
13 Q And you would disagree with me that that's not what you told  
14 me in several pretrial interviews, is that right?  
15 A Yes.  
16 Q Okay. Is it difficult to be in here testifying in this particular  
17 case with your brother as the Defendant?  
18 A Hell, yeah. Yes.  
19 Q Okay. Because of that, are you not discussing what you  
20 previously said to the police?  
21 MR. PIKE: Objection, Your Honor, leading.  
22 THE COURT: Well, overruled. He can answer the question.  
23 BY MS. BLUTH:  
24 A No.  
25 Q Okay.

1 MS. BLUTH: Court's indulgence.

2 BY MS. BLUTH:

3 Q Do you remember telling the police that you were really in a  
4 predicament in this situation?

5 A Yeah.

6 Q What did you mean by that?

7 A Because I felt like I was put up in a messed up predicament.

8 Q Okay. Well what was messed up about it?

9 A Because a shooting happened and I was involved.

10 Q Okay. So you hear these four or five shots and at no point in  
11 time do you turn around to say -- see, what? Where the heck? Who's  
12 shooting? Where's it going from -- where's it coming from?

13 A No.

14 Q And your brother -- I mean, would you say you love your  
15 brother?

16 A [No audible response - nods head yes].

17 Q Is that a yes?

18 A Yes.

19 Q And you just heard four or five gunshots and you don't turn  
20 around to see if your brother's okay?

21 A Yeah.

22 Q You do turn around to see if your brother's okay?

23 A I mean, I knew that he was okay once I seen the shadow with  
24 me. Like I seen the shadow, so he was moving so I know he wasn't  
25 hurt.

1 Q Okay.

2 MS. BLUTH: Page 38, Counsel.

3 MR. PIKE: Thank you.

4 BY MS. BLUTH:

5 Q The police say: So Michael had the gun on him?

6 And your response is: He would have had to or unless he got  
7 it from him. Not you, but the guy he was talking to.

8 So your response was Michael would have had to have the  
9 gun.

10 And at any point in time -- Mitchell, I forgot to tell you this, at  
11 any point in time if you'd like to see a copy of your statement, just ask,  
12 and I'll approach it with you, okay?

13 A That's all right.

14 Q Okay. But you would agree with me that that's what you told  
15 the police on page -- on --when you spoke to the police?

16 A Yes.

17 Q When you got to the corner when your brother came over to  
18 you, did you say anything to him?

19 A I asked him what happened?

20 Q And what did he say?

21 A Keep walking.

22 Q He kept walking or he told you to keep walking?

23 A Keep walking.

24 Q So you --

25 A He told me to keep walking.

1 Q He told you to keep walking.

2 MS. BLUTH: Page 40, Counsel, top of the page.

3 BY MS. BLUTH:

4 Q The detective says: Your brother just pumped five shots, dot,  
5 dot, dot.

6 And then you interrupt saying: Right. And when he did it --  
7 when he did it I'm like -- when he was behind me I did not turn around  
8 that one time and I was like what the fuck --

9 MR. PIKE: Objection, it's reading in the testimony --

10 THE COURT: Well what's the --

11 MR. PIKE: You're going to --

12 THE COURT: Yeah --

13 MR. PIKE: -- refresh his recollection.

14 THE COURT: You just need to ask a question.

15 MS. BLUTH: Well the -- can we approach?

16 THE COURT: Yeah.

17 [Bench Conference Begins]

18 MS. BLUTH: The question is, is did you see your brother  
19 shoot the gun and he said no and there's five times in here when he  
20 says yes so I'm -- do I need to keep --

21 THE COURT: Well but he can --

22 MS. BLUTH: -- asking him --

23 THE COURT: He -- first off, you got to predicate your  
24 questions about what you told detective and whether you remember, not  
25 just start reading it in. But also, it sounds like what you were reading in,

1 he says I didn't turn around. So how is that impeaching his testimony  
2 when he's already said I didn't turn around?

3 MS. BLUTH: Well he talks about --

4 MR. PIKE: [Inaudible] --

5 MS. BLUTH: Sorry --

6 MR. PIKE: I'm sorry, go ahead.

7 MS. BLUTH: That's okay.

8 MR. PIKE: Go ahead.

9 MS. BLUTH: That's okay. He talks about in that statement  
10 that he did see his brother and that when they get there he's like what  
11 the fuck because the detectives are like --

12 THE COURT: What was your statement?

13 MS. BLUTH: What?

14 THE COURT: Let me see your statement.

15 MS. BLUTH: Top of the page.

16 MR. PIKE: Well she --

17 THE COURT: He's still saying he didn't turn around, he didn't  
18 see it. So I don't know that that's impeaching [inaudible] said he didn't  
19 see it.

20 MR. PIKE: It's not the -- and to -- respectfully to impeach  
21 him --

22 THE COURT: No, I know.

23 MR. PIKE: You know, you asked do you remember being  
24 asked this question? What did he answer?

25 THE COURT: Well I -- there is a nuance to that though when

1 we just -- people are saying they just don't remember anything and  
2 there's multiple places in a statement where supposedly they may have  
3 said something. I would agree that it's not improper to impeach them by  
4 what was in the statement and you can't -- you don't tell them everything  
5 that they've said on multiple occasions. But that doesn't seem to  
6 impeach what you're trying to impeach him for if he says there I didn't  
7 see it. He says I didn't turn around not one time.

8 MS. BLUTH: See, I didn't read it like that to be honest with  
9 you. What -- how I read it was he was saying the detective says your  
10 brother just pumped five shots into this guy.

11 THE COURT: Right.

12 MS. BLUTH: And then he says right and when he did it --  
13 when he did it I'm like he was behind me and I -- I read that as is they  
14 start walking and he was behind him and he didn't turn around. And  
15 then he gets up to him and he's like what the fuck?

16 THE COURT: Yeah, but that's not -- that's saying when he  
17 got up to him he said what the fuck, not that he saw it. He says he didn't  
18 turn around at all and then after he kind of approach him he says what  
19 the fuck and the guy says just keep going.

20 MS. BLUTH: No, I -- what I'm saying is I'm not reading that  
21 the same as you're reading it.

22 THE COURT: Well you can approach him and ask him about  
23 it and if he can't remember -- if he thinks [unintelligible] do you  
24 remember a part in the statement where the detective started to ask you  
25 about your brother firing five shots and what your response was. And if



1 he says no, then you can say well was it your response -- because I  
2 agree there's a difference to impeaching and refreshing recollection and  
3 a lot of times with particular witnesses you just like I don't care about  
4 refreshing your recollection, I want to impeach him --

5 MS. BLUTH: Yeah.

6 THE COURT: -- which is this guy.

7 MS. BLUTH: Right.

8 THE COURT: Then you can read that in. But you still got to  
9 give him an opportunity to answer the question before you just start  
10 reading in the transcript.

