

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

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JASON JEROME BOLEN,

Appellant,

*vs.*

THE STATE OF NEVADA,

Respondent.

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Docket No. 79715

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Appeal from a Judgment of Conviction  
Following a Jury Trial and Verdict  
Eighth Judicial District Court, Clark County  
The Honorable Richard F. Scotti, District Judge  
Case No. C-18-334635-1

---

**APPELLANT'S APPENDIX  
VOL. 2 OF 3**

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Nevada Bar No. 9876  
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Electronically Filed  
Aug 10 2020 04:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 10 of August, 2020, I served this document on the following:

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**AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Ben Nadig

Ben Nadig

8-10-20

Date

ORIGINAL

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STEVEN B. GRIERSON  
CLERK OF COURT

MAY 29 2019

BY, E. Vargas  
E. VARGAS, DEPUTY

AINF  
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Nevada Bar #001565  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

CASE NO: C-18-334635-1

-vs-

DEPT NO: XXI

JASON J. BOLDEN, aka  
Jason Jerome Bolen, #1891927  
Defendant.

SECOND AMENDED  
INFORMATION

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JASON J. BOLDEN, aka Jason Jerome Bolen, the Defendant(s) above named, having committed the crimes of **OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460)**;, on or about the 1st day of July, 2018, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: firearm, the Defendant being a convicted felon, having in 2009, been convicted of Trafficking Controlled Substance, in Case

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C-18-334635-1  
AINF  
Amended Information  
4638948

//



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1 No. C228792A and/or having in 2009, been convicted of Battery with Substantial Bodily  
2 Harm, in Case No. C246243X, in the Las Vegas Municipal Court, Clack County, felonies  
3 under the laws of the State of Nevada.

4  
5 STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

6  
7 BY

  
8 JORY SCARBOROUGH  
Deputy District Attorney  
9 Nevada Bar #014265

10  
11 Names of witnesses known to the District Attorney's Office at the time of filing this  
12 Information are as follows:

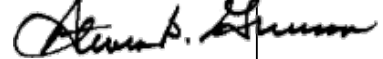
<u>NAME</u>	<u>ADDRESS</u>
14 CAREY, KEVIN	LVMPD #8739
15 CHARLTON, NOREEN	LVMPD #13572
16 COLEMAN, BRANDI	2883 WHEELWRIGHT DR #6/A, LVN 89121
17 CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
18 CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
20 CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, Las Vegas, NV
21 CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records Las Vegas, NV
23 GETER, SHAKIESHA	2883 WHEELWRIGHT DR #6/A, LVN 89121
24 GROSS, KEITH OR DESIGNEE	INVESTIGATOR / C.C. DISTRICT ATTORNEY
25 JACKSON, JERMAINE	LVMPD #16510
26 KNOWLTEN, JOSHUA	4581 CARRIGAE PARK DR #22/A, LVN 89121
27 KRMPOTICH, KENNETH	LVMPD #5809

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MARTINEZ, BRENTON  
MARTINEZ, BRYSTON  
SHAKEFORD, KEVIN

5250 STEWART AVE #2095, LVN 89110  
2883 WHEELWRIGHT DR. #6/A, LVN 89121  
LVMPD #15908

18F12217X/jr / L-1  
LVMPD EV#1807011437  
(TK12)



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-18-334635-1

DEPT. II

10 vs.

11 JASON BOLDEN, aka Jason  
12 Jerome Bolen,

13 Defendant.

14 BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE  
15 WEDNESDAY, MAY 29, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**  
17 **JURY TRIAL - DAY 2**

18 APPEARANCES:

19 For the Plaintiff:

JORY SCARBOROUGH, ESQ.  
CHAD LEXUS, ESQ.  
Chief Deputy District Attorneys

21 For the Defendant:

BENJAMIN NADIG, ESQ.

23  
24 RECORDED BY: DALYNE EASLEY, COURT RECORDER  
25



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WITNESSES FOR DEFT.	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
None				

**EXHIBITS**

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Las Vegas, Nevada, Wednesday, May 29, 2019

[Case called at 11:15 a.m.]

THE MARSHAL: All rise. Okay, Department 2 now in session.  
The Honorable Richard Scotti presiding.

MR. SCARBOROUGH: Pardon my approach. We were just  
discussing exhibits.

THE COURT: Not a problem.

[Counsel confer]

MR. NADIG: And Your Honor, just for the -- are we on?

THE COURT: Yes, we are.

MR. SCARBOROUGH: Okay, just for the record, 2 through 114  
State's 2 through 114 is that --

MR. SCARBOROUGH: It's actually 1.

MR. NADIG: State's 1 through 114 are admitted via stipulation.

MR. SCARBOROUGH: That's correct, Your Honor.

THE COURT: All right.

MR. NADIG: State's 115 has already been admitted.

THE COURT: All right.

MR. NADIG: We're going to argue about State's 116.

THE COURT: Who's offering it and who's objecting?

MR. NADIG: The State is offering. I'm objecting.

THE COURT: Okay, so that's State's 116. I -- yeah. And  
Defense objects.

MR. NADIG: And State's 124 I'm going to object.

1 THE COURT: So State offers, Defendant objects. Okay.

2 MR. NADIG: And then as to State 119, I believe --

3 THE COURT: State 119.

4 MR. NADIG: That the State is going to edit the photo. And just  
5 for the record, Your Honor, if you look at the photo and it's of my client, my  
6 objection is I don't want them to see these and to think that these are all  
7 separate arrests or separate citations. So for those reasons, I just object  
8 and the State is going to give us a photo without the numbers on the --

9 THE COURT: That's good. We don't want the jury speculating  
10 extraneous material is in the photo?

11 MR. SCARBOROUGH: Okay, if we can get -- so here's my only  
12 weird thing. So this is on the photo paper. So if make another copy, it's  
13 going to stand out as like some random newspaper.

14 MR. NADIG: Why don't you just -- I would --

15 THE COURT: Why don't you just cut and paste a white piece of  
16 paper covering that up? And -- oh, but then, how does it go back to the  
17 jury?

18 MR. NADIG: I was going to say just cut out the photo. You  
19 know? I mean, just literally take scissors and go like that.

20 THE COURT: Yeah, yeah.

21 MR. SCARBOROUGH: Since it's an exhibit, do you want to the  
22 Court Clerk to handle me or me?

23 THE COURT: It's up to her.

24 MR. SCARBOROUGH: Okay.

25 MR. NADIG: Whoever cuts straight.

1 THE COURT: Well, you know what? We -- you know what?  
2 You probably have to do it. I don't think the Court Clerk is at liberty to  
3 change proposed exhibits.

4 MR. SCARBOROUGH: That makes sense.

5 MR. NADIG: And I have no objection to the --

6 THE CLERK: I have --

7 MR. NADIG: What?

8 THE CLERK: Before you cut this, since it's already a proposed  
9 exhibit, I'm going to find out and let you know how they want me to handle  
10 it. Because I don't -- if you cut it --

11 THE COURT: Why don't I put it on the record that we decided  
12 to withdraw the proposed exhibit, but --

13 THE CLERK: Okay.

14 THE COURT: -- if you want, you can make a black and white  
15 copy if you can put in the record. Unless the parties stipulate that that  
16 exhibit's withdrawn, and there's no need to keep a black and white copy in  
17 the file. And then, you're going to cut it and resubmit it.

18 MR. SCARBOROUGH: Okay, let's see if we can just rework  
19 this.

20 [Counsel confer]

21 MR. NADIG: So, Your Honor, we'll stipulate that -- tell me if I'm  
22 wrong. We'll stipulate that they don't need a black and white copy. They'll  
23 be a resubmitted State's 119, which will simply be the cut-up version of  
24 State's 119.

25 THE COURT: Yes, is that stipulated to, counsel?

1 MR. SCARBOROUGH: Yes, Your Honor. I just want my -- are  
2 we calling Jegge right now?

3 MR. NADIG: No.

4 MR. SCARBOROUGH: Okay, because we're admitting that  
5 through a witness we're about to call soon, so.

6 MR. NADIG: We just won't.

7 THE COURT: All right, so --

8 MR. NADIG: That's fine.

9 THE COURT: Exhibit 119, the proposed Exhibit 119 is  
10 withdrawn from the possession of the Court Clerk. No copy is maintained.  
11 We're now going to submit -- let's call it Exhibit 119A.

12 MR. NADIG: Okay.

13 THE COURT: All right?

14 MR. SCARBOROUGH: Okay, so we're just going to cut --

15 THE COURT: So 119A is color copy of the original 119, which  
16 is being redacted by cutting off some extraneous material. Very good.

17 MR. SCARBOROUGH: Make sure you cut straight, Chad. I  
18 know, I got nervous when someone wanted me to cut it. It was great.

19 THE COURT: We can go off the record momentarily.

20 MR. NADIG: If you would like, Your Honor, we could discuss  
21 State's 124 and State's 116.

22 MR. SCARBOROUGH: [Indiscernible] him?

23 MR. NADIG: Yes.

24 THE COURT: All right, let me take -- we're still off or we are on  
25 the record now. Very good. So the parties have handed me State's

1 proposed 116 and State's proposed 124. Let me just take a look at these.

2 [Counsel confer]

3 MR. NADIG: And, Your Honor, the photo of the gentleman is  
4 the person whose transcript was read in yesterday. I would suggest, just  
5 based on his demeanor and things of that nature, that that photo serves  
6 no evidentiary purpose other than to be more prejudicial than probative  
7 and I'll submit to Your Honor.

8 MR. SCARBOROUGH: And --

9 THE COURT: Mr. Scarborough, what's the purpose of this  
10 photo?

11 MR. SCARBOROUGH: That purpose right there is to identify  
12 actually Bryson Martinez. I would have my officers testify and identify that  
13 man as Bryson Martinez.

14 THE COURT: Which is which?

15 MR. SCARBOROUGH: Bryson is the --

16 MR. NADIG: Bryson is the gentleman in the photo, yes.

17 MR. SCARBOROUGH: Yes.

18 THE COURT: All right, 116. So you're showing it to prove he  
19 was at the scene?

20 MR. SCARBOROUGH: Correct, yes.

21 THE COURT: Yeah.

22 MR. NADIG: There are other photos they could have used,  
23 Your Honor.

24 MR. SCARBOROUGH: I mean, to be fair, scanning through the  
25 bodycam, there are various scanned images of him walking by and

1 everything like that. So that's why I chose that one.

2 THE COURT: I mean, he's making a grimace. There's no  
3 indication that this -- that he's being arrested, or detained, or this is in  
4 connection with anyhow law enforcement other than this -- wait, this is a  
5 bodycam photo?

6 MR. SCARBOROUGH: Correct.

7 THE COURT: Are you going to introduce it as such?

8 MR. SCARBOROUGH: Just a photo of the -- yeah, I mean it's  
9 going to be through the detective, who's going to identify --

10 THE COURT: All right.

11 MR. SCARBOROUGH: -- everyone who's reviewed all the  
12 bodycam and is able to say that that's an accurate photo captured from  
13 the bodycam he's reviewed.

14 THE COURT: Did -- I guess Defense knew before today that  
15 this was marked as a proposed exhibit. You could have --

16 MR. NADIG: I was provided all of the photos. I was not told  
17 which photos would be used.

18 THE COURT: So 124 is just one of several in a group or  
19 something?

20 MR. NADIG: Theoretically, yeah. You provided the bodycams  
21 correct?

22 MR. SCARBOROUGH: I did. I provided him all the links to the  
23 bodycams. These are --

24 THE COURT: This is a still of the bodycam.

25 MR. SCARBOROUGH: Correct.

1 THE COURT: The bodycam is 124?  
2 MR. NADIG: The bodycam is not 124.  
3 MR. SCARBOROUGH: No.  
4 MR. NADIG: The still of the bodycam is 124.  
5 THE COURT: All right, so we're getting back to what I originally  
6 said is you received as a proposed Exhibit 124, which is the still that  
7 you're objecting to now?  
8 MR. NADIG: No, I received the entirety of the bodycam. I did  
9 not -- I was not told that they were going to take stills from the bodycam  
10 and then present them as exhibits. I was not provided that prior to.  
11 THE COURT: What was 124 before today?  
12 MR. SCARBOROUGH: Nothing. That was just a photo.  
13 MR. NADIG: Yes, I mean, I don't understand your question I  
14 guess, Your Honor.  
15 THE COURT: All right, let's start over. All right, Exhibit 124  
16 yesterday was what?  
17 MR. NADIG: I had not reviewed the photos prior to yesterday  
18 because we were doing jury selection. I had not seen the proposed  
19 exhibits --  
20 THE COURT: Okay.  
21 MR. NADIG: -- until this morning. That's --  
22 THE COURT: When did the State first identify and produce to  
23 the Defense's proposed exhibits?  
24 MR. SCARBOROUGH: This bodycam, I can go to my file. I  
25 mean, this bodycam of this --



1 THE COURT: Before trial started?  
2 MR. NADIG: Yes, I'm not --  
3 MR. SCARBOROUGH: Correct, correct. Yes.  
4 MR. NADIG: Your Honor, I received all the bodycams before  
5 trial started.  
6 THE COURT: Okay, all right.  
7 MR. SCARBOROUGH: And so, I think I know where Your  
8 Honor's going. I did not create a still from the bodycam and provide a still  
9 to him before trial.  
10 THE COURT: All right.  
11 MR. SCARBOROUGH: It's a bodycam and so.  
12 THE COURT: Perfect. So what I'm leading up to is whether the  
13 Defense had a fair opportunity to, you know, examine or cross-examine  
14 this gentleman as to why he's grimacing here.  
15 MR. NADIG: Well, I mean, the answer to that question would  
16 be no because --  
17 MR. SCARBOROUGH: Well, he cross-examined  
18 [indiscernible].  
19 MR. NADIG: Yeah, I did cross-examine him, but I didn't discuss  
20 his facial --  
21 THE COURT: No, you had the bodycam at that point in time?  
22 MR. SCARBOROUGH: I disclosed it before the prelim.  
23 THE COURT: Okay.  
24 MR. SCARBOROUGH: I --  
25 MR. NADIG: Did I have before the prelim?

1 MR. SCARBOROUGH: I don't know. It was in August.

2 MR. NADIG: Yeah, the odds are pretty good I did, but --

3 THE COURT: All right, I see nothing unduly prejudicial.

4 MR. NADIG: If you're saying it's not prejudicial, for purposes of

5 like discovery and things like that, I'm not challenging that. It's just for

6 purposes of prejudicial. So if you're saying it's not prejudicial, obviously,

7 my objection is noted and I'll leave it at that.

8 THE COURT: And part of my prejudice analysis was the timing

9 of production, but I'm finding that it's unduly prejudicial. It has some

10 probative value.

11 Probative value exceeds the prejudicial nature of this photo.

12 The Court overrules the Defense objection to -- this is 116 and 116 is

13 admitted into evidence, all right?

14 [EXHIBIT 116 ADMITTED]

15 MR. SCARBOROUGH: Okay.

16 MR. NADIG: Yes, and then the --

17 THE COURT: All right, now let's talk about Exhibit 124.

18 MR. NADIG: And, Your Honor, I just need to put on the record

19 that I was -- when I think we've been saying 124 for 116 the entire time.

20 So just for record purposes, the one we've previously been discussing is

21 124 is actually Exhibit 116.

22 THE COURT: You're correct.

23 MR. NADIG: Okay.

24 MR. SCARBOROUGH: That's --

25 MR. NADIG: So now we're talking about the correct 124.

1 MR. SCARBOROUGH: That's correct.

2 THE COURT: All right, what do you guys want to say about it?

3 MR. NADIG: I -- my whole point is that if they're using this as  
4 identification of Sanyleh, I don't think that that would be the best  
5 representation of Sanyleh, who is the juvenile involved in the case. And  
6 based on her position, based on the law enforcement in the photo, I would  
7 say it's more prejudicial than probative.

8 It's not going to provide a correct ID. It shows it in a  
9 sympathetic fashion to the State. And for those reasons, I would object.

10 MR. SCARBOROUGH: And, Your Honor, again, the same  
11 purpose is for identification would be to show that Sanyleh was there at  
12 the scene and was actually in the back seat of the car.

13 And another exhibit that we had admitted, if I may approach,  
14 shows Sanyleh.

15 THE COURT: Who's going to authenticate this?

16 MR. SCARBOROUGH: That would, again, be the detective.

17 THE COURT: The detective?

18 MR. SCARBOROUGH: Yes.

19 THE COURT: All right. You can't really make out a face. We  
20 could see it is --

21 MR. SCARBOROUGH: The body.

22 THE COURT: -- a young person in the backseat.

23 MR. SCARBOROUGH: And more importantly, it's probative in  
24 the aspect that Sanyleh was three to four years old at the time. And it  
25 actually corroborates some of my other witness' testimony from what I

1 plan to get out that the kid -- that the child was small.

2 THE COURT: All right. Objection is noted. It's overruled. This  
3 will be admitted. Okay? You can come up. You can approach.

4 [EXHIBIT 124 ADMITTED]

5 MR. SCARBOROUGH: Thanks, Your Honor.

6 And then, Ben, you want to talk about the 911 call?

7 MR. NADIG: Yes, now and -- or you -- and finally, Your Honor,  
8 the State is going to attempt to introduce the 911 call that was made in  
9 this. I don't know the exhibit number off the top -- oh, it's right here.

10 MR. SCARBOROUGH: It is 125, Your Honor.

11 MR. NADIG: State's 125 and --

12 THE COURT: Who made the call?

13 MR. NADIG: This was made by --

14 MR. SCARBOROUGH: Brandi Coleman.

15 MR. NADIG: Brandi Coleman, who's not going to testify as far  
16 as I know. And in addition to that, did not testify at the time of preliminary  
17 hearing.

18 MR. SCARBOROUGH: Did you take the 911 call?

19 MR. NADIG: I did not. I didn't.

20 THE COURT: Well, so, do we have someone that would  
21 recognize her voice? Do we have the --

22 MR. SCARBOROUGH: We do.

23 THE COURT: -- dispatcher? I mean, what do we have to  
24 authenticate?

25 MR. SCARBOROUGH: And, Your Honor, we do have

1 someone that can recognize the voice if you give me a brief indulgence.  
2 Under -- and I know you'll want to hear the 911 call. I just had the 911 call  
3 in my computer.

4 THE COURT: Yeah, let's hear it.

5 MR. SCARBOROUGH: Chad is bringing it up. I'm sorry about  
6 that.

7 THE COURT: Is there an objection, Mr. Nadig, to statements  
8 within or other foundation --

9 MR. NADIG: There --

10 THE COURT: -- or prejudicial impact based on the statements?

11 MR. NADIG: There are a number of objections.

12 THE COURT: Let's hear them before I watch the video.

13 MR. NADIG: Specifically.

14 THE COURT: Before I listen to the call.

15 MR. NADIG: Yes, they are going to argue to that this comes in  
16 under the Bryant versus Michigan [sic] standard, which involves an  
17 analysis of the formality of the interview.

18 It involves whether this was to determine whether the individual  
19 was still outstanding and whether it was used for the purposes of future  
20 prosecution is my understanding of the test under Bryant.

21 MR. SCARBOROUGH: That's correct, Your Honor. And for the  
22 Court's edification, I've actually printed out a copy of Bryant if you'd like.

23 THE COURT: Right. Yeah, to be honest with you, I'm not  
24 familiar with this case.

25 MR. NADIG: To be fair, I just learned it myself.

1 THE COURT: Okay.

2 MR. NADIG: Because I thought it was under the old Crawford  
3 standard. But they're using this. Obviously, I don't have the ability to  
4 cross-examine this woman. Obviously, she has not been provided for  
5 trial.

6 And in it, she identifies that her baby daddy was the one who's  
7 shot. Later on, she says that her baby daddy is Jason Bolden.

8 Obviously, I would argue that that is testimonial in nature. I  
9 would argue it's hearsay. The State would object and say it's an excited  
10 utterance.

11 My objection would be the confrontation clause, but under the  
12 analysis in Bryant, you're the person who decides whether it comes in for  
13 those purposes.

14 Now in addition to that, there's a statement made on that by Ms.  
15 Coleman, wherein she says that Mr. Bolden stole a gun from her. And  
16 there was no bad acts motion filed prior.

17 So it makes it problematic to say that we are now going to add  
18 an uncharged crime into the record as to this 911 call, which makes it  
19 doubly problematic for me.

20 THE COURT: And, interestingly enough, I had a murder trial  
21 some time ago where the State requested the introduction of a prior bad  
22 act.

23 And I considered it carefully and determined that three different  
24 exceptions applied. And the supreme court overruled, saying that they  
25 didn't apply and prejudicial impact exceeded the probative value. And that

1 case is set for re-trial actually.

2 And so, I just have -- I have to be very careful in these types of  
3 analysis is what the message was to me.

4 MR. SCARBOROUGH: And that's very fair, Your Honor.

5 May I --

6 MR. NADIG: Please do, sorry.

7 MR. SCARBOROUGH: And it's very fair. And to respond to  
8 Mr. Nadig's issue with the fact --

9 THE COURT: Well, it's [indiscernible] Mr. Jacimo [phonetic] in  
10 that case.

11 MR. SCARBOROUGH: Oh.

12 THE COURT: To respond to Mr. Nadig's concern about the  
13 statement of the stolen gun, I think that's appropriate. That can be fixed  
14 by an absolute redaction. We can redact that outright from the call.

15 But under the Michigan v. Bryant analysis, I want to turn Your  
16 Honor's attention. The primary purpose is the central focus of the  
17 admissibility of the call in terms of the analysis in terms -- in comparison to  
18 its testimonial value.

19 So the primary purpose would be to enable police assistance to  
20 meet an ongoing emergency. And forgive me, I've made my notes and  
21 I'm just looking down. I provided you the case.

22 So the primary purpose like in a case that is cited in Michigan v.  
23 Bryant Hannon [phonetic], they delineated testimonial statements to be  
24 deliberately recounted in response to questioning in order to prove past  
25 events for a future prosecution.

1 Here, the context, it is an ongoing emergency. And the case  
2 goes on to discuss explicitly an ongoing emergency. And I'm reading from  
3 the case.

4 "The existence of an ongoing emergency at the time of the  
5 encounter is among the most important circumstances informing the  
6 interrogation's primary purpose.

7 And emergency focus is the part focuses the participants not on  
8 proving past events potentially relevant later to criminal prosecution, but  
9 on ending a threatening situation."

10 And moving further down in the case, there's actually analysis  
11 and an analogy to a gun crime, such as this, and an ongoing emergency.

12 And I'm quoting again from the case. "The circumstances of the  
13 interrogation involved an armed shooter, who's motive for and location  
14 after the shooting were unknown."

15 Your Honor, in this exact case, it's particularly relevant, the  
16 location of the shooter, and the motive in terms of the shooter fleeing, the  
17 shooter getting into the car and going away and fleeing the scene.

18 And also continuing on reading from the case, and who had  
19 mortally wounded, and they were talking about the victim in their case,  
20 Covington [phonetic], within a few blocks and a few minutes of the  
21 location where police found the victim in that case.

22 I think that's exactly like this case. And Brandi Coleman's call  
23 with the exception of the fact that the stolen gun, as I conceded before I  
24 think is fair and we need to redact, this is in response to an ongoing  
25 emergency. The 911 dispatcher is not using this to prove future events



1 for prosecution.

2 In fact, in the 911 call when you hear it, and if I misquote small  
3 words, I apologize. That the dispatcher is saying, hey, we needed a  
4 description. We need to know what's going on, what happened?

5 In fact, also in the 911 call, the dispatcher is telling Ms.  
6 Coleman how to dress and how to apply pressure to the wound. This is  
7 all in response to an ongoing emergency. It's nontestimonial under Bryant  
8 because it's not used to prove events for a prosecution.

9 More importantly, it's not -- and as I read before, a deliberately  
10 recounted in response to a police interrogation recounting of events.

11 It's Brandi Coleman calling immediately after the shooting  
12 saying, hey, this happened. This is who did it. This is a description of this  
13 person.

14 And that's to meet the ongoing emergency, so officers can  
15 assess the danger. Because I think what's important also is the focus of  
16 the primary emergency or the emergency and the ongoing emergency  
17 doesn't necessarily stop with just the victim, right? The Defendant in this  
18 case fled the scene after discharging multiple rounds, fled the scene with  
19 the firearm in a vehicle. So his location being unknown is very probative  
20 to this analysis as well.

21 So to address Your Honor's earlier concerns, too, for  
22 foundational issues, we have detectives who have spoken to Brandi  
23 Coleman, who recognize her voice, who's watched all the bodycam, would  
24 know her voice, and can authenticate her voice.

25 And I would also say that under NRS 52.252, it is a 911 system,

1 a recording from a 911 system that's admissible under the statute. So  
2 based on those arguments, Your Honor, we can get this in legally under  
3 multiple fronts. And based on that, I would submit.

