

IN THE NEVADA SUPREME COURT

Electronically Filed  
May 03 2021 05:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**Evaristo Jonathan Garcia,**

Petitioner-Appellant,

**v.**

**James Dzurenda, et al.**

Respondents-Appellees.

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On Appeal from the Order Denying Petition  
for Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District, Clark County (A-19-791171-W)  
Honorable David M. Jones, District Court Judge

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**Petitioner-Appellant's Appendix in Support of Brief  
Volume 2 of 10**

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Federal Public Defender,  
District of Nevada  
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Dated May 3, 2021.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Emma L. Smith  
Emma L. Smith  
Amelia L. Bizzaro  
Assistant Federal Public Defender



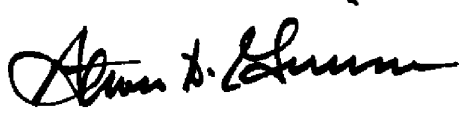
### **CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2021, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include:  
Alexander Chen.

/s/ Jessica Pillsbury  
An Employee of the  
Federal Public Defender

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	Case No. C262966
vs.	)	Dept. No. XV
	)	
EVARISTO JONATHAN GARCIA,	)	
	)	
Defendant.	)	

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Before the Honorable ABBI SILVER  
Tuesday, July 9, 2013, 12:30 p.m.  
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State:	TALEEN PANDUKHT, ESQ. NOREEN DEMONTE, ESQ. Deputies District Attorney
For the Defendant:	ROSS GOODMAN, ESQ. DAYVID FIGLER, ESQ. Attorneys at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

Renee Silvaggio, CCR 122, ACCUSCRIPTS  
(702) 477-5191

FPD-0064

App.182

I N D E X

State of Nevada v. Evaristo Jonathan Garcia

Case No. C262966

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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STATE'S WITNESSES:

Daniel Proietto	32	69	84	90
Richard Moreno	102	113	---	---
Jena Marquez	120	149	---	---
Edshel Calvillo	151	---	---	---

DEFENSE WITNESSES:

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EXHIBITS MARKED & ADMITTED IN EVIDENCE:

	<u>MARKED</u>	<u>ADMITTED</u>
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MISCELLANEOUS

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\* \* \* \* \*

1 Las Vegas, Clark County, Nevada

2 Tuesday, July 9, 2013, 12:30 p.m.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5  
6 (State's Proposed Exhibits 1 through 51, respectively;  
7 and State's Proposed Exhibits 54, 63, 68, 85, 86, and 99,  
8 respectively, were marked for identification.)  
9

10 (The following proceedings were had in open  
11 Court in the presence of the jury panel:)  
12

13 THE COURT: All right. Good afternoon, ladies and  
14 gentlemen. We're on the record in the presence of the jurors  
15 on State of Nevada versus Evaristo Garcia, Case Number C262966.

16 Let the record reflect the defendant's presence with  
17 his attorneys, Mr. Goodman and Mr. Figler, along with the  
18 State's attorneys, Ms. Pandukht and Ms. Demonte.

19 We're going to begin opening statements, so we'll  
20 hear from the State of Nevada.

21 MS. PANDUKHT: Thank you.

22 THE COURT: Should I ask if either party wants to  
23 invoke the Exclusionary Rule?

24 MS. PANDUKHT: Yes, the State invokes the  
25 Exclusionary Rule.

1 MR. GOODMAN: Yes, Your Honor, so if we could just  
2 have a moment.

3 THE COURT: The State of Nevada has invoked the  
4 Exclusionary Rule.

5 Any possible witnesses in this case are to remain  
6 outside during the trial, and they're not to discuss their  
7 testimony between each other. Just making sure.

8 MR. GOODMAN: Thank you, Your Honor.

9 THE COURT: It's been invoked so it is in effect for  
10 both sides. All right, Ms. Pandukht.

11 MS. PANDUKHT: Thank you.

12

13 OPENING STATEMENT ON BEHALF OF THE STATE

14

15 MS. PANDUKHT: Evaristo Garcia shot 15-year-old  
16 Victor Gamboa in the back as he was running away at a local  
17 high school.

18 This case occurred approximately seven years ago, on  
19 February 6th, 2006, at a high school called Morris Sunset East  
20 High School. It's located at 3801 East Washington, at the  
21 corner of Virgil. And what you will see from diagrams is  
22 there's streets that are perpendicular to Washington, and a  
23 little bit over up to the north is Virgil, a little bit to the  
24 south is a street called Parkhurst Avenue.

25 And it occurred here in Clark County.

1           You are going to hear about an incident that started  
2 occurring at this school. This was a night school. It was a  
3 school that had the hours approximately 2:00 o'clock until  
4 8:50 p.m. at night. So it was kind of a night school, and it  
5 would get out at approximately 8:50, which is when sixth period  
6 ended. So there were six periods in the school.

7           You're going to hear about several students that  
8 were going to that school at that time. One was  
9 Giovanni Garcia, he is also known by the name Yobanni Barata  
10 (phonetic) and the nickname of Little One.

11           He was going to that school with three other  
12 students that you're going to hear from -- Crystal Perez,  
13 Melissa Gamboa and Jena Marquez.

14           Now, Crystal, Jena and Melissa all went to school  
15 there, but they had some siblings that you'll also hear from.  
16 Jena Marquez had a brother, a twin brother, his name is  
17 Bryan Marquez.

18           And Melissa Gamboa's younger brother at that time is  
19 Victor Gamboa, who was 15 years old at the time that he was  
20 killed.

21           You're going to hear about another individual, and  
22 that individual's name is Jesus Alonzo. He was a member of  
23 Brown Pride Locotes, abbreviation BPL, and that's a gang here  
24 in Las Vegas. His nickname, or monicker, was Diablo.

25           You're going to hear that he was the boyfriend at

1 the time of Melissa Gamboa. He is now since deceased, but  
2 you're going to hear about him through -- throughout the trial.  
3 So I wanted to let you know who all the players were that  
4 you're going to be hearing from and their relationships to each  
5 other because it can get a little confusing.

6 So you're going to hear about a rival gang of Brown  
7 Pride Locotes, which is Puros Locos. And Puros Locos, which is  
8 spelled P-U-R-O-S, and then Locos is L-O-C-O-S, and you're  
9 going to hear about that gang as well, which Little One was a  
10 member of.

11 And you're going to be able to see tattoos that  
12 Little One had with Puros Locos on his chest, the number 13,  
13 and another common tattoo, East Side.

14 Now, you are going to hear about an altercation that  
15 occurred between originally Crystal Perez and Little One -- so  
16 Giovanni Garcia.

17 This altercation occurs the week before the  
18 shooting, and it starts between those two, and it kind of  
19 continues during that week.

20 And you're going to hear that, on Monday, the day of  
21 the shooting, on February 6th, 2006, this verbal altercation  
22 escalated between them. And you're going to hear that  
23 Jesus Alonzo got involved, and there ultimately is a phone call  
24 that Giovanni Garcia places on a cell phone in the hallway at  
25 the school before sixth period, sometime around fifth period,

1 around eight o'clock in the evening.

2           You're going to hear that that phone call is  
3 witnessed by a few individuals, including Jena Marquez and  
4 Crystal Perez, who are threatened by Giovanni Garcia.

5           And then you're going to hear that there is talk of  
6 a fight that's going to take place after school.

7           Based upon this threat and what's going on at  
8 school, you will hear that Jena Marquez and Crystal Perez were  
9 concerned for their safety, and so Jena Marquez calls her  
10 brother, Bryan, to come to the school and pick her up.

11           And you're going to hear from Bryan that he wants to  
12 know who this Giovanni Garcia -- after school lets out, you  
13 know, who's threatening my sister?

14           So you're going to hear about after school lets out  
15 at 8:50, that there -- everybody comes out of the school.

16           And Bryan Marquez goes up to Giovanni Garcia, and  
17 then a fight has started. You're going to hear about this --  
18 this fistfight throughout the course of this trial, and a bunch  
19 of people start getting involved in this fight.

20           Jesus, Diablo -- Diablo is there, he gets involved  
21 in the fight. Girls get involved in the fight, Crystal and  
22 Jena, they're in there fighting.

23           And then you will hear that the principal comes out,  
24 and he hears about the fight from his campus security monitor,  
25 you're going to hear from her, her name is Betty Graves. She



1 is there, she notifies him. He comes out -- his name is  
2 Dan Eichelberger, he'd actually only been a principal there for  
3 six days, he comes out and he breaks up the fight.

4 So everybody then starts running across the street,  
5 and the street that's in front of the school is  
6 Washington Avenue.

7 So everyone runs across the street, and that is  
8 where you will hear from several witnesses about a shooting  
9 that takes place in the middle of Washington Avenue right  
10 around the median. You're going to see photographs and  
11 diagrams of a couple of medians that are raised dividers in the  
12 middle of Washington Avenue. There's one that is north and one  
13 that is south.

14 And you are going to hear from several witnesses  
15 about an individual wearing a gray hooded sweatshirt, a light  
16 gray hooded sweatshirt, with short black hair, that runs across  
17 Washington after an individual, who is identified as  
18 Victor Gamboa, and shoots multiple times from a black firearm  
19 at that individual, Victor Gamboa.

20 You are going to hear from several witnesses, who  
21 all will describe to you in their own words what they saw.

22 Those witnesses, not only include people that you  
23 have already heard about -- Crystal Perez, Jena Marquez,  
24 Bryan Marquez -- but you're going to hear from Melissa Gamboa,  
25 who was there. She was not actually participating in the

1 fight, but she was watching the fight, and she's running with  
2 her brother across the street.

3 And you're going to hear that there is -- across  
4 from Washington there's a sidewalk, and there's a block wall,  
5 and behind it are some houses.

6 And Melissa Gamboa is going to tell you that she was  
7 running with her brother when she sees him get shot, and she  
8 previously identified the defendant, Evaristo Garcia, as being  
9 the individual that she saw shooting directly at her brother.

10 You are going to hear from an individual that was on  
11 the corner there, right at Washington and Virgil, he was on his  
12 bike there to pick up his girlfriend. And his name is  
13 Joseph Harris. And he will tell you that he saw the victim get  
14 shot up against the wall, and he saw the shooter in this case.

15 You're also going to hear from another individual,  
16 Vanessa Grajeda, that was there watching the fight. And she  
17 doesn't know anybody involved in this case.

18 And everybody's going to tell you their description  
19 of the shooter, they're going to tell you where they were, what  
20 they saw, how many gunshots they heard, and you're going to  
21 hear all of those details throughout the trial.

22 As well as you're going to hear what Betty Graves  
23 saw. And Betty Graves saw the person in the gray hooded  
24 sweatshirt keeping his right hand in his pocket of his  
25 sweatshirt. And he was actually swinging with his left hand.

1           And you're going to also hear from Vanessa Grajeda  
2 that she saw a black object hanging out of the gray hooded  
3 sweatshirt pocket.

4           Then you're going to hear that a crime scene analyst  
5 comes out to the scene, and his name is Daniel Proietto. And  
6 he's a crime scene analyst that comes out, and they collect all  
7 of the physical evidence at the scene.

8           And he is there at the direction of two homicide  
9 detectives that are assigned to investigate this case --  
10 Detective Cliff Mogg and a retired homicide detective,  
11 Detective Ken Hardy. So they come out. They're assigned to  
12 investigate the case, and they direct, you know, the collection  
13 of evidence.

14           You are going to be able to see photographs taken at  
15 the crime scene, a diagram taken of the area and where the  
16 evidence was found, as well as aerial photographs showing you  
17 the location.

18           And you're going to hear from CSA Proietto that he  
19 found six Wolf 9-millimeter Makarov cartridge cases that had  
20 been fired or expended right there in and around and on that  
21 north median in the middle of Washington Avenue.

22           And he's also going to tell you that he found four  
23 bullets at that scene, which were also 9-millimeter bullets  
24 that were there.

25           He's going to explain to you the location of where

1 all the evidence is found.

2 And then he's also going to explain about evidence  
3 that's found further around the corner on Parkhurst.

4 So several witnesses describe the shooter running  
5 south on Parkhurst.

6 So you will hear from a police officer, who was on  
7 patrol at that time, his name is Richard Moreno. He's actually  
8 now a detective in the gang unit. And Richard Moreno started  
9 walking south on Parkhurst Avenue, and he finds in front of --  
10 like he doesn't get very far, it's like the second house there,  
11 at 865 Parkhurst. He -- walking down the street, he sees a  
12 couple of abandoned toilets that are just in front of a  
13 residence there.

14 The person who was living there at the time, he'll  
15 come in too and tell you that that address was 865 Parkhurst;  
16 that his name is Russell Carr, and he was there, and they were  
17 remodeling the bathrooms, and they are changing out tile, and  
18 they were replacing the toilets.

19 So those toilets are sitting out there. There's no  
20 lid in -- on the toilets, there's no water in the toilets, but  
21 as Richard Moreno is walking by looking for where possibly  
22 there might be evidence, he sees in the toilet tank a gun. It  
23 turns out to be a 9-millimeter automatic Makarov firearm,  
24 semiautomatic caliber firearm. He finds that inside, face down  
25 so that the top of the gun is on the bottom of the toilet tank.

1           You'll hear that CSA Dan Proietto impounds that gun.  
2 He takes fingerprints from outside of the toilet tank, but he  
3 doesn't process the actual firearm itself at that time.

4           He packages it up, and then he preserves it for  
5 later analysis by other experts from the Las Vegas Metropolitan  
6 Police Department.

7           So that's kind of the crime scene that they find out  
8 there, but they're still trying to identify who's the person  
9 responsible.

10          So you're going to hear from Detective Mogg that he  
11 continues to try and learn the identities of all the people  
12 involved. And that one of the ways he does that is by finding  
13 cell phone records starting with the phone that was being used  
14 by Giovanni Garcia.

15          You will hear from Detective Mogg that he finds out  
16 that there were numerous phone calls, approximately 20 or so,  
17 that are made by the phone that Giovanni Garcia was using,  
18 which was actually in the name of his brother, Salvador Garcia.

19          That there were 20 phone calls made from that phone  
20 number to an individual by the name of Manuel Lopez.

21          Manuel Lopez has a nickname called Puppet, and  
22 that's how he was known, by that nickname.

23          There are also calls, and the importance of these  
24 calls is they're between eight o'clock and nine o'clock on the  
25 day of the shooting, so between eight p.m. and nine p.m.,

1 approximately 20 phone calls between Giovanni Garcia and  
2 Manuel, and also approximately 12 phone calls between  
3 Giovanni Garcia and Melinda Lopez, who, and I know all the  
4 relationships are a little crazy here, but Melinda Lopez is  
5 Manuel Lopez's sister, Salvador Garcia's girlfriend at the  
6 time. Okay.

7 So he finds out all of these things, and then he  
8 eventually finds another witness to the murder. And his name  
9 is Jonathan Harper.

10 He interviews Jonathan Harper approximately  
11 April 1st, 2006. And Jonathan Harper was a member of the gang  
12 Puros Locos.

13 And he will explain to you about the members of that  
14 gang, about Salvador Garcia, whose nickname was Boxer, about  
15 all the other individuals that I've mentioned already --  
16 Giovanni Garcia, Manuel Lopez.

17 He's also going to talk about his friend  
18 Edshel Calvillo, whose nickname was Danger. And he's going to  
19 talk about the things they were doing, part of that gang, and  
20 he's going to talk about the fight that occurred on that day,  
21 on February 6th, 2006.