11 MS. BLUTH: Okay. Because your position is, is this is not in  
12 contradiction to his response of I didn't see it.

13 THE COURT: I get that you're saying there may be two  
14 different ways to --

15 MS. BLUTH: Sure.

16 THE COURT: -- interpret that so I get that. But I still think you  
17 have to ask him a credible question that he can't answer and then you  
18 can impeach him with what was in the statement, okay?

19 MS. BLUTH: Okay.

20 THE COURT: So if you think that says that he actually did  
21 turn around and see something then you can ask him the question, do  
22 you remember telling the detective after he was talking to you about your  
23 brother firing five shots, do you remember telling him that you did turn  
24 around and see something and you said what the fuck? And if he says  
25 then you say, okay --

1 MS. BLUTH: He's never going to -- I'm just going to move on  
2 because he's never going to give me that. I mean, I don't think that  
3 that's what he meant now he's never -- like that would be --

4 MR. PIKE: Yeah.

5 MS. BLUTH: -- futile because he's never going to do it.

6 THE COURT: Well but I'm -- I get that you're trying to get in  
7 what his answer to the detective was --

8 MS. BLUTH: Yeah.

9 THE COURT: -- and so you can either get it from -- is you can  
10 do it with the detective and he says he doesn't remember then it's a prior  
11 inconsistent statement --

12 MS. BLUTH: Sure. Yeah.

13 THE COURT: -- and you can bring [unintelligible]. But I'm just  
14 saying no, the objection was just to go about reading it before --

15 MS. BLUTH: Yeah.

16 THE COURT: -- you've asked him the question.

17 MS. BLUTH: Okay.

18 THE COURT: Okay.

19 MR. PIKE: Now the other -- one other thing while we're here.  
20 He's falling asleep up on the stand. I think he's about as --

21 THE COURT: He's a mess.

22 MS. BLUTH: I don't think he -- I mean --

23 MR. PIKE: I think about --

24 THE COURT: I don't think he's falling asleep --

25 MS. BLUTH: He's not falling asleep.

1 THE COURT: -- I think he's just really trying not to be here.  
2 MR. PIKE: Okay.  
3 THE COURT: He's trying to be the chair.  
4 MR. PIKE: But I have a good faith belief, I'm going to ask him  
5 if he is and -- smoke any weed --  
6 THE COURT: You can ask him at.  
7 MR. PIKE: -- or anything like that.  
8 MS. SIMPKINS: Move to strike that last question though.  
9 MR. PIKE: Yeah.  
10 THE COURT: Yes.  
11 MR. PIKE: Thank you.  
12 THE COURT: Okay.  
13 [Bench Conference Concludes]  
14 THE COURT: All right. I will strike the last question but you  
15 can rephrase that on the topic.  
16 MS. BLUTH: Okay.  
17 BY MS. BLUTH:  
18 Q Okay. When the detectives asked you the question starts as  
19 is: Your brother just pumped five shots.  
20 Do you remember your response as to what you said or what  
21 you did when the detectives answered that question to you -- or excuse  
22 me, asked that question to you?  
23 A Not really.  
24 Q Okay. If I showed you a copy of your statement, would that  
25 help you to remember what it was that you said?

1 A Yeah.

2 MS. BLUTH: Okay. Page 40, Counsel.

3 MR. PIKE: Thank you.

4 BY MS. BLUTH:

5 Q All right. So Mitchell, if you would just please read the -- to  
6 yourself, read the first question and the answer and let me know when  
7 you're done and then I'll have a few follow-up questions for you.

8 A [No audible response - nods head yes].

9 Q Okay. You done now.

10 A [No audible response - nods head yes].

11 Q Does that help you to remember what you said?

12 A Yes.

13 Q All right. So when they asked you hey, your brother just  
14 pumped five shots, what was your response?

15 A What the fuck? I was like what the hell.

16 Q Okay. Do you remember the detectives asking you how close  
17 Michael was when he shot the victim?

18 A No, I really don't.

19 Q You don't remember them asking --

20 A No.

21 Q -- you that or you don't remember what your answer was?

22 A I don't remember what I said.

23 Q Do you remember what you told the detectives that you saw  
24 Michael doing -- so when you hear the shots and you go to turn around,  
25 do you remember what you told the detectives you saw Mike doing?

1           A     No.

2                   MS. BLUTH: Page 54, Counsel.

3 BY MS. BLUTH:

4           Q     Do you remember telling the detectives that you saw  
5 Michael --

6                   MR. PIKE: Objection, Your Honor. I'd ask that he'd be  
7 allowed to read --

8                   THE COURT: Well, like I said --

9                   MR. PIKE: -- then refresh his recollection.

10                  THE COURT: -- that's not the requirement, so you can go  
11 ahead.

12                  MS. BLUTH: I don't know if I said it, I apologize. Page 54.

13 BY MS. BLUTH:

14           Q     Do you remember telling the detectives that you saw Michael  
15 putting the gun back down to his hide -- to his side? And if you weren't  
16 mistaken it was in his right hand. Do you remember saying that?

17           A     Yes.

18           Q     Do you remember what you said to the detectives in regards  
19 to not the proximity of where Michael was standing to the victim but  
20 where exactly on the street or sidewalk he was standing when he shot  
21 the victim? Do you remember your answer to that question?

22           A     No.

23           Q     Okay.

24                   MS. BLUTH: Page 55, Counsel.

25           ...

1 BY MS. BLUTH:

2 Q Question: Where was Mike when he was shooting?

3 Answer: Almost off of the curb. He was damn near off of it --  
4 meaning the sidewalk.

5 Do you remember that being your answer?

6 A Yes.

7 Q What was Mike's -- I'm going to use the term demeanor or  
8 state of mind when you were walking up towards the victim, how would  
9 you characterizes his demeanor?

10 A Regular.

11 Q When you say regular, only because, you know, we don't  
12 know Mike like you do, so what does regular mean?

13 A Just calm.

14 Q Did you ever ask Mike why he did that?

15 A Not that I remember.

16 Q Okay.

17 MS. BLUTH: Page 52, Counsel.

18 BY MS. BLUTH:

19 Q Question: So you asked him why he shot the guy?

20 Your answer: Yeah, and he was like man, don't worry about  
21 it.

22 Do you remember telling the detectives that?

23 A Yes.

24 Q Was there a point in your interview with the detectives that the  
25 detectives told you they had found the gun at the place of employment?

1 Or that -- excuse me, that you had told them that someone had told you  
2 they had found the gun at Unified Container?