4 THE COURT: Question, and I would ask Mr. Nadig to respond.  
5 So even though this is you said nontestimonial?

6 MR. SCARBOROUGH: Correct.

7 THE COURT: Do I need to balance the need to admit it under  
8 the ongoing emergency rule versus whether there's a violation of the  
9 confrontation clause? Am I supposed to balance those two things? Do I  
10 have discretion to do so?

11 MR. SCARBOROUGH: You do have --

12 THE COURT: What are the factors I should consider?

13 MR. SCARBOROUGH: You do have discretion to balance that  
14 test. And you do have discretion to admit that evidence. That evidence is  
15 always within the discretion of the trial court.

16 In terms of balancing whether or not the confrontation clause is  
17 violated, here under Michigan v. Bryant, they delineate what violates the  
18 confrontation clause because violations of the confrontation clause are  
19 responses or testimonial evidence under this.

20 THE COURT: Uh-huh.

21 MR. SCARBOROUGH: And the confrontation clause isn't  
22 violated under Michigan v. Bryant. And it's up to you to obviously weigh  
23 that, but again the fact --

24 THE COURT: What page is that? You were paraphrasing  
25 some of it.

1 MR. SCARBOROUGH: I had it marked, I apologize.  
2 THE COURT: This is the first time I've seen this case, so I just  
3 want to --  
4 MR. SCARBOROUGH: No, that's fair, Your Honor.  
5 THE COURT: Make sure I read the right portion, so.  
6 MR. SCARBOROUGH: Going, okay, so you have the packet  
7 that I provided the Court, correct?  
8 THE COURT: Yes.  
9 MR. SCARBOROUGH: Okay.  
10 MR. NADIG: And I apologize, Your Honor, I marked it on mine  
11 as well, but I left it at the office when I ran over here.  
12 MR. SCARBOROUGH: So if you would turn to page 4, Your  
13 Honor, in the packet.  
14 THE COURT: I'm there.  
15 MR. SCARBOROUGH: And then if you go to that subsection  
16 (b) to make the primary purpose determination.  
17 THE COURT: Yes.  
18 MR. SCARBOROUGH: The court must objectively evaluate the  
19 circumstances in which the encounter between the individual and the  
20 police occurs and the parties statements and actions.  
21 And if you look at subsections, it analyzes that. So subsection  
22 (1), the primary purpose inquiry is objective. The circumstances in which  
23 an encounter occurs. And then it lists those factors.  
24 And then it moves onto (2), the existence of the ongoing  
25 emergency.

1           And then, number (3), the statements and actions of both the  
2       declarant and interrogators also provide objective evidence of the  
3       interrogation's primary purpose.

4           And when you do to (c), that's when they do the factual  
5       analysis.

6           So Your Honor, I would turn your attention to those factors 1, 2,  
7       and 3 and really stress and place particular emphasis that the inquiry on  
8       your behalf is the primary purpose of this 911 call and the primary  
9       purpose in terms of testimonial evidence.

10          The primary purpose here is what defeats or overcomes the  
11       burden that we have to show that it's not testimonial. The testimonial  
12       would -- go ahead, sorry.

13          THE COURT: No, no, I thought you were done. I was just  
14       pointing to --

15          MR. SCARBOROUGH: Okay. So the testimonial evidence is  
16       what would violate the confront clause, Your Honor. These three factors  
17       are what Your Honor would look to and what the State would argue to  
18       overcome those testimonial -- to overcome that testimonial label of the  
19       testimony we're trying get into the 911 call.

20          THE COURT: Mr. Nadig?

21          MR. NADIG: And, Your Honor, here's the situation. It's, I  
22       believe, roughly five minutes. The initial two -- during the call, Ms.  
23       Coleman states three times my baby daddy's shot, my baby daddy's shot.  
24       We need medical, we need medical. Okay.

25          That is in the first, I'd say, 3 minutes, 30 seconds of the call. I

1 think that under the analysis in Bryant versus Michigan or Michigan versus  
2 Bryant, that that appears to satisfy the primary purpose test for the State.

3 I think the analysis changes when we get to the point after  
4 medical has been ordered and you hear the 911 call operator or  
5 somebody, because it might have been one of the Metro operators, I don't  
6 know. But somebody say we think we have him, what's his name?

7 And then she says Jason Bolden. And I think at that point in  
8 time, there's a change from medical get help for this individual, apply  
9 pressure, to testimonial in we think we have him. Now we have to start  
10 building the case. What's his name?

11 And so, I think there is a cutoff roughly at about 3:30. I may be  
12 wrong, but roughly around that page where it changes from, you know,  
13 proper under Bryant versus Michigan [sic] to testimonial in nature and  
14 violative of the confrontation clause. That would be my argument.

15 THE COURT: So certainly, it's going to come in, but in some  
16 redacted form. The question is what parts need to be redacted? And I do  
17 find that in a general sense, it does satisfy the Michigan versus Bryant  
18 test.

19 So let's discuss what -- first of all, what the State would agree is  
20 proper to redact and then, let's narrowly discuss what remains.

21 MR. SCARBOROUGH: I'll stick with my earlier position in terms  
22 of I think it's entirely appropriate to redact the part where there was a  
23 stolen gun, that the crime or the incident was committed with the stolen  
24 gun. I think that's absolutely fair to redact.

25 But, Your Honor, I don't think after that, I don't believe there's

1 much more to redact. In terms of Jason Bolden and building the case,  
2 again, I don't think there's this fine line as Defense represents.

3 I think at this point, that the operator and the 911 call right now  
4 is ascertaining information as to the continuing date you're presented by  
5 the suspect of the shooting and the ongoing emergency in terms of the  
6 first responders.

7 And so, that's also an inquiry, too. And I have another case,  
8 Your Honor, for Harkins v. State. And I have can give you that case as  
9 well.

10 THE COURT: Yeah.

11 MR. SCARBOROUGH: Um.

12 THE COURT: Well, do you have a copy?

13 MR. SCARBOROUGH: I do.

14 THE COURT: All right.

15 MR. NADIG: He's provided one to me as well, Your Honor.

16 MR. SCARBOROUGH: Yes.

17 THE COURT: All right, thank you.

18 MR. SCARBOROUGH: May I approach?

19 THE COURT: Yes.

20 MR. SCARBOROUGH: Thank you, sir.

21 THE COURT: Thank you.

22 MR. SCARBOROUGH: I believe that was my copy. I'm not let  
23 me grab --

24 THE COURT: Marshal, will you let the jurors know it's just  
25 going to be a few more minutes?

1 THE MARSHAL: Okay.

2 THE COURT: All right, thanks.

3 MR. SCARBOROUGH: And Your Honor, if we --

4 THE COURT: What do you want me to look?

5 MR. SCARBOROUGH: Let me just flip through page. And just

6 to be --

7 THE COURT: He shot me and he was paid to do it. So I see

8 that.

9 MR. SCARBOROUGH: Right, and this is -- I think there is a

10 distinction. Here, there's a dying declaration contempt plated in Harkins. I

11 don't think that's contemplated in this case.

12 What I'm using this case to illustrate and let me just --

13 THE COURT: Well, I mean, you said it's excited utterance,

14 ongoing emergency.

15 MR. SCARBOROUGH: Yes, and I just -- as I'm searching for

16 the page, what I made note of, Your Honor, and I apologize. I'm

17 searching for the page, but in that case, the court held that statements are

18 not testimonial when weighed in the course of a police interrogation under

19 circumstances objectively indicating the primary purpose.

20 They are testimonial when the circumstances objectively

21 indicate that there's no such ongoing emergency and that the primary

22 purpose of the interrogation is to establish a proof.

23 And I understand that I've said that before. But what I want to

24 just reiterate is again, the inquiry here is not saying Jason Bolden is the

25 one who did it, please admit this into Court later.

1           That -- you look at the purpose of the 911 call. Now there are  
2 other statements that police officers in this case have. And that on  
3 bodycam, they have her calmly recounting, deliberately recounting the  
4 incident, who did it, what did he do, all this stuff. That is not the case in  
5 this 911 call. This --

6           THE COURT: So how about what if we admitted, if we gave a  
7 limiting instruction or cautionary instruction to the jury that it's not -- this  
8 particular statement in this particular 911 call is not admitted for the  
9 purposes of establishing identity?

10          MR. NADIG: But I mean, to be fair, Your Honor, that's exactly  
11 what they're using it for is to establish identity.

12          MR. SCARBOROUGH: Brief indulgence, Your Honor.

13          MR. NADIG: And, Your Honor, I do need to in speaking with --

14          THE COURT: Yeah, it's just that you guys are asking me to  
15 make a determination on cases that I haven't had a chance to fully read.  
16 And so I really wish that issues like this come up so I have overnight to  
17 look into them. I'm sure you appreciate that.

18          MR. NADIG: Yeah, no, and I do. And I apologize, Your Honor.  
19 That's partially my fault.

20          THE COURT: Okay.

21          MR. NADIG: It's probably 70 me, 30 them. I will say though  
22 that as the objection as to prior bad acts, I am going to remove that  
23 objection and I'm going to ask that if you do deem it admissible, that it is  
24 played without a redaction as to the bad act. That is for a strategic  
25 purpose, Your Honor.



1 THE COURT: That's okay.

2 MR. NADIG: And I just need to put that on there.

3 THE COURT: All right, that's noted. Anything else anybody  
4 wants to say on this?

5 MR. NADIG: Briefly, Your Honor, what was I going to say?

6 THE COURT: All right. You were going to try to --

7 MR. NADIG: Okay.

8 THE COURT: -- distinguish the dying declaration case.

9 MR. NADIG: I -- well, what I was actually going to talk about is,  
10 Your Honor, in the first 3 minutes, 30 seconds, they get a description.  
11 They get baby daddy. They get what he's wearing. They get his ethnicity.  
12 They get his hair. They get all the identification purposes. Medical is  
13 called, but then, it switches hold on, I think we have what's his name. And  
14 then, it changes to Jason Bolden.

15 Before they had had his descriptors, so they had done the initial  
16 information and things of that nature. Then it's going to change once  
17 medical and everything's there to this is now gearing towards prosecution.

18 THE COURT: All right, so I'm going to listen to it. Tell me the  
19 point in time. Raise your hand when you think it's the point in time when it  
20 should not be submitted.

21 MR. LEXUS: One last thing.

22 THE COURT: Yes, sir.

23 MR. LEXUS: I ask you pay attention to the emergency doctor in  
24 this case as well. Just because they're getting a name, that goes to the  
25 ongoing emergency.

1           You just have a guy that is shot up apartment. Absolutely,  
2 they're going to try to inquire the name in order to locate this individual,  
3 which fits that case on an ongoing emergency. All these --

4           THE COURT: Understood.

5           MR. LEXUS: -- statements.

6           THE COURT: Yeah, before you play it, just give me two more  
7 minutes to finish reading the sections --

8           MR. SCARBOROUGH: Yes, yes, Your Honor.

9           THE COURT: -- from the Bryant case.

10          MR. SCARBOROUGH: Okay.

11                               [Pause]

12          THE COURT: Very well. Let's hear it.

13          MR. SCARBOROUGH: May I approach, Your Honor?

14          THE COURT: Yes.

15          MR. SCARBOROUGH: How I can just disclose -- I can just  
16 give you the laptop if you'd like and press play.

17          THE COURT: I rather not have the technology. I'd rather just  
18 listen. You can play it, right.

19          MR. SCARBOROUGH: Sure. I pressed play.

20          THE COURT: Okay. Where would that be right here? Okay.

21                               [Playing of 911 recording, admitted as Exhibit 125]

22          THE COURT: That was it?

23          MR. SCARBOROUGH: I believe so, yes.

24          THE COURT: All right, so isn't it necessary to obtain a  
25 description in order to determine if there's an ongoing threat and who's

1 posing that threat?

2 MR. NADIG: Potentially, that's I mean, the analysis you make,  
3 yeah.

4 THE COURT: Well, I mean. I think the Bryant case indicates in  
5 circumstances like this where, you know, you're trying to get the  
6 information to neutralize the threat.

7 It hasn't switched over to, you know, a nonemergency situation  
8 where, you know, you're bringing the -- you have the person in custody or  
9 you -- everyone's calmed down and you're over to at the police station. I  
10 mean or, you know, everybody at the scene is secured and safe and  
11 medical treatment is being provided.

12 I mean, here, we don't even have the -- to be honest with you, I  
13 don't think at any point in this 911 call that the discussion turns from  
14 nontestimonial to testimonial. I think it all is appropriately admitted.

15 MR. NADIG: And, Your Honor, I actually thought -- one of the  
16 reasons I was going to ask that the gun part stay in is I thought she said it  
17 was a .9 millimeter but I didn't hear that. The basis was that the shooting  
18 was a .45. So I would ask that he stole my gun to be redacted?

19 MR. SCARBOROUGH: Okay, and that's totally fair. We would  
20 just need time for --

21 THE COURT: Yeah.

22 MR. SCARBOROUGH: -- to get that out.

23 THE COURT: I agree that's the proper thing to do.

24 MR. SCARBOROUGH: Fair. I --

25 THE COURT: So let's redact it. It is going to come in. I believe

1 it meets the --

2 MR. NADIG: Subject to --

3 THE COURT: -- test under Bryant. The objection is noted as  
4 well.

5 MR. NADIG: Thank you, Your Honor.

6 THE COURT: All right. Thank you, counsel.

7 MR. SCARBOROUGH: Thanks.

8 [Counsel confer]

9 THE COURT: So can be bring the jury in while you're doing  
10 that?

11 MR. SCARBOROUGH: To redact it?

12 THE COURT: Yeah. I know it's almost -- well, I'd like to get  
13 started because I'd like to get something done before the afternoon break.

14 MR. SCARBOROUGH: That's fair.

15 THE COURT: Because the jurors have been waiting a long  
16 time. I'd like them to think we're making some progress here.

17 MR. SCARBOROUGH: That's fair. I would need actually to the  
18 afternoon break to go get it redacted.

19 THE COURT: So let's go, if it's okay with my staff, to go till  
20 12:45. Liz?

21 THE CLERK: Okay.

22 THE COURT: Marshal?

23 THE MARSHAL: Uh-huh.

24 THE COURT: All right, great, let's bring them in. We'll go to  
25 1245.

1 MR. NADIG: Judge, one second.

2 [Counsel confer]

3 MR. SCARBOROUGH: Madam Clerk, here's the 911 call,  
4 thank you.

5 THE COURT: Do we need to -- Mr. Nadig, do we need to  
6 introduce the entire 911 call so it's part of the record without going to the  
7 jury to preserve it for review by the supreme court if it's --

8 MR. NADIG: I would request that, Your Honor.

9 THE COURT: Yes, we'll go ahead and mark it then as an  
10 exhibit not admitted for review by the supreme court so they can know the  
11 context in which this discussion occurred, all right?

12 MR. NADIG: And, Your Honor --

13 THE COURT: So it's a court exhibit. It's going to be a court  
14 Exhibit A, all right?

15 MR. SCARBOROUGH: Do you want us to make a copy of  
16 that?

17 THE COURT: Isn't that what you just handed her?

18 MR. SCARBOROUGH: Oh, yeah, I thought we were -- needed  
19 two copies. Do you want to go back and --

20 MR. NADIG: Well, that one would stay as 122A. The redacted  
21 one would be a new exhibit, correct? Because we're redacting the portion  
22 of the gun, so that would be a new exhibit.

23 THE COURT: Well, whatever was the original number for this  
24 CD.

25 MR. SCARBOROUGH: It's 122.

1 THE COURT: All right, why --

2 MR. LEXUS: I'm sorry, I'm making this more complicated than I  
3 wanted.

4 MR. NADIG: 125. So 125 is the unredacted or are we saying  
5 125A will be?

6 THE COURT: 125, the unredacted. Now the Court is ordering  
7 that becomes a court exhibit.

8 MR. SCARBOROUGH: Thank you.

9 THE COURT: All right, it's no longer an exhibit of record.

10 MR. SCARBOROUGH: Yes.

11 THE COURT: And 125A will now be submitted to the Court  
12 Clerk for admission over objection of defense counsel and it constitutes  
13 the redacted portion of the 911 call.

14 MR. NADIG: And that's still subject to foundation, though,  
15 correct?

16 THE COURT: Still subject to your objection as the foundation.  
17 I want to make sure the record's clear to preserve all of your arguments.

18 MR. NADIG: Thank you, Your Honor.

19 THE COURT: All right, let's bring the jury.

20 MR. NADIG: Additionally, the only thing is we have four  
21 additional photos. These are the ones that are Facebook photos. The  
22 State intends to introduce them through their D.A. investigator to prove a  
23 relationship between Mr. Bolden and Ms. Coleman.

24 The only photo that --

25 THE COURT: I think we heard about that already, right, so.

1 MR. NADIG: Yes. And the only photo that shows the two of  
2 them together is listed as State's 122.

3 MR. SCARBOROUGH: It also shows the profile. That's fine.

4 MR. NADIG: Okay, and then in -- there's another photo of the  
5 same photo in State's 120, but Your Honor, I would state that I don't  
6 understand the relevance if you're using it to establish relationship, you  
7 have it through the 911. Additional --

8 THE COURT: Seems cumulative, too, I would think.

9 MR. NADIG: Yes.

10 THE COURT: It's unduly -- it unduly emphasizes the one fact of  
11 the case.

12 MR. LEXUS: Yeah, well, this is the date afterwards, Judge.

13 This is --

14 THE COURT: The day after the 911 call?

15 MR. LEXUS: This is -- yes and that's hugely important in this  
16 case.

17 THE COURT: The photo was taken before or uploaded?

18 MR. LEXUS: No, it was -- this -- these postings or after the 911  
19 call after this event.

20 THE COURT: Can I see them, please?

21 MR. LEXUS: Yeah.

22 MR. SCARBOROUGH: As recent of April this year, Your  
23 Honor.

24 THE COURT: All right. What are you trying to establish?  
25 There is ongoing post event relationship?

1 MR. LEXUS: That there's an ongoing relationship, absolutely.  
2 And that goes with our other document showing that he can -- she  
3 continues to make calls to him after the --

4 THE COURT: And what does that show? What element of  
5 your case does that relate to?

6 MR. LEXUS: Judge, this whole thing is based on the reason  
7 why she's not --

8 THE COURT: Just need to put it in the record.

9 MR. LEXUS: Yes, she's -- this case is based on these  
10 witnesses not showing up because they don't want to implicate the  
11 Defendant as being the shooter.

12 THE COURT: Goes to lack of cooperation, which you --

13 MR. LEXUS: What?

14 THE COURT: -- would argue at closing argument.

15 MR. LEXUS: Correct.

16 MR. NADIG: Correct. And, Your Honor, my response to that is  
17 there's allegations that Mr. Bolden dissuaded witnesses in any way,  
18 shape, or form, or influenced witnesses in any way, shape, or form.

19 It does not address issues with the actual elements of the case.  
20 This is just simply attempting to prejudice the jury as to Mr. Bolden  
21 showing that he has an ongoing relationship and suggesting that he has  
22 something to do with her not being here, which should that be the case,  
23 there should have been an added charge of dissuading a witness, which  
24 is there is not.

25 And the implication that they're providing through this testimony



1 is that Mr. Bolden is dissuading the witness and there's no evidence to  
2 show that.

3 MR. LEXUS: There's no reason to dissuade a witness. The  
4 fact that you're the mother of the man's child, you don't have to be on a  
5 phone call or listening to somebody saying, hey, don't know up to court  
6 because X, Y, Z. The very nature -- foundation of the relationship they  
7 have and having a kid together, that's what we're getting this out, an  
8 ongoing communication shows that -- why is she not here to testify? And  
9 why is we're not able to put her on the stand, and cross her, or ask her  
10 statements consistent with the 911 because of their ongoing family  
11 relationship.

12 THE COURT: What's the date of the incident again?

13 MR. SCARBOROUGH: The date of the incident happened July  
14 1st, 2018.

15 THE COURT: All right, let me look at the Facebook photo.

16 [Counsel confer]

17 MR. LEXUS: This coincides with that as well, Your Honor,  
18 showing ongoing -- placing transferred money to him, which is after this  
19 incident. And of course, we wouldn't phrase that as putting money on the  
20 books. We would just characterized that as transferring money.

21 THE COURT: Well, that's -- so that's -- is this a separate  
22 exhibit that you're offering then?

23 MR. NADIG: No.

24 THE COURT: The transfer of monies?

25 MR. LEXUS: Yes, that's all separate.

1 MR. SCARBOROUGH: Yeah.

2 THE COURT: Is that what's subject to an objection? What  
3 exhibit number is that?

4 MR. NADIG: What I --

5 MR. SCARBOROUGH: Should be on the back, Your Honor.

6 THE COURT: 117 and 118.

7 MR. SCARBOROUGH: Well, the one that you're holding in  
8 117, that certification just --

9 THE COURT: Oh.

10 MR. NADIG: -- the record certification accompanying the  
11 CCDC records.

12 THE COURT: So these are monies transferred into his account  
13 when he was locked up?

14 MR. SCARBOROUGH: Correct.

15 MR. NADIG: But Your Honor, how is that relevant to the case  
16 at large? How is an ongoing --

17 THE COURT: Well, it sounds like she gave a certain story  
18 that's favorable to the prosecution and now she's not -- now she doesn't  
19 want to do that.

20 MR. NADIG: Okay, but how is that relevant -- you know, the  
21 implication becomes that Mr. Bolden had something to do with that. You  
22 know, they said that she's not cooperative. And they're saying, well, the  
23 reason she's not cooperative is they have an ongoing relationship. Okay,  
24 which --

25 THE COURT: Do you have anything else that would --

1 MR. SCARBOROUGH: We do.

2 THE COURT: -- tend to show that he's influencing her or that  
3 he had something to do with her not showing up?

4 MR. SCARBOROUGH: Absolutely.

5 THE COURT: What is it?

6 MR. SCARBOROUGH: Right now, this is a jail call. And I can  
7 play it for, Your Honor.

8 THE COURT: Has Mr. Nadig heard that?

9 MR. SCARBOROUGH: I don't know if you've heard the specific  
10 jail call, but I gave you the jail calls in the file.

11 MR. NADIG: He -- Your Honor, for the record, he did give me  
12 the jail calls. The disk that I had them on did not work. So in --

13 THE COURT: It didn't work.

14 MR. NADIG: It did not.

15 THE COURT: Do you want time to listen to it?

16 MR. NADIG: I would like time to listen to it.

17 THE COURT: Before I make a decision on what to do?

18 MR. NADIG: Yeah, exactly.

19 MR. SCARBOROUGH: And that's fair. And so, what  
20 I'm -- what I want to direct Your Honor's attention to is in this jail call, it  
21 takes place I believe July 25th. It's actually labelled on there. And in  
22 that --

23 THE COURT: July -- how long after?

24 MR. SCARBOROUGH: 2018.

25 THE COURT: Okay, so --

1 MR. SCARBOROUGH: This is when he is in custody.

2 THE COURT: So how long -- how many months after the  
3 event?

4 MR. SCARBOROUGH: Not even a month.

5 THE COURT: Or not even a month. So --

6 MR. SCARBOROUGH: Yeah, it's like so the event  
7 happened --

8 THE COURT: So July 1 and this is July --

9 MR. SCARBOROUGH: Correct. And this is just for the Court's  
10 edification. Mr. Bolden was not taken into custody immediately after the  
11 event. That's why we proposed a flight instruction.

12 THE COURT: Well, it says shortly after, he was in custody.

13 MR. SCARBOROUGH: Okay.

14 THE COURT: And there was a call. Let me hear the call?

15 MR. SCARBOROUGH: Sure. And, Your Honor, just to give  
16 you context, I've highlighted the minutes. We actually hear on the call Mr.  
17 Bolden say they're going to snatch you up. They're going -- they're  
18 probably going to snatch you up talking about a hearing. And  
19 conveniently enough, we had a material witness warrant before the  
20 preliminary hearing.

21 And also, Brandi Coleman, who will be identified by the  
22 detective based on her voice and that voice recognition, along with the  
23 number that she gave on that 911 call associated with this record.

24 She actually says at -- that close to the 1:22 mark that she's  
25 aware of the hearing and that she doesn't want to come.

1 MR. NADIG: Okay, Your Honor, how does that, once again,  
2 impact -- my client should have no influence in that offer of proof.

3 They're going to snatch you up is a statement of fact. There's a  
4 material witness warrant. You know, and then her saying something to  
5 the effect of I don't want to cooperate, he's not the one suggesting it.  
6 She's the one saying it. He didn't offer it.

7 That's -- once again, what they're doing is they're creating this  
8 inference that Mr. Bolden has caused people to not be here.

9 THE COURT: Can't you introduce evidence to --

10 MR. NADIG: What?

11 THE COURT: -- allow the jury to draw a reasonable inference?

12 MR. NADIG: But is it a reasonable inference? Is it relevant to  
13 the case at hand? The case at hand has to do with shooting. If there's  
14 something about dissuading a witness, there's no charge. There's no  
15 dissuading a witness charge here.