22 Jonathan Harper told police that he was at  
23 Salvador Garcia's house when Giovanni Garcia called about this  
24 fight that's taking place, and he wanted them to back him up.

25 So you will hear that Jonathan got into a gray

1 El Camino vehicle, which had a closed front, but kind of a bed  
2 in the back, it's kind of like a truck in the back. That  
3 vehicle's important because Melissa Gamboa told police that she  
4 saw a gray El Camino come to the scene before the shooting.  
5 And she said in that gray El Camino were three individuals that  
6 were male and an individual who was female.

7 And she described the two males that got out of that  
8 car. One of those males had a shiny bald head and was wearing  
9 blue, I believe. And the other individual had the gray hooded  
10 sweatshirt on. And she saw them join in the fight with  
11 Giovanny Garcia.

12 Now, back to Jonathan Harper. Jonathan Harper had  
13 told police that he went in that gray El Camino, driven by  
14 Puppet, that Puppet's girl was there, the defendant was there,  
15 and they all go to the school, and that the defendant and  
16 Jonathan Harper get out of the El Camino and start fighting.

17 Jonathan Harper told police that he was fighting the  
18 leader of the Brown Pride Locotes gang, Diablo, at the time,  
19 that's who he was personally fighting with. And he told police  
20 that he witnessed the shooting.

21 He told police the identity of E, who is also  
22 sometimes known as Chuckie, the defendant Evaristo Garcia. And  
23 he picked him out of a photo lineup, and that is how the police  
24 started finding out who did this murder.

25 And then you're going to hear as well that there was

1 an autopsy done. The autopsy in this case was done by  
2 Clark County Coroner Dr. Lary Sims.

3 Dr. Lary Sims decided that the cause and manner of  
4 the death was a single gunshot wound to the back.

5 You're going to hear again something I forgot to  
6 mention with regard to the crime scene analyst, Crime Scene  
7 Analyst Proietto had also found on that left wall, he found  
8 four bullet strikes to that block wall right where the victim  
9 fell.

10 You're also going to hear from other experts from  
11 the Las Vegas Metropolitan Police Department. There is a  
12 firearms examiner, and her name is Angel Moses, and she  
13 examined the firearm in this case that was impounded into  
14 evidence.

15 She test fired it to make sure that it was operating  
16 normally and firing properly.

17 And she also was able to examine all the cartridge  
18 cases, as well as the bullets.

19 Now, while two of the bullets were too mutilated in  
20 order to really form an identification, she will tell you that  
21 she conclusively identified two of the bullets found right  
22 there at the scene as having been fired by the exact  
23 9-millimeter Makarov gun that was found in the toilet right  
24 there on Parkhurst.

25 And then finally you're going to hear from two other



1 experts, you're going to hear from Detective Michael Souter  
2 (phonetic), he is a gang expert with the Las Vegas Metropolitan  
3 Police Department. And he's going to talk to you about  
4 criminal gangs in general, about these gangs in particular,  
5 Puros Locos, as well as Brown Pride Locotes, and he will give  
6 you, based upon his training and experience, he's going to  
7 explain various terminology, various reasons behind tattoos,  
8 the monickers, customs, relationships, motivations amongst  
9 these two gangs, and gangs in general.

10 And then you're going to hear from a fingerprint  
11 expert, who is also the lab manager of the Las Vegas  
12 Metropolitan Police Department. Her name is Alice Maceo, and  
13 she compared that 9-millimeter Makarov gun to the fingerprints  
14 of Giovanny Garcia and Manuel Lopez.

15 Their fingerprints were not identified anywhere on  
16 the gun, but she also compared the defendant's fingerprints to  
17 the actual gun itself, and she will tell you that she  
18 identified two of the defendant's fingerprints, that one of the  
19 fingerprints was his right ring finger that was on the top of  
20 the grip.

21 And then she's also going to tell you about the  
22 partial palm print that was found on the back strap of the grip  
23 of the firearm, the webbing area between your thumb and your  
24 index finger was right there, identified to the defendant, on  
25 the back of the grip of the gun (indicating).

1           After you have heard all of the evidence in this  
2 case, all of the State's witnesses, and seen all of the  
3 physical evidence that the State presents, Ms. Demonte and I  
4 are confident that you are going to return a verdict of guilty  
5 on all counts.

6           Thank you.

7           THE COURT: Thank you, Ms. Pandukht.

8           And the defense.

9           MR. GOODMAN: Thank you, Your Honor.

10          THE COURT: Mr. Goodman.

11

12                   OPENING STATEMENT ON BEHALF OF THE DEFENDANT

13

14           MR. GOODMAN: Good afternoon.

15           You know it's a murder case. You know that  
16 Victor Gamboa died. You know that he died from a gunshot  
17 wound.

18           But other than that it's a relatively simple case  
19 for you to decide.

20           It's a question of whether or not Evaristo Garcia,  
21 sitting over there (indicating), was the actual shooter.

22           So let me give you my road map as to what you're  
23 going to hear over the course of the week.

24           You're going to hear primarily from only two  
25 witnesses. The State told you about a whole bunch of

1 witnesses. There were about 20 to 30 kids in this fight. It  
2 was a fight that happened at a school between non-gang members.

3 Most of the people at that school, in that park,  
4 during that fight, were non-gang members.

5 You're going to hear from two witnesses:  
6 Melissa Gamboa, that the State just talked about, who is  
7 Victor Gamboa's sister, and you're going to hear from  
8 Jonathan Harper.

9 What's interesting is that you already heard in  
10 opening statement that the shooter was wearing a gray  
11 sweatshirt, a gray hoodie.

12 It's important for your consideration to listen  
13 carefully to what the evidence actually is during the course of  
14 the trial because it's not enough that there is a shooter, you  
15 have to prove -- the State has to prove beyond a reasonable  
16 doubt that Mr. Garcia was the shooter and whether or not  
17 Mr. Garcia was wearing a gray sweatshirt.

18 And this is what we do know, this is what you're  
19 going to hear from those two primary witnesses, Melissa Gamboa  
20 and Jonathan Harper. You're going to hear that they both  
21 described the shooter as wearing a black, not gray, sweatshirt.

22 Specifically, under oath, Jonathan Harper testified:  
23 The shooter was wearing, quote, all black sleeved, long sleeved  
24 pant, end quote.

25 You're going to hear that Melissa Gamboa, under

1 oath, testified the shooter -- the shooter was wearing, quote,  
2 black sweater, black hoodie.

3 Now, you heard a lot of names. You heard a lot of  
4 witnesses -- Manuel Lopez, Salvador Garcia, Giovanny Garcia, a  
5 lot of people. What you need to pay attention to during the  
6 course of this evidence is what evidence is related to  
7 Evaristo Garcia.

8 And let's talk about what you're going to hear from  
9 Jonathan Harper.

10 Jonathan Harper is a confirmed member of  
11 Puros Locos.

12 You're going to hear Jonathan Harper tell you that  
13 he was promised immunity. He was promised not to be prosecuted  
14 in order to give evidence and testimony in this case.

15 That's a big motivation for you to consider because  
16 Jonathan Harper is going to tell you that he was at  
17 Salvador Garcia's house, Manuel Lopez came to pick him up, and  
18 he went to the park.

19 He's going to tell you that Giovanny and Edshel, who  
20 you just heard otherwise known as Danger, was also at the  
21 house.

22 Guess who he said was not at the house?  
23 Evaristo Garcia.

24 He didn't say that until later, but his initial  
25 statement to the police was -- he didn't mention

1 Evaristo Garcia.

2           You're going to hear from Jonathan Harper that not  
3 only was he at the house, Salvador Garcia's house, that he was  
4 picked up by -- by Manuel Lopez, and he was -- and he went to  
5 this school.

6           And you're going to hear that he got out of the car,  
7 he jumped on somebody immediately, and he participated in the  
8 fight.

9           He's going to tell you that he knew before  
10 leaving -- before going to the park, going to the school, that  
11 Manuel Lopez had a gun.

12           He's going to tell you that Manuel Lopez owns that  
13 gun that was in the shooting.

14           Jonathan Harper's going to tell you that  
15 Manuel Lopez had that gun that you're going to see in his  
16 waistband at Salvador Garcia's house before they actually  
17 travel to the school:

18           Before you got into the car was there any talk  
19 about a gun?

20           Jonathan Harper: No.

21           Now, let's talk about the gun for a second even  
22 though we know from Jonathan Harper that it was Lopez's gun.  
23 Lopez had it in his waistband before they went to the park,  
24 Lopez drove to the park. Let's talk about the gun, because  
25 you're going to hear some evidence that, at some point,

1 Evaristo Garcia handled that gun (indicating).

2 And you're going to hear that there were three  
3 prints that were lifted from that gun, three prints. One was,  
4 as you heard, between the thumb and the ring finger, the web  
5 part.

6 So if you can imagine, and we'll show you during  
7 the course of trial, if you shoot the gun and you stick your --  
8 your hand as far up as you can, then that -- that partial web  
9 print was on there.

10 You're also going to hear that there's another  
11 print that was lifted on the upper left-hand side of the gun by  
12 his right index finger that was in the two o'clock position.

13 The State's own expert is going to tell you  
14 that's a very -- very unusual spot.

15 And when you look to see exactly where the print  
16 is, you're going to see that that was consistent with somebody  
17 holding the gun and touching the gun.

18 Nobody is going to tell you that that's  
19 consistent with somebody shooting the gun.

20 So when you're listening to the evidence during  
21 this week about that there's some prints on the gun, you're  
22 going to hear that this gun was at -- was with Lopez at the  
23 house, and it was passed around.

24 It's common for people to touch the gun.

25 What you're also going to hear is that there was

1 a third spot, a third fingerprint that was lifted, that would  
2 be consistent with somebody shooting the gun.

3 That print was not identified to  
4 Evaristo Garcia.

5 You're going to hear that this gun, after the  
6 fight, was dropped off in a toilet, and you're going to hear  
7 that there was a print lifted off of the toilet.

8 You're going to hear that that print was not  
9 identified as Evaristo Garcia.

10 And what you need to consider and why we talked  
11 in voir dire and why I asked you those questions about would  
12 you please wait to form your opinion is because you have to ask  
13 yourselves: Well, what would have been on the gun that can  
14 prove to you beyond a reasonable doubt that Evaristo Garcia  
15 (indicating) was the actual shooter?

16 And when you hold the gun, everybody knows you  
17 hold the gun on the grip. And it's very common to have, during  
18 crime scene, to have swabs of DNA pulled from the grip of the  
19 gun, because that's where you leave skin cells and other things  
20 that can be lifted.

21 That would have conclusively proved who shot the  
22 gun.

23 The DNA came back negative.

24 They even found the car that allegedly  
25 Evaristo Garcia rode in. There was no prints from the car.

1 There was no gun in the car, there was no clothes from the car.  
2 There was nothing from this crime scene before, during or after  
3 connecting Evaristo Garcia as the shooter.

4 If there was a fingerprint -- if a crime was  
5 committed in this room, and there was a fingerprint on that  
6 wall (indicating), that fingerprint would have more  
7 significance, right? Because you would know at least that  
8 person was in that room.

9 When you handle a gun no matter -- before -- an  
10 hour before, a day before, and you lift off a print, especially  
11 not consistent with somebody shooting the gun, that gun can  
12 move, it's transitional. That's no more evidence of somebody  
13 shooting the gun as it is somebody holding a gun the day  
14 before.

15 So you really have to look to see what evidence  
16 there is to connect Evaristo Garcia in any way, shape, manner  
17 or form as the shooter in this case.

18 But what the evidence is going to show you is  
19 that it was Manuel Lopez's gun, he carried the gun, he owned  
20 the gun. He had the gun in his waistband. And Manuel Lopez  
21 was the only person that went back to that toilet to try and  
22 retrieve that gun.

23 You're going to hear that from Jonathan Harper,  
24 not Evaristo Garcia.

25 Listen to see what evidence there is about



1 Evaristo Garcia in this entire case.

2 In voir dire and in opening, you heard a lot  
3 about gang, about Puros Locos gang, that there was some kids  
4 from the Puros Locos gang and there was some kids from  
5 Brown Pride.

6 We just mentioned a whole bunch of names.  
7 Listen to what the evidence is that Evaristo Garcia is a member  
8 of any gang.

9 He was 16 years old when this happened.

10 The names that were just mentioned by both the  
11 prosecutor and myself, Manuel Lopez, Jonathan Harper,  
12 Giovanny Garcia, Sal, are all confirmed Puros Locos members.  
13 That's what the evidence is going to show.

14 And you're going to hear from the State's  
15 expert, how to you -- how do you confirm whether or not you --  
16 somebody is a member of a gang?

17 There's traditional ways to do that.

18 Police officers go out in the field. They're  
19 called field cards, and there would be a field card on somebody  
20 that's a member of a gang.

21 There would be Incident Reports, so people know,  
22 so police officers know if more than two people are together,  
23 they commit a crime, it's from the same gang, and that's put in  
24 the system.

25 They have people who admit to being in a gang.

1                   You're going to hear from a gang expert that  
2 that was done in this case, that all those names I just  
3 mentioned, either through field cards, tattoos with the logo  
4 Puros Locos on -- on them, right, that would be a good sign if  
5 somebody's in a gang, Incident Report, all that information was  
6 found to confirm all these people were gang members.

7                   Who's the only person that I didn't mention?  
8                   Evaristo Garcia.

9                   Not only are you not going to hear evidence that  
10 Garcia did not have -- police officers did not have a field  
11 card for Evaristo Garcia, they did not have an Incident Report  
12 for Evaristo Garcia. There's no logo tattooed on  
13 Evaristo Garcia, Puros Locos, like there is for other gang  
14 members.

15                  But you're going to hear that there was nothing  
16 on Evaristo Garcia. He wasn't even arrested before this case.

17                  So listen to the evidence. That's why we talked  
18 about yesterday, please wait to form your opinion and listen or  
19 write down when you hear if there's any evidence connecting  
20 Evaristo Garcia as being a member of Puros Locos.

21                  Now, this is also important for your  
22 consideration because you're going to hear, the State didn't  
23 mention it in their opening statement, but Evaristo Garcia  
24 ultimately, at some point, went to Mexico.

25                  And we just got done talking about how

1 Evaristo Garcia is the only non-confirmed gang member in this  
2 case.

3 And when the police notified Evaristo Garcia  
4 that he was actually being looked at in this case, they went  
5 down to Mexico, and Evaristo Garcia waived extradition. He  
6 didn't try to fight extradition.

7 You're going to hear that the reason  
8 Evaristo Garcia went down to Mexico was because he was afraid  
9 of the Puros Locos gang members. He wasn't one of them. He  
10 was the only non-gang member there.

11 There has been testimony for the last couple of  
12 years in this case that Evaristo -- Jonathan Harper, the  
13 witness who is going to tell you that he was promised that he  
14 wouldn't be prosecuted, this is what he's going to tell you:  
15 That when he was fighting, the principal came out of the  
16 school, all these kids ran in different directions.

17 Jonathan Harper did not follow Giovanny Garcia.

18 At one point, some point in his testimony he  
19 says that Evaristo Garcia was there, then under oath he says  
20 Evaristo Garcia was not there.

21 But what he's going to tell you is that when --  
22 at the point -- at some point in his testimony, on the day that  
23 he chooses to say either Evaristo Garcia was there or  
24 Evaristo Garcia wasn't there, on the time he chooses to say  
25 that Evaristo Garcia was there, he testified that

1 Giovanni Garcia pursued Victor Gamboa, and Evaristo Garcia was  
2 behind him.

3 Jonathan Harper is going to tell you that he  
4 went in a completely different direction. He went towards the  
5 baseball field.