3 A Yes.

4 Q And what did you mean when you said: Well that's even  
5 better for me because now I'm out of it then.

6 What did you mean by that?

7 A Because they had the gun, they'll know who did it.

8 Q When you saw on the news -- and I apologize, did I ask you  
9 that? Did you ever see on the news that they were looking for your  
10 truck?

11 A Yeah.

12 Q All right. When you saw that, what did you do?

13 A I was just shocked.

14 Q Did you stay at your house?

15 A Yeah.

16 Q How far is your house from Unified Container?

17 A Walking, like five minutes. In the car, like two.

18 Q When the detectives came to interview you, where was that  
19 interview done at? Was that at your house, at police quarters?

20 A At the police quarters.

21 Q Was your DNA -- do you remember if your DNA was taken?

22 A No.

23 Q No, you don't remember or no, it wasn't taken?

24 A I don't think it was.

25 Q Do you know an individual by the name of Damar House or

1 know of him?

2 A Yeah, I know of him.

3 Q Okay. And how do you know him?

4 A Friends.

5 Q Is he related in any way to Mike's wife, Tyesha?

6 A Yes.

7 Q I want to ask you a few questions about your interview with the  
8 police if I could. Are you honest with them when you sit down and speak  
9 with them?

10 A Half of the time.

11 Q Half the time?

12 A [No audible response - nods head yes].

13 Q Is that a yes?

14 A Yes.

15 Q What do you mean by that?

16 A Half the time.

17 Q Okay. Let me ask you this. Originally, when they ask you if  
18 you ever even went to Unified Containers on September 14<sup>th</sup>, what is  
19 your response?

20 A I think the first time I told him was no.

21 Q Did you say someone else went on your behalf?

22 A Yes.

23 Q Who's that?

24 A Bianca.

25 Q Bianca?



1           A     [No audible response - nods head yes].  
2           Q     Yes?  
3           A     Yes.  
4           Q     Okay. And did they confront you with video surveillance or  
5 say to you hey, we've got video surveillance, we know what's going on?  
6           A     They said they had it.  
7           Q     Okay. So at some point do you then say okay, yes, I did go  
8 there?  
9           A     Yeah.  
10          Q     But do you deny ever getting out of the car  
11          A     No. I don't think -- no.  
12          Q     Okay. Do you deny at first ever walking all the way across the  
13 street?  
14          A     Yeah.  
15          Q     Okay. Do you deny punching Mr. Phillips?  
16          A     Yeah.  
17          Q     Okay. So is it fair to say that you would deny and then go a  
18 little bit further, deny, go a little bit further, et cetera?  
19          A     Yes.  
20          Q     Why were you doing that?  
21          A     Because I didn't want to be there?  
22          Q     You didn't want to be with the police?  
23          A     No.  
24          Q     And I mean this respectfully, but kind of like you don't want to  
25 be here today?

1           A     Yes.

2           Q     So Mitchell, there's a TV in front of you. And I'm going to fast  
3 forward to 22:28.

4           MS. BLUTH: This is State's 1, for the record.

5           MR. PIKE: This is -- it's not --

6           MS. BLUTH: Oh, wow, okay.

7           MR. PIKE: -- up there.

8           MS. BLUTH: Thank you.

9           Thank you, Randy.

10          MR. PIKE: You bet.

11          You want it back on the ELMO, sorry.

12          MS. BLUTH: Yeah, thank you.

13 BY MS. BLUTH:

14          Q     Sorry about that, Mitchell. So I'm at 22:37.

15          Oh my goodness, okay. [Unintelligible].

16                         [Surveillance video playing]

17          All right. So I started it at 22:30. We see a vehicle driving in.

18 Who's driving that vehicle?

19          A     Me.

20          Q     Where's Tyesha?

21          A     I don't know?

22          Q     I mean, not Tyesha. Bianca.

23          A     In the back seat.

24          Q     Okay. Sorry. All right.

25                         [Surveillance video continues playing]

1 BY MS. BLUTH:

2 Q Now, when you get out of the car, did you see what you were  
3 wearing?

4 A Yeah.

5 Q Do you want me to rewind it?

6 A No, I see.

7 Q Okay. So at that point where -- when you first get out of the  
8 car, where is your shirt?

9 A In my hand.

10 Q In your hand.

11 [Surveillance video continues playing]

12 BY MS. BLUTH:

13 A I don't know, but I think it's around my neck already.

14 Q Say it a little bit louder.

15 A I said I think it's around my neck already.

16 Q Around your neck, okay.

17 And then when you're walking over there, do you put it -- you  
18 put it completely on though?

19 A Yes.

20 Q So when Mike says to you walk with me to the corner, does he  
21 give you any details at all in regards to why you're going to the corner?

22 A No.

23 [Surveillance video continues playing]

24 BY MS. BLUTH:

25 Q That third individual walking behind you guys in the white shirt,

1 do you have any idea who that person is?

2 A No.

3 Q Was that person involved in any of this at all?

4 A No.

5 Q Okay.

6 [Surveillance video continues playing]

7 BY MS. BLUTH:

8 Q So was it your testimony earlier that as you were approaching,  
9 the male on the other side of the street was sitting down in the -- in his  
10 area?

11 A Right.

12 [Surveillance video continues playing]

13 BY MS. BLUTH:

14 Q Now the video's at 24:50. Mitchell, I want you to keep your  
15 eyes on that corner for me, okay, because I'm going to have a few  
16 questions. We see someone start running around the corner. Who's  
17 that first?

18 A Mike.

19 Q Okay. Mike drops something and bends down and gets it.  
20 Did you see what it was that he dropped?

21 A No.

22 [Surveillance video continues playing]

23 BY MS. BLUTH:

24 Q As you're running back or walking back, do you call  
25 somebody?

1           A     Yes.

2           Q     Who do you call?

3           A     Bianca.

4           Q     And why do you call Bianca?

5           A     To pick me up.

6           Q     Do you want to get out of there?

7           A     Yeah.

8           Q     All right. And -- so in a second we're going to see the

9 vehicle -- we see Bianca now, she -- you said she was in the back, is

10 that right?

11          A     Yes.

12                               [Surveillance video continues playing]

13 BY MS. BLUTH:

14          Q     When she goes and picks you up, where do you guys go?

15          A     Home.

16                               [Surveillance video continues playing]

17          MS. BLUTH: Can I have the Court's indulgence, Judge?

18          Thank you, that concludes my direct, Your Honor.

19          THE COURT: Okay. Mr. Pike.

20          MR. PIKE: If we could leave the video on --

21          MS. BLUTH: Yeah.

22          MR. PIKE: -- I may refer to it.

23          THE COURT: Okay.

24          MS. BLUTH: Got it.

25          MR. PIKE: Thank you very much.

1 **CROSS-EXAMINATION**

2 BY MR. PIKE:

3 Q Good morning, Mr. Johnson -- or afternoon. My name's  
4 Randall Pike, Randy Pike and I'm going to ask you a few questions this  
5 afternoon, if that's all right?