16 MR. SCARBOROUGH: And, Your Honor, again, as what Mr.  
17 Lexus reiterated before, we're not sitting up here trying to say and I won't  
18 get up in closing nor will Mr. Lexus get up in rebuttal and say Jason  
19 Bolden did the shooting and then he told everyone not to come to Court.  
20 That's not what we're saying here.

21 The theme and what we're trying to prove and show, as we did  
22 in opening, is that Brandi Coleman's uncooperative. And we're going to  
23 argue to the jury, listen, use your common sense. Not everyone wants to  
24 cooperate. This is why, you know, the State doesn't have all the evidence  
25 that it does and that's why she's not on the stand.

1           We're not going to put them -- we're not going to have them in  
2 the box thinking, oh, we're going to parade Brandi Coleman and everyone  
3 up there.

4           We got to let them know that, hey, we have witnesses that  
5 aren't cooperative. This shows that she's not cooperative. This shows  
6 her state of mind, saying she doesn't want to come to the hearing, that  
7 she's aware of it. We're not saying that Jason Bolden did it.

8           THE COURT: But just because it's her state of mind doesn't  
9 mean he influenced her.

10          MR. SCARBOROUGH: We --

11          MR. NADIG: We're not --

12          THE COURT: It shows that she --

13          MR. SCARBOROUGH: We agree, we agree.

14          MR. LEXUS: We can argue 100 percent. We're not going to up  
15 here and try to say this man dissuaded her. We're trying to say --

16          THE COURT: Why she didn't show up?

17          MR. LEXUS: -- look at her relationship.

18          MR. SCARBOROUGH: Correct. Yes.

19          MR. LEXUS: She's got a baby with him. She's continuing to  
20 send him money. She's continuing to talk to him. She's continuing to post  
21 Facebook pictures with him on it. Therefore, that's the reason why she  
22 doesn't want to come, due to the relationship. We're not trying to say that  
23 he's dissuading her.

24          THE COURT: Anything else?

25          MR. NADIG: The problem is the implication, Your Honor,

1 because then, you know, why don't I get out there and say there's a jury  
2 instruction that says that I'm not allowed to comment on witnesses who  
3 didn't testify or the State didn't call. Now --

4 THE COURT: It's almost -- let me -- it's almost as if and I don't  
5 know what the law is on this to be honest with you. It's almost as if the  
6 State is saying the reason why we don't have more evidence is because  
7 she wouldn't testify and you should give more weight to us than the  
8 defense.

9 MR. NADIG: And but that's what that is.

10 THE COURT: And it kind of -- to me, it seems like it kind of,  
11 you know, makes it -- really doesn't it shift some of the burden to the  
12 Defense to say.

13 MR. LEXUS: And no.

14 THE COURT: You know, we -- but he -- how can he overcome  
15 the implication you create?

16 MR. LEXUS: Judge, if you want to instruct the jury when they  
17 testify, this evidence is not offered to show any type of dissuasion on the  
18 part of the Defendant. It's there to show the relationship. That's exactly  
19 what we're going to argue and that's exactly what it's offered for.

20 We'll go as far as doing that. But with these pictures and this  
21 evidence takes the stand. You are they -- this is to be -- I'll even say it  
22 when I'm introducing. This is to be offered for --

23 THE COURT: But I understand that, but how -- I mean, you're  
24 elements are, you know, he did the act, had the intent. What has that got  
25 to do with her intent and not showing up?

1 MR. SCARBOROUGH: Well, Your Honor, it goes to the entire  
2 culture of the case.

3 THE COURT: And I see you shaking your head. I need the -- I  
4 need to better understand this.

5 MR. LEXUS: Judge, it's the entire case. This -- they're going to  
6 have a 911 come in and then everyone's saying, you know, that this  
7 man's implicated, but then, no one's here because they -- the one guy is  
8 probably scared. This one -- this girl --

9 THE COURT: Probably is.

10 MR. LEXUS: -- we have evidence. Both the brothers are  
11 scared.

12 And this girl, we have ample evidence, the reason she's not  
13 here to implicate anybody or to take the stand is because she still loves  
14 the man or -- and at least has a relationship with him.

15 MR. SCARBOROUGH: And, Your Honor, it's the same case,  
16 too, also as a domestic violence -- it's the same type of case.

17 MR. NADIG: No, it's not.

18 MR. SCARBOROUGH: It's the same --

19 MR. NADIG: It's not charged as domestic violence.

20 THE COURT: Yeah.

21 MR. NADIG: And, Your Honor, I'm interrupting because they're  
22 both attacking me and they've cut me off repeatedly. I'm a little bit  
23 annoyed right now. So let me just get this out.

24 THE COURT: I'll give you the last word. Let's --

25 MR. NADIG: All right.



1           THE COURT: Let them finish. You get the last word because  
2 it's your objection.

3           MR. SCARBOROUGH: I apologize to Mr. Nadig. I don't mean  
4 to be rude.

5           THE COURT: That's all right.

6           MR. SCARBOROUGH: I'm sorry. I -- that's what the changes  
7 that we're alluding to. It is a domestic violence situation. And I  
8 understand that it's not charged as a domestic violence.

9           We're not sitting up here saying Jason Bolden abused Brandi.  
10 He made her not come into Court because he threatened her and  
11 threatened their child. We're not saying that.

12           But, Your Honor, DV cases, gang-related cases with  
13 uncooperative witnesses alike, they wouldn't exist. They wouldn't exist  
14 without the State being able to come up and walk in front of the jury and  
15 say, listen, ladies and gentlemen, not every witness comes up to the  
16 stand and wants to point someone out.

17           And in opening, Mr. Nadig said no one's going to ID the shooter,  
18 that my -- the shooter wasn't there. My client wasn't there.

19           And a part of that in our case, our burden is to show, yeah, you  
20 know what? We don't have people here, but we are entitled to explain  
21 why, and the relationship and what we're trying to allude including this  
22 evidence, the Facebook postings, the posting money on his books, the jail  
23 call where she's aware of the hearing saying she's not going to come and  
24 all this stuff, we're presenting that to the jury to let them know, hey, listen,  
25 Brandi doesn't want to come.

1           Brandi doesn't want to come. This is an uncooperative witness.  
2           It's literally just like a DV case, but we're not charging him with DV. I  
3           understand that, but without evidence like that and evidence to show to  
4           the jury, hey, some people don't cooperate all the time.

5           Some people don't want to get on the stand, then we're left with  
6           no case. Then DV cases and gang cases alike, they would never exist,  
7           Your Honor.

8           Uncooperative witnesses would rule the -- would run the  
9           courthouse. We would never be able to elicit that, hey, you didn't want to  
10          identify someone, did you? You didn't want to point him out in court. Why  
11          didn't you want to point him out in court? There's something to be said  
12          that for the State's ability to allow to introduce that testimony. And that's  
13          what we're trying to do here.

14          To echo what Mr. Lexus said, we can -- you can issue an  
15          instruction saying, listen, we're not trying to like allude -- like allude to any  
16          way that he is the someone who caused her not to come. We're not  
17          saying that.

18          We're saying that the scope of their relationship is why she's not  
19          here and we're showing evidence to prove the scope of that relationship  
20          and why.

21          That's our case. He got up there and said no one can ID him.  
22          And we don't have everyone to come and ID. And we have to explain  
23          why. It's our burden.

24          MR. NADIG: Your Honor, I got this charge dismissed at prelim,  
25          okay? They filed an Information by affidavit. What they're attempting to

1 do is they're attempting to go outside of the elements of the case.

2 Unless there is a -- an issue showing that Mr. Bolden had  
3 something to do with her not being here, that is irrelevant. They have a  
4 witness who they want to say, yes, she does all these things. That is  
5 irrelevant. You did not produce this person. There's was malfeasance on  
6 Mr. Bolden's part to not produce that individual.

7 We cannot then create this implication. You fell for the  
8 implication already that they're scared. No, they're not scared. In all  
9 likelihood, they probably want to get him on the streets and shoot him. He  
10 lives in North Dakota -- South Dakota now. He's nowhere in town. He  
11 does not exert any influence over these people.

12 So you yourself fell for the implication they want you to fall for,  
13 which is that they're scared to testify against this individual, who doesn't  
14 even live here.

15 And they're suggesting to you that all of this information is  
16 relevant, but it's not. This is a shooting. This is somebody got shot and  
17 these are the facts.

18 Whether somebody's here or not is not relevant to their case,  
19 but it is very persuasive to suggest that Mr. Bolden is a bad man, even  
20 though that's not the case.

21 And I don't have the ability to rebut anything that they're  
22 attempting to introduce regarding that relationship. Or in addition to that  
23 to rebut this idea that they're afraid other than cross-examination. And I  
24 don't have it. I do not have it.

25 So what you are doing is you're taking something outside the

1 scope and you're trying to introduce it, so that you can use it by  
2 implication in a manner that is improper.

3 THE COURT: I'm not going to let it in, all right, either the DVD  
4 or this evidence. To me, it creates a wholly -- it creates an inference that  
5 the Defendant did something wrong, that he had some unfair, undue  
6 influence over the witness.

7 The only way that Mr. Nadig would be able to rebut that would  
8 be call her on the stand. It forces him to put on testimony to defend  
9 against the charges --

10 MR. SCARBOROUGH: And, Your Honor --

11 THE COURT: But I mean, I don't see that it's relevant to any of  
12 the elements of your case in chief.

13 MR. SCARBOROUGH: And Your Honor, I --

14 THE COURT: Unless you had a case for me to read that would  
15 say otherwise, which you don't, we already take an hour and 10 minutes, I  
16 don't have any legal authority in front of me that would allow me to  
17 introduce this evidence.

18 And I do see how it's -- I mean, how can we not? It is  
19 prejudicial against the Defendant.

20 MR. SCARBOROUGH: In terms of just her and his  
21 relationship?

22 THE COURT: Yeah, it does. It creates the inference that, you  
23 know, they had -- she was scared, there was a shooting. After the fact,  
24 you know, they're still together. It creates the inference that he's still had  
25 influence over her and exercise that influence to keep her from testifying.

1 I get that feeling from this. And that would put --

2 MR. SCARBOROUGH: Even with a limiting instruction, Your  
3 Honor?

4 THE COURT: Yeah, even with a limiting instruction, because  
5 once they hear it, the limiting instruction, we all know that. Once it's in,  
6 you know, once it's in, they're going to convict him, all right? So --

7 MR. SCARBOROUGH: I mean, that's fair. I just -- for my  
8 record --

9 THE COURT: I -- yeah go ahead.

10 MR. SCARBOROUGH: -- I do think it's just like a DV case. I  
11 think along that line of logic, I mean, the DV cases and those alike, they  
12 wouldn't exist. I mean, we wouldn't be able to prosecute those cases.

13 And again, I understand that Your Honor's saying that  
14 there's -- there may be some perception of undue influence, but I think  
15 that's particularly --

16 THE COURT: It's not a perception. I think it leads to a strong  
17 circumstance or a strong -- it leads a jury to have strong feelings that  
18 there might have been that undue influence. So I think that would be  
19 unduly prejudicial here.

20 MR. SCARBOROUGH: Okay.

21 THE COURT: Maybe there's cases where it comes in. I'm just  
22 not feeling it here. I really think it's too prejudicial here.

23 MR. SCARBOROUGH: And would also --

24 THE COURT: I'm not going to change my mind, but please  
25 make your record.

1 MR. SCARBOROUGH: No, that's fair. And I would also  
2 disagree about being able to rebut it. I mean, if we're talking about undue  
3 influence on Brandi Coleman, he's sitting right there. He can take the  
4 stand.

5 MR. NADIG: Oh, Your Honor.

6 MR. SCARBOROUGH: We're not forcing him to take the stand.

7 MR. NADIG: You --

8 MR. SCARBOROUGH: We can introduce the evidence and he  
9 can decide whether or not he can put up a case to rebut it. We're  
10 not -- he's not -- his hands aren't tied behind his back. He can go up and  
11 he could take the stand and say --

12 THE COURT: Yeah.

13 MR. SCARBOROUGH: -- I have no influence over Brandi.  
14 Brandi doesn't want to come because she doesn't want to come. Yeah,  
15 we're together. She has my child. That's about it. I mean, see --

16 THE COURT: But it forces --

17 MR. SCARBOROUGH: I'm not forcing him.

18 THE COURT: It kind of -- it does force him to take the stand to  
19 rebut the inference you create by not having more evidence. That just  
20 didn't seem right.

21 MR. NADIG: Which is the textbook definition of burden shifting.

22 THE COURT: Yeah, that's what I thought kind of at the  
23 beginning. So, again, and again, guys, I -- this is last minute. I don't have  
24 a case in front of me, but --

25 MR. LEXUS: Okay, so Judge, you're eliminating the Facebook

1 and the money, correct?

2 THE COURT: Yes, sir.

3 MR. NADIG: And the jail call.

4 THE COURT: Oh, yeah, I said the call, too. I said the DVD.  
5 That's what I said the jail call.

6 MR. NADIG: Yes, and the jail call.

7 MR. LEXUS: Jail call, too?

8 THE COURT: Yes.

9 MR. LEXUS: Okay.

10 THE COURT: Yeah, because --

11 MR. SCARBOROUGH: Oh, man.

12 MR. LEXUS: All right so just so we're clear then when I have  
13 the - our investigating on the stand, I'm just doing this now to comply with  
14 the same.

15 THE COURT: I understand.

16 MR. LEXUS: Okay. I'm just going to have him talk about we're  
17 able to secure a subpoena at one point, not secure a subpoena for certain  
18 of these individuals. And I won't have him get into on --

19 THE COURT: Well, I guess you can get into everything up to  
20 the point where she became apparently obstinate, right?

21 MR. LEXUS: Well, no --

22 MR. SCARBOROUGH: Well, that was before prelim.

23 MR. LEXUS: Yeah.

24 MR. SCARBOROUGH: We had a material witness sworn out  
25 from the get go, and then, we got one for this case. And that's how he

1 found out about, oh, that's why we need the material witness warrant  
2 because she's refusing to come. She doesn't want to be served. It's  
3 impractical to serve her.

4 MR. LEXUS: So I'm just going to have him talk about all the  
5 things -- what he's done to secure and whether or not got a subpoena for  
6 them or not.

7 And I'll tell him to not talk about the jail calls, the putting the  
8 money on the books and the Facebook. Just with that said, if Mr. Nadig  
9 comes up there and starts grilling him on you should have done this, this,  
10 and this, I'll want to approach Your Honor --

11 THE COURT: That might open the door.

12 MR. NADIG: Your Honor, just for the record, I object to this  
13 testimony at all because it's not relevant. You know, how is it relevant that  
14 I mean, I -- how is it relevant that he's going to get out there and say I tried  
15 to get him? Like how is that relevant to the case?

16 MR. SCARBOROUGH: She's a named victim in the case.

17 THE COURT: I'm going to let that in, all right?

18 MR. NADIG: Okay.

19 THE COURT: I won't have any more discussion on that. I can  
20 see how that would be potentially relevant.

21 MR. SCARBOROUGH: Okay.

22 THE COURT: And that's not unduly prejudicial there. That will  
23 come in.

24 Look, maybe I'm not wrong on this. I'm not sure. I don't have  
25 the authority. That's what I think fairness dictates in this case, all right?



1 MR. SCARBOROUGH: I mean, that's fair, Your Honor. And  
2 just for the record, so Exhibits 117, 120 through 123 and 117, they will not  
3 be admitted.

4 THE COURT: Mr. Nadig, is that consistent with my ruling?

5 MR. NADIG: That is consistent with your ruling.

6 THE COURT: All right, then that is correct subject to your  
7 objections. Thank you, counsel.

8 MR. NADIG: And just for the record, the jail call was not  
9 submitted as a proposed exhibit at this time.

10 MR. SCARBOROUGH: It was not, that's correct.

11 THE COURT: Okay, well, then that's not a problem.

12 MR. NADIG: Okay.

13 THE COURT: All right, but we'll accept that from the State as  
14 an offer of proof on what is shown. Right, Mr. Scarborough?

15 MR. SCARBOROUGH: Pardon me, Your Honor?

16 THE COURT: I just said we'll accept what you said as an offer  
17 of proof of what the jail house call would have said.

18 MR. SCARBOROUGH: Oh, okay, yes.

19 THE COURT: So that's in the record as well. All right, if you  
20 want Mr. -- if you want that jail house call CD marked as a Court Exhibit B,  
21 I'm willing to do that for you.

22 MR. LEXUS: No, that's fine, Your Honor.

23 THE COURT: I mean, you have to test -- you have your  
24 argument that's --

25 MR. LEXUS: That's fine, Judge. And we're ready to listen to

1 witnesses.

2 THE COURT: Can we go till 1? Let me ask my staff. Is that  
3 okay? If you have any reservations about it, I don't mind.

4 THE MARSHAL: That's fine with us, Judge.

5 MR. SCARBOROUGH: My apologies to the Court and the staff.  
6 I appreciate the patience. Thank you for hearing the arguments. I  
7 understand. I'm sorry.

8 THE COURT: Last minute arguments, you know, I do the best I  
9 can. Let's go ahead and bring the jurors in.

10 [The Judge confers with the Clerk]

11 THE COURT: So to the extent we can, I'd really like to  
12 minimize objections in this part. I mean, obviously, I'm not prohibiting you  
13 from doing it, but -- and remember, we always have the ability to do a  
14 motion to strike.

15 MR. NADIG: Your Honor, for the record, I think they're calling  
16 Officer Jegge next.

17 MR. SCARBOROUGH: Not right now. We're calling the  
18 independent witness Joshua Knowlton.

19 MR. NADIG: Okay.

20 MR. SCARBOROUGH: That's -- he lived in the apartment. I  
21 don't think you're going to have much cross. I [indiscernible].

22 THE COURT: Thank you, counsel.

23 MR. SCARBOROUGH: Yeah, and this witness will be relatively  
24 short. I believe our line-up will be Joshua Knowlton, then Investigator  
25 Keith Gross, and then possibly a break.

1 THE COURT: Right.

2 MR. SCARBOROUGH: And then, we'll have all the rest of our  
3 witnesses, which may now take us into the end of the day. I'm not quite  
4 positive we'll close today.

5 THE COURT: That's fine. That's fine.

6 MR. LEXUS: But we have -- I don't know if Mr. Nadig saw, but  
7 we should be good on jury instructions, too.

8 MR. NADIG: Yeah, I'm going to double check our line-up.

9 THE COURT: I saw them.

10 MR. NADIG: Yeah.

11 THE COURT: Down to just one charge?

12 MR. NADIG: What's that, Judge?

13 THE COURT: I mean, I saw the jury instructions and it looked  
14 like you just had one charge.

15 MR. LEXUS: No, we sent two, Judge. There's -- we have split  
16 it up. One is --

17 MR. SCARBOROUGH: Oh, that was the -- that was this.

18 MR. LEXUS: [Indiscernible].

19 THE MARSHAL: All rise for the jury.

20 THE COURT: All right, that makes sense in part.

21 MR. SCARBOROUGH: Yeah.

22 THE MARSHAL: All jurors present.

23 [In the presence of the jury]

24 THE COURT: All right, thank you, everybody. Please be  
25 seated. Appreciate your patience. This is typical for a jury trial to have

1 jurors waiting for a while. Oftentimes, there's unanticipated issues. I can  
2 assure you that justice does require the Court to sometimes have  
3 important discussions with the attorneys, all right?

4 So please remember, we're working hard when you're not in  
5 here. And some of it is to make sure that it's for your benefit, okay? All  
6 right. Thank you.

7 The State may call its next witness.

8 MR. SCARBOROUGH: Thank you, Your Honor. The State  
9 calls Joshua Knowlton.

10 May I approach here?

11 THE COURT: Yes, you may.

12 MR. SCARBOROUGH: Thank you.

13 THE COURT: So we're going to go until 1 and then take a  
14 lunch break and come back.

15 THE MARSHAL: Remain standing and they'll swear you in.

16 JOSHUA KNOWLTON

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

19 THE CLERK: You may be seated. And then, can you please  
20 state and spell your first and last name for the record?

21 THE WITNESS: First name is Joshua Knowlton. Last name  
22 Knowlton. J-O-S-H, Joshua I guess U-A. Knowlton is K-N-O-W-L-T-O-N.

23 THE CLERK: Thank you.

24 THE COURT: You may proceed.

25 MR. SCARBOROUGH: May I proceed?

1 THE COURT: Yes, sir.

2 **DIRECT EXAMINATION**

3 BY MR. SCARBOROUGH:

4 Q Good I guess afternoon. I want to direct your attention to July  
5 1st, 2018. Were you at your apartment that day?

6 A Yes, I was.

7 Q Okay, and where is your apartment located in the Vegas valley?

8 A 4581 Carriage Park Drive.

9 Q Okay, and is that on Wheelwright Drive?

10 A Yes, no, not on Wheelwright. It runs, I guess, adjacent to  
11 Wheelwright.

12 Q Is it on Vegas Valley and Mountain Vista?

13 A Yeah.

14 Q Okay.

15 A Right there.

16 Q And that apartment complex, is that here in Clark County, Las  
17 Vegas, Nevada?

18 A Yes.

19 Q On that day, did you hear anything out of the ordinary that  
20 brings you into the courtroom today?

21 A I was standing outside on my deck.

22 Q What time -- what time were you standing outside on your --

23 A It was in the morning. I would say around 8 or 9 a.m. maybe.

24 Q Okay.

25 A I heard a couple of gunshots. And then, do you want me to just

1 go into --

2 Q Please go ahead.

3 A Okay, heard a couple of gunshots. And then, I look over in the  
4 direction and I see a black male running across the apartment complex.  
5 Runs across Vegas Valley and hops into a car.

6 MR. SCARBOROUGH: Okay, so I am publishing what's been  
7 previously admitted by stipulation even though there's no sticker.

8 THE COURT: You may.

9 MR. SCARBOROUGH: State's proposed or State's Exhibit 1.

10 THE COURT: We have the sticker on the back, right?

11 MR. NADIG: The proposed sticker is the actual admitting  
12 sticker.

13 THE COURT: Very good.

14 MR. SCARBOROUGH: Thank you, Your Honor.

15 THE COURT: Thank you.

16 BY MR. SCARBOROUGH:

17 Q Okay, so publishing State's 1. Oh, now I got to figure  
18 out -- okay, so you have me on the screen, correct, sir?

19 A Yeah.

20 Q Yeah? Okay, so right here where my finger is running along, is  
21 that Vegas Valley?

22 A Yes.

23 Q Okay, and then, this street right here is Monte Vista?

24 A Yeah, Mountain Vista.

25 Q Mountain Visit, pardon me. And is your apartment complex

1 over here?

2 A Yes.

3 Q Okay, now if you could, you can actually mark on that screen  
4 kind of like John Madden like on football.

5 A Okay.

6 Q Kind of give us a direction of where your apartment is in relation  
7 to that pinpointed apartment?

8 A Okay, I am right over here. No, not -- that way.

9 Q So that's all still in the apartment complex area?

10 A Yeah.

11 Q And you're in that area where the first or the second dot was?

12 A Second dot.

13 Q The second square dot?

14 A Yeah.

15 THE COURT: Sometimes the calibration is off a little bit.

16 MR. SCARBOROUGH: Fair.

17 THE WITNESS: That's my fault, I missed it.

18 THE COURT: Okay.

19 BY MR. SCARBOROUGH:

20 Q Okay, so to give a little bit of context, so you're out on your back  
21 porch?

22 A Yeah.

23 Q Where would you be facing? What street would you be faced  
24 on your back porch?

25 A Vegas Valley.

1 Q So you are looking this way?

2 A I'm looking at like Vegas -- or excuse me, am I -- no, looking

3 Vegas Valley, right, this way.

4 Q This way?

5 A Yeah.

6 Q Okay.

7 A Yeah, so I'm looking straight.

8 Q Okay, so again, so on that map, can you please -- you talked

9 about you heard gunshots, yes?

10 A Yeah.

11 Q I mean, to be fair, I mean, how do you know they were

12 gunshots?

13 A I don't know for sure.

14 Q Were they loud, clapping sounds?

15 A Yeah.

16 Q Okay, do you recall the succession or the cadence of those

17 sounds?

18 A Just you -- I would say about three or four quick pops.

19 Q Quick pops?

20 A Yeah.

21 Q One right after the other?

22 A Yeah.

23 Q All right, so after you heard those quick pops, remind the jury

24 what time did you hear those in the morning?

25 A I would say around 8 or 9. I don't know.



1 Q In between that hour?

2 A Yeah, somewhere around there.

3 Q So after you hear those quick pops, what do you do? Do you

4 look over to the direction where you believe they're coming from?