6 At one point, and it's up to you, ladies and  
7 gentlemen of the jury, on who you believe. You're going to  
8 have to assess his credibility. At one point he tells you he  
9 heard that there was this conversation going back and forth  
10 between Giovanni Garcia and Evaristo Garcia, you know: Give me  
11 the gun, let me do the shooting -- words to that effect.

12 Then he tells you under oath later that he  
13 couldn't hear anything that happened.

14 He didn't see anything that happened.

15 He was behind the baseball fields.

16 You know who else said that they didn't hear  
17 anything happen by the shooter? Melissa Gamboa.

18 Melissa Gamboa, that's what's consistent.

19 Melissa says:

20 Did a shooter say anything?

21 No.

22 Did you hear anything?

23 No.

24 So pay attention to that when you're -- when  
25 Jonathan Harper's testifying. I'm not sure what he's going to

1 testify to, there's been so many different statements.

2           So we know -- the evidence is going to show you  
3 that Jonathan Harper was motivated for a whole host of reasons,  
4 whether it was so he wasn't prosecuted, his statement changes  
5 about three or four times. You'll hear all of that, and it's  
6 going to be up to you to judge his credibility.

7           But the other person who you're going to hear  
8 from, and really the only other person that claims to identify  
9 Evaristo Garcia, was the deceased's sister, Melissa Gamboa.

10           And you're going to have to ask yourselves, is  
11 something else motivating -- motivating Melissa Gamboa? She  
12 just saw her brother shot dead. She's going to want to hold  
13 somebody accountable. But you're going to have to look at the  
14 evidence.

15           And this is what Melissa Gamboa said, she said  
16 the day -- the night of the shooting that the shooter had light  
17 hair and was 18 or 19 years old.

18           You know, just looking at Evaristo Garcia, that  
19 he doesn't have black hair at the time when he was 16 years  
20 old.

21           She then says, at the Preliminary Hearing, the  
22 shooter was, quote, wearing a hoodie that night, end quote.

23           The hoodie, quote, covered his face, end quote.

24           She also acknowledged that her description of  
25 Evaristo Garcia did not match the shooter.

1                   Nobody faults Melissa Gamboa, she wants to see  
2 somebody held accountable. So really, when you listen to her  
3 testimony, she then comes into Court three years later, at the  
4 Preliminary Hearing, with Evaristo Garcia in the courtroom,  
5 they ask her: Can you identify the shooter? He's right there  
6 (indicating).

7                   So you're going to have to ask yourselves  
8 whether or not her previous testimony of the shooter was  
9 wearing light -- had light hair, was 18 to 19 years old, was  
10 wearing a hoodie that night that covered his face, whether or  
11 not she could really identify who the shooter was except for  
12 that he was the defendant at the time in the courtroom.

13                  There's one last thing that I want to talk to  
14 you about is Jonathan Harper.

15                  Jonathan Harper was shot in the head. He  
16 suffered a traumatic brain injury.

17                  He was shot in the head in an unrelated incident  
18 about two weeks after the shooting in this case, before he gave  
19 any statements. It's not like he called up the police officer  
20 and said, You know what, I'm a witness to the case.

21                  So -- and you're going to hear a lot of things  
22 when I come up to cross-examine Mr. Harper of all these  
23 statements that he's made.

24                  The prosecutor asked him in prior testimony:

25                  Does it cause you to have some memory problems

1 sometimes?

2 Answer: Yes.

3 Question: All right. Do you think you're  
4 recovered now?

5 Answer: Yes.

6 Question: You're back on?

7 Answer: Not -- not -- not normal.

8 Question. Okay. And you think you were screwed  
9 up when you made these other statements?

10 Answer: Yes.

11 So what your job here to do during a week or  
12 week and a half is to actually write down in your notebooks,  
13 piece together what evidence you think come from that stand  
14 that prove to you beyond a reasonable doubt that the shooter in  
15 this case is actually Evaristo Garcia.

16 Because even though there's 20 to 30 kids that  
17 participated in this fight, there's only going to be two  
18 witnesses that actually claim to have identified  
19 Evaristo Garcia, Melissa Gamboa, the deceased's sister, who  
20 says that the shooter had light hair, was wearing a hoodie,  
21 face was covered; and for Jonathan Harper, who was shot in the  
22 head, suffered brain injury, had every reason, was motivated,  
23 every reason to say whatever he thought to say at that time in  
24 order to avoid prosecution.

25 You're going to hear evidence that Jonathan said

1 that he's tired of the members of the DA's Office. That's the  
2 District Attorney's Office that these prosecutors are from,  
3 placed a great deal of stress on him in their efforts to obtain  
4 additional information despite his insistence that he does not  
5 remember any specifics surrounding who fired the gun.

6 He was tired. You're going to hear his  
7 testimony. He talked to an investigator, who said that he was  
8 tired of the DA's Office putting words in his mouth.

9 There's a confluence of events that you, ladies  
10 and gentlemen, have to determine regarding Jonathan Harper, why  
11 he's motivated to say what he said, whether or not the gunshot  
12 injury to his head had any impact, and whether or not who was  
13 telling him to say what and when.

14 At the end of the day, we're here, as we are in  
15 murder cases, somebody's dead, somebody should be held  
16 accountable.

17 But they have the wrong person sitting at that  
18 table (indicating).

19 Thank you.

20 THE COURT: Thank you, Mr. Goodman.

21 All right. We'll begin with the State's case in  
22 chief.

23 MS. DEMONTE: Thank you.

24 State calls Dan Proietto.

25 May I approach your clerk, Your Honor?



1 THE COURT: You may.

2 MS. DEMONTE: Thank you.

3  
4 DANIEL PROIETTO

5 called as a witness on behalf of the State,

6 having been first duly sworn,

7 was examined and testified as follows:

8  
9 THE WITNESS: I do.

10 THE CLERK: Please be seated.

11 THE WITNESS: Thank you.

12 THE CLERK: State and spell your full name for the  
13 record, please.

14 THE WITNESS: First name is Daniel, D-A-N-I-E-L;  
15 last name Proietto, spelled P-R-O-I-E-T-T-O.

16  
17 DIRECT EXAMINATION

18 BY MS. DEMONTE:

19 Q. Sir, how are you employed?

20 A. By the Las Vegas Metropolitan Police Department.

21 Q. And how long have you been there?

22 A. For nine and a half -- about nine and a half years.

23 Q. And what is your current job title?

24 A. I am a senior crime scene analyst, and I'm currently  
25 assigned to the training coordinator position.

1 Q. And so you train other crime scene analysts?

2 A. Correct.

3 Q. How long have you been doing that?

4 A. For about half a year now.

5 Q. Okay. And prior to becoming the senior crime scene  
6 analyst responsible for the training, what did you do before  
7 that?

8 A. I'm a senior crime scene analyst.

9 Q. And is -- have you always been a crime scene analyst  
10 in your career with Metro?

11 A. Yes.

12 Q. And what are the duties of a crime scene analyst?

13 A. We respond to crime scenes. We document the crime  
14 scenes using photography. We conduct things like latent print  
15 processing, and basically we're there to document, collect and  
16 preserve the evidence.

17 Q. Okay. Now, are you familiar with the television  
18 show called CSI?

19 A. Yes.

20 Q. Do you go out and interview witnesses?

21 A. No.

22 Q. Do you go out and interrogate suspects?

23 A. No.

24 Q. Do you make arrests?

25 A. No.

1 Q. Okay. Now, sir, I want to direct your attention to  
2 February 6th of 2006. Were you employed at that time with  
3 Metro?

4 A. Yes.

5 Q. As a crime scene analyst?

6 A. Correct.

7 Q. Do you recall being called out to the Morris Sunset  
8 High School on Washington Avenue?

9 A. Yes.

10 Q. Okay. And do you -- approximately how -- what time  
11 of day was that? Sorry.

12 A. Approximately eleven o'clock at night.

13 Q. And what was that reference to?

14 A. It was in reference to a shooting, which turned into  
15 a homicide.

16 MS. DEMONTE: May I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 BY MS. DEMONTE:

20 Q. Sir, showing you what's been marked as State's  
21 Proposed Exhibits 1 and 2, do you recognize this?

22 A. Yes, I do.

23 Q. Okay. And do those fairly and accurately depict the  
24 area that you responded to that evening?

25 A. Yes.

1 Q. And would those assist you in your testimony this  
2 morning?

3 A. Yes, they would.

4 MS. DEMONTE: Move for admission of 1 and 2.

5 THE COURT: Is there any objection?

6 MR. GOODMAN: None, Your Honor.

7 THE COURT: All right. State's Proposed  
8 Exhibits Number 1 and 2 are now State's Exhibits 1 and 2,  
9 admitted.

10 (State's Exhibits 1 and 2, respectively,  
11 were admitted into evidence.)

12 MS. DEMONTE: Thank you, Your Honor.

13 Move to publish?

14 THE COURT: You may.

15 BY MS. DEMONTE:

16 Q. And is your screen in front of you on, sir?

17 A. No, it's not.

18 Q. I'll come around.

19 And do you see Exhibit 1 up here on the screen?

20 A. Yes.

21 Q. Okay.

22 MR. FIGLER: I'm sorry, Counselor, I hate to  
23 interrupt, our monitor didn't come up when they were supposed  
24 to.

25 MS. PANDUKHT: Did you turn it on?

1 MR. FIGLER: No, I didn't. The Marshal told me not  
2 to, so --

3 MS. DEMONTE: Okay. I'm a bad girl. All right.

4 BY MS. DEMONTE:

5 Q. And what are we looking at here?

6 A. We're looking at the area that I responded to for  
7 the crime scene.

8 Q. Okay. Now, putting up on the screen State's  
9 Exhibit 2, is this just a more close up version of that?

10 A. Yes, it is.

11 Q. And what area were you primarily concerned with?

12 A. With the intersection at Washington Avenue and  
13 Virgil Street.

14 Q. And can you please circle that on the screen?

15 A. Yes. (Witness complies.)

16 Q. And why were you concerned with that area?

17 A. There were a number of cartridge cases and bullets  
18 located in that area.

19 Q. Now, prior to you actually examining the scene, are  
20 you briefed?

21 A. Yes.

22 Q. And who does that briefing?

23 A. Generally it's either the homicide detectives that  
24 are at the scene or the major crime detectives that are  
25 responding first.

1 Q. And in this particular case, do you recall who did  
2 the briefing with you?

3 A. I do not.

4 Q. Okay.

5 A. It's been a number of years.

6 Q. That's okay.

7 But do you remember which homicide detectives  
8 were on the scene?

9 A. Yes.

10 Q. And who were there?

11 A. I believe Cliff Mogg was there,  
12 Ken Hardy, Detective Chris Fontaine (phonetic), who was  
13 assigned to, I believe, major crime scenes at the time. Those  
14 are just some of them.

15 Q. Okay. And with respect to Detectives Mogg and  
16 Hardy, did they then direct you to a certain area?

17 A. Yes.

18 Q. Okay.

19 MS. DEMONTE: Move to approach again, Your Honor?

20 THE COURT: You may.

21 MS. DEMONTE: And, Your Honor, permission to just  
22 approach this witness?

23 THE COURT: You may.

24 MS. DEMONTE: Thank you.

25 BY MS. DEMONTE:

1 Q. Now, sir, showing you State's Exhibit 3, do you  
2 recognize that item?

3 A. Yes, I do.

4 Q. And what is that?

5 A. This is a finished diagram that I completed of the  
6 crime scene.

7 Q. And you did that yourself?

8 A. Yes, I did.

9 Q. And did you do that -- and what was the purpose of  
10 doing that?

11 A. To note the location of the evidence that was  
12 recovered at the crime scene.

13 MS. DEMONTE: Move for admission of 3.

14 MR. FIGLER: No objection.

15 THE COURT: Three is now admitted.

16 (State's Exhibit 3  
17 was admitted into evidence.)

18 BY MS. DEMONTE:

19 Q. And now, sir, showing you Exhibits 4 through 49,  
20 could you please briefly flip through those and let me know  
21 when you recognize -- if you recognize them?

22 A. Sure. (Witness complies.)

23 Q. And, sir, have you looked through 4 through 49?

24 A. Yes, I have.

25 Q. You do you recognize those?

1 A. Yes.

2 Q. And do those fairly and accurately depict the crime  
3 scene as you were documenting it the night of February 6th,  
4 2006?

5 A. Yes, they do.

6 MS. DEMONTE: Move for admission of 4 through 49.

7 MR. FIGLER: Submitted, Your Honor.

8 THE COURT: Submitted, or is there an objection or  
9 no objection?

10 MR. FIGLER: With regard to the authentication,  
11 that's fine, just contact -- we're fine, we have no objection.

12 THE COURT: No objection, they'll all be admitted.  
13 They're now State's 4 through 49.

14 Right, is that it? Yeah, 4 through 49.

15 (State's Exhibits 4 through 49, respectively,  
16 were admitted into evidence.)

17 MS. DEMONTE: And move to publish, Your Honor.

18 THE COURT: You may.

19 MS. DEMONTE: Thank you.

20 BY MS. DEMONTE:

21 Q. Now, sir, you had circled the area that's the  
22 intersection of Washington and Virgil. Putting on the screen  
23 now what's now State's Exhibit 3, and you had stated this is  
24 your diagram; correct?

25 A. Correct.



1                   Is there a way to -- I can --

2           Q.     Yeah, you put your finger on the bottom corner.

3           A.     Got it.

4           Q.     And now this diagram that you drew, does that depict  
5 the exact same intersection?

6           A.     Yes, it does.

7           Q.     Okay. And what was the purpose of making this  
8 diagram?

9           A.     To mark the locations -- location, like I said, of  
10 the evidence, and also it makes it a little bit easier to see  
11 versus an aerial depiction, just because a lot of the fluff is  
12 taken out.

13          Q.     And, sir, there's various markings on this diagram  
14 besides just the street itself. Can you describe what we're  
15 looking at here?

16          A.     Yes. We're looking at eastbound Washington -- or  
17 east and westbound lanes of Washington Avenue, approximately  
18 the 3800 block.

19                   If you look at the top of the screen, you can  
20 see North Virgil Street. That's depicted in the very center.

21                   And to the east or right of Virgil Street, on  
22 Washington, you can see an area where there's a left-hand turn  
23 lane that turns from westbound Washington south onto the  
24 academy. It's like an academy drive, which is --

25          Q.     And if you could just draw a circle in that area.

1 A. Sure.

2 And this the academy drive.

3 Q. Okay. And is that where the school is located?

4 A. The school drive is -- is what I've just circled.

5 Q. Okay.

6 A. And the school is just east of that where it says  
7 Morris Academy.

8 Q. Okay. And then you had stated there's a turn lane.  
9 Can you please circle that area?

10 A. Yes. Sorry, it's not letting me --

11 Q. Oh, it's not erasing?

12 A. -- unclick.

13 Q. It's not letting me do it either.

14 MR. FIGLER: I got that for you.

15 MS. DEMONTE: Thank you.

16 THE WITNESS: So the turn lane is right where I  
17 circled.

18 BY MS. DEMONTE:

19 Q. Okay. And do you recall if there's like a raised  
20 median in that area?

21 A. Yes.

22 Q. And had you drawn that in as well?

23 A. Yes, they're actually two sections of median, they  
24 look like little pie slices.

25 Q. Now, in that area you circled, I'm going to zoom in

1 a little closer here. You placed various numbers, what do  
2 those numbers mean?