6 A [No audible response - nods head yes].

7 Q You nod your head, is that yes?

8 A Yeah.

9 Q Okay. Do you remember meeting with me outside of your  
10 apartment --

11 A Yeah.

12 Q -- at one point in time to discuss this?

13 And there was a previous hearing in this case, it's called a  
14 preliminary hearing. Were you subpoenaed to appear at that preliminary  
15 hearing by the State?

16 MS. BLUTH: Objection, relevance.

17 THE COURT: Well, overruled. I'll give you a little leeway --

18 THE WITNESS: No.

19 THE COURT: -- you can go ahead.

20 BY MR. PIKE:

21 Q No, okay.

22 And you didn't attend that so you didn't hear any of the  
23 testimony, right?

24 A No.

25 Q Have you ever read the charging document, the Information in

1 this case?

2 MS. BLUTH: Objection, relevance.

3 MR. PIKE: It'll come --

4 THE COURT: Well, overruled.

5 BY MR. PIKE:

6 A No.

7 Q You're not here by yourself today, are you?

8 A What do you mean?

9 Q Well, you have an attorney here with you, don't you?

10 A Yeah.

11 Q Okay. And you understand from talking with your attorney --

12 MS. BLUTH: Objection, in regards to conversations with his  
13 attorney.

14 MR. PIKE: I --

15 THE COURT: Okay. I'll sustain the objection.

16 MR. PIKE: I should not have asked it that way.

17 BY MR. PIKE:

18 Q You understand that on the murder count in this case, that one  
19 of the theories of the case is that Michael, your half-brother, was --

20 THE COURT: Why don't you guys approach?

21 MR. PIKE: Okay.

22 [Bench Conference Begins]

23 THE COURT: There's a difference between asking him  
24 questions about any concern he has about culpability and getting in to  
25 legal theories. The jury -- I mean, that's not really relevant to his

1 testimony, what the legal theories of the case are. I mean, it would be  
2 relevant if you wanted to say hey, have you read anything that says  
3 there's other unnamed people involved in this that somehow you're  
4 concerned about that or you want to impeach him in that regard and get  
5 that. But kind of parceling out the charging document and legal theories,  
6 I don't know that --

7 MR. PIKE: Okay. I'll rephrase it.

8 THE COURT: -- that's an appropriate way to do it.

9 MR. PIKE: I'll find a better way.

10 THE COURT: Okay.

11 MR. PIKE: Because --

12 THE COURT: All right.

13 [Bench Conference Concludes]

14 THE COURT: All right. Mr. Pike, why don't you rephrase  
15 that?

16 MR. PIKE: Thanks.

17 BY MR. PIKE:

18 Q You're afraid that you might be charged with the murder in this  
19 case?

20 A I'm afraid I might be charged with it?

21 Q Yes.

22 A No.

23 Q Are you aware that a witness has identified the shorter man as  
24 the shooter?

25 MS. BLUTH: Judge, objection.



1 THE COURT: Well --

2 THE WITNESS: Negative.

3 THE COURT: -- I'll sustain the objection. We don't talk to  
4 witnesses about what other witnesses are saying.

5 MR. PIKE: All right.

6 BY MR. PIKE:

7 Q You were there at the location when Mr. Phillips was shot,  
8 right?

9 A Yeah.

10 Q Yes.

11 And you were there and you walked over to the location where  
12 he was at, right?

13 A Yeah.

14 Q And you punched him?

15 A Okay.

16 Q Is that yes?

17 A Yes.

18 Q How many times did you punch him?

19 A One.

20 Q He came up at you and you punched him because you  
21 thought -- were afraid that he was going to hit you?

22 A I don't know, he just got too close.

23 Q Got too close to you?

24 A Yeah.

25 Q Okay. You didn't feel frightened at all by him?

1 A Feel threatened by him?

2 Q Yeah.

3 A Why would I feel threatened by him?

4 Q I don't know, did you think he might have a knife? Did you  
5 think he might be dangerous? There's a bunch of homeless people out  
6 there. Do you just walk up and punch him because he got too close?

7 A Right.

8 Q Okay. That's a justification to punch somebody because  
9 they're too close and you didn't like that. You were going up there,  
10 right?

11 A You said I was going up there?

12 Q You were -- walked up on him. Did you see this guy before?  
13 Did you know this -- Mr. Phillips before or after?

14 A No.

15 Q No?

16 A If I would've seen him before, he probably wouldn't have got  
17 hit because I --

18 Q Okay. So you --

19 A -- know him.

20 Q -- walked up and you just punched him.

21 And now when you talked with the police, let me kind of go  
22 through your statement and we'll lead up to where we're at. First of all,  
23 let me ask you a question if I may. Have you smoked any marijuana this  
24 morning? Today?

25 A Yeah.

1 Q Okay. About how much?

2 A About two blunts.

3 Q About what? Two blunts. What's a blunt?

4 A A cigar.

5 Q It's like a marijuana cigar?

6 A [No audible response - nods head yes].

7 Q Okay. And it's legal. And in fact on the day that you were

8 going over to get that \$10 from Michael, what was the purpose for that

9 money?

10 A To get me some weed.

11 Q Okay. You smoked weed a lot?

12 A Of course.

13 Q I'm sorry?

14 A Yes.

15 Q Okay. While you're here test -- and you knew you were going

16 to be in court today testifying, right?

17 A Well no not today.

18 Q Not today. Some time.

19 Okay. So -- oops. I'm sorry, I grabbed the wrong note.

20 When the police came to you and they were talking to you, I

21 think the --

22 MR. PIKE: Page 14, Counsel.

23 BY MR. PIKE:

24 Q You told them that you never even went up to Flavors that

25 night, right?

1 A Yeah.

2 Q Okay. And that was a lie.

3 A [No audible response - nods head yes].

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 BY MR. PIKE:

8 Q Are you having a hard time remembering things today or  
9 answering them today?

10 A No, not at all.

11 Q And where did you tell them that you went, instead of going up  
12 to Funny -- or excuse me, to Flavors?

13 A I don't even remember.

14 Q You remember that you told them that you went to get a soda?  
15 Get something to drink?

16 A Oh, yeah.

17 Q Okay. And where was that at that you went to?

18 A Circle K.

19 Q Is that a Circle K?

20 A Yeah.

21 Q Now we're recording this so I kind of need to be able to hear  
22 your response if I could, all right?

23 And that Circle K, where is that located in relationship to  
24 where Flavors is at?

25 A Five minutes. Five minutes away.

1 Q Okay. About as close as your apartment is?

2 A Yes.

3 Q All right. And you went to Circle K, picked up the money, and  
4 then left, right? You never got out of the car.

5 A I don't know.

6 Q That's what you told the police the second after that, right?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes.