5 A Yeah, I notice a girl in the back of her trunk over in that way.

6 And she runs inside. And then, that's when I noticed, you know, the male

7 coming across the apartment complex.

8 Q So can you draw a line on that screen where -- of the pathway

9 where you see that male running, if you can?

10 A Okay, so right there.

11 Q Okay, so do you see him running in the direction from where

12 you started or where you ended?

13 A Right, where I ended at.

14 Q That's --

15 A So that's where I'm looking in that direction, that way.

16 Q Okay, so that's -- your vision path?

17 A Yeah.

18 Q Draw the path where you see the person running?

19 A Oh, running?

20 Q Where his path?

21 A Okay, so it's just --

22 Q Okay.

23 A -- here and then there.

24 Q All right, so for the record, you drew that line and it was across

25 Vegas Valley like you indicated before?

1           A     Yeah.

2           Q     Can you recall any specific descriptors as best as you can  
3 about that person?

4           A     Specifically, no.

5           Q     What race?

6           A     He was a black male for sure.

7           Q     Okay.

8           A     He was wearing a big coat and jumped into a -- you want me to  
9 tell --

10          Q     Please?

11          A     -- the name the car? Okay, it was a gold Cadillac CTS that he  
12 jumped into.

13          Q     Okay, and where did that person that male, that African  
14 American male you described as running? Was the -- Cadillac located at  
15 the end of the line that you just drew?

16          A     Yes.

17          Q     Okay, did you see that person get into -- what side of the  
18 vehicle did you see that person get into?

19          A     Driver's side.

20          Q     Okay, were you able to get close enough to make a plate out of  
21 that vehicle?

22          A     No.

23          Q     No? Were you able to get close enough to identify any facial  
24 features of that man?

25          A     No.

1 Q No. Did you see that man carrying or holding a firearm?  
2 A No.  
3 Q No, okay. What did you do after you saw that man get into that  
4 Cadillac?  
5 A That's when the -- like a bunch of police showed up. And then  
6 they were just like swarming the area. And then, kind of just went over  
7 there after a few minutes and let them know kind of what I'd seen.  
8 Q How quickly do you recall police arriving in the area?  
9 A Within a minute. It was fast.  
10 Q Do you recall which street and which direction that Cadillac  
11 went down after the man entered the driver's side?  
12 A That street where I ended the line, it headed, I guess, in the  
13 south down that way.  
14 Q So just --  
15 A And took a right down a street. I don't know exactly which  
16 street it was.  
17 Q All right, so if you were to continue that line where you drew his  
18 path --  
19 A Yeah.  
20 Q -- the car would just continue to go that way?  
21 A Yeah, it kind of went straight and then went like that around the  
22 next block.  
23 Q And you're unfamiliar with the street name after that?  
24 A No.  
25 MR. SCARBOROUGH: Brief indulgence?

1 THE COURT: Uh-huh. Yeah.

2 MR. SCARBOROUGH: Nothing further from this witness.

3 THE COURT: All right, any cross-exam?

4 MR. NADIG: Yes, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. NADIG:

7 Q How you doing, Josh?

8 A Good, how's it going?

9 Q Good. All right, so Josh, and I'm going to point and I cleared it  
10 so that we could draw because it's like my five-year old with her drawing  
11 sometimes. But you were located at this apartment, correct?

12 A Correct.

13 Q Okay, now if we look, can you just put a -- put your thumb right  
14 there so everybody can see where it was. Mark it.

15 A Yeah.

16 Q Right there. Okay, and you're outside on your deck, right?

17 A Correct.

18 Q Is it a first story or second story deck?

19 A First story.

20 Q Okay, so do you have like a pony wall? Do you have a big wall,  
21 anything like that?

22 A I got a little, you know, wall in front of me, probably.

23 Q So like roughly the size of the witness stand?

24 A Yeah, I had -- yeah.

25 Q And you're a tall guy. You're not short, right?

1       A     Yeah.

2       Q     So you can see it?

3       A     Yeah.

4       Q     Okay, and so, you're looking in that direction. And if we look at

5 that, it looks like 2883 Wheelwright is marked. Can you put a dot there?

6       A     Yeah.

7       Q     Okay. Now it looks like, and tell me if I'm wrong, there's a bit of

8 a -- one of the other apartments is in your way; is that true?

9       A     Correct, yeah.

10      Q     Okay, so did you see how many people were in front of that

11 2883 Wheelwright house?

12      A     I did not know -- I didn't have a view behind the first view of

13 apartments, no.

14      Q     Okay, so you didn't actually see that building at all?

15      A     No.

16      Q     Okay, but you did hear what you believe was three or four pops,

17 right?

18      A     Correct.

19      Q     So like pop, pop, pop, pop?

20      A     Yes.

21      Q     Okay, so the three or four pops are right there. And then you're

22 like, oh, my God. So you look in that direction, right?

23      A     Right.

24      Q     Okay. And when you look in that direction, you said you saw

25 you believed a female, right?

1       A     That's incorrect. No, a male.

2       Q     Okay, you saw a male, but you also said you saw a female run  
3 into an apartment?

4       A     Yeah, yeah, yeah.

5       Q     What apartment did that female run into, the 2883?

6       A     I couldn't tell you for sure.

7       Q     Okay, did you see any other gentlemen besides that one  
8 gentleman?

9       A     No.

10      Q     Okay, so you just saw a female go into an apartment you don't  
11 know which one?

12      A     No.

13      Q     Okay, and then you saw this gentleman in a big coat, right?

14      A     Correct.

15      Q     Get -- was he wearing jeans?

16      A     I don't know for sure. I couldn't -- I didn't spend -- I didn't see  
17 any jeans or shorts or anything like that.

18      Q     Okay, but it was July?

19      A     Right.

20      Q     Like the jacket had to be a little weird, right?

21      A     That's right.

22      Q     Okay, and then, you knew he was black, but beyond that, you  
23 didn't?

24      A     Couldn't tell you anything else.

25      Q     Okay. And then, even -- and it looks there's some trees in the

1 park and you said he ran over in this direction down here with the trees  
2 and the parks and everything. You could still see him running?  
3 A Yes.  
4 Q Okay. And I'm guessing you know cars, because you identified  
5 not only the make but the model as well?  
6 A Uh-huh.  
7 Q Okay, so that's -- is that a yes?  
8 A Yes.  
9 Q Okay, so you saw him get in a gold Cadillac CTS?  
10 A Correct.  
11 Q Okay, and then he took off in that gold Cadillac CTS?  
12 A Yes.  
13 Q Didn't see that gentleman with a gun?  
14 A No.  
15 Q Okay, and you just saw him running from the area where you  
16 believe that the shots occurred?  
17 A Correct.  
18 Q Okay, and the only thing you notice is a black dude in the big  
19 jacket?  
20 A That's correct.  
21 Q All right, nothing further.  
22 THE COURT: Mr. Scarborough, any redirect?  
23 MR. SCARBOROUGH: No redirect, Your Honor.  
24 THE COURT: All right, Mr. Knowlton, you're excused.  
25 THE WITNESS: Okay, thank you.

1 THE COURT: Thank you, sir.

2 [Witness excused]

3 MR. SCARBOROUGH: Your Honor, our next witness will be  
4 Investigator Keith Gross.

5 THE COURT: All right, Marshal?

6 Hello, Mr. Gross. The Clerk will administer your oath.

7 KEITH GROSS

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

10 THE CLERK: You may be seated. And then, can you please  
11 state and spell your first and last name for the record?

12 THE WITNESS: Keith Gross, K-E-I-T-H G-R-O-S-S.

13 THE CLERK: Thank you.

14 THE COURT: You may begin, Mr. Lexus.

15 **DIRECT EXAMINATION**

16 BY MR. LEXUS:

17 Q Where do you work, sir?

18 A The Clark County District Attorney's Office.

19 Q How long have you worked there?

20 A 12 years.

21 Q Among your duties, is one of them to assist in securing  
22 witnesses and issuing subpoenas?

23 A That's correct.

24 Q And were you assigned to do that on this case regarding Jason  
25 Bolden?



1 A I was.

2 Q Do you see that person in Court today?

3 A I do.

4 Q Do you see that person in Court today?

5 A I do.

6 Q Can you please point to him and identify for me the color shirt  
7 he's wearing?

8 A Blue shirt over there.

9 MR. LEXUS: Your Honor, let the record reflect the witness  
10 identified the Defendant.

11 THE COURT: So noted.

12 BY MR. LEXUS:

13 Q Sir, did you eventually in our office try to effectuate subpoenas  
14 for one Bryson Martinez, Brenton Martinez, Brandi Coleman, Shakiesha  
15 Geter, and Sanyleh Coleman?

16 A Yes, I have.

17 Q Or Sanyleh Coleman, whichever one it was.

18 A That's correct.

19 Q Okay. With regards to Bryson Martinez, was our office able to  
20 secure a subpoena for him for a what's called a preliminary hearing  
21 months ago?

22 A Yes, our office did.

23 Q Okay, how about for this trial?

24 A I was not able to locate him.

25 Q Okay, he's currently unable to be located?

1           A     That's correct.

2           Q     How about Brenton Martinez, was a subpoena secured for him  
3 for preliminary hearing?

4           A     That it was.

5           Q     And for trial?

6           A     That's correct.

7           Q     And how was his demeanor?

8                 MR. NADIG: Your Honor?

9                 THE WITNESS: Some --

10                MR. NADIG: Can we approach?

11                THE COURT: Yes.

12                                 [Bench conference]

13                MR. NADIG: I'm going to object to the demeanor his served the  
14 subpoena. Mr. Martinez is going to come and testify. So his demeanor  
15 would not be relevant to, you know, anything.

16                If they need to rebut his testimony after the fact, that might be  
17 one thing, but at this point, I would object as to the relevance of his  
18 demeanor for receiving the subpoena.

19                THE COURT: He's going to be --

20                MR. NADIG: What?

21                THE COURT: He's going to be here?

22                MR. NADIG: As far as I know he his.

23                MR. SCARBOROUGH: Brenton is, yeah.

24                MR. LEXUS: We're hoping he's going to be here, but you never  
25 know. So that's why I said, yeah, it's really relevant as far as how he -- his

1 reluctance to want to be here and his reluctance to testify is what this  
2 case is all about.

3 THE COURT: Goes to his credibility. Overruled. I'm going to  
4 allow it.

5 [End bench conference]

6 BY MR. LEXUS:

7 Q Describe his demeanor, sir.

8 A Somewhat reluctant.

9 Q Okay. Shakiesha Geter, who has subpoenas secured for her  
10 for a preliminary hearing or trial?

11 A That it was.

12 Q Shakiesha?

13 A Yes, a subpoena was issued for her. I was not able to locate  
14 her.

15 Q Okay, and so she's in the wind as well?

16 A She is in the wind as well. She is a cousin of Brandi.

17 Q Okay, as far as Shania, the child, in -- first of all, were you  
18 asked to secure a subpoena for the child?

19 A I was.

20 Q And who do you look to secure the subpoena for the child?

21 A For a child, I have to obtain from the custodial parents or  
22 guardian.

23 Q Okay, which is who?

24 A It's either Jason Bolden or Brandi Coleman.

25 Q Okay. With regards to Brandi Coleman, did we ask you to

1 secure a subpoena for her?

2 A Yes, you did.

3 Q And was one able to be obtained for preliminary hearing?

4 A No.

5 Q How about for this trial?

6 A For neither.

7 Q Okay, in fact, did we then effectuate a material witness more for  
8 her?

9 A We did further for the preliminary hearing and for this case.

10 Q Which is currently outstanding?

11 A That's correct.

12 Q Describe for us, sir, what a material warrant is?

13 A A material witness warrant is usually for someone that's not  
14 cooperative for our cases in that they're not wanting to either be located or  
15 they're just refusing to come to court.

16 Q And that warrant has been outstanding for some time?

17 A That is correct.

18 Q Nothing further.

19 THE COURT: Cross-exam?

20 MR. NADIG: No questions, Your Honor.

21 THE COURT: All right, you're excused. Thank you.

22 Mr. Gross, thank you. Watch your step.

23 [Witness excused]

24 THE COURT: Any other witnesses at this time by the State?

25 MR. LEXUS: Let's -- can we approach, Judge?

1 THE COURT: Yes.

2 [Bench conference]

3 MR. LEXUS: Judge, we'd like to do one last [indiscernible] and  
4 then break.

5 THE COURT: That's fine with me. Yeah, could you do it?

6 MR. SCARBOROUGH: Yes, sir.

7 THE COURT: Thank you. Let's do it.

8 [End bench conference]

9 THE COURT: The State may call its next witness.

10 MR. SCARBOROUGH: Officer Alexander Jegge.

11 THE COURT: Officer Jegge.

12 MR. SCARBOROUGH: May I approach?

13 THE COURT: Yes.

14 THE MARSHAL: Right there.

15 THE COURT: All right, officer, remain standing. You will  
16 receive your oath.

17 THE CLERK: Raise your hand.

18 ALEXANDER JEGGE

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

21 THE CLERK: Okay, you may be seated. Can you please state  
22 and spell your first and last name for the record?

23 THE WITNESS: Alexander Jegge, A-L-E-X-A-N-D-E-R J-E-G-  
24 G-E.

25 MR. SCARBOROUGH: May I proceed?

1 THE COURT: Yes.

2 **DIRECT EXAMINATION**

3 Q What do you do no a living?

4 A I'm a police officer for the Las Vegas Metro.

5 Q All right, how long have you a police officer?

6 A Two years.

7 Q What units have you been on in your tenure as a Metro police  
8 officer?

9 A I've been in patrol.

10 Q Okay, what is a patrol officer do?

11 A A patrol officer takes care of calls for service and does proactive  
12 stops on vehicles and pedestrians.

13 Q All right, so we hear a lot of lingo in all this stuff, so I want the  
14 jury to be clear. What's a call for service?

15 A A call for service is when a citizen calls us, calls dispatch, and  
16 asks for assistance, whether it's related to a domestic disturbance or an  
17 assault, robbery, any of the above. It could be multitude amounts of  
18 different calls.

19 Q All right, I want to direct your attention to July 1st, 2018. Were  
20 you on duty in that capacity on that day?

21 A Yes.

22 Q And on that day, did you have occasion to respond to a scene  
23 located at 2883 Wheelwright Drive?

24 A Yes.

25 Q And is that here in Clark County, Las Vegas, Nevada?

1           A     Yes, it is.

2           Q     Now when you get assigned to a call or let me walk back. How  
3 do you respond to calls? Do you get assigned to them?

4           A     So, yes. Dispatch calls out the event and she assigns available  
5 units. And I also have the discretion to send myself to a call that is an  
6 emergency situation for another officer or to save lives for citizens.

7           Q     Now that what you're alerting to the dispatch and stuff, is there  
8 a system that you operate with in order to communicate?

9           A     Yes, it's called their CAD system. It's a computer that we have  
10 in our patrol vehicles that shows us all the calls that are holding and who  
11 the officers are that are assigned to these different calls.

12          Q     All right, now turning your attention specifically to this event on  
13 July 1st, 2018, what was the nature of this call?

14          A     It was an assault battery with a deadly weapon. The details of  
15 the call stated that a black male had been shot.

16          Q     Okay. So do you recall what time the call came out?

17          A     At approximately 9 o'clock.

18          Q     What time do you recall arriving to the scene?

19          A     I would say a little bit after 9. I would say a couple minutes after  
20 9 o'clock.

21          Q     It's pretty quick.

22          A     Correct.

23          Q     When you arrived on scene, can you describe for the ladies and  
24 gentlemen of the jury the dynamics of the scene as you arrived?

25          A     So as I arrived, multiple officers were on the scene. It was

1 pretty chaotic. We had received notice that a subject had fled on foot and  
2 taken off in his vehicle. We attempted to locate the individual, which was  
3 negative. And I basically saw a black male with a gunshot to his  
4 abdomen, where officers were actually carrying the subject onto a  
5 stretcher.

6 Q And what do you do next?

7 A I see if I can help the individual. And I start talking to him,  
8 asking him what happened, who shot him, and I assist the officers when  
9 the individual's on the stretcher.

10 Q Now when you walk up and you see a situation like that, what's  
11 your purpose of asking them who shot them? Why are you doing that?

12 A To get more information, so that it could be relayed to our  
13 dispatcher, so we can get a better description of the subject and attempt  
14 to apprehend the subject.

15 Q When you went to go speak with the person that you saw that  
16 was shot, what was his condition?

17 A He looked in pretty dire straits. He had a gunshot wound to the  
18 lower abdomen, there was blood on his shirt, and it looked like medical  
19 was trying to treat his wounds.

20 Q Now at this point, when you're talking to someone with such a  
21 serious wound, what goals do you have in terms of speaking with that  
22 person?

23 A I try to get as much information as I can as to what happened,  
24 who did it, any information that would be helpful for the investigation going  
25 forward.



1 Q All right, now you've responded to a number of shooting scenes  
2 in your career, yes?

3 A Yes.

4 Q You've come into contact with people who have been wounded  
5 in such capacity, correct?

6 A Correct.

7 Q Now in that, safe to say in your professional experience, were  
8 you evaluating Mr. -- who was it that you came into contact with? What  
9 was the name?

10 A Brenton Martinez.

11 Q When you came into contact with Brenton Martinez, you earlier  
12 indicated dire straits, yes?

13 A Correct.

14 Q What do you mean by that?

15 A I mean it appears that he was either going in and out of  
16 consciousness, was in pain, looked like he was seriously injured.

17 Q Okay. Showing defense counsel what's been marked as  
18 State's proposed 108 -- 106 and 108. May I approach the witness?

19 THE COURT: Yes.

20 MR. NADIG: Those are actually already admitted via  
21 stipulation, Your Honor.

22 MR. SCARBOROUGH: I'm sorry, I didn't see the sticker.

23 THE COURT: They are submitted.

24 MR. SCARBOROUGH: My apologies. Sorry. So I won't  
25 publish.

1 THE COURT: You may publish.

2 MR. SCARBOROUGH: Thank you, Your Honor, I appreciate it.

3 BY MR. SCARBOROUGH:

4 Q So I'm showing -- I'm publishing State's 108. What are we  
5 looking at here?

6 A We're looking at the subject and it appears to be a gunshot  
7 wound to his abdomen.

8 Q Is that Brenton Martinez?

9 A Yes.

10 Q Is that the same man that you came into contact with when you  
11 came on to the scene?

12 A Yes.

13 Q Okay, and showing you State's 106 looking right around in this  
14 area. Is that another depiction of the gunshot wound?

15 A That is correct.

16 Q Okay, now when you responded to the scene, and you spoke  
17 with other officers, did you actually develop a suspect very quickly?

18 A Brenton Martinez stated that a man with --

19 MR. NADIG: Objection, Your Honor. Could we approach?

20 THE COURT: Yeah.

21 [Bench conference]

22 MR. SCARBOROUGH: I mean, it's a dying declaration  
23 obviously because he indicated that he was in dire straits. It's also for the  
24 effect of the investigation. I'm not issuing it for the truth of the matter  
25 asserted.

1 And more importantly, Brenton Martinez is actually going to take  
2 the stand and he could be crossed on that as well.

3 THE COURT: Comes in for a limit. Go ahead.

4 MR. NADIG: I would say that it's definitely not a dying  
5 declaration. Maybe he was under the stress of the event. Is that what  
6 you're suggesting?

7 MR. SCARBOROUGH: Which would go with dying declaration.

8 MR. NADIG: Or --

9 THE COURT: Are you talking about excited utterance?

10 MR. SCARBOROUGH: Oh, okay.

11 MR. NADIG: But there's no foundation of that at this point.

12 THE COURT: I can keep that officer waiting on foundation.

13 MR. NADIG: Okay.

14 THE COURT: You know, dire straits, in and out of  
15 consciousness and pain and I'm looking at the photo myself. I think  
16 it's -- so I'm going to overrule the objection.

17 MR. SCARBOROUGH: Thank you.

18 [End bench conference]

19 THE COURT: Hold on, counsel?

20 [Bench conference]

21 MR. NADIG: I apologize for all the objections, but --

22 THE COURT: That's fine. You have a --

23 MR. NADIG: Move to strike as speculative.

24 MR. SCARBOROUGH: What is?

25 THE COURT: He's giving his perception based upon his

1 personal observations. So he can -- is -- he can say what his opinion  
2 was, what his -- well, what his observations were.

3 MR. SCARBOROUGH: And I was going to lay a lot more  
4 foundation.

5 THE COURT: You can --

6 MR. SCARBOROUGH: -- with professional experience.

7 THE COURT: The other foundation.

8 MR. SCARBOROUGH: Yes.

9 THE COURT: This isn't for purposes of establishing, you know,  
10 the -- again, not that he's under any undue influence. It's merely, right?

11 MR. SCARBOROUGH: Yeah, of course.

12 THE COURT: It's merely that he was reluctant. Just establish  
13 that with foundation. I'll allow that. By the way, guys, we do record  
14 everything here.

15 MR. NADIG: Yes.

16 MR. SCARBOROUGH: Okay.

17 THE COURT: Okay.

18 MR. SCARBOROUGH: Perfect, thanks.

19 [End bench conference]

20 THE COURT: Go ahead.

21 MR. SCARBOROUGH: May I continue?

22 THE COURT: Yes.

23 MR. SCARBOROUGH: Thank you, Your Honor.

24 BY MR. SCARBOROUGH:

25 Q So in your training and experience, have you dealt with people

1 who were reluctant to cooperate so to speak?

2 A Yes.

3 Q Okay, now do you have any type of techniques that you use in  
4 order to kind of diminish that reluctance?

5 A You start by building a rapport, letting the victims know that  
6 we're here to help to hopefully get the bad guy that did this or the person.  
7 And, you know, it takes a little bit of time. So we trust, you know, officers.

8 Q So eventually, were you able to develop this rapport and  
9 eventually diminish that level of reluctance and uncooperation?

10 A Yes.

11 Q Ultimately, did you present a picture of a suspect that you  
12 developed Jason Bolden to this man?

13 A Yes.

14 Q And did he identify that man as the shooter?

15 A Yes.

16 MR. SCARBOROUGH: And I'm sorry, is this one admitted?

17 MR. NADIG: Yeah.

18 MR. SCARBOROUGH: Okay, publishing State's  
19 proposed -- State's admitted 119.

20 BY MR. SCARBOROUGH:

21 Q Is this the exact photograph you showed Brenton Martinez?

22 A That is correct.

23 Q And when you showed this photograph to Brenton Martinez, did  
24 he identify that man depicted in the photograph as the shooter that day?

25 A Yes.

1 Q Is that person in that photograph in this courtroom today?

2 A Yes.

3 Q Can you please point and identify that man and an article of

4 clothing he's wearing for the record?

5 A The individual with a black button -- I'm sorry, blue button up

6 shirt.

7 MR. SCARBOROUGH: The record would reflect identification

8 of the Defendant.

9 THE COURT: So noted.

10 MR. SCARBOROUGH: Brief indulgence. Nothing further.

11 THE COURT: Cross-exam?

12 MR. NADIG: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. NADIG:

15 Q Officer how are you doing?

16 A Good and yourself?

17 Q Good. Let me do a little house cleaning. One of the things is

18 you've testified earlier in this matter, correct?

19 A Correct.

20 Q And you testified at the preliminary hearing, right?

21 A Yes.

22 Q Okay. And at that point in time, you did not mention that you

23 had conversation with Mr. Martinez, is that a fair statement? Had a

24 conversation?

25 A I don't recall.

1 Q Okay, and in fact, there was no mention of identifying a  
2 gentleman with braids, correct?

3 A I don't believe so.

4 Q Okay. And so, is that something you forgot at the time of the  
5 preliminary hearing or --

6 A It could be possible.

7 Q Okay, and but you're saying today that you did have that  
8 conversation with Mr. Martinez?

9 A Yes.

10 Q Okay, and he said it was an African American gentleman with  
11 braids?

12 A Correct.

13 Q Okay, now you said he was in dire straits, correct?

14 A Correct.

15 Q And you said he was shot?

16 A Correct.

17 Q And he had that through and through, right?

18 A Yes.

19 Q Okay, and so, medical came and got him, right?

20 A Yes.

21 Q Okay, and medical had to stabilize him, correct?

22 A Yes.

23 Q Okay, and one of the things they have to stabilize and tell me if  
24 you don't know. One of the things they have to do is administer pain  
25 killing drugs, correct?