3 A. They represent either bullets or cartridge cases  
4 that were observed and recovered from the scene.

5 Q. Okay. Now, when you're preparing this diagram, are  
6 there photographs and things like that that are also taken so  
7 that you can then make the diagram later?

8 A. Yes.

9 Q. Okay. And in this particular case, who was taking  
10 those photographs?

11 A. It was Senior Crime Scene Analyst Bill Speas.

12 Q. And is Bill Speas still employed with the Las Vegas  
13 Metropolitan Police Department?

14 A. Yes, he is.

15 Q. Okay. The photographs, which are 4 through 49, were  
16 these the photographs he took?

17 A. Yes.

18 Q. You were present when those photographs were taken?

19 A. Correct.

20 Q. And is it common that one person will photograph,  
21 and the other person will document and do the diagram?

22 A. Yes. Typically how we split up big scenes like this  
23 is one -- one crime scene analyst is assigned to the  
24 photographs and the report, and a second crime scene analyst is  
25 responsible for the evidence and diagram. It's typically how

1 it's divided.

2 Q. So now let's go through Mr. Speas's photographs.

3 Showing you what's been marked as State's  
4 Exhibit 4, what are we looking at here?

5 A. We are looking, that's going to be eastbound on  
6 Washington.

7 Q. And what can you tell me about the lighting  
8 conditions in this particular photograph?

9 A. It represents the level of darkness, if you will,  
10 the scene is fairly dark. When we're taking our photographs,  
11 we're trying to show as much of the evidence as possible so  
12 we're correcting for that and trying to lighten up our  
13 photographs just a little bit so you can actually see the  
14 evidence.

15 Q. And do you actually take a reference photograph  
16 showing how dark it is?

17 A. We try to.

18 Q. Okay.

19 A. This is before the days of digital, so it was a  
20 little bit more complicated to do. But, yes, this is an  
21 attempt at that, correct.

22 Q. Okay. And State's Exhibit 5, are we still looking  
23 at the same area here?

24 A. Yes, we are.

25 Q. Okay. Now, in this photograph, have you guys

1 actually made an attempt to lighten it up, this portion, at --  
2 at this particular time?

3 A. I would have to look at the original photo.

4 Q. Okay. It's kind of bad on the screen.

5 A. A little bit. It's still fairly dark.

6 Q. Okay. And -- but these are a series of photographs  
7 of that median; is that correct?

8 A. Correct.

9 Q. Okay. Now, State's Exhibit 11, what are we looking  
10 at here?

11 A. This is the turn lane that I had just circled prior,  
12 and this is looking now westbound on Washington inside that  
13 turn lane, and off to the left is that private academy drive.

14 Q. Okay. And so this is the opposite direction from  
15 the previous photograph?

16 A. Correct.

17 Q. Okay. And Exhibit 12?

18 A. This is actually standing on North Virgil and  
19 looking -- it would be southeast.

20 Q. Okay.

21 A. And looking at that -- the center median.

22 Q. Now, at the center median there are some cones in  
23 that photograph; is that correct?

24 A. Yes.

25 Q. What do those cones represent?

1           A.     Those are placed to mark evidence that was at the  
2 scene.

3           Q.     And you placed those cones there?

4           A.     I believe those were placed prior to our arrival.  
5 So probably by patrol officers basically to make sure that  
6 people aren't walking over them, driving over them, kicking the  
7 evidence or stepping on it.

8           Q.     Okay. And did you later yourself go to those cones  
9 to investigate what you found there?

10          A.     Yes.

11          Q.     And did you then document what you found at those  
12 cones in your diagram?

13          A.     Yes, I did.

14          Q.     Okay. Showing you State's Exhibit 19, can you see  
15 that or do you need me to bring it up to you?

16          A.     I can see it.

17          Q.     Okay. Now, in addition to the cones, there's actual  
18 number placards; correct?

19          A.     Yes.

20          Q.     And in this one we have one, two, three and four?

21          A.     Correct.

22          Q.     Okay. Now those number placards, who put those  
23 there?

24          A.     I did.

25          Q.     And those are yours?

1 A. Yes.

2 Q. And do those correlate on your diagram with the  
3 numbers that you placed there?

4 A. Yes, they do.

5 Q. Okay. So let's start with 1 and 2, can you please  
6 circle that?

7 A. (Witness complies.)

8 Q. And what are 1 and 2?

9 A. 1 is an apparent bullet, and 2 is a cartridge case.

10 Q. Okay. And did you yourself go up to those and  
11 collect those?

12 A. Yes.

13 Q. Okay. And where on the diagram were those located?

14 A. Items Number 1 and 2 are marked on the diagram --  
15 there you go, where I've circled.

16 MS. DEMONTE: And for the record, on State's  
17 Exhibit 3, the witness drew a circle at the numbers 1 and 2,  
18 which is close to the intersection of North Virgil and  
19 East Washington Street.

20 Now, going back to State's Exhibit 19, do you see 3  
21 and 4?

22 A. Yes, I do.

23 Q. And what are 3 and 4?

24 A. 3 and 4 are both cartridge cases.

25 Q. And you collected those as well?

1 A. Yes, I did.

2 Q. Now, on your diagram can you please show us where 3  
3 and 4 are?

4 A. Yes. I've circled them and they're just south of  
5 Items 1 and 2.

6 Q. Okay. And do those appear to be actually in the  
7 westbound lane?

8 A. In the westbound lane, correct.

9 Q. Okay. Now, sir, I'm putting on the screen State's  
10 Exhibit 22. Are there additional numbers there?

11 A. Yes, there are.

12 Q. And do those appear to be 5, 6, 7 and 8?

13 A. Yes.

14 Q. Can you please circle 5 and 6?

15 A. (Witness complies.)

16 Q. And what were 5 and 6?

17 A. 5 is a cartridge case, and 6 is an apparent bullet.

18 Q. Now, what is the difference between a cartridge case  
19 and a bullet?

20 A. A cartridge -- or what people normally refer to as a  
21 bullet is actually a cartridge.

22 Now, a cartridge contains a cartridge case,  
23 which has a primer, which is what actually sets the powder  
24 that's contained within the cartridge to form the explosion  
25 that propels the bullet down the barrel.



1                   So a cartridge simply contains a bullet, a  
2 cartridge case, which is the metal component that flies out of  
3 the gun after it's fired or, in the case of a revolver, stays  
4 in the cylinder.

5                   The primer is actually what gets the explosion  
6 going, and the powder is the actual explosive that propels the  
7 bullet.

8                   Does that make sense?

9           Q.     Okay. So the bullet itself is what comes out the  
10 front of the gun?

11          A.     Correct. Comes out -- out at the muzzle, the muzzle  
12 side.

13          Q.     And the cartridge case is, fair to say, left behind?

14          A.     Correct.

15          Q.     And depending on the type of gun, it either remains  
16 with the gun or is expelled from the gun?

17          A.     Correct.

18          Q.     Based from the fact that you found cartridge cases  
19 on the scene, were you able to draw conclusions based on your  
20 training and experience as to what type of gun it was?

21          A.     Yes. And based on the caliber it's consistent with  
22 a semiautomatic firearm versus a revolver.

23          Q.     And the cartridge cases you found and the bullets  
24 you found, were you able to tell what type of caliber bullet  
25 they were?

1 A. Yes.

2 Q. And what were those?

3 A. It's 9-millimeter Makarov.

4 Q. And how can you tell that?

5 A. It's actually marked on the cartridge case itself.

6 It's stamped. It's called a head stamp so it's actually  
7 stamped on the cartridge case.

8 Q. And the cartridge cases you found are actually  
9 stamped that way?

10 A. Correct.

11 Q. Okay. And was every cartridge case you found  
12 stamped that way?

13 A. Yes.

14 Q. And what is 9-millimeter Makarov?

15 A. There's a family of 9-millimeter, it's one of the  
16 calibers in that family.

17 What most people are familiar with is like  
18 9-millimeter Luger or a 9 Parabellum, and that's simply a  
19 9-by-19, 19 representing the case length.

20 What a Makarov is, is a 9-by-18. So it's a  
21 slightly shorter cartridge case, and it's very typical of  
22 Eastern Block European ammunition.

23 Q. And would you -- sorry.

24 If a gun is actually a Makarov, can you put  
25 9-millimeter Luger or Parabellum in it?

1           A.     It's probably a better question for a firearms  
2 examiner. It wouldn't be safe to swap ammunition like that  
3 though.

4           Q.     Okay. So the Makarov is actually a smaller around?

5           A.     It's smaller than a 9 Luger or 9 Parabellum, but.

6           Q.     Okay. And on a scale where would a .380 be?

7           A.     A .380 is actually a 9-by-17 versus 9-by-18, which  
8 is the Makarov, or 9-by-19, which is Luger or Parabellum.

9           Q.     Okay. So the Makarov, size-wise, is between the  
10 .380 and the 9-millimeter Luger?

11          A.     Correct.

12          Q.     Okay. So which one of 6 -- I'm sorry, 5 and 6 was  
13 the cartridge?

14          A.     5 is the cartridge case.

15          Q.     Okay. Sorry.

16          A.     And -- that's okay. And 6 is the apparent bullet.

17          Q.     Okay. And did you depict those on your diagram as  
18 well?

19          A.     Yes, I did.

20          Q.     And for the record you have drawn a circle around  
21 what's depicted at 5 and 6, which on the diagram are actually  
22 on the median itself; correct?

23          A.     Correct.

24          Q.     Okay. And then 7 and 8, what were those?

25          A.     7 and 8 are also cartridge cases.

1 Q. And they were also the Makarov?

2 A. Yes.

3 Q. Okay. And were those on your diagram depicted on  
4 the median as well?

5 A. Yes.

6 Q. And now State's Exhibit 23, you have an Item 9.  
7 Where was that located?

8 A. Can we go back to the diagram?

9 Q. Absolutely.

10 A. Make it a little bit easier.

11 Q. Did you actually place 9 on your diagram?

12 A. Yes. I'll circle it on the diagram; is that okay?

13 Q. Absolutely.

14 A. And 9 is actually located in -- inside of what's a  
15 bicycle lane, along the -- it would be the south edge of East  
16 Washington Avenue, so it's actually south of the travel lanes  
17 and just north of the sidewalk.

18 Q. Now, it's clear across the street; correct?

19 A. Correct.

20 Q. Okay. And it's not near any of the other items that  
21 you found?

22 A. Correct.

23 Q. Did you also examine the area along the sidewalk on  
24 Washington?

25 A. Yes.

1 Q. Okay. And what is along that sidewalk, if you could  
2 describe that area for me?

3 A. Along the sidewalk of Washington?

4 Q. Yes.

5 A. Okay. Sorry.

6 I don't know what you are trying to refer to.  
7 Sorry.

8 Q. That's okay. I'm trying to find the picture.

9 (Sotto voce at this time.)

10 BY MS. DEMONTE:

11 Q. Was there a block wall?

12 A. Yes.

13 Q. Okay. Did you actually depict that in your diagram?

14 A. Yes, I did.

15 Q. Okay.

16 A. Are you talking about the north?

17 Q. Yes.

18 A. Okay.

19 Q. Now, showing you State's Exhibit 17, what are we  
20 looking at here?

21 A. We are looking at apparent bullet impacts to a wall  
22 along East Washington.

23 Q. And do I even have the orientation correct on this  
24 photograph?

25 A. Actually, if you turn that -- yes, that's correct.

1 Q. Okay. And where is this section of wall on your  
2 diagram?

3 A. There's a number 11. Can I circle that?

4 Q. Absolutely.

5 A. It's in the area marked 11 on the diagram.

6 Q. And what did you find in the area marked 11?

7 A. There is actually a bullet that is lodged inside of  
8 the wall.

9 Q. And is that what's depicted here in State's  
10 Exhibit 33?

11 A. Yes.

12 Q. Okay. And did you collect that bullet as well?

13 A. Yes, I did.

14 Q. Okay.

15 A. And if you could go back to the --

16 Q. The wall?

17 A. -- picture of the wall --

18 Q. Absolutely.

19 A. -- I can show which the bullet is in.

20 Actually, it would be that hole in the wall  
21 that's circled.

22 Q. Okay. So the second bullet hole from the top?

23 A. Correct.

24 Q. Okay. And how many bullet strikes are there on this  
25 wall?

1 A. Four.

2 Q. Okay. How many bullets did you recover?

3 A. Total bullets?

4 Q. Yes.

5 A. Four.

6 Q. Okay. And how many cases did you recover?

7 A. Six.

8 Q. Is it common for you to collect all of the bullets  
9 when you find casings?

10 A. We always try to collect all of the bullets or  
11 account for them.

12 It's not uncommon for bullets or cartridge cases  
13 to go missing.

14 Q. And why is that?

15 A. A number of reasons. Especially in a street scene  
16 like this, we have cars, they're traveling back and forth  
17 before any first responders, ambulances, anyone can get there  
18 to shut down the scene.

19 There are people walking through the area,  
20 again, before first responders arrive.

21 Any number of reasons. The gun could have been  
22 fired in the air for instance, so we wouldn't expect to  
23 necessarily find a bullet.

24 Q. Okay. And is there any rhyme or reason to where the  
25 bullets are going to land?

1           A.     In this case they're impacting a brick wall. It's  
2 covered with stucco.

3                     What happens when they impact brick walls like  
4 this is it actually shatters the stucco that's right behind it,  
5 and it makes the direction of the bullet flight very chaotic.  
6 They can bounce around just about anywhere.

7           Q.     And so in the case of what Item 9, the bullet that  
8 was found across the street, is that consistent?

9           A.     Yes.

10          Q.     Now, in addition to the bullet strikes along the  
11 wall, was an attempt made to recover a firearm that  
12 corresponded with these?

13          A.     Yes.

14          Q.     To your knowledge was one recovered?

15          A.     Yes.

16          Q.     And where was that?

17          A.     Let me go back to the diagram.

18          Q.     And let me put State's Exhibit 2 back up.

19                 MR. FIGLER: Your Honor, I would just make a  
20 foundation objection. I'm sure that the State would be able to  
21 status check it, were you aware of it, but we don't have the  
22 status between, so it's just the foundation.

23                 THE COURT: All right.

24 BY MS. DEMONTE:

25          Q.     I'm sorry. At some point were you able to locate



1 and recover a firearm?

2 A. Yes.

3 Q. And where did you recover that firearm?

4 A. From North Parkhurst Drive -- or sorry, North  
5 Parkhurst Street.

6 Q. Okay. And did you actually make a notation of that  
7 on your diagram?

8 A. Yes, I did.

9 Q. Okay. And can you please circle that?

10 A. Yes.

11 Q. Okay. Now, you yourself were not the first person  
12 to locate this firearm; correct?

13 A. Correct.

14 Q. Who notified you to go to that location?

15 A. I believe it was Senior Crime Scene Analyst  
16 Bill Speas.

17 Q. Okay. And when you went to that location, were  
18 there already Metro personnel on scene?

19 A. Yes.

20 Q. Okay. And do you recall who those people were?

21 A. To the best of my recollection, and again this is  
22 going back seven years, there was actually a patrol officer  
23 that had walked that street looking for any firearms evidence  
24 for us, and he actually located it.