10 Q And that was a lie as well?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yes

14 Q You actually told them that you got halfway there and then you  
15 left, right?

16 A Uh-huh. Yes.

17 Q That's a yes as well, okay.

18 Then when you started talking to the police a little bit further  
19 you said well, yeah, I did get out of the car but you never walked all the  
20 way down to the corner?

21 A Uh-huh. Yes.

22 Q Okay. You told the police that and that was a lie too.

23 A Right.

24 Q Now you understood at the point in time when the detectives  
25 are talking with you that they were talking to you about a murder and

1 they were talking about a criminal charge that was pending, right?

2 A Yeah.

3 Q And that your car had been on a surveillance video, right?

4 A [No audible response - nods head yes].

5 Q That's a yes?

6 A Yes.

7 Q And so you were withholding information from them?

8 A If that's what you want to call it.

9 Q I want to know what you want to call it.

10 A I call it not wanting to talk to them.

11 Q Didn't want to talk with them.

12 Then you told the police --

13 MR. PIKE: On page 26, Counsel, I'm sorry.

14 MS. BLUTH: Thank you.

15 BY MR. PIKE:

16 Q -- that you only went to the corner, right?

17 A If that's what they say.

18 Q You don't have any reason to doubt what I'm asking you, you  
19 said? You want to look at the transcript?

20 MS. BLUTH: I'll stipulate, Counsel.

21 MR. PIKE: Thank you.

22 BY MR. PIKE:

23 Q The stipulation is, and that's an agreement, that you told the  
24 police that you went to the corner and you didn't go any further. You  
25 didn't go out into the street. You told the police --

1 A Right.

2 Q You just heard -- and you remember telling the police that you  
3 just heard shots and then you went away.

4 A [No audible response - nods head yes].

5 Q Yes?

6 THE COURT: Yes?

7 THE WITNESS: Uh-huh. Yes.

8 MR. PIKE: Okay.

9 BY MR. PIKE:

10 Q Then you went over to get the money from Michael that he  
11 was going to lend you.

12 A Yes.

13 Q Did he ever give you the \$10?

14 A I actually don't even remember.

15 Q What?

16 A I don't even remember.

17 Q Okay. You don't remember. Okay.

18 And now you're over there -- you're in an area that you were  
19 used to going to when you were working over there at Flavors, right?

20 A Right.

21 Q And there were a lot of homeless people there around that  
22 area at night, yes?

23 A Yeah.

24 Q In your opinion.

25 And these -- they were potentially dangerous or could be

1 dangerous?

2 A To who?

3 Q To you or to anybody that was in that area?

4 A I wouldn't know. They wasn't dangerous to me.

5 Q Okay. They weren't dangerous to you, but there was a gate  
6 around Flavors and that is to keep the homeless out?

7 MS. BLUTH: Objection, speculation --

8 THE WITNESS: Your guess is as --

9 MS. BLUTH: -- if he knows.

10 THE WITNESS: -- good as mine.

11 THE COURT: Well, I'll sustain the objection as to the purpose  
12 of Flavors' gate.

13 BY MR. PIKE:

14 Q You know that there was a locked gate -- or fence all the way  
15 around there, that's correct.

16 A Right.

17 Q And when you worked there, you'd just leave and then go  
18 home. It was about five minutes away, right?

19 A Right.

20 Q Did you mingle with the homeless people, did you go out and  
21 talk to them?

22 A Why?

23 Q I'm just asking whether you did?

24 A No.

25 Q And you were still denying to the police that you went over



1 there. Was there a time when you told the police that you heard some  
2 gunshots, but it couldn't have been Michael?

3 MR. PIKE: Page 29. I'm sorry, Counsel.

4 MS. BLUTH: That's okay.

5 BY MR. PIKE:

6 A I don't even remember.

7 MR. PIKE: Can I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MR. PIKE:

10 Q I'm showing you what's a copy of the statement that you gave  
11 to the police that was recorded and then transcribed. Did you have an  
12 opportunity to read this before you came into Court today?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q And I'm showing you here, and if you'd read to yourself this  
17 portion of it right in the middle.

18 Okay. Read that.

19 Do you remember telling the police it couldn't have been  
20 Michael?

21 A Yeah.

22 Q Did it look -- when you told the police again --

23 MR. PIKE: Page 50, Counsel.

24 BY MR. PIKE:

25 Q -- that you stayed on Searles, that was another lie to the

1 police, right?

2 A No.

3 Q You crossed over and you went over --

4 A You said that I stayed on Searles?

5 Q I'm sorry?

6 A You said I told them I stayed on Searles?

7 Q Yes.

8 A Yeah.

9 Q You were out in the street. Did you go all the way across Las  
10 Vegas Boulevard North and did you go up and on to the sidewalk when  
11 you hit --

12 A No, I stayed like in the far lane. I was in the lane -- the  
13 middle -- like not even in the middle of the street but like in the street.

14 Q Okay. So you're version of it now is that you were in the  
15 street --

16 A It's not really the street.

17 Q -- and that's where you were when you had physical contact  
18 with Mr. Phillips?

19 A Uh-huh.

20 Q That's yes?

21 A Yes.

22 Q And did you hit him with a closed fist, with an open hand, how  
23 did you hit him?

24 A With a closed fist.

25 Q Right hand or left hand?

1           A     Right.

2           Q     And when you hit him with your right hand, did you hit him in  
3 the jaw, did you hit him in the forehead, where -- in the stomach? Where  
4 did you hit him?

5           A     In the neck.

6           Q     Right in the neck. Which part of his neck?

7           A     Like right here.

8           MR. PIKE: Okay. May the record reflect that --

9           THE COURT: He hit on the side.

10          MR. PIKE: I'm sorry?

11          THE COURT: On the side.

12          MR. PIKE: On the side and on the right side.

13          THE COURT: Yes, he did indicate on the right side of the  
14 neck.

15          BY MR. PIKE:

16          Q     So you hit him on the right side of the neck and he didn't go  
17 down, right?

18          A     Right.

19          Q     Now Mr. Phillips, you didn't know his name at that point in  
20 time, right?

21          A     Right.

22          Q     Do you know his name now?

23          A     No.

24          Q     What was he wearing at that time?

25          A     I really can't remember.

1 Q Did he have anything in his hand?

2 A Not that I know of.

3 Q Did he swing back at you? Did he punch you?

4 A No.

5 Q About how tall was he?

6 A I don't know.

7 Q About how much did he weigh?

8 A I can't remember.

9 Q When all of this happened, when this was going on, had you

10 smoked a couple of blunts that evening?