1           A     I'm not sure what they do to stabilize a victim.  
2           Q     An individual who's shot?  
3           A     Correct.  
4           Q     Okay, and so, additionally, you had to wait for a little bit before  
5     you could introduce that photo to Mr. Martinez, right?  
6           A     Yes.  
7           Q     And they had to treat them at the hospital, yes?  
8           A     Yes.  
9           Q     They had to stabilize him? Yes?  
10          A     Yes.  
11          Q     Okay. And so --  
12                MR. NADIG: Court's indulgence. For the record, I'm publishing  
13     State's 106.  
14     BY MR. NADIG:  
15          Q     What we have here is we have something going into Mr.  
16     Martinez's arms, correct?  
17          A     Yes.  
18          Q     Okay. And was that in his arms at the time you talked to him?  
19          A     Yes.  
20          Q     Okay, and so, there were a number of things go in his arm,  
21     right?  
22          A     I assume.  
23          Q     Okay, you assume or you -- I'm asking if you saw it?  
24          A     I saw the tube going into his arm, yes.  
25          Q     Okay, and you said before he was in dire straits. When you



1 talked to him later, was he still in dire straits?

2 A He seemed to have been stabilized by medical staff.

3 Q Okay, so he had been stabilized. Additionally earlier at the  
4 preliminary hearing, you said that you were not trained to identify  
5 somebody what was under the influence. Do you remember that?

6 A Correct.

7 Q Okay. But you have gone through the standard DUI training in  
8 the academy?

9 A Correct.

10 Q And you've had an opportunity -- even at that time, you'd been  
11 an officer for a year and four months, correct?

12 A Correct.

13 Q And you've had an opportunity to pull people over for DUIs?

14 A Yes.

15 Q And you had the ability to develop reasonable suspicion for  
16 arresting somebody and getting a test?

17 MR. SCARBOROUGH: May we approach?

18 THE COURT: Yes, you may.

19 [Bench conference]

20 MR. NADIG: I'm objecting to the relevance of this and DUI is --

21 THE COURT: Where are you doing with this?

22 MR. NADIG: Specifically what it is is at the preliminary hearing,  
23 he said he was not able to tell if he was under the influence. And what I'm  
24 trying to suggest is at the time he made the identification, he was under  
25 the influence from the pain killing medication that was administered. So

1 that's why I'm --

2 THE COURT: So the test shows lack of credibility in his  
3 identification?

4 MR. NADIG: Correct.

5 THE COURT: Or his relay of the identification?

6 MR. NADIG: That's exactly it.

7 MR. SCARBOROUGH: And why are we asking about DUI  
8 though?

9 MR. NADIG: Because I'm trying to show through this training  
10 and experience that he's been exposed to this.

11 MR. SCARBOROUGH: To?

12 THE COURT: Based on his observation, the victim was  
13 exposed.

14 MR. SCARBOROUGH: Well, I think there's a big difference.

15 MR. NADIG: Your Honor, can we just have one person  
16 objecting at all times?

17 THE COURT: Yes, I'm just trying to understand [indiscernible].  
18 Go ahead.

19 MR. NADIG: The issue is is that at the preliminary hearing, he  
20 said he couldn't ascertain whether he was under the influence or not.

21 THE COURT: Okay.

22 MR. NADIG: And I'm saying that he's been trained to identify  
23 [indiscernible] or under the influence.

24 THE COURT: Okay.

25 MR. NADIG: Okay, and so I'm trying to suggest that he was

1 under the influence. He just doesn't want to admit it.

2 THE COURT: And what does that tend to show?

3 MR. NADIG: And then, that will show that his identification at  
4 the time he was under the influence.

5 THE COURT: Might be suspect?

6 MR. NADIG: Exactly.

7 MR. SCARBOROUGH: Again, this is something that Officer  
8 Jegge just admitted that he's not trained. He doesn't understand how they  
9 even treat people under medically.

10 So to ask him to evaluate whether or not he was under the  
11 influence on pain of medical doses, I think, is beyond his scope of  
12 knowledge. And to link that to --

13 THE COURT: Well, he has a --

14 MR. SCARBOROUGH: -- a DUI.

15 THE COURT: He has a year and a half of training. If he knows  
16 what the symptoms are and can identify those same symptoms with the  
17 victim.

18 MR. SCARBOROUGH: I think you're going to lay that  
19 foundation.

20 THE COURT: Absolutely.

21 MR. NADIG: And that's what I'm doing.

22 THE COURT: Absolutely.

23 MR. SCARBOROUGH: But he's doing it with DUI stuff and  
24 pulling people over. There's a difference between DUIs --

25 THE COURT: Well --

1 MR. SCARBOROUGH: -- and medical treatment and seeing  
2 whether or not he's under the influence and coherent.  
3 THE COURT: Well, let's see --  
4 MR. SCARBOROUGH: -- because he's taking pain pills.  
5 THE COURT: -- well, let's --  
6 MR. NADIG: He's not taking pills. He's been injected. It's a  
7 morphine drug.  
8 THE COURT: He doesn't know what that is. He doesn't know  
9 it's a [indiscernible].  
10 MR. NADIG: No, exactly, I know.  
11 THE COURT: But why don't you try to lay foundation --  
12 MR. NADIG: Now [indiscernible].  
13 THE COURT: -- on whether he's competent in a  
14 nonspeculative matter to render an opinion on whether this --  
15 MR. SCARBOROUGH: Exactly.  
16 THE COURT: -- he was under the influence or not.  
17 MR. NADIG: Okay.  
18 THE COURT: Objection, yeah, if there has to be appropriate  
19 foundation.  
20 MR. SCARBOROUGH: Thank you, Your Honor.  
21 THE COURT: Okay.  
22 [End bench conference]  
23 BY MR. NADIG:  
24 Q And so, you're trained under DUIs to develop this idea of  
25 reasonable suspicion via the test, right?

1 A Correct.

2 Q Again, so you look for objective clues of whether somebody's  
3 under the influence of specifically alcohol?

4 A Correct.

5 Q Okay, or specifically other substances?

6 A Yes.

7 Q And you're trained to identify those substances?

8 A Well, it depends. I mean --

9 Q In a general fashion? I mean, you're not an expert at this point  
10 in time, correct?

11 THE COURT: Was he done -- were you done with your  
12 answer?

13 THE WITNESS: Yes, I'm --

14 THE COURT: Okay, go ahead.

15 BY MR. NADIG:

16 Q So you're not an expert in this area?

17 A Correct.

18 Q But you've developed a basic knowledge as to how to identify  
19 somebody under the influence?

20 A Mainly alcohol through HGN, which is a Nystagmus of the eye  
21 movements. You can see the eye stuttering.

22 Q And there are relative field sobriety tests that you do, correct?

23 A Correct.

24 Q Okay, but there are also objective signs that you look for, right,  
25 the bloodshot eyes, things of that nature?

1 A That's for alcohol. Bloodshot eyes, odor.

2 Q You're right, but there are also other ones that are specific as to  
3 drugs, correct?

4 A Correct, and they're usually the eyes. The pupils get  
5 constricted.

6 Q Okay.

7 A Or thereafter, but I did not take the extended course in detecting  
8 those through ARIDE --

9 Q Okay.

10 A -- which is a different way to see if somebody's impaired on their  
11 different illicit drugs besides alcohol.

12 Q Okay. But also, the results will pinpoint there's also, you know,  
13 extended eyes, dilated pupils as well, right?

14 A Correct.

15 Q Okay, are you saying you didn't look for any other symptoms  
16 when you were talking to him?

17 A No.

18 Q Okay, and you didn't know if he was under the influence of pain  
19 killers, 30 minutes after he was shot in the hospital with a drip in his arm?

20 A I do not know.

21 Q Okay. And so, in this condition is when you came up upon him  
22 and you presented him with a photo?

23 A Yes.

24 Q Again, it was one photo, right?

25 A Correct.

1 Q Okay, now typically, you do what's called a six-pack? Is that a  
2 fair statement?

3 A Yes.

4 Q And what is a six-pack for the jury?

5 A A six-pack is six different pictures of six different individuals that  
6 relatively look like a potential suspect with the suspect being in this line-  
7 up.

8 Q Okay, and there's actually an admonishment you read to  
9 somebody before you present the six-pack, right?

10 A Correct.

11 Q Okay, and it says if you see somebody, you identify them, right?

12 A Correct.

13 Q And their name isn't listed on there.

14 A No.

15 Q And what you do is you show them that they write who they  
16 believe it is and then you have a key that says where the suspect actually  
17 was in those six photos?

18 A Correct.

19 Q Okay. But in this case, you showed one photo?

20 A Correct.

21 Q Okay, and in this case, you didn't talk about that admonishment,  
22 did you?

23 A No.

24 Q Okay, you just showed him the photo and said is this the guy?

25 A Correct.

1 Q Okay, and that was based on something that had heard earlier?

2 A Correct.

3 Q Okay. Nothing further.

4 THE COURT: Redirect?

5 MR. SCARBOROUGH: Yes.

6 MR. NADIG: Do you need this?

7 MR. SCARBOROUGH: I do not. Thank you.

8 **REDIRECT EXAMINATION**

9 BY MR. SCARBOROUGH:

10 Q Let's talk about when you talk to witnesses. Now when you talk  
11 to witnesses, you obviously assess their lucidity, yes?

12 A Correct.

13 Q And by that, meaning do you assess whether or not they are  
14 coherently responding to your inquiries?

15 A Yes.

16 Q And if you were to come into contact with the witness, who  
17 wasn't responding lucidly or coherently to your inquiries, would you  
18 continue to question them?

19 A No.

20 Q In your professional experience, have you dealt with people  
21 where as Mr. Nadig asked you, were "under the influence"?

22 A Yes.

23 Q And when you came into contact with Mr. Martinez in this case,  
24 did you deem him to be lucid at the times he was answering your  
25 inquiries?



1           A     Yes.

2           Q     Okay, did you deem him to be coherent when he was  
3 responding to all of your inquiries?

4           A     Yes.

5           Q     Talk to the ladies and gentlemen of the jury, how do you deem  
6 him to be coherent and lucid?

7           A     Making full statements, not slurring his speech, making sense  
8 when he's speaking.

9           Q     Things of that nature, correct?

10          A     Correct.

11          Q     And to be clear, even though Brenton was in the hospital, did he  
12 exhibit any of those symptoms or signs that you had just indicated to the  
13 members of the jury?

14          A     He seemed lucid, yes.

15          Q     Enough to answer your questions coherently to give you an  
16 understandable response?

17          A     Yes.

18          Q     And while he was lucid and coherent, he identified the man that  
19 shot him, yes?

20          A     Yes.

21          Q     Now let's talk about that six-pack photo line-up that you were  
22 questioned on. In this instance, are there certain situations where time  
23 would maybe constrict or warrant --

24               MR. NADIG: Your Honor, can we approach?

25               THE COURT: Uh-huh, yes.

1 [Bench conference]  
2 MR. NADIG: This question is leading.  
3 THE COURT: Of course. It was leading. I mean, you need a  
4 response on that, so objection sustained. Don't suggest the answer, all  
5 right?  
6 MR. SCARBOROUGH: Fair.  
7 [End bench conference]  
8 BY MR. SCARBOROUGH:  
9 Q Are there ever situations where a six-pack would not be feasible  
10 to administer?  
11 A Yes.  
12 Q Can you describe to the ladies and gentlemen of the jury those  
13 types of situations?  
14 A When it is not feasible as far as timing is concerned when the  
15 potential victim could be, you know, about to pass on.  
16 Q Or in dire straits?  
17 A Or in dire straits.  
18 MR. NADIG: Your Honor, move to strike.  
19 MR. SCARBOROUGH: That wasn't me. It was yes or no.  
20 THE COURT: Well, close call. I'll go ahead and allow it, so.  
21 MR. SCARBOROUGH: Continue?  
22 THE COURT: We already heard those words. All right, go  
23 ahead.  
24 THE WITNESS: So when a victim is not -- you know, going to  
25 potentially make it and we don't have enough time to develop a six-pack

1 and get all the paperwork assembled for this, a one picture is acceptable.

2 BY MR. SCARBOROUGH:

3 Q Now this whole course of conduct, did you have a suspect  
4 within minutes of the shooter?

5 A Yes.

6 Q And that suspect was developed -- was that suspect developed  
7 via that photograph?

8 A Yes.

9 Q Okay, and at this point, under your training and professional  
10 experience, was it feasible to administer a six-pack photo line-up?

11 A It was not.

12 Q And did you -- and as a result, did you issue that picture and  
13 show Mr. Martinez that picture?

14 A Yes.

15 Q Okay.

16 THE COURT: All right, recross, Mr. Nadig?

17 **RECROSS-EXAMINATION**

18 BY MR. NADIG:

19 Q There's a suggestion that he was in dire straits and about to  
20 pass on? You interviewed him for 30 minutes after, right?

21 A Approximately.

22 Q Okay, and he was released two days later from the hospital,  
23 right?

24 A Correct.

25 Q Okay, so it's your testimony here today that there was a

1 question of whether he was going to pass on and you saw him 30  
2 seconds later -- 30 minutes later?

3 A Correct.

4 Q Okay, additionally, what you're saying is that you didn't have the  
5 ability to compile a six-pack in the time allotted?

6 A Correct.

7 Q Okay, and that this person who you had identified within  
8 minutes, so you identified your suspect in minutes, you didn't have the  
9 time to wait and have that person identified with the six-pack?

10 A No.

11 Q Okay, and so you went in there with an individual who may or  
12 may not have been on pain medication because you don't know and  
13 presented him with one photo?

14 A Yes.

15 Q Okay, and additionally, you said he was reluctant to talk, but  
16 you said what, that he immediately identified the person in the photo?

17 A Well, after we built the rapport --

18 Q Okay.

19 A -- he's speaking with me and then I showed him the picture.

20 Q Okay, and so, once you built that rapport, he said that's the  
21 guy?

22 A Correct.

23 Q So that reluctance went away?

24 A Correct.

25 Q Nothing further.

1 THE COURT: All right, officer, you may be excused. Thank  
2 you for your time.

3 THE WITNESS: Thank you.

4 [Witness excused]

5 THE COURT: Counsel, I think we should take lunch now.

6 MR. SCARBOROUGH: That is fair, yes, Your Honor.

7 THE COURT: All right, ladies and gentlemen of the jury, I want  
8 you back here at 2:05. During this recess, you're admonished as soon as  
9 I find my admonishment. I don't have it.

10 So you're admonished not to form any opinions. Don't talk to  
11 anybody about the facts of this case. Don't talk to any witnesses,  
12 attorneys, or Defendant in any capacity.

13 Don't do any research or investigation, don't go take a view of  
14 the scene, and don't do any of the other things I told you before not to do,  
15 okay? Thank you very much. You are excused --

16 THE MARSHAL: All rise for the jury.

17 THE COURT: -- for one hour. See you at 2:05.

18 THE MARSHAL: All rise for the jury.

19 [Outside the presence of the jury]

20 THE COURT: Outside the presence of the jury. We can go off  
21 the record now?

22 MR. SCARBOROUGH: Yes, Your Honor. I missed the return  
23 time. I apologize. What time?

24 THE COURT: So 2:05 please. And just FYI, I don't know why  
25 this device is blinking on the bench here. Maybe we can get that fixed

1 over --

2 THE COURT RECORDER: It was recording.

3 THE COURT: It was recording.

4 MR. SCARBOROUGH: It was recording.

5 MR. LEXUS: Some courtrooms just so you know do that when

6 it's recording.

7 THE COURT: Blinks like that?

8 MR. LEXUS: Yeah.

9 THE COURT: I've never seen it happen before here before.

10 This is the first time. So we'll look into it. I -- it seemed a little distracting

11 to me.

12 THE COURT RECORDER: Yeah. All right --

13 [Trial in recess taken at 1:05 p.m.]

14 [Trial resumed at 2:17 p.m.]

15 [Outside the presence of the jury]

16 THE MARSHAL: And remain seated. Department 2 back on

17 the record. Come to order.

18 THE COURT: Can we bring the jurors in now? Where's Mr.

19 Scarborough?

20 MR. LEXUS: He just went to the restroom, Judge.

21 THE COURT: Okay.

22 MR. LEXUS: He'll be right back.

23 MR. SCARBOROUGH: Here, sorry.

24 THE COURT: All set?

25 MR. SCARBOROUGH: Yeah.

1 THE COURT: All right, Marshal.  
2 THE MARSHAL: Okay.  
3 All rise for the jury. All jurors are present.  
4 [In the presence of the jury]  
5 THE COURT: Please be seated, everybody. The State may  
6 call its next witness.  
7 MR. SCARBOROUGH: The State calls Brenton Martinez.  
8 May I approach, Your Honor?  
9 THE COURT: Yes.  
10 All right, Mr. Martinez?  
11 MR. MARTINEZ: Yes.  
12 THE COURT: Welcome. Please remain standing. The Clerk  
13 will give you your oath.  
14 BRENTON MARTINEZ  
15 [having been called as a witness and being first duly sworn, testified as  
16 follows:]  
17 THE CLERK: You may be seated. And then can you please  
18 state and spell your first and last name for the record?  
19 THE WITNESS: Brenton Martinez, B-R-E-N-T-O-N M-A-R-T-I-  
20 N-E-Z.  
21 THE CLERK: Thank you.  
22 THE COURT: You may proceed, counsel.  
23 **DIRECT EXAMINATION**  
24 BY MR. SCARBOROUGH:  
25 Q Mr. Martinez, how are you today?

1 A I'm fine and yourself?

2 Q I'm doing well. All right, I want to get some stuff out right in the  
3 open. You have a couple felony convictions, correct?

4 A Yes.

5 Q Okay, and those felony convictions are in 2009 in California,  
6 one for possession or purchase of a cocaine-base substance for sale?

7 A Yes.

8 Q And the same in 2009 for possession or sale of marijuana?

9 A Yes.

10 Q And you were on probation for those?

11 A Yes.

12 Q And you successfully completed probation on those?

13 A Yes.

14 Q Okay. All right, I want to take you to July 1st, 2018. Were you  
15 at the address of 2883 Wheelwright Drive?

16 A Yes.

17 Q Who are you with that day?

18 A With my brother.

19 Q What's your brother's name?

20 A Bryson.

21 Q Bryson what?

22 A Martinez.

23 Q Who else was there that day?

24 A His girlfriend Brandi, her cousin, and Brandi's daughter.

25 Q Okay, when you say his girlfriend, you mean your brother's



1 girlfriend Brandi?

2 A Right, yes.

3 Q Okay. And Brandi's daughter, do you remember the daughter's

4 name?

5 A I can't remember her name.

6 Q Is it Sanyleh?

7 A It sound familiar, yes.

8 Q Yes. Okay. Now in terms of your brother and the dating

9 relationship with Brandi, were you aware that Brandi was in another

10 relationship on and off at the time?

11 A It seemed like that was -- I was aware that she had a baby

12 father.

13 Q And were you aware of who that baby's father was?

14 A Yeah, I heard about him, yes.

15 Q Yeah. You didn't know his name?

16 A No.

17 Q Okay. And you had not seen him prior to that day, fair?

18 A Fair.

19 Q Okay, so I want to walk towards later on in the morning around

20 the morning time when you were with all those people. Where are you at

21 at that address in terms of inside or outside?

22 A I was outside with my brother.

23 Q Your brother being Bryson?

24 A Right.

25 Q Now did something happen in that morning that caused you to

1 come to Court today?

2 A Yeah, I ended up getting shot that morning.

3 Q You ended up getting shot. Now let's walk through that. So  
4 who comes up? Who -- did someone come up or how does that go  
5 down?

6 A Well, we're standing outside.

7 Q When you say we, you mean?

8 A Me and my brother.

9 Q Okay.

10 A Standing outside chilling. This guy walked past. Then he  
11 comes back and everything just one left from there.

12 Q Keep going. What do you mean? So a guy comes -- so a guy  
13 comes and he walks past. Where are you guys at? Publishing State's 2.

14 MR. SCARBOROUGH: Can I have the overhead, please?

15 Okay, pardon me. We'll clear the bottom of these arrows.

16 BY MR. SCARBOROUGH:

17 Q All right, so is that on State's 2, is that the residence that you  
18 were in front of on July 1st 2018?

19 A Yes.

20 Q So like John Madden, man like on football, you can push the  
21 screen and they'll be a dot. Where are you and your brothers sitting?

22 A Standing up in here.

23 Q Okay, now the apartment to the left, who's apartment is that?

24 A It's Brandi's apartment.

25 Q Okay, and is that Apartment 6A?

1       A     Yes.

2       Q     Okay, so when you and your brother are sitting out there, you  
3 said someone walks by. Can you kind of draw with a line on that sidewalk  
4 where they walk by?

5       A     Like this way, walk by this way.

6       Q     Okay, so you're just drawing -- okay, so along that --

7       A     Yeah.

8       Q     -- along this way, yes?

9       A     Yes.

10      Q     You also indicated that the person walked by and then circled  
11 back?

12      A     Right, they walked out of sight. And they ended up coming  
13 back.

14      Q     All right. So when that person comes back, what's going on?  
15 Walk us through those events.

16      A     Well, when you walk past, my brother say something. I don't  
17 whether he said his name or what was going on, but he come back.

18            When he come back, when he come back, he got his hand behind his  
19 back. So I'm trying to ask him like what's your hand behind your back for,  
20 you know?

21      Q     You're talking about the man who walked up, not your brother,  
22 right?

23      A     Right, right, the man who walked up.

24      Q     Okay?

25      A     What your hand or back for? And say we are grown right here.

1 Probably like talk it out, but what's going on? You know what I'm saying?  
2 But he just kept his hand behind his back.

3 Then, he like acts -- like some type of question, asks my brother  
4 something. I can't even remember what the reply was, but then, that's  
5 when the pistol got developed.

6 Q All right. So let's talk about that man. The man pulls a pistol,  
7 you're testifying to, yes?

8 A Yes.

9 Q Where does he retrieve that from?

10 A From behind his back.

11 Q So I got to make a record of the gestures that you're making.  
12 So you with your right arm made a gesture that he was pulling a gun from  
13 behind his back, yes?

14 A Yes.

15 Q All right, you didn't see that gun prior to that gesture, yes?

16 A No.

17 Q Okay. Now what happens after that? Describe the man who  
18 has the gun? Describe his movements with the gun?

19 A Well, just then he asked my brother, later my brother I said I  
20 can't remember the reply. He pulled a gun up and he pointed towards my  
21 brother well in or direction.

22 So I pushed my brother away. And as -- and I'm looking at, you know,  
23 and I'm trying to protect my little brother. So he cocked it and there's like  
24 steel jam and he cocked it again.

25 Then, was finally able to fire. By then, my brother was in the house

1 and I had turned my back to get away. And that's when I felt I got hit and  
2 tried to get in the house.

3 Q Okay, so that man that you said pulled that gun, you were  
4 making gestures as if you were holding a pistol in your right hand and you  
5 were making an attempt to it looks like to adjust a slide, am I correct?

6 A Yes, yes.

7 Q Would that mean is the gun a semi-automatic or a revolver?

8 A A semi-automatic.

9 Q Okay, and you know the difference between the two?

10 A Yes.

11 Q The difference being that there's a slide on the top?

12 A A slide. One type click and the other one doesn't.

13 Q Okay. You also made a gesture and while you were making  
14 that gesture, you said that the gun jammed?

15 A Yes.

16 Q What do you mean by that? Describe that? How do you --

17 A Like it's like a misfire. When you point it, it didn't fire. So he  
18 was trying to rechamber. And it didn't work again and he had to be  
19 rechambered again.

20 Q Okay, so in that time, that's when you indicated your brother  
21 was near you?

22 A Right.

23 Q And you were trying to protect your brother?

24 A Right.

25 Q What were you doing trying to protect your brother?

1           A     Pushed him back towards the house, so he can get in the  
2 house or from the steps pushed him back towards the door, so he can get  
3 in the house and then I followed after.

4           Q     Okay, so the door would be back here, right?

5           A     Yes.

6           Q     And to the left?

7           A     Yes.

8           Q     Okay, now you pushed your brother back towards the door.  
9 You indicated your brother got into the house first?

10          A     Yes.

11          Q     Okay. Publishing State's 7. Is this the front door we're talking  
12 about here?

13          A     Yes.

14          Q     Okay, and your brother actually got inside?

15          A     Yes.

16          Q     Now at this point when you're pushing your brother, you said  
17 you felt getting shocked?

18          A     Yes.

19          Q     Did you hear any gunfire?

20          A     Yes.

21          Q     How many -- describe the cadence of it, the rhythm of the  
22 gunfire?

23          A     It was more just like rapid fire. Boom, boom, boom, boom,  
24 boom. Just rapid fire.

25          Q     Can you recall to the best of your knowledge how many shots

1 you believe you heard were rang off?

2 A Well, I can count for sure about 3. And by the time I got in the  
3 house, it wouldn't -- I wasn't paying attention to the gun sounds no more  
4 because like I said, I was hit. I was laying on the floor.

5 Q All right, now you indicated you got hit. Where did you get hit  
6 by the gunfire?

7 A In my back here.

8 Q And for the record, my witness is making a gesture with his right  
9 hand and pointing to the upper right quadrant of his rib area.