25 Q. Okay. And was that patrol officer still there when

1 you went to secure --

2 A. To the best of my recollection, he was, yes.

3 Q. Okay. Now, facing on the screen, where did you  
4 recover that firearm from?

5 A. From inside the toilet tank.

6 Q. Okay. Putting on the screen State's Exhibit 36. Is  
7 this the area on Parkhurst that that firearm was located at?

8 A. Yes, it is.

9 Q. Okay. And again showing you State's Exhibit 39, is  
10 that that same area?

11 A. Yes, it is.

12 Q. And are we looking at the sidewalk?

13 A. Yes.

14 Q. And which street does that sidewalk go up against?

15 A. This is North Parkhurst, and we're looking at a stop  
16 sign that's located at the intersection of Parkhurst and  
17 Washington.

18 Q. Okay. And State's Exhibit 37?

19 A. Yes, that's a view inside of the toilet tank showing  
20 the firearm.

21 Q. Okay. And you -- can you please circle the firearm  
22 for me?

23 A. Yes.

24 Q. Now, what type of firearm was this?

25 A. It is a 9-millimeter Makarov made by Imez. That's a

1 semi-auto.

2 Q. Now, Makarov is not the name of the gun?

3 A. Correct.

4 Q. It's the caliber; correct?

5 A. Correct.

6 Q. Okay. And is this consistent with the shell casings  
7 that you found?

8 A. Yes.

9 Q. And did you actually recover this yourself?

10 A. Yes.

11 Q. And prior to impounding it into evidence, was it  
12 photographed?

13 A. Yes.

14 Q. And is this what we see here on State's Exhibit 47?

15 A. Yes, it is.

16 Q. Okay.

17 A. Sorry, it's not working.

18 Q. Yeah.

19 Now, showing you State's Exhibit 99, do you  
20 recognize this?

21 A. Yes, I do.

22 Q. How do you recognize it?

23 A. It is a package that I have sealed and placed my  
24 label on, bearing my signature and other information from the  
25 case.

1 Q. Okay. And you actually see your signature, your  
2 label, and the information from the case?

3 A. Yes.

4 Q. And one of the things that is placed on that label  
5 is something called an event number; is that correct?

6 A. Correct.

7 Q. What is an event number?

8 A. It's a number that's generated to be assigned to a  
9 specific case so we can locate, for example, items of -- items  
10 of evidence that are specifically for that case.

11 Q. And --

12 A. Reports and stuff.

13 Q. And how are the numbers generated, is there a rhyme  
14 or reason to it?

15 A. Yes. It's -- basically we start at one at midnight  
16 and we go up from there.

17 Q. Okay. And is there a series of numbers prior to the  
18 1 through --

19 A. Yes, that correspond with the year and the month and  
20 day.

21 Q. Okay. So this event number would start with 06 for  
22 the year?

23 A. Correct.

24 Q. Okay. And then 02?

25 A. 02 for February, and then 06 for the day.

1 Q. And what were the last four digits of this one?

2 A. This one is 2820.

3 Q. And is that unique to this shooting?

4 A. Yes.

5 Q. Okay. So the next call that comes in that could be  
6 a robbery halfway across town will have the number following  
7 it?

8 A. Yes, exactly.

9 Q. Okay. And you placed event number on that bag?

10 A. Yes.

11 Q. Okay. And what is inside that bag?

12 A. This contains the bullets and cartridge cases that  
13 I've spoken of at the scene.

14 Q. Okay. And did you yourself place those inside that  
15 bag?

16 A. Yes, I did.

17 Q. And are those the bullets and cartridge cases that  
18 you yourself recovered?

19 A. Yes.

20 Q. Were they in your sole care, custody and control  
21 from the time you picked them up from the street to the time  
22 you placed them in that bag?

23 A. Yes.

24 Q. And after you placed them in that bag, what did you  
25 do with it?

1           A.     It goes into impound so the bag gets sealed and my  
2     initials and personnel number, as well as the date, are noted  
3     on the crime scene tape, and basically this keeps anyone out of  
4     this bag.

5                     It's tamper resistant, so if you try to get into  
6     the bag along that seal it will tear and let us know that  
7     someone was in that -- in that portion of the bag.

8           Q.     And are your seals still intact?

9           A.     Yes.

10          Q.     Okay. And after you placed it in the bag and placed  
11     your seals on it, where do you place it?

12          A.     It goes into an impound room where there's an  
13     impound log that gets signed, and then it goes on to the  
14     evidence vault.

15          Q.     And was that bag in your sole care, custody and  
16     control from the time you loaded those items into it, placed  
17     your seals onto it, to the time you eventually logged it with  
18     the vault?

19          A.     Yes.

20          Q.     Now, in addition to your seals that are intact, do  
21     you notice any other seals or any evidence that the bag had  
22     been opened?

23          A.     Yes.

24          Q.     And how do you notice that?

25          A.     There are actually two new seals that are placed,

1 one along the side of the bag and one at the bottom of the bag.  
2 And they have different P numbers, initials, and dates as well.

3 Q. So let's start with the one at the bottom of the  
4 bag, do you recognize that type of seal?

5 A. It's typically used by the forensic lab.

6 Q. Okay.

7 A. Which is denoted by the color.

8 Q. And on the side of the bag do you recognize that  
9 seal?

10 A. Yes.

11 Q. Okay. And is that one of the detectives assigned to  
12 this case?

13 A. Yes.

14 Q. With the exception of the two seals that indicate  
15 someone had opened it, is the bag in the same condition as when  
16 you placed it in the vault?

17 A. Yes.

18 MS. DEMONTE: Move for admission of 99.

19 MR. FIGLER: No objection.

20 THE COURT: With no objection, 99 is now admitted.

21 (State's Exhibit 99

22 was admitted into evidence.)

23 MS. DEMONTE: Does defense counsel wish it to be  
24 opened?

25 MR. FIGLER: It's the prosecutor's pleasure on that.

1 It doesn't need to be opened at this time, Your Honor, if the  
2 State does not want to do it.

3 MS. DEMONTE: The State will not open it at this  
4 time then.

5 BY MS. DEMONTE:

6 Q. Now showing you State's Exhibit 100. Do you  
7 recognize that?

8 A. Yes, I do.

9 Q. And how do you recognize it?

10 A. Again, it has the event number, as well as my  
11 P numbers -- P number, initials, my signature on the package,  
12 as well as the seals that I placed on the package.

13 Q. Now, same with this exhibit, do your seals appear to  
14 be intact?

15 A. In this case they are not intact.

16 Q. But are there other seals over your seals to  
17 indicate who was the person that opened them?

18 A. Yes.

19 Q. And do you recognize those as being from the  
20 forensic laboratory?

21 A. As well as a second set of seals that would be  
22 consistent with the detective.

23 Q. With the exception of those seals, is it in the same  
24 condition as when you yourself sealed that item?

25 A. Yes.



1 Q. And what is inside that item?

2 A. This contains the firearm.

3 Q. And did you yourself place the firearm in that?

4 A. Yes.

5 Q. And prior to placing the firearm into that box, was  
6 it in your sole care, custody and control?

7 A. Yes.

8 Q. And did you yourself then lodge it with the evidence  
9 vault?

10 A. Yes.

11 Q. And did it remain in your sole care, custody and  
12 control from the time you picked up the firearm to the time you  
13 lodged the entire box with the evidence vault?

14 A. Yes.

15 MS. DEMONTE: Move for admission of 100.

16 MR. FIGLER: I would conditionally not object to  
17 that. There's a question about the -- the second seals and may  
18 be something that comes up later. So for purposes of  
19 identification, that's fine, but --

20 MS. DEMONTE: Can we approach on the second seals?

21 THE COURT: I'm going to sustain the objection.

22 (Bench conference outside the presence of the jury.)

23 THE COURT: All right.

24 MS. PANDUKHT: Does counsel want to do the evidence  
25 view? You guys indicated you wanted it opened today.

1 MR. FIGLER: We didn't do the evidence.

2 THE COURT: When I -- when I sustained it, I'm  
3 thinking that thing was checked as well. It's -- for firearms  
4 eval.

5 MR. FIGLER: Right.

6 THE COURT: So you haven't met chain of custody. I  
7 don't know what you are talking about.

8 If there's another time that was stipulated to,  
9 that's different than what you are talking about.

10 MR. FIGLER: She'd can do it right now. There's a  
11 gun inside there, okay? I don't know that it needs to be  
12 admitted formally yet. We can deal with this issue later  
13 outside the presence if you want.

14 We ask just sort it all out. Maybe we can come up  
15 with a stipulation, but just for where we're at right now in  
16 the proceedings, we didn't feel comfortable just admitting it.  
17 We think it needs to be --

18 THE COURT: Right now, from what I heard, and I  
19 don't know what has been stipulated looking at evidence, okay,  
20 that's a different ball game, but just knowing that a firearm,  
21 I'm assuming the firearm has been tested as well?

22 MS. PANDUKHT: Yes.

23 THE COURT: You haven't met -- you haven't met --  
24 it's improper, I won't admit it anyway, so I'm just going to  
25 sustain it. Yeah, it's improper for you to move to admit right

1 now. You haven't met a chain of custody.

2 MS. DEMONTE: Okay. Okay. We'll just do that.

3 (End of bench conference.)

4 (Proceedings in the presence of the jury.)

5 BY MS. DEMONTE:

6 Q. I will collect 100 from you.

7 A. Sure.

8 Q. But you're the one that lodged this, and you expect  
9 the Makarov to be inside here?

10 A. Yes.

11 Q. Do you have any reason to believe that inside here  
12 is not going to be the Makarov?

13 A. No.

14 Q. Okay. Now, when the firearm was located at the  
15 toilet, was there any testing done on the toilet itself?

16 A. There was.

17 Q. Okay. And what was done on the toilet?

18 A. Latent print processing was conducted on the toilet  
19 to see if there were any latent prints located on the toilet  
20 itself.

21 Q. And what is latent print processing?

22 A. Like you've probably seen on TV if you watch CSI,  
23 typically out in the field we're using latent fingerprint  
24 powder, so we're using a powder brush and basically dusting the  
25 areas to see if there are any latent prints that are not

1 readily observable to the naked eye.

2 Q. And in this particular case, was that done to the  
3 toilet?

4 A. Yes.

5 Q. Okay. And is that what's depicted here in State's  
6 Exhibit 41?

7 A. Yes.

8 Q. Okay. And what are we looking at as far as this  
9 exhibit?

10 A. We're looking at the toilet that's already been  
11 processed for fingerprints. And once we find an area that's  
12 consistent with latent print detail, we lay down a piece of  
13 tape so that we can actually recover that section of detail.

14 So we're photographing the actual tape that's on  
15 the surface, and then that tape would be lifted -- the tape  
16 would be placed on a card so that later on, latent print  
17 examiners can look at it and try to make a comparison.

18 Q. Now, did you yourself lift that print?

19 A. I did not.

20 Q. Did you observe who did that?

21 A. Yes.

22 Q. And who did that?

23 A. Senior Crime Scene Analyst Bill Speas.

24 Q. Okay. And are you aware of where Mr. Speas is this  
25 week?

1 A. Yes.

2 Q. Where is he?

3 A. He's on vacation.

4 Q. Okay. Now, in 2006, when you recovered the firearm,  
5 did you yourself do any forensic lifting or processing of that  
6 firearm?

7 A. Back in 2006 it was our section's policy to not do  
8 any kind of latent print finger -- latent fingerprint  
9 development and/or DNA collection. It was basically our  
10 procedure to impound the firearm and have the other forensic  
11 disciplines do those, whether it be DNA or latent prints.

12 Q. So in this particular case, once you collected the  
13 firearm, you placed it in impound, and it was up to the  
14 forensic laboratory to do the processing?

15 A. Correct. We're basically handling it very carefully  
16 to preserve either the DNA or the -- for the possibility of  
17 fingerprints.

18 Q. And has that policy changed today?

19 A. Yes, it has.

20 Q. And what is the policy now today?

21 A. The crime scene analysts out in the field are  
22 actually recovering firearms from homicides, and we bring them  
23 back and we do our own DNA recovery as well as latent  
24 fingerprint development.

25 Q. But in 2006 that was not what was done?

1 A. Correct.

2 Q. Okay.

3 (Sotto voce at this time.)

4 MS. DEMONTE: I'll pass the witness.

5 THE COURT: Cross-examination.

6 MR. FIGLER: Thank you, Your Honor.

7

8 CROSS-EXAMINATION

9 BY MR. FIGLER:

10 Q. Sir, you're essentially doing a little covering for  
11 another crime scene analyst today because that person is  
12 unavailable. Is that basically what's going on?

13 A. Yes.

14 Q. Okay. So a lot of things that were done hands-on  
15 were not done by you but by Mr. Speas; is that correct?

16 A. Correct.

17 Q. Okay. So you were however at the -- at the incident  
18 scene, the one that you depicted in the -- in the photos and in  
19 the diagram as well; correct?

20 A. Yes.

21 Q. Okay. So do you recall what time this incident was  
22 called in to Metro?

23 A. I don't. Typically that's recorded by the crime  
24 scene analyst that's doing the notes and the report.

25 Q. Okay.

1           A.     So it would be Bill Speas that writes that down, but  
2 it would be sometime just prior to eleven o'clock.

3           Q.     Okay. Is there something also called an incident  
4 log or incident recall?

5           A.     Yes.

6           Q.     All right. If I were to show you one, do you think  
7 that that might refresh your recollection as to when the  
8 incident was made? Would that be a good source for you to  
9 remember?

10          A.     It might. I -- I would have to see it.

11          Q.     Okay.

12                         (Sotto voce at this time.)

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

14          THE COURT: You may.

15          MR. FIGLER: Thank you.

16 BY MR. FIGLER:

17          Q.     I'm just showing you what's marked on top an  
18 incident recall, and you should be able to identify if that's  
19 related to this particular case rather quickly. Why don't you  
20 just review that document.

21          A.     Sure.

22          Q.     And just upon cursory review, is that a document  
23 related to this investigation?

24          A.     Yes.

25          Q.     Okay. Now, reading that, you can then tell me if

1 that refreshes your recollection as to when the incident  
2 occurred.

3 A. The first time that I have on here, and I don't --  
4 I've never read one of these before, so I'm not too familiar,  
5 the first time recorded is 2100 hours, which would be nine  
6 o'clock.

7 Q. Okay. And do you recall what time -- I'll take that  
8 back from you.

9 A. Sure.

10 Q. Do you recall what time you arrived at the -- at the  
11 scene?

12 A. It was just before eleven o'clock.

13 Q. Okay. So if the incident itself was around nine and  
14 you arrived around eleven, that's about a two hour difference  
15 of things happening; correct?

16 A. Correct.

17 Q. Okay. And that's not uncommon in the investigation.  
18 You're not a first responder by any stretch of the imagination,  
19 are you?

20 A. Absolutely, that's correct.

21 Q. Okay. And so the investigation was well underway  
22 prior to your arrival by -- just when you arrived at the scene,  
23 you were able to observe that; correct?

24 A. Yes.

25 Q. And this patrol officer, you don't recall that



1 patrol officer's name who found the gun?

2 A. I don't.

3 Q. Okay. So you really don't have any information for  
4 us on how they got to that area or who directed them or what  
5 briefing they had, or anything like that?

6 A. I do. And again, it's seven years ago, so it's my  
7 recollection, but I do have a recollection of how we were --  
8 how we got to that area.

9 Q. Okay.

10 A. Specific --

11 Q. But that was from the patrol officer, I'm saying.

12 In other words, you testified on Direct that it  
13 was the patrol officer who, in all likelihood, found the weapon  
14 itself; correct?