11 A I'm sure I did.

12 Q Okay. You're sure you did. Two, maybe three? How many?

13 A Ain't no telling.

14 Q I'm sorry?

15 A Ain't no telling.

16 Q Ain't no telling, okay.

17 From what was happening and the area that you went over

18 there, how dark was it?

19 A Not dark.

20 Q Pretty dark?

21 A No, like a regular street lit up.

22 Q So you could see the person that you were going over to

23 punch?

24 A Yeah.

25 Q And when you were walking over there and you were walking

1 over towards Mr. Phillips, you had in your mind that you were going to  
2 punch him?

3 A Uh-uh.

4 Q Okay. And it was a sudden spur of the moment.

5 A He got too close.

6 Q Got too close. And at that time, from your memory, where  
7 was Michael at? How close was he to you?

8 A At that point in time?

9 Q I'm sorry?

10 A Not far.

11 Q Not far. Was he as close as from me to you or was he closer?

12 A He was closer.

13 Q Okay.

14 MR. PIKE: If I may cross the well, Your Honor.

15 THE COURT: Yeah.

16 BY MR. PIKE:

17 Q Kind of stop me when he was about how close to you?

18 A About right there.

19 Q About right here.

20 [Cell phone ringing]

21 THE COURT: About ten feet.

22 THE WITNESS: Oh, shit. My bad.

23 THE COURT: I don't want you break out in song or anything,

24 so.

25 THE WITNESS: Yeah.

1 THE COURT: Quiet the phone.

2 BY MR. PIKE:

3 Q Okay. So we're about five feet away from each other, maybe.

4 A Yeah.

5 Q Is that right?

6 MS. BLUTH: I'm sorry, Judge, just for the record, is this the

7 distance between --

8 MR. PIKE: Oh me and --

9 THE WITNESS: Michael, right?

10 MR. PIKE: Yeah.

11 MS. BLUTH: Well no, I know you, Mr. Pike. But are you --

12 who are you?

13 THE COURT: Mr. McNair. He's talking about --

14 MR. PIKE: I'm the Defense attorney.

15 THE COURT: -- the distance --

16 MR. PIKE: This --

17 THE COURT: The gentleman's describing the distance

18 between him and the Defendant.

19 MS. BLUTH: Okay. Thank you.

20 MR. PIKE: Right.

21 THE COURT: And he said it's about there, which is about

22 eight/nine feet.

23 MS. BLUTH: Okay. Thank you.

24 MR. PIKE: Change that maybe, Your Honor, about five/six

25 feet.

1 THE COURT: I'm going to say eight or nine feet.

2 MR. PIKE: Okay.

3 THE COURT: But thank you.

4 MR. PIKE: Thanks.

5 BY MR. PIKE:

6 Q And that -- and when you were striking Mr. Phillips, when you  
7 were hitting him, he was facing you, correct? He was --

8 A [No audible response - nods head yes].

9 Q -- facing you and you felt that he was close and you felt  
10 threatened by him?

11 A Yeah.

12 Q Okay. Is that yes?

13 A Yes.

14 Q Okay. Now at the -- and you never saw the flash of any  
15 gunshots, you just heard them, according to your testimony.

16 A Right.

17 Q Did -- when you were walking up and Mr. Phillips got too close  
18 to you for your comfort, you didn't -- did he come up on Mike as well?

19 A No, he was walking towards us.

20 Q Walking towards both of you?

21 A [No audible response - nods head yes].

22 Q Was he walking towards you bent over, standing up, what kind  
23 of --

24 A Straight up, just walking.

25 Q Just walking. At that point in time that -- did everything

1     happen very fast or --

2           A     Yeah.

3           Q     Okay. So when you were coming up on Mr. Phillips, were you  
4     walking at a fast pace or were you just walking normally?

5           A     Just walking.

6           Q     Just walking, okay.

7                     You weren't saying anything to him?

8           A     [No audible response - shakes head no].

9           Q     Is that no?

10          A     No.

11          Q     Not very talkative much when you're on marijuana -- smoke  
12     marijuana, are you?

13          A     Oh, I don't talk at all.

14          Q     You don't talk at all, okay.

15                     And so do you remember telling the police --

16                     MR. PIKE: And this will be on page 62, Counsel.

17     BY MR. PIKE:

18           Q     -- that you finally came and told the police that you were not  
19     going to say that I wasn't involved in it?

20          A     Say it again.

21          Q     Okay. Let me pull the transcript.

22          A     You ain't got to show it. I just asked you to say it again. You  
23     ain't got to show me this.

24          Q     I'm sorry, I couldn't hear that.

25          A     I just said repeat what you said.



1 Q Okay. Do you remember telling the police that you told them  
2 I'm not going to say that I wasn't involved in it?

3 A No, I don't remember that.

4 Q Pardon?

5 A I don't remember that.

6 Q Okay.

7 MR. PIKE: 62.

8 MS. BLUTH: Got it.

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

10 THE COURT: Yeah.

11 BY MR. PIKE:

12 Q This is page 62. Question on the end to there, if you'd just  
13 read those to yourself.

14 A Okay.

15 Q Okay. So now that you've had a chance to refresh your  
16 recollection on this, do you recall that when the police asked you about  
17 your potential involvement, you said I'm not going to say that I wasn't  
18 involved in it, but I didn't know this was going to happen, I just came --  
19 like I said, I came to get some money to get my weed and my cigarettes.

20 A You got it.

21 Q Is that what you said?

22 A Yes.

23 Q That's what --

24 A Yes.

25 ...

1 Q -- you told the police?

2 Rather than stay around after this had happened, you called  
3 your girlfriend to get in the car to come drive and pick you up. Where did  
4 you have her drive to pick you out?

5 A Right out the gate.

6 Q Is there any reason why you didn't go ahead and just come  
7 back into the --

8 A That was doing too much,

9 Q -- where the car was at so you could drive?

10 A I was doing too much.

11 Q You were doing too much?

12 A That was doing too much.

13 Q What do you mean by that?

14 A About me walking all the way back in the gate was doing too  
15 much when I just call her and tell her to turn around and pick me up.