10 Fair, Defense, when he was pointing?

11 MR. NADIG: Yes.

12 BY MR. SCARBOROUGH:

13 Q Okay, publishing State's 106. Are we looking at you here?

14 A Yes.

15 Q Okay, and then the lighting's a little off, so do we see -- is that a  
16 wound right there?

17 A Yes. Was that there before that day?

18 A No.

19 Q Was that the bullet wound?

20 A Yes.

21 Q Okay. Publishing State's 108. Is that you again?

22 A Yes.

23 Q Is that where the bullet wound was?

24 A Yes, it's the exit wound.

25 Q The exit wound. Do you recall the coming it out front?

1       A     Yes.

2       Q     All right. So now that the bullet struck you, what happened to  
3 you next? Did you eventually make it into the house?

4       A     Yes, I made it into the house. I came here. I had locked the  
5 door and went -- I made it into the house and I made it like past the  
6 kitchen and laid on the floor.

7       Q     What do you recall going on when you are laying on the floor?  
8 Are more shots ringing off?

9       A     I can't recall. I know my brother and everybody else, they were  
10 going to the back room. Like I said, I just laid on the floor and just laid  
11 there. That's --

12      Q     Okay, do you recall hearing any strikes to the house or any  
13 glass breaking or anything like that?

14      A     No, sir.

15      Q     All right. You indicated that you laid down in the front area of  
16 the house; is that correct or the apartment?

17      A     Yes.

18      Q     Okay. Publishing State's 9. Is that a picture of the front area  
19 where you were laying?

20      A     Yes, just walked through the front door. I was like right where  
21 this next wall is like behind that wall right there. There's a couch right  
22 there, so I was laying right behind the couch and the wall.

23      Q     Okay. When you went into the house, and you were laying  
24 down, what were you doing?

25      A     I was just laying on the floor. I called my brother and then



1 down -- the girls in the house, I just told them to just call an ambulance  
2 and I told my brother to put fishing on TV.

3 Q So let's talk a couple things right there. So publishing State's  
4 14. Is this the couch area that you were talking about where you near  
5 laying down?

6 A Yes, right in the hallway.

7 Q Okay.

8 A Yeah.

9 Q And the front door would be up top over here?

10 A Right.

11 Q And to the right or just straight through?

12 A Straight through.

13 Q Okay, you said other people were in the house at this time.  
14 Yes?

15 A Yes, yes.

16 Q Who was in the house at this time?

17 A At this time, my brother, Brandi, Brandi cousin and the baby girl.

18 Q Sanyleh?

19 A Yes.

20 Q Okay. You asked someone to put on fishing?

21 A Yes.

22 Q Why?

23 A Because really I'm fisherman and I couldn't breathe. You know,  
24 I figured well, if anything going to happen to me, if I was going to die, at  
25 least I'll be watching I like to watch. So I try to have my brother put fishing

1 or something for me while I was waiting for the ambulance.

2 Q All right. So, eventually, does this kind of event come to an  
3 end? Yes?

4 A Yes.

5 Q So, eventually, does medical personnel respond to you?

6 A Yes.

7 Q All right, and were you taken to the hospital?

8 A Yes.

9 Q Now when you were taken to the hospital, eventually, did you  
10 come into contact with the -- a police officer?

11 A Yes.

12 Q Okay, and did that police officer show you a photo of the  
13 suspect they developed as the shooter?

14 A Yes.

15 Q Okay, publishing State's 119A. Is this the patient that you  
16 showed you?

17 A Yes.

18 Q Is that the man you identified as being the shooter?

19 A Yes.

20 Q Is that man in the courtroom here today?

21 A Yes.

22 Q Can you please to point to them and identify an article of  
23 clothing?

24 A Blue shirt.

25 Q Record reflect identification of the Defendant.

1 THE COURT: It does.

2 BY MR. SCARBOROUGH:

3 Q Now admittedly, after this, there was a -- another hearing at  
4 which you testified, correct?

5 A Correct.

6 Q And at that hearing, you did not point out the man you pointed  
7 out today; is that correct?

8 A Correct.

9 Q Why?

10 A Really, that's just not how I was raised. So I figured really -- I  
11 figure everything would have been over and blown over, you know. And  
12 then it comes to the point I say I still got to work. Like I say, I fend my  
13 kids.

14 Keep getting subpoenas, I can't work from the subpoenas. I can't just  
15 pick up and run. I can't afford it. Ain't no need to pick up and run, so I just  
16 have to deal with the situation at hand.

17 If it would have stayed died down the way it was in the beginning, it  
18 would have stayed like that, but I said I got to live. I got to keep going to  
19 work, but I can't afford it. Just keep getting subpoenaed being bothered  
20 by the situation that I thought I let go already.

21 MR. SCARBOROUGH: Brief indulgence. That is all nothing  
22 further.

23 THE COURT: Thank you. Cross?

24 MR. NADIG: Thanks.

25 **CROSS-EXAMINATION**

1 BY MR. NADIG:

2 Q Good afternoon, Mr. Martinez.

3 A Good afternoon.

4 Q How are you doing today?

5 A Fine and yourself?

6 Q Good. Now let's talk. You said in previous testimony that your  
7 brother and you were hanging out in front of the house, right?

8 A Right.

9 Q Okay, and you guys were drinking and smoking that morning,  
10 right?

11 A Yes.

12 Q Okay, would you have any reason to change your testimony  
13 now?

14 A No.

15 Q Okay, so you were drinking and smoking during that period of  
16 time?

17 A Yes.

18 Q And when I'm saying smoking, I'm talking about smoking weed,  
19 correct?

20 A Yes.

21 Q Okay, you don't remember the conversation, but somebody  
22 came up on you, right?

23 A Yes.

24 Q Okay, and that individual shot you?

25 A Yes.

1 Q Okay, and you didn't see the shot? You turned around when  
2 they shot you, right?

3 A Right.

4 Q Okay, and now the individual who shot you, do you remember  
5 what clothing they were wearing?

6 A No.

7 Q Okay, so you have no idea what T-shirt, jeans, any idea?

8 A No.

9 Q Okay. And so, that person shot you and you went in the  
10 house?

11 A Correct.

12 Q Okay, and you laid down and you wanted to watch fishing?

13 A Correct.

14 Q Okay, you go to the hospital, right?

15 A Right.

16 Q And on your way to the hospital, they start pumping you full of  
17 painkillers, right?

18 A Right.

19 Q Okay, and they pump you full of painkillers --

20 A Well, I really -- stated I really don't know what they did to me  
21 when I got to the hospital whether or not I was on painkillers or not.

22 Q But did you feel different?

23 A I can't tell you whether it felt different or not. I was shot. All I  
24 know is I was in pain.

25 Q Okay, earlier you had testified, and tell me if I'm wrong --

1           A     Uh-huh.

2           Q     -- okay, I -- and this is -- just for the record, this is page 16 of  
3 the transcript, lines 20 through 24. Okay, and earlier, you'd been asked  
4 you know, when you got to the hospital, you were on drugs, correct? Your  
5 answer was right and then it was followed up subsequently with  
6 painkillers, right? And your response is yes. Okay, would you have any  
7 reason to change your testimony here today?

8           A     No.

9           Q     Okay, and so, you said you weren't necessarily able to identify  
10 the gentleman because of the effect of all those drugs. Do you remember  
11 that?

12          A     No.

13          Q     Okay, would you have any reason to doubt that's what you said  
14 on the day in question?

15          A     No.

16          Q     Okay, now you're saying here today that the reason you're  
17 testifying is because you have to work, you have to live, right?

18          A     Correct.

19          Q     Okay, had the subpoena -- had you not been subpoenaed, you  
20 would have just let it go, is that what you're saying?

21          A     Correct.

22          Q     Okay, but because you keep on having to come back, that's  
23 why you felt the need to testify?

24          A     Correct.

25          Q     Okay, and who are the people who are subpoenaing you?

1       A     The courts.

2       Q     Okay, and how much time did you spend with the District  
3 Attorneys before today?

4       A     Not a lot.

5       Q     Okay, but did you spend time with them?

6       A     Yeah, not even 30 minutes.

7       Q     Okay.

8       A     Going over my -- he asked [indiscernible], yes.

9       Q     Okay, on the preliminary hearing, the date of that, did you  
10 speak to them before that?

11      A     No.

12      Q     Okay, did you speak to them prior to going forward with the  
13 preliminary hearing?

14      A     No.

15      Q     Okay, but then you spoke to them about 30 minutes this week?

16      A     Yeah, when I finally decided to respond to everything, yeah.

17      Q     Okay, and so you talked to him for 30 minutes?

18      A     Yes.

19      Q     Okay, and you talked about your testimony?

20      A     Yes.

21      Q     Okay, and earlier, you testified you couldn't identify the  
22 individual, but today, you're saying you can?

23      A     Yes.

24      Q     Okay, and that's based on -- had you seen Jason before the  
25 day in question?

1           A     No.

2           Q     Have you seen Jason outside of court since the day in  
3 question?

4           A     No.

5           Q     Okay, and how much time did you spend seeing Jason on the  
6 day in question?

7           A     Just that -- just the time we'll need any walk by to  
8 glance -- when he came and stood in our face and I was asking him why  
9 he had his hand behind his back. And the whole time I seen him, he was  
10 fumbling with the gun.

11          Q     Okay, so you're talking roughly, 30, 40 seconds?

12          A     More than that.

13          Q     About a minute?

14          A     About a minute and a half.

15          Q     Okay, a minute, minute and a half. We'll say minute and a half.  
16 So you've seen Jason outside of court for a minute and a half?

17          A     Correct.

18          Q     Okay, and that was one day, correct?

19          A     Correct.

20          Q     And you were shot in the back on that day?

21          A     Correct.

22          Q     And the only people outside during that day were yourself and  
23 your brother?

24          A     Correct.

25          Q     Okay, everybody else was not outside?



1 A Correct. Nobody outside, but me and my brother.

2 Q Okay.

3 A And Jason.

4 Q All right, nothing further.

5 THE COURT: Redirect?

6 MR. SCARBOROUGH: Yes.

7 **REDIRECT EXAMINATION**

8 BY MR. SCARBOROUGH:

9 Q So let's talk about how, again, at the preliminary hearing, you  
10 were reluctant to identify?

11 A Yes.

12 Q I wanted to flush something out. You said something about how  
13 you were raised.

14 A Right, correct.

15 Q What do you mean? What does that mean?

16 A You know, I grew up in South Central Los Angeles. It ain't no  
17 telling, no snitching, no none of that. I mean, once I figured I survived,  
18 that was it. You know, then there's nothing to say. I'm still breathing, I  
19 made it. Made it from the worst to the best. I survived. Leave it alone.

20 Q Now along the course of these proceedings, you had indicated  
21 that you had changed your mind in terms of wanting to come to Court,  
22 yes? -

23 A Right. Yeah, just getting pressure by my sister, sister and all  
24 them. Family members really like basically just telling me I got to live my  
25 life, so keep like I say keep avoiding stuff, I keep running. Just get it out

1 the way. Just a big hassle right now, so listen to my sisters.

2 Q And that's -- their relationships are important to you, yes?

3 A Yes.

4 Q Okay. Now when you're talking about go -- you're talking about  
5 you being at the hospital, right?

6 A Yes.

7 Q Now are you sitting here today if you were reflecting back in  
8 your time in the hospital, were you so out of it, that you had no idea what  
9 was going on?

10 A No.

11 Q Were you lucid? Could you understand what was being said to  
12 you?

13 A Yes.

14 Q Could you understand what the officer was doing when he was  
15 asking you the questions that he asked you?

16 A Yes.

17 Q Okay. Nothing further.

18 THE COURT: Recross?

19 **RECROSS-EXAMINATION**

20 BY MR. NADIG:

21 Q When you were in the apartment, did Brandi tell you who shot  
22 you?

23 A Say it again?

24 Q Did Brandi tell you who shot you when you were in the  
25 apartment?

1           A     When I got shot, she identified who he was. I knew --  
2           Q     Okay, what did she say?  
3           A     That was her baby daddy.  
4           Q     Okay, and so, had you seen a picture of her baby daddy before  
5     that day?  
6           A     No.  
7           Q     Okay, and did you see a picture of her baby daddy after that  
8     day?  
9           A     No.  
10          Q     Okay, nothing further.  
11                THE COURT: Okay, jurors, I, you know, look over every time  
12     when the testimony's over to see if there are any hands raised.  
13     Throughout this trial, I haven't seen any hands raised, which means you  
14     haven't had any questions. Just wanted to remind you, you do have that  
15     right to ask questions. So just remember that.  
16                Okay, all right, sir, you are excused. Thank you for your time.  
17                THE WITNESS: Thank you.  
18                        [Witness excused]  
19                MR. LEXUS: The witness is on the fifth floor. Give me a few  
20     minutes and I'll --  
21                THE COURT: Thank you, sir.  
22                        [Pause]  
23                MR. SCARBOROUGH: Your Honor, I may I approach?  
24                THE COURT: Yes, you may.  
25                        [Counsel confers with the Clerk]

1 THE COURT: Counsel, if there's any issue about the audio  
2 being loud enough, you can bring your computer over to the jury box.

3 MR. SCARBOROUGH: Thank you very much, Your Honor. I  
4 appreciate that.

5 THE COURT: Why don't you step up here?

6 MR. SCARBOROUGH: Thank you.

7 THE COURT: Okay, please remain standing. The Court Clerk  
8 has your oath.

9 KEN KRMPOTICH

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

12 THE CLERK: Okay, you may be seated.

13 THE WITNESS: Thank you.

14 THE CLERK: Then can you please state and spell your first  
15 and last name for the record?

16 THE WITNESS: Sure, it's Ken Krmpotich. Last name's spelling  
17 is K-R-M-P-O-T-I-C-H.

18 THE CLERK: Thank you.

19 MR. SCARBOROUGH: May I proceed, Your Honor?

20 THE COURT: Yes.

21 MR. SCARBOROUGH: Pardon me while I'm fumbling through  
22 the exhibits here.

23 THE WITNESS: Absolutely, sir.

24 **DIRECT EXAMINATION**

25 BY MR. SCARBOROUGH:

1 Q What do you for a living?

2 A Sir, I'm a detective with Las Vegas Metro Police Department.

3 Q How long have you been a detective with the Las Vegas  
4 Metropolitan Police Department?

5 A Approximately nine years, sir.

6 Q Now during the tenure of your employment, what other units  
7 were you on?

8 A I was in the gang unit as a detective patrol, field training officer.

9 Q Okay, now amongst your training and experience as a  
10 detective, is it safe to say that you've responded to numerous shooting  
11 scenes?

12 A Yes, I have.

13 Q And are you familiar with more or less the physical evidence  
14 associated with those shooting scenes?

15 A Yes, I am.

16 Q Let's walk through some of that. So what would a casing be?

17 A A casing is a spent round. So the bullet has already been fired  
18 and the casing is just an empty shell casing. That's what we call it.

19 Q And what would the presence of casings indicate to you about a  
20 shooting scene?

21 A That a semi-automatic firearm was fired and the casings were  
22 ejected and put on the ground.

23 Q Okay, now I want to direct your attention to July 1st, 2018. Did  
24 you have occasion to respond to 2883 Wheelwright Drive?

25 A Yes, I did.

1 Q What was the nature of that call?

2 A We had a shooting there, where a male had been shot.

3 Q Now when you get assigned cases as a detective, do you get  
4 assigned in the lead role capacity?

5 A Yes.

6 Q What does a lead detective do?

7 A I'm in charge of the case. It's my responsibility to make sure  
8 that things are done, search warrants are done, making sure that the  
9 detectives that are helping me are sent in the right direction.

10 Q Now as a part of your duties as a lead detective in a case, are  
11 you responsible for collecting and -- well, not collecting so to speak  
12 physically, but reviewing all of the evidence collected at the scene and  
13 throughout the case?

14 A Yes, I am.

15 Q Would that include evidence of bodycam footage?

16 A Yes, it is.

17 Q Would that include evidence of statements, audio statements  
18 and written statements of all the parties interviewed?

19 A Absolutely.

20 Q And in this case, did you have occasion to review all the  
21 bodycam and review all the statements written and recorded off all the  
22 parties that were involved in this case?

23 A Yes, I did.

24 Q Okay, now may I have the -- sorry. Okay, so publishing State's  
25 1. What are we looking at here?

1       A     This looks like the intersection where -- the intersection where  
2 the apartment complex is.

3       Q     Okay, and then on this pin right here, is that the 2883  
4 Wheelwright Drive, Apartment A address you responded to?

5       A     Yes, it is.

6       Q     And that address was significant why?

7       A     That is where the shooting had occurred.

8       Q     Okay. So when you responded to the scene as a lead  
9 detective, do you walk the scene?

10      A     Yes, I do.

11      Q     Tell the ladies and gentlemen of the jury what that means? It  
12 may be obvious, but what does that mean?

13      A     Okay, when I get there, I make sure that the crime scene is  
14 taped off, because at times when we do have a violent crime like this,  
15 people will show up and try to go look and see what's going on.

16         So we try to make sure the first thing I do is that everything's taped off,  
17 that no one can go in there, and I have officers posted to protect all the  
18 evidence.

19         After that, we go through and we basically walk the scene. We walk  
20 through to make sure that we could see the shell casings and blood and  
21 clothes and marks in the dirt.

22         We walk inside the residence and check for, you know, damage or  
23 any type of evidence that we could see in there.

24      Q     Now when you walked up to the scene, can you just describe  
25 the lay out of the outside of the scene, please?

1       A     Yes, when I walked up, we walked through the walkway to  
2 where the apartment was. There was dirt on it and a sidewalk that went  
3 through there. And that was the front of the apartment complex or the  
4 apartment that was shot up. I saw several bullet holes in the stucco and  
5 in the window.

6       Q     Okay, publishing State's 16. Now is that a depiction of the front  
7 of the apartment that you walked that scene?

8       A     Yes.

9       Q     Okay, and the apartment would be the right, where my finger is  
10 over here, correct?

11      A     Yes, sir.

12      Q     Now I'm going to zoom in a little bit. I think, vaguely, and this is  
13 always my fault because my technology skills are terrible, the yellow  
14 things in the picture --

15      A     Yes.

16      Q     -- they're obviously not just yellow things. What are those?

17      A     Those are marking evidence on the ground. In this particular  
18 case, it's marking either spent or unspent casings or bullets.

19      Q     Okay, you also indicated when you walked the scene you saw  
20 what you believe to be bullet holes?

21      A     Yes.

22      Q     Where were those bullet holes located?

23      A     There were several that were in the front of the apartment that  
24 there's a window. And it appeared to be in the window and lower part of  
25 the window and the stucco. And in the breezeway, there is a breezeway



1 between the two apartments.

2 And on the -- in the breezeway, the apartment next to that one had  
3 bullet holes in the stucco.

4 Q Okay. Publishing State's 47, what are we looking at in that  
5 picture?

6 A Those are the evidence markings of the bullet holes in the front  
7 of the apartment, where the window is and the stucco or --

8 Q Okay, and so, what you could do, detective, is you can actually  
9 still circle those [indiscernible] ones. So these, where my fingers are  
10 those are the holes that were referred to, yes?

11 A Yes, those are the holes.

12 Q Okay, and another one down here, correct?

13 A Yes.

14 Q All right. Publishing State's 44. Just zoomed in on the whole  
15 bottom of the stucco, yes?

16 A Yes.

17 Q Okay, now those -- publishing State's 48, what are the green  
18 stickers that we're looking at here? What are those?

19 A Those are marked A1, B1, C1 and so forth. The way the ID or  
20 crime scene analyst does that is that could be the first point that the bullet  
21 entered.

22 So if it went through the window, the wall, a door, another window,  
23 you'd get A, B -- or I'm sorry, A1, A2, A3, A4. It's the projectile of that  
24 bullet.

25 Q So those stickers are to demarcate actually a pathway so to

1 speak of the bullet?

2 A Yes.

3 Q Okay, now when you indicated you walked the scene, and you  
4 saw spent shell casings, yes?

5 A I -- the shell casings were picked up prior, but I did review all of  
6 the video and the photos.

7 Q How many spent shell casings were recovered?

8 A We had eight spent shell casings and two unspent, which is just  
9 the full bullet laying on the ground.

10 Q Okay, so what is significant about the unspent shell casings?

11 A The unspent were not fired, which matches the stories. It  
12 corroborates the stories of the witnesses that we had there of what  
13 happened.

14 Q By corroborating the stories, what do you mean?

15 MR. NADIG: Your Honor, can we approach?

16 THE COURT: Sure.

17 [Bench conference]

18 MR. NADIG: Depending on how he answers it, this is said to  
19 could be hearsay. You know, he says, well, they said X, and it's  
20 corroborated that there was --

21 THE COURT: It could be. He's not going to --

22 MR. SCARBOROUGH: For the --

23 THE COURT: -- testify what other people said, right?

24 MR. SCARBOROUGH: Right, it's just for the --

25 THE COURT: Are you sure?

1           MR. SCARBOROUGH: It's for the effect of the investigation. It  
2 will -- I will -- was going to elicit that he had learned that the gun was stove  
3 piped and that it was jammed and that the stove piping can cause the  
4 jamming of the gun, which would cause those casings or those unspent  
5 rounds to fall.

6           So that's what I was soliciting that for. Not for the truth or the  
7 matter asserted like that. It's just for the fact that it was significant to his  
8 investigation.

9           MR. NADIG: As long as that comes from him and not out of Mr.  
10 Scarborough's mouth, because then I'd object to leading.

11          MR. SCARBOROUGH: That's fine.

12          THE COURT: Of course, yeah, all right.

13          MR. SCARBOROUGH: Right now, I'm going to ask what stove  
14 piping is.

15          THE COURT: All right.

16          MR. NADIG: Okay.

17          MR. SCARBOROUGH: Thank you.

18                       [End bench conference

19          MR. SCARBOROUGH: Thank you, Your Honor.

20 BY MR. SCARBOROUGH:

21          Q     So I want to shift gears. Earlier, you had indicated that you  
22 have responded to many shooting scenes, yes?

23          A     Yes.

24          Q     And you're familiar with physical evidence and the mechanics of  
25 firearms used in those scenes?

1       A     Yes.

2       Q     All right, what would the term stove piping mean?

3       A     What happens is when you have a stove pipe, either the bullet  
4 didn't go off, or it did go off. And when the firearm ejects the round, it  
5 slides back and the round is supposed to eject.

6       If it gets caught, the gun's dirty, it's just not ejecting right, it will jam.  
7 And it looks like the top of the bullet is sticking straight up.

8       So if someone even doesn't fire a round, because we will have a lot of  
9 times where they come in and they rack the round to scare people, first of  
10 all, they'll do that and it will stove pipe with a live round. So it doesn't  
11 have to be fired.

12       And what happens is you have to clear that. And usually by clearing  
13 that is either swiping it and then racking another round. And at times, you  
14 could get two rounds that will eject out of the firearm and land being  
15 unfired or one fired, one not fired, just depends.

16       Q     As you indicated in this case, how many unspent rounds were  
17 collected?

18       A     I had two.

19       Q     Publishing State's 38. Is that one of the unspent rounds?

20       A     Yes, sir.

21       Q     And publishing State's 41, is that one of the other unspent  
22 rounds?

23       A     Yes, sir.

24       Q     Now just to give a -- the jurors a clear picture, you said how  
25 many spent shell casings were collected again?

1           A     8.

2           Q     Okay. Publishing State's 35. Is that depicted at -- is that an  
3 unspent shell casing depicted?

4           A     That is a spent casing.

5           Q     Sorry, spent?

6           A     Spent shell casing.

7           Q     Okay. And again, you indicated that 8 were collected and I'm  
8 just going to publish them rather quickly publishing State's 20. Is that one  
9 of the spent rounds?

10          A     Yes.

11          Q     Now we see it flipped up upside-down.

12          A     Uh-huh.

13          Q     Why is it flipped up upside-down in that picture?

14          A     The markings or I'm sorry, that showed that it -- the hammer of  
15 the firearm had been pulled back and went forward and struck the pin.  
16 That little pin right there ignites the gunpowder inside and shoots the  
17 projectile. So that is showing that it had been actually been fired.

18          Q     Okay, so publishing State's 22 just to go really quickly, that's  
19 another --

20          A     Yes.

21          Q     -- unspent or spent cartridge, correct?

22          A     Yes.

23          Q     State's 23, another one?

24          A     Yes, sorry.

25          Q     State's 27?

1 A Yes.

2 Q Another spent one? State's 29?

3 A Yes.

4 Q State's 30?

5 A Yes, sir.

6 Q And this is -- I mixed that one in, State's 31, that's number 6

7 flipped up on its head?

8 A Yes.

9 Q State's 34?

10 A Yes.

11 Q And State's 36?

12 A Yes.

13 Q Okay. You also indicated that there were -- you walked the

14 inside of the residence, correct?

15 A Yes.

16 Q And there were bullet strikes inside the residence?

17 A Yes.

18 Q Where do you recall the bullet strikes inside the residence?

19 A The kitchen area, the window that was shot out that -- the big

20 window that was shot out, there there's a kitchen there and the front door

21 and a small hallway. So it was in that area that follows all the bullet holes

22 were.