15 A. Yes.

16 Q. All right. The question I was asking you is you're  
17 not sure what instructions that patrol officer got or how that  
18 patrol officer found himself at that location, you don't know  
19 that happened?

20 A. I do. I have a recollection of that as well.

21 Q. Oh, and can you tell me how that happened?

22 A. My recollection of it, and again it's seven years  
23 ago, is that a witness had observed a suspect that was running  
24 down North Parkhurst and so that officer took it upon himself  
25 to walk that area, and he came across the firearm.

1 Q. Thank you.

2 A. Sure.

3 Q. Now, first things first, we -- we were talking a  
4 little bit on Direct there about how that scene was fairly dark  
5 when you arrived; correct?

6 A. Correct.

7 Q. Okay. And there's no real evidentiary value, if you  
8 want to take a picture of a bullet that's in the road, you want  
9 to make sure it's illuminated; correct?

10 A. Yes.

11 Q. Because if you were to show the jury a bunch of dark  
12 pictures, that would be fairly useless; correct?

13 A. Exactly.

14 Q. Okay. So none of the pictures that were shown to  
15 you by the prosecution were without artificial illumination; is  
16 that correct? Or your illumination?

17 A. I can't say that.

18 Q. Okay. You don't depict or you don't have a log that  
19 says which ones were and which ones were not with the use of a  
20 flash or some other artificial illumination; correct?

21 A. No.

22 Q. Okay. And certainly we saw some pictures with  
23 some --

24 MR. FIGLER: May I just grab any one of those?

25 Thanks.

1 BY MR. FIGLER:

2 Q. I'm going to show you what's been State's Exhibit 5.  
3 For an instance, we see some streetlights -- they weren't in  
4 their natural state star bust -- star bust streetlights like  
5 that; correct?

6 A. Correct.

7 Q. Okay. In fact, there were some rather dark areas  
8 throughout the -- the area that you were investigating;  
9 correct?

10 A. Yes.

11 Q. Okay. Now, there was a photo of a -- a bullet --  
12 I'm sorry.

13 (Sotto voce at this time.)

14 BY MR. FIGLER:

15 Q. Exhibit 33, State's Exhibit 33, there is a hand with  
16 a bullet in it. Do you remember testifying about that?

17 A. Yes, sir.

18 Q. Is that your hand or someone else's hand?

19 A. Chances are it's my hand.

20 Q. Okay.

21 A. But it's in a glove so it's tough to tell.

22 Q. Okay. So there's no log that says whose hand is in  
23 what at any time, you don't keep records of that degree of  
24 detail?

25 A. No, I'm responsible for the evidence. So like I

1 said, chances are it's my hand.

2 Q. Okay.

3 A. And I typically would do the bullet recovery, so I'm  
4 fairly certain it's my hand, but I couldn't say a hundred  
5 percent.

6 Q. All right. And you wear gloves on the scene to  
7 avoid, as best you can, contamination; isn't that correct?

8 A. Yes.

9 Q. And what is contamination for the -- so the jury  
10 knows what we're talking about there?

11 A. Cross-contamination would be, for example, handling  
12 one item of evidence and then, without changing gloves, going  
13 and handling a second item -- item of evidence, so we could  
14 cross-contaminate, say, the DNA.

15 Q. Okay.

16 A. So it would be transferred from one item of evidence  
17 through the glove onto a second item.

18 Q. And you would also agree that it's important to  
19 avoid contamination in that you want to avoid interfering with  
20 the ability to take latent prints from an item of potential  
21 evidentiary value; correct?

22 A. Yes.

23 Q. Okay. But that does sometimes happen?

24 A. It's the nature of the business. You have to handle  
25 the -- the items of evidence, so we do it just as carefully as

1 possible and change our gloves as frequently as we can.

2 Q. Okay. But you lose evidence sometimes, or things of  
3 evidentiary value just because, like you said, it's the nature  
4 of the beast?

5 A. Yes.

6 Q. Okay. So CSIs or CSAs always are instructed to be  
7 wearing these gloves; correct? That's protocol?

8 A. No, not necessarily always.

9 Q. Okay. It's a better practice for them to be wearing  
10 the special blue gloves though; correct?

11 A. Depending on the item of evidence, yes.

12 Q. Okay. And it's also a good protocol for them to be  
13 changing gloves on a regular basis between handling one item  
14 and another item; correct?

15 A. Yes.

16 Q. You would call that a general protocol for CSAs;  
17 correct?

18 A. Yes, absolutely.

19 Q. Now, sometimes you get other personnel from Metro  
20 who might not be as familiar or follow those protocols; isn't  
21 that correct?

22 A. We've hounded people for so long that most people  
23 are familiar, from patrol officers to detectives, et cetera.

24 Q. Okay.

25 A. So it's -- it's fairly common practice across the

1 department by now.

2 Q. The patrol officer who found the gun, do you have  
3 personal knowledge that he followed the protocol?

4 A. I don't, but generally speaking that's our first  
5 question.

6 Q. Okay. Is that documented anywhere? Do you do a  
7 recorded interview or a written interview or a written  
8 statement that says that patrol officer wearing the correct  
9 gloves, using them the correct way checked? Do you have that?

10 A. I know Bill Speas had the initial contact.

11 Q. So Mr. Speas would be the better one to ask that  
12 question?

13 A. Absolutely.

14 Q. So as you sit here today, you don't have personal  
15 knowledge of that?

16 A. Correct.

17 Q. Thank you.

18 And can you tell me how many people handled or  
19 touched or prodded that gun in any way from that evening before  
20 you came upon it?

21 A. No. There's no way to tell.

22 Q. Can you tell me how many Metro personnel touched,  
23 handled or prodded that item that evening?

24 A. No.

25 Q. Do you have the names of everybody who, from Metro,

1 who touched, prodded and poked that item?

2 A. Before it came into my custody?

3 Q. That's correct.

4 A. I would seriously doubt there would be one because  
5 they'd hear about it from us. And typically, like I said,  
6 that's the very first question that we'd ask the patrol officer  
7 is did -- did he touch it.

8 Q. And the answer Mr. Speas has?

9 A. Again I'm assuming, that would be my question --

10 Q. I don't want you to assume.

11 A. -- of that -- that officer.

12 Q. Okay.

13 A. My first -- very first question would be: Did you  
14 ham the firearm in any way?

15 Q. Okay. But you weren't responsible for asking that  
16 question in this particular case?

17 A. No.

18 Q. We saw pictures of those tanks. You were able to  
19 personally observe those toilet tanks; correct?

20 A. Yes.

21 Q. They were fairly heavy items; is that correct?

22 A. I didn't try to lift them.

23 Q. Okay. Did they look like they were of normal weight  
24 for a toilet bowl?

25 A. Sure.

1 Q. The whole commode?

2 A. Sure.

3 Q. Okay.

4 A. Minus the toilet tanks, the tank tops, I don't  
5 believe that they were there.

6 Q. But you weren't there first, so you didn't see --  
7 you weren't the first one to see what it looked like initially;  
8 right?

9 A. Correct.

10 Q. Do you know what time the toilet bowl was found or  
11 the gun was found?

12 A. Again, to the best of my recollection, after seven  
13 years, it was fairly early on in the investigation.

14 Q. So it might have been before you arrived?

15 A. It may have been, sure.

16 Q. Now, on the Direct Examination, the prosecutor asked  
17 you about DNA testing, you would do DNA testing; is that  
18 correct?

19 A. Yes.

20 Q. Okay. And you're saying that the Metropolitan  
21 Police Department has changed their policy as to who is  
22 responsible for the -- the testing since 2006; correct?

23 A. The actual collection, not the testing.

24 Q. Okay. Now, DNA was still a very important thing in  
25 2006, was it not?



1           A.     Yes, but we've gone leaps and bounds above 2006 to  
2 today.

3           Q.     Okay. The thing about preservation of DNA evidence  
4 is that, if there's enough, you can test it five years later,  
5 six years later, ten years later?

6           A.     Potentially, yes.

7           Q.     Okay. But in 2006, they were still happy to get DNA  
8 because that would help them prove their case; isn't that  
9 correct?

10          A.     Yes.

11          Q.     Okay. It would have great evidentiary value to find  
12 some DNA on something like a gun; is that correct?

13          A.     Yes.

14          Q.     That doesn't change from 2006 to 2013?

15          A.     That -- no, that doesn't change.

16          Q.     Okay. Your -- your unit did not do any DNA testing  
17 on this particular gun; correct?

18          A.     Our section does not do the testing, correct.

19          Q.     And your unit did not do the gathering or the  
20 swabbing of the item to do any DNA testing on the gun; correct?

21          A.     Correct.

22          Q.     And when I said swabbing, just so everybody know,  
23 swabbing is one of the techniques used by crime scene analysts  
24 now or anyone who's gathering evidence to remove DNA from an  
25 item; isn't that correct?

1 A. Yes.

2 Q. Okay. And it looks a little bit like a -- like a  
3 Q-Tip that people would be familiar with, but it's done in a  
4 certain way to maintain the -- the integrity of the substance  
5 being taken for later testing; correct?

6 A. Yes.

7 Q. Okay. But back in '06 your division or your unit  
8 wasn't responsible for doing that?

9 A. For homicide?

10 Q. For homicide cases.

11 A. Firearms, correct.

12 Q. Okay. Now, let's take this bag as an example.  
13 Showing you what's been admitted as State's 99, this is a  
14 typical item of --

15 MR. FIGLER: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. FIGLER:

18 Q. This is a typical item, sir, of evidence impounding,  
19 in other words, you take the item and you stick it in these  
20 brown paper bags, that's pretty much every single case has  
21 probably a brown paper bag, would that be fair?

22 A. Yes.

23 Q. And there are a lot of markings on the outside of  
24 the brown paper bag; correct?

25 A. Yes.

1 Q. And that's to help in the investigation, help the  
2 prosecution, help the defense, help everybody identify what's  
3 in a bag at any time; correct?

4 A. Yes.

5 Q. Okay. And when items go on an impound log, I think  
6 you testified, they enter the information from each individual  
7 paper bag; correct?

8 A. Yes.

9 Q. Okay. So if I were to hand you the impound log on  
10 this particular case, it would identify a package and an item  
11 number, and then you would have great confidence of what exists  
12 in that package and item number if you were to have it in your  
13 hands; correct?

14 A. Yes.

15 Q. Okay. So for instance on this package, what is  
16 the -- the package number and the items contained within?

17 A. The package number is Number 1, and the items  
18 contained are bullets and, like I said previously, bullets and  
19 cartridge cases.

20 Q. Okay. And they're listed individually as Item 1,  
21 Item 2, Item 3, Item 4?

22 A. Correct.

23 Q. And sometimes items are listed by a letter; correct,  
24 1-A, 1-B, something like that?

25 A. Yes, correct.

1 Q. Okay. But it gives you great certainty as to what's  
2 in the bag so you don't have to open it every single time;  
3 correct?

4 A. Yes.

5 Q. Okay. So I'm shaking this bag. And reading what's  
6 on there, you're pretty confident that there's going to be  
7 bullets and cartridges inside here; correct?

8 A. Yes.

9 Q. You don't think that if I opened it right now there  
10 would be, you know, gumdrops in there or something like that?

11 A. Correct.

12 Q. Okay. That would come as a great shock to you?

13 A. Yes.

14 Q. Because you use all these controls to be able to  
15 identify everything; correct?

16 A. Yes.

17 Q. Okay. And, sir, after your involvement out at the  
18 scene documenting what you did and the things that you were --  
19 you observed or can testify as to what Mr. Speas did, did you  
20 have any further role in this investigation?

21 A. Other than the evidence and the diagram, no.

22 Q. Okay. Did you collect any other evidence or process  
23 any other evidence in this particular case?

24 A. No.

25 Q. Okay. There was a -- a vehicle that I think might

1 have been involved in this case. Did you have anything to do  
2 with the investigation or the processing of that vehicle?

3 A. I did not.

4 Q. So as far as your role in finding out more about  
5 this or tracking down information that would lead you to find  
6 who did it or any of that stuff, you -- you testified as to  
7 your entire role in this particular case today?

8 A. Yes.

9 Q. Okay.

10 MR. FIGLER: No further questions, Your Honor.

11 THE COURT: Redirect.

12 MS. DEMONTE: Thank you.

13 May I approach the clerk again?

14 THE COURT: You may.

15 MS. DEMONTE: May I approach the witness again?

16 THE COURT: I'm sorry?

17 MS. DEMONTE: May I approach the witness again?

18 THE COURT: You may.

19 (Sotto voce at this time.)

20

21 REDIRECT EXAMINATION

22 BY MS. DEMONTE:

23 Q. Sir, handing you Exhibit 99, which has already been  
24 admitted into custody, counsel was asking you what you would  
25 expect to find in there. Can you please take the scissors and

1 open it without breaking any seals?

2 A. Yes.

3 Q. Thank you.

4 A. (Witness complies.)

5 Q. And have you now opened the bag?

6 A. Yes.

7 Q. Can you please remove the contents.

8 A. (Witness complies.)

9 Q. And for the record you've removed approximately ten  
10 items?

11 A. Yes.

12 Q. Okay. Now, those items, do they actually have  
13 numbers across the top?

14 A. Yes.

15 Q. And did you yourself do those numbers?

16 A. Yes.

17 Q. What do those numbers represent?

18 A. They represent the item number that's contained in  
19 that vial.

20 Q. And is that what you documented here on the front?

21 A. Yes.

22 Q. Okay. And are those in the same or substantially  
23 the same condition as from when you placed the items inside  
24 them and numbered them to when you placed them in the bag and  
25 documented what they were?

1           A.     Yes. The only exception is there's a -- it looks  
2 like the event number and some other notation on it with tape  
3 placed over it. But other than that, yes, it's in -- they're  
4 all in the same condition.

5           Q.     And what do you recognize that tape placed over it  
6 to be?

7           A.     Well, there's the even number, like I stated,  
8 repeated on -- I had written it prior to as repeated.

9                     And the second -- it looks like it's just the  
10 package number and a dash and the item number itself.

11                    So just again repeated and then tape over them.

12          Q.     Okay. So with the exception of those additional  
13 tape markings, those are in substantially the same condition as  
14 when you placed them in?

15          A.     Yes.

16          Q.     Okay. And they are actually labeled 1 through 9,  
17 and 11; correct?

18          A.     Correct.

19          Q.     And what's the significance of those numbers?

20          A.     They represent the item numbers themselves for the  
21 items that are placed inside those vials.

22          Q.     And they -- do they correspond with your diagram as  
23 well?

24          A.     Yes.

25          Q.     Okay. So Item 1 on the vial is Item 1 on your

1 diagram that you found?

2 A. Correct.

3 Q. And why did we skip Item 10?

4 A. Item 10 is actually the firearm itself.

5 Q. And the firearm is listed on your diagram as 10?

6 A. Ten, correct.

7 (Sotto voce at this time.)

8 THE COURT: Well, actually they are admitted.

9 MS. DEMONTE: Oh, contents.

10 THE COURT: They're the contents so they are  
11 admitted.

12 MS. DEMONTE: Okay. So I move -- officially move  
13 for admission of --

14 THE COURT: You can't move to admit. They're in.

15 MS. DEMONTE: Okay. Thank you, Your Honor.

16 BY MS. DEMONTE:

17 Q. Now, counsel was asking you about DNA and  
18 preservation and cross-contamination.

19 And you're wearing the gloves to make sure that  
20 you're not placing your DNA on the item; correct?

21 A. Either our DNA or other potential DNAs, say, from  
22 other items of evidence. We're constantly changing our gloves,  
23 correct.