16 Q All right. So you had her do that and then from there you  
17 drove home?

18 A Yes.

19 Q Okay. You knew there had been gunshots and you knew that  
20 the police would be coming.

21 A Yes.

22 Q Is there a reason that you didn't stay so that you could tell the  
23 police what had happened?

24 A Because I don't like the police.

25 Q You don't like the police?

1           A     No.

2           Q     Within ten years prior to this time, had you ever been  
3 convicted of a felony?

4           A     You said ten -- obviously if you said ten years, then you know I  
5 have.

6           Q     Okay. Well, the Ladies and Gentlemen of the jury don't know.  
7 What have you been convicted of?

8           A     Larceny from a person.

9           Q     Okay. So you don't like police, you don't want to talk with  
10 them, and you run away -- or excuse me, you get out of there as fast as  
11 you can?

12          A     I wasn't even fast as I can. I normally left like I normally came.

13          Q     When you found out that your vehicle was on the TV and there  
14 were questions about your involvement, did you go over to the police  
15 and say hey, I want to talk to you about this?

16          A     No.

17          Q     You're here today to testify because you're under subpoena,  
18 correct?

19          A     Yes.

20          Q     You have an attorney with you?

21          A     Yes.

22                 MR. PIKE: No further questions.

23                 THE COURT: State.

24                 ...

25                 ...

1 **REDIRECT EXAMINATION**

2 BY MS. BLUTH:

3 Q I don't have very much further, Mr. Johnson, so I'm going to  
4 try to get you out of here as fast as possible, okay? But Mr. Pike had  
5 asked you if you remembered the description of the victim and you said  
6 that you couldn't quite remember.

7 MS. BLUTH: Page 34, Counsel.

8 MR. PIKE: Thank you.

9 BY MS. BLUTH:

10 Q Do you remember telling the detectives that you thought that  
11 the victim was about 150 pounds and he was skinny as fuck, had a white  
12 beard, and was wearing dark colored clothes? Do you remember telling  
13 the detectives that?

14 A Yeah.

15 Q And I apologize because I didn't have the right page number  
16 before.

17 MS. BLUTH: Mr. Pike, it's page 35.

18 MR. PIKE: That was the 55?

19 MS. BLUTH: Yeah, it wasn't 55, it was 35. And my  
20 question --

21 MR. PIKE: Thank you.

22 BY MS. BLUTH:

23 Q -- was -- is -- as you were -- I had asked you earlier, do you  
24 remember the victim saying something to you as you were walking up  
25 and your response was no. On page 35, you stated that the victim was

1 like man, we just going to leave it alone.

2 What did you -- what did that mean to you when saying man,  
3 we just going to leave it alone?

4 A Really nothing because I didn't know what he was talking  
5 about.

6 Q Okay. Did at any point in time, did you think he meant like  
7 look, we're just going to squash this, let's call it a day?

8 A Yeah, that's what -- usually what leave it -- just leave it alone  
9 means.

10 Q Okay. Mr. Pike just asked you about on page 62 when you  
11 said I'm not going to say I wasn't involved in it. What did you mean by  
12 that when you said that to the police?

13 A That I wasn't saying that I wasn't there. Like I was there but  
14 like I didn't know what was going on, so.

15 Q So you weren't -- you're not saying that you weren't there  
16 when it happened --

17 A Yeah.

18 Q -- you're just saying you didn't do it.

19 A Yeah.

20 Q Meaning you weren't the shooter?

21 A Yeah.

22 Q Did you shoot Gordon Phillips?

23 A No.

24 Q Mr. Pike had gone through sometimes with you when you  
25 were speaking with the police that you weren't honest with them. I think

1 I went through a few of those too.

2 A Yes.

3 Q And you stated that yeah, you weren't honest with them.

4 Were you trying to protect your brother?

5 A Part of it.

6 Q Part of it. What was the other part of it, just that you don't like  
7 police?

8 A Yeah.

9 Q In regards to the weed that you smoked that night, would you  
10 say that you were so high to the point that you were having issues  
11 driving?

12 A Never.

13 Q Never.

14 A Never.

15 Q You smoke weed on a pretty regular basis?

16 A Yes.

17 Q Does it affect you in anyway of how you see things, how you  
18 drive, how you walk, et cetera?

19 A No.

20 Q On cross-examination, did you state that you did in fact feel  
21 threatened by the victim or you did not feel threatened?

22 A I didn't feel threatened by him.

23 MS. BLUTH: Court's indulgence, Judge.

24 BY MS. BLUTH:

25 Q You were never charged in any way in regards to any part of

1 the murder of Gordon Phillips, is that correct?

2 A Correct.

3 Q Have you been offered any promises, any deals, anything for  
4 your testimony here today?

5 A No.

6 Q Are you here because you were served a subpoena and you  
7 don't really have a choice?

8 A Yes.

9 MS. BLUTH: Nothing further, Your Honor.

10 THE COURT: Mr. Pike, anything further?

11 Okay.

12 **RECROSS-EXAMINATION**

13 BY MR. PIKE:

14 Q Well, you weren't offered anything but you had an attorney  
15 appointed for you free of charge, isn't that true?

16 MS. BLUTH: Judge, I --

17 MR. PIKE: That wasn't by the State.

18 THE COURT: Well that was by the Court.

19 MR. PIKE: That was by the Court.

20 THE COURT: The Court arranged for that.

21 MR. PIKE: Right.

22 BY MR. PIKE:

23 Q So you --

24 [Cell phone ringing]

25 THE WITNESS: I'm so sorry, that's -- I --

1 THE COURT: Do you need me to answer that?

2 THE WITNESS: No.

3 THE COURT: You probably don't want me to answer that. So  
4 just turn it off for me.

5 THE WITNESS: All right. I just did.

6 THE COURT: All right. Thank you, Mitchell.

7 BY MR. PIKE:

8 Q All right. Just one or two questions. Now you -- on page 35  
9 when you were telling the detectives that Mr. Phillips said man, we just  
10 going to leave it alone, did you punch him in the face before or after he  
11 said that?

12 A Before.

13 Q Before, okay.

14 MR. PIKE: Nothing further.

15 THE COURT: Anything further?

16 MS. BLUTH: Yeah, I just -- I apologize.

17 **FURTHER REDIRECT EXAMINATION**

18 BY MS. BLUTH:

19 Q When -- so you're saying that he -- that when you punched  
20 him had he said man, I just want to -- we just need to leave it alone at  
21 that point yet?