23 Q Publishing State's 57. Is that the area you were just talking

24 about?

25 A Yes, sir.

1 Q And the coloring is a little off, so State's 58, as we get closer, do  
2 we see those same green stickers?

3 A Yes, sir.

4 Q Okay, and those would indicate the other pathways of the bullet,  
5 correct?

6 A Yes, sir.

7 Q Okay. State's 59, are those two of the strikes?

8 A Yes, those are the continuation of the bullet coming through the  
9 window and going through a wall.

10 Q Okay, just want to search for a couple more. Now just to refer  
11 to what you were talking about earlier in terms of A1, A2 and such, I'm  
12 publishing State's 50. Is that what we're talking about? Let me zoom out  
13 real quick in terms of demarcating the entry and the exit and the pathway  
14 of the bullet?

15 A Yes.

16 Q Okay, and all those bullet strikes in total, how many bullet  
17 strikes in total were found on the Apartment 6A?

18 A The entrance.

19 Q Please, yes.

20 A Is -- well, 6A would be five.

21 Q Okay. And then to give a clear picture, State's 64, do we see  
22 the trajectory of the bullets matching up with the stickers here, correct?

23 A Yes.

24 Q Okay. Now I want to talk about follow up investigation. Now  
25 with those spent cartridges --

1 A Yes.

2 Q Can you get DNA off those?

3 A There are times you can get DNA. If the -- if the casing is -- if  
4 the bullet is fired, it usually there's the fingerprints burn off and the DNA  
5 burns off.

6 If it is intact, there's a chance we can, but it just depends on where it  
7 lands where -- how it's handled or anything like that.

8 If it falls in water, you're probably not going to get anything off of it,  
9 something to that effect.

10 Q All right, so walking through the fingerprints and it burning off?

11 A Yes.

12 Q Explain that, what do you mean?

13 A That -- I don't know if you've ever watched YouTube, but if you  
14 watch YouTube, you'll see where people are firing guns and the metal  
15 comes out, the casing comes out, ends up going down somebody's shirt  
16 or somewhere in there and it burns them. They jump around, they're  
17 burning. Well, that heat will burn off anything that's on there. So that's  
18 basically what is happening.

19 Q So as a matter of course, is it feasible so to speak to even test  
20 really those casings regularly for DNA and fingerprints?

21 A No.

22 Q Okay. Now those -- you also refer to an area where a factor  
23 where the casings would fall?

24 A Yes.

25 Q Correct? What about the unspent casings? Why not test



1 those?

2 A I did not test -- well, I was told we couldn't test those because of  
3 where they fell. They fell in the dirt, were covered with the dirt, which kind  
4 of ruins --

5 Q Publishing State's --

6 A Yes.

7 Q -- 32. That's the general area where all of the casings and the  
8 unspent casings were recovered, correct?

9 A Yes.

10 Q And that is for the record a dirt area?

11 A Yes.

12 Q Okay. Now ultimately, in this investigation, was there ever a  
13 gun recovered?

14 A No, there was not.

15 Q If there was a gun recovered, is there ballistics that could be  
16 done on the gun?

17 A Yes, and actually, I did do ballistics on the bullets that were  
18 recovered. So if that gun is ever recovered, I will be able to get that gun.

19 Q Okay, and just briefly for the jury, what do you mean by  
20 ballistics??

21 A They test -- they had a -- they -- where the hammer hit, that is a  
22 certain mark. Where a bullet was recovered, the bullet -- the projectile  
23 that was shot out -- that was recovered. It has grooves on it from going  
24 through a gun.

25 Usually each gun is different, so they can match that up pretty close

1 where they could be high populate that [indiscernible]. I don't know the  
2 exact [indiscernible].

3 Q Okay, now in terms of identification techniques, are you familiar  
4 with what a six-pack is?

5 A Yes, I am.

6 Q Okay, and what's a six-pack?

7 A A six-pack is where you get individual pictures that look like  
8 your suspect. We usually have someone who's robbed and we get a  
9 suspect, we will get that guy's picture and then six other pictures -- or five  
10 other pictures that look like him. And we will show that to our victim. And  
11 the victim will pick out which person he thinks it is.

12 Q Okay, now, what is a show up?

13 A A show up is basically when you have a suspect that might be  
14 in custody and you bring your victim by -- the police bring the victim. They  
15 read them the instructions saying, hey, this is, you know, we're going to  
16 show you this person.

17 They give them the instructions. They bring them to where the guy is.  
18 They show him. He says yes or no, that's that person.

19 Q Now are you familiar with situations where a show up is more  
20 feasible than a six-pack photo arrangement?

21 A Yes.

22 Q Okay. And as the lead detective in this case, were you familiar  
23 with basically the still up photo that was done in this case?

24 A Yes.

25 Q Okay, and was that more feasible or less feasible to do, given

1 the circumstances?

2 A At that time, it was more feasible.

3 Q Why?

4 A The officer and the doctors -- well, the officer was finding out  
5 that the subject that was shot, there was a good chance that he would not  
6 make it.

7 So what we did is you get a chance to do a dying declaration. A lot of  
8 times when someone gets shot, stabbed, hit by a car, the officer will jump  
9 in the ambulance with them.

10 And if the medics are working on them, they're like this isn't looking  
11 good, you can ask that guy questions. You can show him pictures  
12 because that's your last chance to get the evidence.

13 So a lot of times, we will, hey, is this the guy? Is it so and so? Yeah,  
14 that's him. Or who shot you? And they will be it's Johnson that shot me.  
15 And then, you can go on with your investigation from there.

16 Q All right, as I alluded to earlier before, as the lead detective in a  
17 case, you're required -- well, it's your job to become familiar with all  
18 aspects of the case, including the people involved [indiscernible], correct?

19 A Yes.

20 Q Now you became familiar with -- pardon me, may we approach?  
21 Just want to make sure.

22 MR. SCARBOROUGH: Brief indulgence, Your Honor. I  
23 apologize.

24 BY MR. SCARBOROUGH:

25 Q Did you become involved or familiar with someone named

1 Bryson Martinez in this case?

2 A Yes, I did.

3 Q Okay, and why was he relevant?

4 A Bryson is the boyfriend of Brandi Coleman or was the boyfriend  
5 of Brandi Coleman.

6 Q And was he at the scene that day?

7 A Yes, he was.

8 Q Okay, did you also become familiar with Brandi Coleman?

9 A Yes.

10 Q Why is she relevant?

11 A She was there at the shooting and was -- had been dating the  
12 shooter at one point and has a child and common and was currently  
13 dating Bryson.

14 Q Okay, and when you refer to the shooter, who are you referring  
15 to?

16 A Jason Bolden.

17 Q Is he in Court today?

18 A Yes, he is.

19 Q Can you please point and identify?

20 A Sure he is. He's sitting at the defendant table in a blue shirt, tie.

21 Q Record reflect the identification of the Defendant?

22 THE COURT: It does.

23 MR. SCARBOROUGH:

24 Q Publishing State's 115, who are we looking at in this  
25 photograph?

1 A That is going to be Brandi Coleman.

2 Q Did you also learn of the minor child that's present?

3 A Yes, I did.

4 Q Where was that minor -- where was that minor child during this  
5 incident?

6 A That minor child was in the apartment.

7 Q What's the minor child's name?

8 A Sanyleh Bolen.

9 Q Sanyleh Bolen?

10 A Sanyleh Bolen.

11 Q And who was that a minor child of?

12 A It is a minor child of Brandi Coleman and Jason Bolden.

13 Q Okay, now you've listened to all of the statements, correct?

14 A Yes.

15 Q And you have listened to specifically Brandi Coleman's  
16 statement?

17 A Yes.

18 Q And you would be able to -- would you be able to recognize  
19 Brandi Coleman's voice if you heard it?

20 A Yes.

21 MR. SCARBOROUGH: Your Honor, permission to publish  
22 State's proposed --

23 MR. NADIG: I don't remember the number.

24 MR. SCARBOROUGH: I apologize, Your Honor. I don't  
25 remember the number of the 911 call.

1 THE COURT: Let's take a look.

2 MR. SCARBOROUGH: I don't have the envelope on me. I  
3 think it might have been 125A, Your Honor. My sincerest apologies for --

4 THE COURT: That's okay.

5 THE CLERK: 125 was the original.

6 THE COURT: Yeah, it's 125A then.

7 MR. SCARBOROUGH: Your Honor, permission to publish  
8 125A for purposes of identification?

9 THE COURT: You may, subject to the discussions that we had.

10 MR. SCARBOROUGH: Thank you.

11 THE COURT: Okay.

12 [Playing of 911 recording, admitted as Exhibit 125A]

13 MR. SCARBOROUGH: May I approach the witness for volume  
14 purposes? Do you need to approach, Ben?

15 MR. NADIG: No, no, no. Thank you.

16 [Playing of 911 recording, admitted as Exhibit 125A]

17 MR. SCARBOROUGH: All right, I'm pausing for the record at  
18 20 seconds into State's proposed 125A.

19 BY MR. SCARBOROUGH:

20 Q Detective, do you recognize the voice that I just played on that  
21 recording?

22 A Yes, I do.

23 Q And whose voice is that?

24 A That is Brandi Coleman.

25 Q Okay. And is that -- and you have listened to the 911 calls?

1           A     Yes, I have.

2           Q     Is that a fair and accurate depiction of the 911 call placed by  
3 Brandi Coleman on July 1st?

4           A     Yes, it is.

5           Q     2018?

6           A     Yes, it is.

7           MR. SCARBOROUGH: Move to admit?

8           THE COURT: Yes, it's admitted, again, subject to the  
9 discussions we had.

10                           [EXHIBIT 125A ADMITTED]

11           MR. NADIG: Thank you, Your Honor.

12           MR. SCARBOROUGH: And before I continue to play this, this  
13 was the photo-I was looking for. Publishing State's 116.

14           THE COURT: One moment.

15 BY MR. SCARBOROUGH:

16           Q     Who is that man in the photograph?

17           A     That is going to be Bryson.

18           Q     Okay. And I know the lighting is off. Who is that up in the top?

19           A     That is Sanyleh.

20           Q     Your Honor, may I publish to the jury?

21           THE COURT: You may.

22 BY MR. SCARBOROUGH:

23           Q     Up in the top? Sanyleh Bolen. I'm going to continue to play  
24 State's now admitted 125A at 20 seconds and counting.

25                           [Playing of 911 recording, admitted as Exhibit 125A]

1 MR. SCARBOROUGH: Nothing further.

2 THE COURT: All right, cross-exam?

3 MR. NADIG: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. NADIG:

6 Q How are you doing, detective?

7 A How are you, sir?

8 Q I'm good.

9 A Good.

10 Q So let's go through a couple of things.

11 A Sure.

12 Q One, you've been doing this for a while?

13 A Yes, sir.

14 Q Okay.

15 MR. SCARBOROUGH: I didn't know if you wanted --

16 MR. NADIG: No, I don't.

17 BY MR. NADIG:

18 Q And so, you're not a first responder at this point? You're not the  
19 first person on the scene is what I mean to that?

20 A No, I'm not.

21 Q Okay, and especially in a situation the way it works, and tell me  
22 if I'm wrong, is it's kind of like a pool situation where you guys rotate up,  
23 the detectives and your group, you rotate up to whoever's the lead  
24 detective, right?

25 A Yes.



1 Q Okay. And on the day in question, your -- you were out?  
2 A Yes.  
3 Q Okay. And so, typically, you guys go out there as a team, is  
4 that fair a statement?  
5 A Yes, it is true.  
6 Q Okay, now how many people are on your team?  
7 THE COURT: Hold on. Yes, ma'am?  
8 JUROR NO. 10: I just had a question.  
9 THE COURT: Great. You know what? Save that to when all  
10 the examination is over, and then, we'll proceed with that.  
11 JUROR NO. 10: Okay.  
12 THE COURT: Thank you.  
13 BY MR. NADIG:  
14 Q So how many guys were on your team or how many people?  
15 A We have a sergeant and including me, four detectives.  
16 Q Okay, and when you go out there, patrol's already out there?  
17 A Yes, sir.  
18 Q And patrol is providing you information?  
19 A Yes.  
20 Q Okay, and so they give you a set of facts?  
21 A Yes, sir.  
22 Q Okay, so by the time you arrived on the scene approximately  
23 what time did you arrive?  
24 A Approximately two hours to two and a half hours after the  
25 shooting.

1 Q All right, because you arrived roughly 11, 11:30 give or take?  
2 A I don't know the exact time.  
3 Q If I represented it's a 9, you're arrived 11, 11:30?  
4 A Could be.  
5 Q All right.  
6 A I don't want to -- I really don't --  
7 Q So and the officers are there and they provide you the  
8 information?  
9 A Yes.  
10 Q Okay, the patrol officers provide you that information. Now  
11 when you arrive also, the victim is not present, the shooting victim is not  
12 present?  
13 A Right, the shooting victim was at the hospital.  
14 Q Okay. Had you known that an identification had been provided  
15 to the shooting detective prior to your arrival?  
16 A I'm sorry to the --  
17 Q Did you know that Mr. Martinez had identified the subject in the  
18 hospital prior your to arrival?  
19 A I did not.  
20 Q Okay, but did that occur prior to your arrival?  
21 A Yes.  
22 Q Okay, and in fact?  
23 A Excuse me, I don't know exactly what time was shown. I don't  
24 have the exact time.  
25 Q You didn't review that prior to coming here today?

1           A     That I don't know exactly the exact time the officer gave  
2 him -- showed him the picture.

3           Q     But it was -- you were not the one directing that portion of the  
4 investigation?

5           A     No, sir, I was not.

6           Q     You did not say, hey, take this photo and do that?

7           A     No, I did not.

8           Q     Do you know who said, hey, take this photo and do that?

9           A     As far as I know, it was no one from the detective part of it.

10          Q     So it was probably patrol who did that?

11          A     Yes, sir.

12          Q     Okay, and one of the things you guys do as detectives is  
13 because you said he was touch and go as to whether he made it, right?

14          A     Yes.

15          Q     Okay, in your review of this case, one of the things you have to  
16 review is you have to review medical records, right?

17          A     Yes.

18          Q     Do you recall reviewing the medical records in this case?

19          A     I do not.

20          Q     Okay. Court's indulgence. And I'm just using the first page.

21               MR. SCARBOROUGH: I understand.

22               MR. NADIG: May I approach, Your Honor?

23               THE COURT: You may.

24               MR. NADIG: Okay.

25 BY MR. NADIG:

1 Q Okay, now obviously review this yourself. Don't say anything  
2 out loud.

3 A Yes, sir.

4 Q In reviewing that document, do you know what you hold in your  
5 hands?

6 A This is a release for medical records.

7 Q Okay, and do you see -- and obviously, I don't want you to read  
8 it off. So turn it over, so no one can accuse me of you read a document?

9 A Can I read this first?

10 Q Please?

11 A Okay, thank you.

12 Q When you look up, I'm going to ask you a question.

13 A Thank you.

14 Q Okay, actually, I'll just steal it from you. So does reviewing that  
15 refresh your recollection?

16 A No, sir.

17 Q Okay, so you don't remember when he was released from the  
18 hospital?

19 A No, sir.

20 Q Okay, so he went in on July 1st, and you don't recall when he  
21 got out?

22 A No, sir.

23 Q Did you go see him in the hospital?

24 A I did not.

25 Q Okay, so you never saw him in the hospital?

1       A     I did not.

2       Q     You never got a statement from him?

3       A     I didn't, my partner did.

4       Q     Okay, did you get a statement from Brandi?

5       A     Yes, we had a statement from Brandi.

6       A     Did you personally, I apologize I was inartful in my question.

7       A     No, no, sir.

8       Q     Did you personally get a statement from Brandi?

9       A     No, sir.

10      Q     Did you ever personally talk to Brandi?

11      A     Yes, I did.

12      Q     When did you personally talk to Brandi?

13      A     When we first get there at the scene, we kind of -- you have to

14 understand, I know we said that there were four guys on my squad, but it

15 was only me and another detective out there and a sergeant. We had

16 guys off. We had guys on the FMLA. We were short.

17      Q     Plus the summer is?

18      A     Plus it's summer and we're extremely busy. Exactly, thank you.

19 So what we do is when we get to the witnesses, they're separated by

20 patrol so that they can talk, but the patrol's there for make sure that

21 they're not talking about what happens because we want each individual

22 story.

23       We pull each one on the side, get a brief statement from them, okay,

24 give me an idea what happened because then that get gives me the

25 chance to find out who we need to interview and who I could either

1 interview later or don't need to interview. Their written statement could be  
2 good enough.

3 And at that point, we did talk to each myself and Detective Carey did  
4 talk to each individual victim. And then, we meet up. We divide up our --

5 Q Tasks.

6 A -- tasks and go from there.

7 Q Okay, but on the day -- so you're saying the only contact you  
8 have with Brandi was on that day, fair statement?

9 A Yes.

10 Q Okay, and how long did you speak with Brandi on that day?

11 A Approximately 10 minutes or longer.

12 Q Okay, so you spoke to her and this was not the recorded  
13 statement that she gave?

14 A No, no, sir.

15 Q And she later gave a report statement?

16 A Yes, sir.

17 Q Okay. Now additionally and that was your only contact with  
18 Brandi was on that day?

19 A For me personally, yes.

20 Q Yeah, okay.

21 Q Yes.

22 Q Now let's go back to the scene. And one of the reasons you do  
23 six packs is why before I even show up to the scene?

24 A Because it is an objective -- it gives you a chance to  
25 reasonably -- the victim reasonably look at each picture. You're not

1 singling out one person.

2 So you get a chance to look at them. And I personally make my six-  
3 packs pretty hard. They kind of -- everybody kind of looks alike. And  
4 when I get a good one, the good identification, it's a good one.

5 Q Because --

6 A I keep them --

7 Q It's a tool for prosecution, right?

8 A Yes, exactly.

9 Q You use those because you want -- you don't want anybody to  
10 say there's a bias in identification?

11 A Exactly.

12 Q Okay, and you want to be able to say, hey, they had a choice  
13 and they picked the right guy?

14 A Yes.

15 Q Okay, but they didn't do that in this situation?

16 A I'm sorry?

17 A They didn't do that in this situation?

18 A No, they did not.

19 Q Additionally, typically it's detectives who direct this type of -- this  
20 part of the investigation, right?

21 A Yes.

22 Q Okay, but your belief is that no detective had a part in the initial  
23 identification?

24 A Yes.

25 Q Okay, additionally what you have is a situation wherein you had

1 some unspent shell casings, right?

2 A Yes, sir.

3 Q Okay. Now like you said, when you fire a weapon, the cartridge  
4 ejects and it heats up the casing, so the casing does not have DNA  
5 evidentiary value?

6 A Yes.

7 Q Okay, however, potentially, the DNA can be recovered from an  
8 unspent round?

9 A Yes.

10 Q Okay, now you said that somebody told you that you couldn't  
11 test them because they had fallen on the ground?

12 A The CSA crime scene analyst, they make the decision on if an it  
13 can be worth the time and the money to -- and test that.

14 Q Because that's a factor?

15 A It's a factor.

16 Q The money?

17 A Yes, the cost.

18 Q Okay, now let's go through a couple things.

19 A Yes.

20 Q There are a number of CSAs, right?

21 A Yes.

22 Q There are CSAs that who do specific jobs? Fair to say some  
23 can only take photographs?

24 A Yes.

25 Q Some can take photographs and analyze DNA?



1       A     Yes.

2       Q     Okay, and some can do fingerprints?

3       A     Yes.

4       Q     But not everything can be done by all of them, right?

5       A     It just depends on tenure, if they're new or not, if they're in  
6 training, if they're in field training they can only do a certain amount of  
7 things.

8       Q     And it's also their level of training in, you know, if you're a CSA  
9 1, CSA 2, things of that nature?

10      A     Yes, sir.

11      Q     Now do you recall at what point you were told that the bullets  
12 would not have evidentiary value, the unspent casings?

13      A     I do not.

14      Q     Okay, did you recall obviously because one of the things Mr.  
15 Scarborough brought up and was showing pictures was of each individual  
16 bullet, right?

17      A     Yes.

18      Q     Okay, and they were each numbered 1 through 8 for the spent  
19 shell casings, right?

20      A     Yes.

21      Q     And then, 9 and 10 were the unspent rounds?

22      A     Yes, sir.

23      Q     Okay. And you said that it's important to look where the pin is  
24 struck because that could help to identify the weapon?

25      A     I'm not a forensic analysis, but yes, there is one of the factors.

1 Q And I'm not saying you're doing the analysis. I'm just saying  
2 that's one of the things you do?

3 A Yes, sir.

4 Q Now, with the unspent rounds, they are picked up by somebody  
5 right?

6 A They were picked by our CSI [sic].

7 Q Okay, so the CSAs are the ones who pick up the evidence.

8 A Right.

9 Q Okay, and then they collect it and they document it?

10 A Yes.

11 Q You are the person, however, who puts in to see if these things  
12 should be tested for DNA, correct?

13 A Yes.

14 Q That is your job as the lead detective?

15 A Yes.

16 Q You decided this has evidentiary value?

17 A Yes.

18 Q Do you believe that you put in for the testing of those unspent  
19 rounds?

20 A I did not put in the testing of the unspent rounds.

21 Q Okay, and your belief is because somebody told you that they  
22 may not have significant -- evidentiarily significant value?

23 A Yes.

24 Q Okay, well -- and you don't recall if you were told at the scene or  
25 later on?

1 A I think it was at the scene, but I'm not sure.

2 Q Okay, and do you remember the CSA at the scene?

3 A I do not.

4 Q Okay, so you don't know what level of CSA they were?

5 A I do not.

6 Q Okay, now one of the things is you have an identification pretty  
7 early, right?

8 A Yes, sir.

9 Q You had an identification on that 911 that you reviewed, right?

10 A Yes, sir.

11 Q Okay, now you heard Brandi say that this the person who did it,  
12 correct?

13 A Yes, sir.

14 Q Okay, so at that point in time, you have the ability to tell if  
15 somebody is in a certain location, right? Okay, and what I mean by that is  
16 you have the ability to see if somebody's cell phone is in the area, right?

17 A Yes.

18 Q Okay, you don't do it every investigation, right?

19 A No, sir.

20 Q Okay, and the reason being is it's expensive?

21 A Yes.

22 Q Okay, but what you had here is the situation where potentially  
23 you could have used that information to tie Mr. Bolden to the scene?

24 A Yes.

25 Q But you felt based on cost and things of that nature, and once

1 again tell me if I'm wrong, cost and things of nature that you had already  
2 had the ID, so you didn't need to go down that road?

3 A No, absolutely. We did go down that road to subpoena some of  
4 his phone records to find him.

5 Q Okay, so you actually went and subpoenaed the phone  
6 records?

7 A Yes, phone records were -- I didn't. We handed it off to a squad  
8 that tries to find people.

9 Q Okay, and so you had attempted to subpoena his phone  
10 records for that day?

11 A No, I didn't.

12 Q For the day of July 1st?

13 A No, I did not.

14 Q When I say you I'm using the royal you of Metro, not you  
15 personally?

16 A Right, I don't know exactly what they did, but it was handed off  
17 to them to get those records to find him.

18 Q Okay, but was it to find him or to determine whether he was  
19 there --

20 A Find first, right.

21 Q Okay, so this was post?

22 A Yes, sir.

23 Q Okay, because he was not arrested that day, correct?

24 A No, he was not.

25 Q All right. Okay did you speak to Brenton Martinez on the day in

1 question?

2 A Yes, I did.

3 Q Okay, he was obviously distraught, right?

4 A Yes, he was.

5 Q Okay, did he give you his real name?

6 A No, he did not.

7 Q Why did he not give you his real name?

8 A It was found out later that he was wanted. He had warrants out.

9 MR. SCARBOROUGH: May we approach?

10 THE COURT: Yes, you may.

11 [Bench conference]

12 MR. SCARBOROUGH: Brenton is on the stand.

13 MR. NADIG: No, Brenton was the one that [indiscernible].

14 MR. NADIG: No, Bryson.

15 THE COURT: You get the guys mixed up?

16 MR. SCARBOROUGH: Yeah, it was Bryson.

17 MR. NADIG: I apologize.

18 THE COURT: All right, why don't you fix that?

19 MR. NADIG: I will.

20 [End bench conference]

21 BY MR. NADIG:

22 Q And I apologize because I confuse the Martinez brothers the  
23 whole time.

24 A Yeah.

25 Q It was Bryson?

1       A     Yes, sir.

2       Q     Okay, so Bryson gave you a --

3       A     Bryson yes.

4       Q     And the reason being was why?

5       A     He had warrants out for his arrest.

6       Q     Okay. And so, that's what he did on the day in question?

7       A     Yes.

8       Q     Do you recall his -- do you recall demeanor on the day in

9 question?