24 Q. In your training and experience, is it possible to  
25 place a fingerprint from one item to another?



1 A. No, not that I've ever heard.

2 Q. Okay. Now, counsel was asking you if, back in 2006,  
3 DNA was around.

4 A. Sure.

5 Q. And you said it's made leaps and bounds since then.

6 A. Absolutely.

7 Q. What types of leaps and bounds?

8 A. The biggest leaps and bounds is the sensitivity of  
9 the testing equipment to the DNA itself.

10 In other words, they need far less DNA today  
11 than they did back in 2006 to actually develop a profile.

12 Q. Are you familiar with what touch DNA is?

13 A. Yes.

14 Q. And what is touch DNA?

15 A. Touch DNA basically describes you're coming into  
16 contact with an item, say in this case a gun, and just through  
17 normal action, especially with sharp edges on a firearm for  
18 instance, you're going to leave either, say, blood if you cut  
19 yourself, or just normal sloughing of skin. You're very liable  
20 to leave some portion of your DNA behind on that item.

21 Q. Now, with regard to just skin itself, is there a  
22 certain level of sensitivity that's required in the testing?

23 A. Yes.

24 Q. Okay. Was that something that was -- you were  
25 capable of in 2006?

1           A.     That would be a much better question for a DNA  
2 person but, yes -- I mean it's certainly changed.

3           Q.     Okay. In 2006 did you, as a crime scene department,  
4 swab for touch DNA?

5           A.     I don't recall if we were doing it in 2006. I can't  
6 recall.

7           Q.     That's okay.

8                     Now, counsel was asking you about whether or not  
9 Officer Moreno had indicated whether or not he touched the gun.  
10 You yourself didn't have a conversation with Officer Moreno?

11          A.     Correct.

12          Q.     Had there been some conversation where he indicated  
13 he touched it, was there something additional you would have  
14 notated?

15          A.     Absolutely.

16          Q.     And why is that?

17                   MR. FIGLER: I'm just going to object on  
18 speculation. It calls for facts not in evidence.

19                   THE COURT: Sustained.

20                   MS. DEMONTE: Okay.

21                   THE COURT: It's definitely facts not in evidence.  
22 BY MS. DEMONTE:

23          Q.     Counsel had asked you if Bill Speas would be the  
24 correct person to ask that question to; correct?

25          A.     Yes.

1 Q. What about Officer Moreno himself?

2 A. If he would be -- I'm sorry, can you -- can you  
3 rephrase that?

4 Q. Would he be equipped to answer whether or not he  
5 touched the firearm?

6 A. Yeah, absolutely.

7 MS. DEMONTE: Nothing further, pass the witness.

8 THE COURT: Recross.

9 MR. FIGLER: One question.

10

11 RECROSS-EXAMINATION

12 BY MR. FIGLER:

13 Q. So Package 10 is the box of the gun; correct?

14 A. Correct. It contains the gun, magazine, and two  
15 cartridges.

16 Q. So there could be a 10-A, B and C inside that  
17 package. Is that what's in there?

18 A. That's possible. Someone could have relabeled.  
19 Because if -- because I labeled it Item 10, if someone later on  
20 was going into that package, they could decide to separate out  
21 those components, the cartridge -- cartridges, the magazine,  
22 and label them 10-A, 10-B, 10-C, 10-D, correct.

23 Q. But it's always going to be Item 10 for consistency,  
24 you guys need to have that; correct?

25 A. It's nice -- yeah. I mean you can -- you can

1 renumber it as long as you're not covering over an item number  
2 that I've already used under my P number.

3 Q. All right.

4 A. So we -- we have actually changed that. We used to  
5 do the P number and -- the P number and a package number, if  
6 that makes sense, and then start 1 through however many items  
7 you have.

8 Q. Okay. But as we sit here today, Package 10 is gun;  
9 correct?

10 A. Package 10 would be the gun. And as I marked it,  
11 the firearm, the magazine, and two cartridges.

12 MR. FIGLER: Thank you.

13 No further questions.

14 THE COURT: All right. Ladies and gentlemen of the  
15 Jury, it's your turn, if you have any questions, for this crime  
16 scene analyst, we are allowed, as I told you in the opening  
17 instructions, to ask questions of a witness.

18 The procedure we use is that you would write it down  
19 on your notepad. You need to have your name and your badge  
20 number, the current badge number, so however you're sitting,  
21 1 through 14, on it.

22 If you don't have any, that's fine, too, but if you  
23 do, you will hand those to the marshal and I will see the  
24 attorneys at the bench.

25 Are there any questions? Is anybody writing them

1 down or can I excuse this witness?

2 Any questions?

3 (Affirmative response from the jury panel.)

4 THE COURT: Yes. Go ahead, take your time.

5 (Bench conference outside the presence of the jury.)

6 THE REPORTER: I can't hear.

7 THE COURT: The procedure I use is that I'll say for  
8 the record: Do you know the number and what juror? And then I  
9 basically show it to defense, read it, or you can all read it  
10 together, but just say: I object. Or no, no objection. Or  
11 objection, and state your objection.

12 MR. FIGLER: Okay.

13 THE COURT: That's all I need. I don't want to  
14 discuss.

15 MR. FIGLER: No, no.

16 THE COURT: I read it first. So if you make an  
17 objection, I can rule. Okay?

18 MR. FIGLER: And then it becomes a Court exhibit,  
19 yeah.

20 THE COURT: Always, sure, yeah. No, of course.

21 MR. FIGLER: I just want to make sure.

22 THE COURT: A lot of time people -- people want to  
23 discuss it, and I don't want to discuss it. I just want to  
24 rule on it and then I want to ask it, if it's proper. And if  
25 it's not proper, then I make a whole record outside the

1 presence of why it is or isn't --

2 MR. GOODMAN: Right.

3 THE COURT: But I don't like a lot of discussion on  
4 a simple evidentiary objection.

5 And most of the time I find that nobody objects, so  
6 it's a rather quick procedure of just reading it.

7 MR. FIGLER: I can't imagine I'd object to a  
8 question from a CSA, but that's it.

9 MR. GOODMAN: First time it happened.

10 THE COURT: Actually on the CSI probably on the most  
11 objectionable, yes, because they ask things from different  
12 witnesses that this witness would not be competent to talk  
13 about, but I guess we'll find out.

14 This one is from juror number (inaudible) -- I'm not  
15 sure what the first two words say, something bullet.

16 MR. FIGLER: Term bullet.

17 THE COURT: Term bullet.

18 MR. FIGLER: Is at the complete --

19 THE REPORTER: I can't hear.

20 THE COURT: They read it. The term bullet then is  
21 the first one.

22 MR. FIGLER: Right.

23 THE COURT: I just can't read those first two  
24 letters.

25 MR. FIGLER: No objection.

1 THE COURT: No objection.

2 MS. PANDUKHT: No.

3 THE COURT: Okay. This is from -- can I -- can I  
4 get them to write their name on it? They just put Number 5.  
5 Thank you.

6 This is from Badge Number 6.

7 MR. FIGLER: No objection.

8 MS. PANDUKHT: No objection.

9 THE COURT: This one is from number 14,  
10 Sandra Gomez. Is there an objection?

11 MS. PANDUKHT: Yes.

12 THE COURT: Is there an objection, defense?

13 MR. FIGLER: No objection from defense, but I  
14 understand if State's objecting.

15 THE COURT: I'm going to sustain the objection.  
16 Well, wait until you get this one, Jacque Wiese,  
17 Number 5.

18 MR. FIGLER: Can I go first?

19 THE COURT: No.

20 MS. PANDUKHT: This -- let me.

21 THE COURT: Let me say, what did I say?

22 MS. PANDUKHT: Objection. I can't provide a  
23 possible reason for the objection.

24 THE COURT: Objection or no objection? Is there an  
25 objection?

1 MS. PANDUKHT: Okay. I would object.

2 THE COURT: Okay. Sustained.

3 Did you have an objection for the record?

4 MR. FIGLER: No.

5 THE COURT: No objection by the defense.

6 MS. PANDUKHT: Can I tell you?

7 THE COURT: Number -- you know what --

8 MR. FIGLER: Yeah.

9 THE COURT: This is -- could I get --

10 (Sotto voce at this time.)

11 THE COURT: Marshal Ellis, I'm sorry, she needs to  
12 write her name on this one too. Sorry. She made two  
13 questions. I would prefer to have her name on it too.

14 THE REPORTER: I can't hear you guys.

15 (Sotto voce at this time.)

16 MS. PANDUKHT: Judge, can we state the reasons for  
17 our objection when we make our record afterwards?

18 THE COURT: Yeah, but I mean itself -- I mean, I'll  
19 read the ones I don't put into evidence, does that make sense?  
20 Because I'm reading it. If I -- if I ask them --

21 MR. FIGLER: If the State has concern she can make a  
22 record.

23 MS. PANDUKHT: No.

24 THE COURT: I also said it.

25 MR. FIGLER: Just generally.



1 THE COURT: Yeah. This is from Number 5,  
2 Jacque Wiese.

3 MR. FIGLER: That's better for ballistics.

4 THE COURT: Any objection? Objection, yes or no?

5 MS. PANDUKHT: Okay. Objection, because another  
6 witness will tell us.

7 MR. FIGLER: Okay.

8 THE COURT: Sustained. Thank you.

9 Can you take me off bench conference? Thank you.

10 (End of bench conference.)

11 (Proceedings in the presence of the jury panel.)

12 THE COURT: All right. This is a question from  
13 Badge Number 6, Angelica Numez -- sorry. Boy, I really need  
14 to -- I have to read this.

15 Why is there tape over two of the items in Package  
16 Number 1?

17 Do you need to see Package 1 to know what they're  
18 talking about?

19 THE WITNESS: I believe I know what they're talking  
20 about. The -- there's scotch tape over the vial, that's what  
21 they're referring to?

22 It's been placed over the vial, my guess is, to try  
23 to protect -- the pens that we have to write on the vials  
24 themselves oftentimes run, so if you try to handle it soon  
25 after you've written on the vial, it's not a great surface for

1 writing, so a lot of that will just smudge right off.

2 It's typically why I use a Sharpie and a thick  
3 Sharpie, so that's my guess as to why they've done that.

4 If you use a felt tip marker, for example, a very  
5 thin felt tip marker or a pen, it will smudge right off if you  
6 touch it, so they probably placed the tape over it to preserve  
7 whatever -- whatever they've written on it.

8 THE COURT: All right. This is from Juror Number 7,  
9 Keith Trombetta: The term bullet, is that the complete unfired  
10 shell or the tip or projectile?

11 THE WITNESS: That's a good question.

12 It's -- it's easy to confuse because everyone refers  
13 to it on TV and common parlance, the bullet as the entire  
14 cartridge.

15 But that's correct, the bullet is actually the top  
16 portion of the complete cartridge, and that's what would be  
17 forced out of the barrel.

18 If that answers that question.

19 THE COURT: Any follow up by the State from the  
20 jurors' questions?

21 MS. DEMONTE: No, Your Honor.

22 THE COURT: Any from the defense?

23 MR. FIGLER: No, Your Honor.

24 THE COURT: Thank you very much for your testimony,  
25 sir. You're excused.

1 THE WITNESS: Thank you, Your Honor.

2 (Whereupon, at this time the witness was excused.)

3 THE COURT: This is a good time for our first break  
4 since we had opening and a longer witness.

5 What I'm going to do now -- let me think, yeah.

6 During this recess you're admonished not to talk  
7 or converse among yourselves or with anyone else of  
8 any subject connected with the trial;

9 Read, watch, or listen to any -- whatever  
10 commentary on the trial, or any person connected  
11 with this trial, by any medium of information,  
12 including, without limitation, newspaper,  
13 television, radio or internet;

14 Or form or express any opinion on any subject  
15 connected with the trial until the case is finally  
16 submitted to you.

17 We'll take a ten-minute break, so we'll see you  
18 back at five till three.

19 And the attorneys will stay on the record.

20 MR. FIGLER: Your Honor, the jurors are indicating  
21 whether or not to leave the book in the jury room or take it  
22 with them.

23 THE COURT: No. Leave it right there on your seats.  
24 Okay. Nobody looks at them. But you're not supposed to take  
25 them with you, ever. It's your secret.

1 THE MARSHAL: All rise.

2  
3 (The following proceedings were had in open  
4 Court outside the presence of the jury panel:)

5  
6 THE COURT: Be seated.

7 We're outside the presence.

8 I want to make a record of three questions that were  
9 not asked.

10 Two of them were from Jacque Wiese, Juror Number 5.  
11 The first one is: Who is the gun registered under?

12 This witness -- I sustained the objection. This  
13 witness is not competent to testify as to who the gun is  
14 registered under. There were objections made.

15 The next one, from Jacque Wiese, Number 5, is: How  
16 many bullets can a gun hold at any one time?

17 There were objections by both parties to this.

18 This witness is not a firearm expert. I believe the  
19 State has a firearm expert coming in, is that correct, in this  
20 case?

21 MS. PANDUKHT: Correct, Your Honor.

22 THE COURT: And so it's more properly answered by  
23 the firearm expert and not this particular witness.

24 So I sustained the objection.

25 The next question is from Sandra Gomez, Juror

1 No. 14: How do we know if anyone else touched gun since no one  
2 can confirm?

3 Sustained the objection.

4 It's speculative. It calls for speculation.

5 MR. FIGLER: And both sides know there are experts  
6 in that area so that is a better witness, too, Your Honor.

7 THE COURT: As well, yours is a fingerprint expert  
8 is probably a better expert, and I believe the State has a  
9 fingerprint expert coming in as well.

10 MS. PANDUKHT: Correct.

11 THE COURT: So that may be very well -- more  
12 appropriate for another expert, but it calls for speculation  
13 for this particular -- or competency of this particular  
14 witness.

15 All right? All right. So I'm going to give you a  
16 break unless you have something you wanted to bring to my  
17 attention right now, either side?

18 MR. FIGLER: The State just filed a third amended  
19 indictment. It only has corrections with spelling errors, we  
20 have no objection to that.

21 THE COURT: With that, the amended is now filed and  
22 it's granted.

23 Anything else then?

24 MR. FIGLER: No, Your Honor.

25 MS. PANDUKHT: No.

1 THE COURT: All right. Thank you.

2 THE MARSHAL: All rise.

3 (Recess in proceedings.)

4  
5 (The following proceedings were had in open  
6 Court in the presence of the jury panel:)

7  
8 THE COURT: All right. Please be seated. Good  
9 afternoon -- we're in the afternoon. In the presence of the  
10 jurors, Case Number C262966, State of Nevada versus  
11 Evaristo Garcia.

12 Let the record reflect the defendant's present with  
13 his attorneys, Mr. Figler and Mr. Goodman. And for the State,  
14 Ms. Pandukht and Ms. Demonte.

15 So it's still the State's case in chief, and if the  
16 State would call their next witness.

17 MS. DEMONTE: The State calls Detective  
18 Richard Moreno.

19  
20 RICHARD MORENO

21 called as a witness on behalf of the State,  
22 having been first duly sworn,  
23 was examined and testified as follows:  
24

25 THE WITNESS: Yes, I do.

1 THE CLERK: Please be seated.

2 THE WITNESS: Thank you.

3 THE CLERK: State and spell your full name for the  
4 record, please.

5 THE WITNESS: Okay. It's Detective Richard Moreno,  
6 R-I-C-H-A-R-D, M-O-R-E-N-O.

7

8 DIRECT EXAMINATION

9 BY MS. DEMONTE:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Do you work for the Las Vegas Metropolitan Police  
13 Department?