22 A No, he didn't say nothing.

23 Q Okay. So you punched him first and then he said that?

24 A Yeah.

25 MS. BLUTH: Okay. Nothing further. Thanks.



1 THE COURT: Anything from our jurors?

2 Yes.

3 [Bench Conference Begins]

4 MR. ROGAN: She's an inquisitive juror.

5 MS. BLUTH: Yeah, she is.

6 MR. PIKE: Don't stand too close to him, you'll get a contact  
7 high.

8 MS. BLUTH: Uh-huh.

9 THE COURT: And we won't call any more witnesses now.

10 MS. BLUTH: What?

11 THE COURT: You're not going to call any more witnesses  
12 now.

13 MR. ROGAN: No.

14 MS. BLUTH: Okay. These are both fine.

15 THE COURT: Well my worry is what's the context of Number  
16 2 if he says yes?

17 MS. BLUTH: Well he just said he's seen his brother with a  
18 gun before. He told detectives that as well.

19 THE COURT: I don't want him to say yeah, I've seen him  
20 walking around pointing a gun at homeless people or something.

21 MS. BLUTH: No he's not going to say that, he's just going to  
22 say yes.

23 THE COURT: You think he's going to say yes.

24 MS. BLUTH: He's going to say -- he's not going to say yes  
25 with homeless, he's going to say yes. That's what he told police; yes,

1 I've seen him with a gun before. But it's been while.

2 MR. PIKE: The problem I've got with that, we don't have a  
3 timeframe.

4 MS. BLUTH: You can get it with backup questions.

5 THE COURT: Well --

6 MR. ROGAN: I think that relates to Ramiro's --

7 THE COURT: I don't think the question is improper, I just  
8 wanted to make sure there wasn't any bad act kind of things about when  
9 he saw him with it.

10 MR. PIKE: He's got a murder felony conviction, so --

11 MR. ROGAN: They don't know about that.

12 THE COURT: Well but they -- the jury's not going to know  
13 that. So all the jury knows is people are allowed to have guns. Okay.

14 [Bench Conference Concludes]

15 THE COURT: A couple questions for you, Mr. Johnson, if I  
16 could.

17 **EXAMINATION BY THE COURT**

18 BY THE COURT:

19 Q Did you at any point get approached by anybody at Unified  
20 about buying a gun? Anybody ask you if you had a gun to sell them or  
21 where they could buy a gun?

22 A No.

23 Q No.

24 Had you ever -- before this date, September 14<sup>th</sup> of 2017, had  
25 you ever seen Michael with a gun before that date?

1           A     No.

2           THE COURT: Okay. Ms. Bluth, any questions based on  
3 mine?

4           MS. BLUTH: Do you -- yes, please, Judge.

5                                   **FOLLOW-UP EXAMINATION**

6 BY MS. BLUTH:

7           Q     Do you remember the police asking you if you had ever seen  
8 your brother with a gun before?

9           A     Not really.

10          Q     Okay.

11          MS. BLUTH: Page 42, Counsel.

12          MR. PIKE: Just a second, I'm just about there. Thank you.

13 BY MS. BLUTH:

14          Q     Question: Okay. So have you ever seen your brother in  
15 possession of a firearm before?

16                 Answer: Yeah, a couple of times. I mean, not recently, but I  
17 have seen him in possession with a firearm a couple of times.

18                 Do you remember saying that?

19          A     Yeah.

20          Q     Okay.

21          MS. BLUTH: Nothing further.

22          THE COURT: Mr. Pike, anything?

23          MR. PIKE: Nothing, Your Honor.

24          THE COURT: All right. Mr. Johnson, thank you very much for  
25 your time. I appreciate it. You are excused. You can turn your phone

1 back on when you get outside, okay?

2 THE WITNESS: All right.

3 THE COURT: All right. Ladies and Gentlemen, with that  
4 we're going to go ahead and take our evening recess. We're going to be  
5 starting at 1:00 tomorrow.

6 And during the recess you're admonished not to talk or  
7 converse among yourselves or with anyone else on any subject  
8 connected with this trial. Or read or watch or listen to any report of or  
9 commentary by any medium of information including, without limitation,  
10 newspapers, television, the internet and radio. Or form or express any  
11 opinion on any subject connected with the trial until the case is finally  
12 submitted to you. No legal or factual research or investigation on your  
13 own.

14 Thank you very much for your time today. I'll see you  
15 tomorrow.

16 THE MARSHAL: Rise for the jurors.

17 [Outside the presence of the jury]

18 THE COURT: You guys have anything outside the  
19 presence?

20 MS. BLUTH: The State doesn't.

21 MR. PIKE: The Defense does not.

22 THE COURT: The only thing I just kind of wanted to make a  
23 bigger record on and I didn't want to do it in the jury's presence, but was  
24 when the objection got re-raised on the State's examination of Mr.  
25 Johnson in terms of using that statement, one of the things that I had

1 said at the bench was obviously there is a distinction between --  
2 everybody can sit down. A distinction between impeaching and  
3 refreshing credibility.

4 And generally impeaching, a lot of times, goes straight into  
5 prior inconsistent statements, versus refreshing recollection. And  
6 impeaching is obviously more often with difficult or hostile or  
7 uncooperative witnesses, which in regard to Mr. Johnson I don't think he  
8 was hostile at all but I do think he was kind of difficult and had admitted  
9 prior to the use of the statements and what was occurring that he had  
10 lied to the police on a number of occasions; didn't like the police, didn't  
11 want to be there, didn't want to be giving information.

12 So I don't think it was improper for the State to use prior  
13 inconsistent statements. And when he says I don't remember the  
14 statement to the police it is a prior inconsistent statement so they  
15 could -- they can impeach him with those statements.

16 But what I was explaining at the bench was they don't have to  
17 allow him to refresh recollection but I did -- they needed to ask him the  
18 question first before going into the statement, so that's why I overruled  
19 that objection.

20 All right. You guys have three witnesses left, is that it? The  
21 coroner, the detective, and --

22 MS. BLUTH: DNA. And then we'll have to bring in our  
23 investigator just for a quick impeachment.

24 THE COURT: Okay.

25 MS. BLUTH: But yes, that would be correct.

1 THE COURT: Okay. And then what's the issue with Mr.  
2 Saldana? Is everybody still looking for him or --

3 MR. PIKE: We haven't had any more leads.

4 THE COURT: Okay.

5 MS. BLUTH: Neither have we.

6 THE COURT: Okay. All right. Then I will see everybody at  
7 1:00.

8 I know I saw an e-mail come up with jury instructions?

9 MS. BLUTH: Yes.

10 THE COURT: You guys have jury instructions that you're  
11 going to be proposing as well?

12 MR. PIKE: We do and we'll e-mail them to the Court as soon  
13 as we get back to the office.

14 THE COURT: Okay. Yeah, I need those by tomorrow so that  
15 we can talk about them tomorrow evening after we break for the day,  
16 okay?

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

18 THE COURT: All right. I'll see you all tomorrow. Thank you.

19 [Evening recess at 4:47 p.m.]

20 \* \* \* \* \*

21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 Brittany Mangelson  
Independent Transcriber