10      A     Yes, he was very worried about his brother. He wanted to go.

11 He wanted to leave. I asked him to stick around, so I can get a statement

12 from him and --

13      Q     Okay, did you let him leave before he would make -- did you let

14 him leave prior to making a statement?

15      A     No, he had the option to leave if he wanted to.

16      Q     Okay, now additionally, did he appear under the influence when

17 he showed up?

18      A     No, he did not.

19      Q     Okay. Just for the record, Court's indulgence. You testified

20 early in this matter, correct?

21      A     Yes.

22      Q     And it's always hard to find things when you want them, so I

23 apologize.

24      A     Yes, sir.

25           MR. NADIG: If I may approach, Your Honor, and this is page

1 60, lines 14 through 60?

2 THE COURT: That's fine, you may.

3 MR. SCARBOROUGH: On the prelim page?

4 MR. NADIG: Yes, if I may.

5 BY MR. NADIG:

6 Q Okay, detective and --

7 A Uh-huh.

8 Q -- if you read essentially right here. And to yourself?

9 A Yes, sir.

10 Q Now, once again, the question before was that have you

11 testified previously in this case? And your answer was yes. So after you

12 read that --

13 A I'm sorry, what was the question you asked me?

14 Q The question was have you previously testified in this case and

15 your answer had been yes?

16 A Yes, yes.

17 Q Okay.

18 A Okay.

19 Q And then once you've read that. Yes, does reading that refresh

20 your recollection?

21 A Yes, sir.

22 Q Do you recall if you smelled alcohol on him?

23 A I did smell alcohol on his breath.

24 Q Okay, and you know, this happened a year ago. Over the

25 course of time, you don't remember everything?

1 A Exactly.

2 Q Fair to say? But on the day in question, he appeared to at least  
3 have booze on his breath when you interview him?

4 A Yes.

5 Q Okay, and that was roughly about two and a half hours after the  
6 event had occurred?

7 A Yes.

8 Q Okay, and at this point, nothing further, Your Honor.

9 THE COURT: All right, redirect?

10 **REDIRECT EXAMINATION**

11 BY MR. SCARBOROUGH:

12 Q Yes, detective, now officers are trained to assess the severity of  
13 wounds for victims and they respond, correct?

14 A Yes.

15 Q And when they assess that severity of the wounds, they're  
16 required to make quick decisions?

17 A Yes.

18 Q Now in this instance, where officers made a quick decision to  
19 get an ID while they could --

20 A Yes.

21 Q -- is that a proper procedure?

22 A Yes.

23 Q And that happens quite often?

24 A Yes, it does.

25 Q Given the situation like this, would you say again that the officer



1 who behaved that way or elected to choose that route of identification  
2 was --

3 MR. NADIG: Your Honor, can we approach?

4 THE COURT: Yeah.

5 [Bench conference]

6 MR. SCARBOROUGH: I'm leading?

7 THE COURT: I think what he's going say.

8 MR. NADIG: Leading, well, there's leading. There's also  
9 bolstering as well. And they're essentially trying to bolster Jegge's  
10 previous testimony. I haven't cast an aspersion on his testimony.

11 MR. SCARBOROUGH: I was just trying to say it's proper  
12 procedure.

13 MR. NADIG: Which you've already gotten, so [indiscernible].

14 MR. SCARBOROUGH: I can move on. I'll move on.

15 THE COURT: Looks like you guys had it on your own.

16 MR. SCARBOROUGH: Thank you.

17 THE COURT: Okay.

18 [End bench conference]

19 MR. SCARBOROUGH: Thank you, Your Honor.

20 BY MR. SCARBOROUGH:

21 Q So, detective, walking you back to the CSA and testing of  
22 evidence, okay, you rely on other professionals in terms of making  
23 decisions on whether or not to pursue those avenues in testing evidence,  
24 yes?

25 A Yes, I do.

1 Q Okay, and as defense counsel was saying before, you weren't  
2 just listening to anybody saying oh, don't test this, you were listening to a  
3 CSA?

4 A Yes, I was.

5 Q And CSAs -- what do CSAs do in terms of forensic evidence  
6 and testing?

7 A That's their specialty. They are the ones that know what they  
8 can and can't do. They know -- they have the equipment and the tools to  
9 do it, but I don't.

10 Q And so, when making the determination not to test or pursue  
11 certain avenues, relying on the CSA is well within policy and procedure?

12 A Yes, yes.

13 Q Nothing further.

14 THE COURT: All right, is there going to be any recross?

15 MR. NADIG: Briefly, Your Honor.

16 THE COURT: All right.

17 MR. NADIG: And I know you hate when attorneys say briefly.

18 **RECROSS-EXAMINATION**

19 BY MR. NADIG:

20 Q But you don't even know who the CSA was, right?

21 A At the point, I don't remember.

22 Q It could have been a trainee for all you know?

23 A I would have to go back and look at it, yes, I would.

24 MR. NADIG: So I'll just pass.

25 THE COURT: All right, Ms. Harris, I think you had a question; is

1 that correct?

2 JUROR NO. 10: Yes, I wrote it down.

3 THE COURT: All right, very good. Is your name and badge  
4 number on there? Very good, thank you.

5 [Bench conference]

6 MR. SCARBOROUGH: If Brandi was inside, how did she give  
7 clothing description? I don't think that's somebody any one of the  
8 witnesses can answer.

9 MR. NADIG: There would be a number of objections that would  
10 come up.

11 MR. SCARBOROUGH: Yeah.

12 MR. NADIG: I think based on how he could answer it. So that's  
13 what makes it problematic, because essentially what you're getting at is  
14 how this -- you know, does he know where she was and if so, how and  
15 then --

16 THE COURT: He probably wouldn't know.

17 MR. NADIG: Well, I'm pretty sure that he had his version of  
18 what happened but it's just problematic, you know what I'm saying?

19 MR. LEXUS: I would agree with Ben that it's going to open up  
20 [indiscernible] of hearsay, so [indiscernible].

21 THE COURT: Okay. All right.

22 MR. SCARBOROUGH: That would be, yeah.

23 THE COURT: All right, thank you.

24 MR. SCARBOROUGH: Thank you.

25 [End bench conference]

1 THE COURT: Thank you for giving the question. It is important  
2 for the jurors to bring questions when you have something on your mind.

3 I really appreciate this, but in this instance, I'm going to elect not  
4 to give this question. And -- but please don't concern yourself as to why I  
5 made that decision okay? But thank you.

6 MR. SCARBOROUGH: Your Honor, I have no further follow  
7 ups based on that question. Or sorry.

8 MR. NADIG: Neither does Defense.

9 THE COURT: All right very good. All right, thank you.

10 All right, detective, you may step down. Thank you, sir.

11 THE WITNESS: Thank you, sir. Have a great day.

12 [Witness excused]

13 MR. LEXUS: Judge, may we approach?

14 MR. SCARBOROUGH: Yes, can we approach, please?

15 THE COURT: Yes.

16 [Bench conference]

17 THE COURT: I hope we're not stopping today.

18 MR. LEXUS: We're just making sure -- we're resting.

19 THE COURT: Yes, sir?

20 MR. LEXUS: We're resting.

21 THE COURT: Oh, good, sorry, got to give the waiver.

22 MR. LEXUS: Yeah, so we're just going to make sure all our  
23 exhibits are -- well, what essentially I'm asking you to --

24 THE COURT: Why don't we take our 15 minute break.

25 MR. LEXUS: Take a break, because you're going to have to

1 read him the admonishment.

2 THE COURT: Of course.

3 MR. LEXUS: And we're ready to go with Defense's case or are

4 they going to rest?

5 THE COURT: We'll find out.

6 MR. LEXUS: Or if he's going to testify. But we just want to

7 make sure that our exhibits are admitted.

8 THE COURT: Why don't you do that at the break and we'll

9 double check.

10 MR. LEXUS: Yeah.

11 THE COURT: Okay, thank you.

12 MR. SCARBOROUGH: And I don't think we'll be able to close

13 today.

14 MR. NADIG: I would prefer to close tomorrow for the simple

15 reason that --

16 THE COURT: Tomorrow we start at I think 10:30.

17 MR. NADIG: Yeah.

18 MR. LEXUS: That's fine, yeah, please.

19 MR. NADIG: They'll have instructions and closing done by

20 11:30, 12, lunch and [indiscernible].

21 THE COURT: Yeah, so we'll --

22 MR. SCARBOROUGH: Please.

23 THE COURT: -- order them lunch and okay, very good.

24 MR. SCARBOROUGH: Thank you.

25 [End bench conference]

1 THE COURT: All right, ladies and gentlemen, we're going to  
2 take our 15-minute recess now. And so, let me go ahead and give you  
3 the admonishment.

4 Do not communicate among yourselves or with anybody else  
5 about this trial or the subject matter of this trial. Do not communicate at all  
6 with any of the parties, attorneys, or witnesses involved in this trial.

7 Do not seek or obtain any information or comments about the  
8 case. Do not read, watch, or listen to any report or commentary about the  
9 case.

10 Do not perform any research or investigation and do not form or  
11 express any opinion.

12 We'll see you back here in 15 minutes. Let's say -- let's say -- I  
13 guess that's 3:50. Okay thank you.

14 THE MARSHAL: Okay, all rise for the jury.

15 THE COURT: Leave your notepads.

16 [Outside the presence of the jury]

17 THE COURT: All right, looks like Mr. Lewis [sic] has stepped  
18 out. Why don't we take our break, come back a few minutes early,  
19 then -- well, during this break, you can check. Plaintiff can check with the  
20 Clerk about the exhibits.

21 MR. SCARBOROUGH: Thank you.

22 THE COURT: And, Mr. Nadig, talk to your client about whether

23 --

24 MR. NADIG: Yeah.

25 THE COURT: -- he's going to testify.

1 MR. NADIG: Your Honor, I've already given him the  
2 admonishment. I know you have to do it on the record, but he's not going  
3 to testify. So when the State rests, Defense will rest as well.

4 THE COURT: All right, very good. When we come back a few  
5 minutes early from our break, that's when I'll inquire of the --

6 MR. NADIG: Perfect.

7 THE COURT: -- Defendant and read his admonishment.

8 MR. NADIG: Thank you, Your Honor.

9 THE COURT: All right, thank you.

10 [Trial in recess taken at 3:36 p.m.]

11 [Trial resumed at 3:50 p.m.]

12 [Outside the presence of the jury]

13 THE MARSHAL: So anything outside the presence?

14 MR. NADIG: Nothing outside the presence, Your Honor.

15 THE COURT: Just waiting for the --

16 MR. NADIG: Yes.

17 THE MARSHAL: Okay, let me get him in.

18 THE COURT: Anything to put on the record about the exhibits?

19 MR. SCARBOROUGH: Your Honor, I don't believe there's  
20 anything else on the record unless Mr. Nadig has anything?

21 MR. NADIG: No, Your Honor, I believe the State has moved  
22 everything in. If not, I believe everything was admitted via stipulation,  
23 except the exhibits that I reserved objection to and you ruled on. So I  
24 think everything's in evidence.

25 THE COURT: Very good. Just waiting for the Defendant and

1 then we'll bring the jurors in.

2 MR. LEXUS: How are we doing with jury instructions?

3 MR. SCARBOROUGH: He wants to settle them today if you'd  
4 like.

5 MR. NADIG: Yeah, they're fine. Do you want to print out the  
6 jury instructions and number them?

7 THE COURT: Yeah, yeah.

8 MR. NADIG: We could do that.

9 THE COURT: All right.

10 MR. SCARBOROUGH: Sounds good.

11 THE COURT: Well, I think I have --

12 MR. SCARBOROUGH: I think we included the car instruction,  
13 yeah?

14 MR. NADIG: Let me double check.

15 THE COURT: I have it in my office. That's why -- we'll get it in  
16 a moment. All right, we or on the record. Mr. Bolden is present with his  
17 counsel.

18 All right, Mr. Nadig, have you had an opportunity to consult with  
19 your client about whether he wishes to testify?

20 MR. NADIG: Your Honor, I've discussed he -- his 5th  
21 Amendment right to testify. Additionally that anything he said on direct  
22 would be subject to fair comment and cross-examination.

23 And any previous felony convictions that are within the last 10  
24 years or probation or parole expired within the last 10 years would be  
25 admissible. He has declined at this point to testify, obviously. And you



1 need to give instructions [indiscernible].

2 THE COURT: Right, I'm going to provide you with an  
3 admonishment, Mr. Bolden. Listen carefully to an explanation of your  
4 rights.

5 THE DEFENDANT: Yes.

6 THE COURT: All right, so under the Constitution of the United  
7 States, and under the constitution of the State of Nevada, you cannot be  
8 compelled to testify in this case. Do you understand that, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: You may at your own request give up this right  
11 and take the witness stand and testify. If you do, you will be subject to  
12 cross-examination by the Deputy District Attorney.

13 And anything that you may say, be it on direct or  
14 cross-examination, will be the subject of fair comment when the Deputy  
15 District Attorney speaks to the jury in his final argument.

16 Do you understand that so far, sir?

17 THE DEFENDANT: Yes, I do, sir.

18 THE COURT: Thank you. If you chose not to testify, the Court  
19 will not permit the Deputy District Attorney to make any comments to the  
20 jury because you have not testified. Do you understand that?

21 THE DEFENDANT: Yes, I do, sir.

22 THE COURT: Thank you. If you elect not to testify, then if your  
23 attorney specifically requests, I will instruct the jury substantially as  
24 follows.

25 The law does not compel a defendant in a criminal case to take

1 the stand and testify. And no presumption may be raised and no  
2 inference of any kind may be drawn from the failure of a defendant to  
3 testify.

4 Do you know have any questions about these rights?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. You are further advised that if you have  
7 a felony conviction, and more than 10 years has not elapsed from the date  
8 you have been convicted, or discharged from parole, or probation  
9 whichever's later, and the Defense had not sought to preclude that from  
10 coming before the jury.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: Then if you take the stand and testify, the deputy  
13 District Attorney in the presence of the jury will be permitted to ask you the  
14 following.

15 Number one, have you been convicted of a felony? Number  
16 two, what was the felony? And number three, when did I happen? Do  
17 you understand that, sir?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right, based upon that, sir, you have a choice.  
20 Do you elect to exercise your constitutional right not to testify?

21 THE DEFENDANT: Yes.

22 THE COURT: All right, very well. The record will so reflect.

23 And at this point in time, let me ask defense counsel, do you  
24 have anything that you'd like to add to the record?

25 MR. NADIG: No, Your Honor, not at this point in time.

1 THE COURT: All right, very good.

2 Marshal, would you please bring the jurors in? Maybe he's  
3 outside.

4 THE MARSHAL: Oh, are we ready, Judge?

5 THE COURT: Yes, sir, bring them in.

6 THE MARSHAL: Okay. All rise for the jury. Great, all jurors  
7 are present.

8 [In the presence of the jury]

9 THE COURT: All right, please be seated, everybody. Does the  
10 State have any further witnesses to call?

11 MR. SCARBOROUGH: No, Your Honor, at this point, the State  
12 rests.

13 THE COURT: Very well. The Defense may now present its  
14 case in chief. Does the Defense have any witnesses that it would like to  
15 call?

16 MR. NADIG: No, Your Honor, at this point in time, Defense  
17 rests.

18 THE COURT: All right, the Defenses rests also.

19 Ladies and gentlemen of the jury, this concludes the evidence  
20 portion of this trial. We will proceed tomorrow with the reading of the jury  
21 instructions and then the closing arguments. And then, you will be  
22 directed to retire to begin your deliberations. Do you all understand?

23 All right, very good. What I'm going to do now is I'll excuse you  
24 for the evening and direct you to be lined up ready to go at 10:30.

25 We're going to have a stand out there. I'm going to provide you

1 with donuts and orange juice. So if you'd like to come at 10:30, feel free  
2 to do that, all right, and we ready to go like about 10:30. Okay, well, at  
3 10:30. All right, so let me go ahead and read you the admonishment.

4 Do not communicate among yourselves or with anybody else  
5 about this trial or the subject matter of this trial. Do not communicate at all  
6 with any of the parties, attorneys, or witnesses involved in this case.

7 Do not seek or obtain any information or comments about the  
8 case from any source.

9 Do not read, watch, or listen to any report or commentary about  
10 the case. Do not perform any research or investigation. And do not form  
11 or express any opinion on any subject connected with this trial.

12 I do have a civil calendar tomorrow, some matters to handle.  
13 It's going to go till about 10:15. So just so you understand they'll be a few  
14 other people coming and going unrelated to this trial tomorrow morning.  
15 All right?

16 Thank you -- yes, sir.

17 JUROR NO. 13: Question, sir.

18 THE COURT: Go ahead. I'll take a look.

19 JUROR NO. 13: Before the last recess, sir.

20 THE COURT: Oh, right, let me take a look.

21 [Bench conference]

22 MR. SCARBOROUGH: Why don't we just --

23 THE COURT: Oh, sorry. I think that's something maybe they  
24 just deal with on cross.

25 MR. SCARBOROUGH: Can the jury be reminded of the closed

1 descriptions of the suspect who gave the description and when they gave  
2 them?

3 MR. NADIG: That can all be done via closing and deliberation.

4 MR. SCARBOROUGH: Yeah.

5 THE COURT: What should I -- I'll just say that I elected not to  
6 give that question, but the attorneys are permitted to remind the jurors of  
7 the evidence in the matter that they see appropriate.

8 MR. LEXUS: I would say I think most judges [indiscernible]  
9 would say disregard -- not ask the question and say the jury is to rely on  
10 their own memory, so.

11 MR. NADIG: And the evidence that will be provided in the back.

12 MR. SCARBOROUGH: Yeah.

13 THE COURT: And any?

14 MR. NADIG: Evidence that's provided in the --

15 THE COURT: Okay, so just say that right now?

16 MR. SCARBOROUGH: Yeah.

17 THE COURT: Okay. Very good.

18 MR. NADIG: Thank you.

19 [End bench conference]

20 THE COURT: Thank you for the question, Mr. Randolph. I'm  
21 electing not to give it, but I'm reminding the jurors that they will rely on  
22 their own memories as to what the evidence was that was presented and  
23 the evidence that would be provided to you back in the jury deliberation  
24 room. All right, very well.

25 Feel free to -- again, to show up early tomorrow. Other than

1 that, have a nice evening. And we'll continue tomorrow with the jury  
2 instructions. Okay, 10:30? Lined up ready to go 10:30.

3 Please leave -- you can take the papers regarding lunch. Have  
4 that for the Marshal tomorrow morning. Leave your notepads.

5 THE MARSHAL: Okay, rise for the jury.

6 [Outside the presence of the jury]

7 THE COURT: All right, we're outside the presence of the jury. I  
8 believe the attorneys wanted to discuss jury instructions. I'm going to go  
9 back to my office and grab them. I think they're back there. We can all  
10 take a few minute break.

11 MR. LEXUS: We can address something else now.

12 THE COURT: Yes, go ahead.

13 MR. LEXUS: I'll go ahead and show Mr. Nadig the second  
14 amended Information. And just so we're ready to go, for phase 2, I'll pass  
15 the second amended Information and then to support the second  
16 amended is the two certified judgments of convictions.

17 THE COURT: Right.

18 MR. LEXUS: And they're right there.

19 THE COURT: All right, why don't I review those?

20 MR. NADIG: And Your Honor, I have reviewed those.

21 THE COURT: Oh, you have?

22 MR. NADIG: I forgot to look at the jury instruction for what the  
23 standard, but --

24 MR. LEXUS: Oh, I didn't put the jury instructions.

25 MR. NADIG: Oh.

1 MR. LEXUS: I just put second amended along with the  
2 supporting judgment.  
3 MR. NADIG: Oh, yeah, yeah, yeah, I already [indiscernible]  
4 that.  
5 THE CLERK: I mean, you want to me to file them?  
6 THE COURT: So the predicate prior convictions, how do you  
7 wish to have those into the record?  
8 MR. LEXUS: Those are court exhibits?  
9 THE COURT: They're court exhibits.  
10 MR. LEXUS: They're court exhibits yes, Your Honor.  
11 THE COURT: All right, good.  
12 MR. NADIG: You have the certified copies for tomorrow, right.  
13 MR. LEXUS: Yes.  
14 MR. SCARBOROUGH: You want to see them?  
15 MR. NADIG: No, I believe you.  
16 MR. LEXUS: I got it.  
17 THE COURT: All right, so here are the certified copies. I  
18 saw -- I felt a certified stamp at the back of one?  
19 MR. SCARBOROUGH: Yes, they are, yeah.  
20 THE COURT: All right, so those will be marked as court  
21 exhibits.  
22 MR. SCARBOROUGH: Thank you.  
23 THE COURT: All right.  
24 MR. SCARBOROUGH: And then we filed a second  
25 amended --

1 THE COURT: My Clerk is handing them back to me.  
2 THE CLERK: No I thought you were asking for it.  
3 THE COURT: Oh, no. All right, very good. Be back in about  
4 five minutes.  
5 MR. SCARBOROUGH: Thank you, Your Honor.  
6 THE COURT: All right.  
7 MR. NADIG: Thank you, Your Honor.  
8 [Trial in recess at 4:01 p.m.]  
9 [Trial resumed at 4:08 p.m.]  
10 THE MARSHAL: Department 2 back on the record, come to  
11 order.  
12 [Outside the presence of the jury]  
13 THE COURT: All right, please be seated. I've reviewed both  
14 sets of jury instructions. We'll discuss them if we have to. I've seen all of  
15 these before. They seem standard, but I would like to hear any objections  
16 or anything that counsel might feel needs to be amended?  
17 MR. NADIG: No, as long as the Carter instructions that  
18 we -- did you check and see if it was in?  
19 MR. SCARBOROUGH: I have not checked in that instruction,  
20 but as long as the Carter instruction is in there, the State submitted their  
21 full set of what they intend -- what we intend to introduce as instructions.  
22 THE COURT: So who's going to number them? We just -- just  
23 number them and then you got to make copies. And what we need is not  
24 one for every juror, but generally you ask the D.A. to prepare another  
25 copy.



1 MR. SCARBOROUGH: Fair enough.

2 THE COURT: Because we need one for me, one official copy  
3 for the Court Clerk, one to give the foreperson and I think that's it.

4 MR. SCARBOROUGH: We don't need copies for every juror?

5 THE COURT: No, I don't need just set them back with one for  
6 the foreperson.

7 That's all I do. That's what I've always done. I mean, if  
8 somebody wants to request that each of them gets a copy, it's your right  
9 to request that, but --

10 MR. LEXUS: That's fine.

11 MR. NADIG: I just -- once they're numbered, I just -- you know  
12 let me review them before you submit them. That's all.

13 THE COURT: All right, so you guys make the copies and make  
14 sure that the Court has enough and then, I'd like to know now if you  
15 intend -- if you want to request that each juror receive a copy?

16 MR. NADIG: Oh.

17 THE COURT: It's typically in all the cases that -- all the criminal  
18 cases that I've handled, it's never done that way. I've never had anybody  
19 request that, but it's up to you.

20 MR. NADIG: Your Honor, this is what I'll say. I've  
21 seen -- depends court to court. If you're with just the foreperson that is  
22 well within the norm of what I've seen.

23 MR. LEXUS: That's fine with me.

24 THE COURT: I say I think my Court Clerk blue backs it and  
25 sends it back.

1 MR. NADIG: I do know that some judges don't want them to all  
2 have them, because then it just bogs down the entire process.

3 THE COURT: It's a waste of paper, too.

4 MR. NADIG: Yeah.

5 MR. LEXUS: I told them that number them as they're sent to  
6 him in the email.

7 MR. NADIG: Just read email them and look at the number and  
8 then we'll --

9 MR. LEXUS: Okay. Okay.

10 THE COURT: Good for me.

11 MR. SCARBOROUGH: All right, thank you.

12 THE COURT: We'll just have you confirm in the record -- on the  
13 record first thing tomorrow that this is what you all agree upon.

14 How about the verdict form? You all agree on that?

15 MR. LEXUS: Yeah.

16 MR. NADIG: Yeah.

17 MR. SCARBOROUGH: Did you?

18 MR. NADIG: Let me double check. I'm sorry. I closed it out.

19 MR. SCARBOROUGH: And Your Honor, for clarification, for  
20 both sets of instructions --

21 THE COURT: Yes.

22 MR. SCARBOROUGH: -- the prohibited and the  
23 regular -- okay.

24 MR. NADIG: There it is. Sorry, Your Honor. Yeah, that's fine.

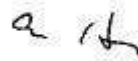
25 THE COURT: All right, very good. Off the record. See you all

1 at 10:30. We're just going to have a cart out --

2 [Trial Day 2 concluded at 4:11 p.m.]

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5  
6 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.  
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10 Chris Hwang  
11 Transcriber  
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