14 A. Yes, I do.

15 Q. How long have you worked for the department in  
16 total?

17 A. A little over 18 years.

18 Q. And how long have you been a detective?

19 A. Currently a little over three years.

20 Q. What unit are you assigned to currently?

21 A. I'm in the Gang Crime Bureau.

22 Q. So prior to that were you in patrol?

23 A. Yes, I was.

24 Q. So on February 6th, 2006, at approximately nine  
25 o'clock p.m., you were in the patrol division?

1 A. Yes, I was.

2 Q. Do you remember what area command?

3 A. Yes, in the Northeast Area Command.

4 Q. So on that date and time, on February 6th, 2006, at  
5 approximately 9:02 p.m., did you learn of an incident that had  
6 taken place at the Morris Sunset East High School?

7 A. Yes, I did.

8 Q. And was that located at 3801 East Washington?

9 A. Yes, it is.

10 Q. Is that within Clark County, Nevada?

11 A. Yes, it is.

12 Q. So when you were -- when you received the phone  
13 call, were you technically dispatched, or did you just arrive  
14 on your own?

15 A. I believe I arrived on my own. I went to that  
16 location, arrived on my own.

17 Q. Is there a method within the department in which  
18 officers can communicate and learn of information?

19 A. Yes, I can.

20 Q. What is that system called?

21 A. That's through my mobile -- we call them MCTs,  
22 mobile computer -- computer terminal.

23 Q. Does that have any relationship to when people call  
24 in 911 calls?

25 A. Yes. That's in part of it, yes, I'm able to read



1 that information.

2 Q. So if somebody calls in to 911, and there's an  
3 incident that officers are being dispatched to, would you be  
4 able, and other officers, be able to hear about that  
5 information?

6 A. Yes. You can hear it being broadcast over the air  
7 by the dispatchers and also typed verbatim from the dispatchers  
8 receiving that information. They update it as quickly as they  
9 can on the MCT. We're able to read that.

10 Q. And are there logs that are generated that show  
11 which officers are dispatched and involved with a particular  
12 incident as well as the times and locations?

13 A. Yes, there is.

14 Q. Okay. And those are called what exactly?

15 A. I believe it's called CAD. I don't know exactly  
16 what the acronym stands for.

17 Q. But that's the abbreviation, C-A-D?

18 A. Yes.

19 Q. Okay. So is there a specific event number also that  
20 is associated with each and every case?

21 A. Yes, there is.

22 Q. And so on this particular date, do you remember the  
23 time in which or how long after you were assigned to this case?

24 A. I was assigned, I believe, at 2110 hours.

25 Q. So what time would that be?

1 A. I'm sorry, 9:10 p.m.

2 Q. And about how long approximately did it take you to  
3 arrive at the location of the school?

4 A. At approximately 2121 hours, which is 9:21 p.m.

5 Q. So that's 20 minutes after the initial 911 call came  
6 out?

7 A. Yes, it was.

8 Q. Okay. So when you arrived at the scene at about  
9 9:21 p.m., were there any other police officers and personnel  
10 already at the scene?

11 A. Yes, there were several officers and other people at  
12 the scene. So I obtained a more outer position.

13 Q. And was -- when you already arrived, was the scene  
14 already secured, and was there taping put up and things like  
15 that?

16 A. No. I assisted on putting some of that tape up on  
17 the outer perimeter.

18 I could tell that there was ample manpower with  
19 inside the inner perimeter or close to where the crime scene  
20 had occurred, so I just assumed a more outer position or an  
21 outer perimeter position on the particular crime scene.

22 Q. So was there anything else that you personally did  
23 in terms of the crime scene in that area?

24 A. Yeah. Just -- I -- I protected the outer areas of  
25 the crime scene, more positioned on Washington and Parkhurst

1 area. I remember directing traffic away from that particular  
2 area.

3 Q. Let me show you what has already been admitted into  
4 evidence as State's Exhibit Number 1. Do you recognize this  
5 aerial photograph?

6 A. Yes, I do.

7 Q. Could you explain to the jury what area this  
8 depicts?

9 A. This describes the area where this particular  
10 incident occurred, at 3801 East Washington.

11 Q. So here we have Washington Avenue and then this  
12 street over here?

13 A. Yes, Virgil.

14 Q. And what about this street over here?

15 A. And Parkhurst.

16 Q. Let me show you a close-up to make it a little  
17 easier. This is State's Exhibit 2. And this is a close-up  
18 area of where the school is, and could you point out where the  
19 school is located, Morris Academy?

20 A. The school -- am I pointing at this or?

21 Q. Yeah, go ahead, you can mark it on your computer  
22 screen.

23 A. This school is located -- I guess I can touch it,  
24 right?

25 Q. Yeah, you can. If you touch the screen it will show

1 up.

2 A. Does it? Okay, I'm sorry.

3 Right in this particular area is where the  
4 school is at (indicating).

5 And I was positioned in this area here  
6 (indicating), at Parkhurst and Washington.

7 Q. Okay. Did there come a point when you began to go  
8 somewhere else outside of the immediate area right there?

9 A. Yes. After I was relieved after that of my  
10 position, I then assumed a position on Parkhurst and started  
11 walking on Parkhurst.

12 Q. Why did you decide to walk south on Parkhurst?

13 A. Information was broadcast earlier that the suspect  
14 had possibly ran westbound on Washington.

15 Sitting out there for two hours, through my  
16 training and experience, it's often that suspects flee a  
17 particular area, may discard clothing or weapons, or articles  
18 related to the particular crime that I'm in.

19 So I just started walking the area on Parkhurst,  
20 and I'm going to point on the screen here, from Washington, I  
21 decided to walk directly southbound on Parkhurst from  
22 Washington.

23 Out there on -- on the sidewalk was trash that  
24 was obviously being discarded for pickup. And I just started  
25 looking in the particular yards, and also on the curb, and in

1 that particular case I started looking into the trash.

2 Q. Okay. Now, first of all, you kind of drew an area.  
3 Do you know the address that -- of this house?

4 A. I believe it was 865 Parkhurst.

5 Q. And could you point the house out?

6 A. I'm not positive if it was the first one or second  
7 one, but I know it was right here (indicating) in this area  
8 where the -- the trash was discarded.

9 Q. So do you remember it being kind of close to  
10 Washington Avenue?

11 A. Oh, yes, absolutely. I could see Washington right  
12 there.

13 Q. And when you say trash, what in particular kind of  
14 trash are you talking about?

15 A. It was -- there was toilets, used toilets, older,  
16 soiled toilets sitting on the curb, and there was newer boxes  
17 of probably newer toilets sitting right there on the curb also  
18 next to these older toilets.

19 Q. And did you see anything of any significance in that  
20 area?

21 A. Yeah. I looked inside of one of the toilets, and I  
22 immediately saw a semi-auto handgun, a blue steel or black  
23 semi-auto handgun.

24 Q. Did you see a lid on the toilet?

25 A. No, I don't believe so.

1 Q. And when you're saying toilet, is it the part where  
2 you sit on or the tank?

3 A. No, it was the tank, I'm sorry.

4 Q. Let me show you some photographs that have also been  
5 admitted into evidence.

6 A. Okay.

7 Q. This is State's Exhibit Number 36. Do you recognize  
8 this?

9 A. Yes, I do.

10 (Sotto voce at this time.)

11 MR. FIGLER: Thank you.

12 BY MS. DEMONTE:

13 Q. So please describe what you recognize, if anything,  
14 in this photograph.

15 A. This is the same toilets that I observed on that  
16 evening that were sitting on a curb in front of 865 Parkhurst.

17 Q. And I see that there is a mailbox in front of the  
18 residence. What is the number on the mailbox?

19 A. I believe --

20 Q. And I can zoom it in if you'd like?

21 A. 865.

22 Q. Okay. And could you point to the -- the toilet that  
23 you found the item in?

24 A. I don't recall whether it was the first one or  
25 second one.

1 Q. Did both toilets have the -- the same lack of lid?

2 A. Yes.

3 Q. So is this -- when you came up on these toilet  
4 tanks, is this exactly how they looked?

5 A. Yes, they are.

6 Q. So neither one had a lid?

7 A. Correct.

8 Q. Okay. And I see here that there is a sidewalk here.  
9 Was this exactly where they were located on the sidewalk?

10 A. Yes, they were.

11 Q. Let me show you State's Exhibit Number 39. This is  
12 another view. I'm going to zoom back out.

13 Okay. Is this another view of the evidence that  
14 you saw?

15 A. Yes, it is, ma'am.

16 Q. Okay. And is there a label on here on the box that  
17 we can see?

18 A. Yes. It says: American Standard Total Toilet Set.

19 Q. Now, also I don't know if it's even possible to see  
20 it, but can you see a stop sign here with a street sign?

21 A. That is a stop sign of -- that is Washington.

22 Q. Okay. So you know that that's Washington Avenue?

23 A. Yes, I do.

24 Q. Okay. Showing you State's Exhibit Number 37. Do  
25 you recognize what is depicted in this photograph?

1           A.     Yes. That is the semi-auto handgun that I observed  
2 that evening.

3           Q.     Was there any water inside of the toilet tank?

4           A.     No, there wasn't.

5           Q.     And when you observed this firearm, is this in the  
6 exact position that you first observed it?

7           A.     Yes, it is.

8           Q.     So with the gun, the top of the gun on the bottom of  
9 the tank?

10          A.     Correct.

11          Q.     Did you touch this firearm at all?

12          A.     No, not at all.

13          Q.     And why not?

14          A.     It's a crucial priority not to handle any evidence,  
15 to preserve any evidence that we locate on crime scenes so the  
16 proper crime scene specialist can come and recover evidence.

17          Q.     State's Exhibit Number 38. Is this a close-up?

18          A.     It appears to be, yes, ma'am.

19          Q.     Okay. Now, what did you do when you found that  
20 semi-auto firearm in the toilet?

21          A.     I stayed there at the scene, because it being the  
22 type of call it is, the radio traffic is often very, very busy.

23                   I then called dispatch and advised them, via  
24 telephone, that I had recovered a firearm at 865 Parkhurst.

25          Q.     Did you call for a crime scene analyst or a Homicide



1 detective to come out to your location?

2 A. Yes. I notified a -- a detective from Homicide. It  
3 was Detective Hardy.

4 Q. And to your knowledge, was he the detective that was  
5 in charge of the crime scene?

6 A. He was one of the detectives that was out there,  
7 yes.

8 Q. And did you remain with that firearm the entire time  
9 until someone else arrived?

10 A. Absolutely, yes.

11 Q. What about the crime scene analyst -- Crime Scene  
12 Analyst Proietto, did you -- were you there when he arrived?

13 A. Yes. I think simultaneously CSI Proietto and  
14 Detective Hardy responded to my location and then assumed  
15 possession of that evidence, of the firearm.

16 Q. And you were there when both of them arrived and  
17 when he impounded the firearm?

18 A. Correct.

19 Q. Or collected the firearm?

20 A. Yes, ma'am.

21 Q. And did you -- you've already said you didn't touch  
22 it. Did you remain there by the firearm to make sure nobody  
23 else touched it other than Crime Scene Analyst Proietto?

24 A. Absolutely, yes.

25 (Sotto voce at this time.)

1 BY MS. DEMONTE:

2 Q. So no one else touched that firearm?

3 A. No one else; no, ma'am.

4 (Sotto voce at this time.)

5 MS. DEMONTE: Pass the witness.

6 THE COURT: Cross-examination.

7 MR. FIGLER: Thank you.

8

9 CROSS-EXAMINATION

10 BY MR. FIGLER:

11 Q. Detective, did you see who took it out of the tank?

12 A. I don't recall exactly. I -- I believe it was the  
13 crime scene analyst that took it out.

14 Q. But you can't tell me which one?

15 A. I can't remember, can't recall at this time, sir.

16 Q. Okay. And as a detective, when you go investigate a  
17 crime, it's pretty routine for you to do a report almost every  
18 single time now; correct, now that you're a detective?

19 A. Correct.

20 Q. Okay. But back when you were patrol, it's hit and  
21 miss, sometimes they ask you to fill out a report, sometimes  
22 they don't; correct?

23 A. There's times, correct.

24 Q. Okay. And in this particular event, no one had you  
25 fill out a report; correct?

1 A. Correct.

2 Q. And to your knowledge, you did not fill out any  
3 report in this particular case?

4 A. I did not, no, sir.

5 Q. Okay. I'm going to show you some of those pictures.

6 Did you have any interaction with the residents  
7 of 865 Parkhurst?

8 A. I don't believe I did.

9 Q. I'm going to show you a couple of the pictures that  
10 the prosecution just showed you. I just have a couple more  
11 questions.

12 A. Yes, sir.

13 Q. I'm going to show you what's been marked as State's  
14 Exhibit 36. Those are the two commodes that you came upon as  
15 part of your investigation; correct?

16 A. Correct.

17 Q. Now, when you first came upon them, they were not  
18 illuminated in such a fashion, were they?

19 A. No, they weren't.

20 Q. Okay. In fact, generally speaking, it was pretty  
21 dark outside at the time that you had done your investigation?

22 A. I'd say so, yes, sir.

23 Q. Okay. And presumably, like every other good cop,  
24 you're out there with your flashlight looking around; is that  
25 correct?

1 A. Yes, probably.

2 Q. Okay. You're -- most patrol officers are equipped  
3 with some illuminating device or a flashlight or something?

4 A. Yes, sir.

5 Q. Okay. And to your recollection, you probably had  
6 that that evening to go around and look around?

7 A. Correct, sir.

8 Q. You probably would not have been able to see inside  
9 those tanks without -- without your flashlight, correct?

10 A. I think I could probably have saw inside of them,  
11 yes.

12 Q. Okay.

13 A. Without -- without illumination.

14 Q. But you did have your illumination with you?

15 A. I did have it, yes, sir.

16 Q. Thanks.

17 Now, here's Exhibit -- State's Exhibit 39.  
18 That's just a different view; correct?

19 A. Yes, sir.

20 Q. Okay. And again, beyond the area -- this appears to  
21 be an illuminated photo, in other words, a picture that was  
22 probably taken with a flash?

23 A. Probably, yes, sir.

24 Q. Okay. And you saw crime scene analysts out there  
25 taking pictures with flashes; correct?

1 A. Yes, sir.

2 Q. Okay. But you would agree with me that the area  
3 beyond that is fairly dark; correct?

4 A. Correct.

5 Q. And that reflects accurately what it was like that  
6 night?

7 A. Correct.

8 Q. Okay. Now, you had also indicated that there was no  
9 water at all in the tank of the --

10 A. For some reason I remember moist or I remember, um,  
11 a mildew-type smell.

12 Q. Okay.

13 A. For whatever reason, I -- I remember that still.

14 Q. Okay. So there was some sort of moisture that  
15 existed within the -- within the tank; correct?

16 A. By looking at this and then based on my smell that  
17 evening, yes.

18 Q. And that even looks like -- that little white part,  
19 which is not -- I'm sorry, in Exhibit 38, there appears to be  
20 something white in the photo; in Exhibit 37, there doesn't  
21 appear to be anything white. Could you say that that might be  
22 a reflection of a flash? Does that look consistent with that?

23 A. I -- I don't know. I mean I'm just looking at these  
24 pictures. I don't know what it could be.

25 Q. Sure, but there's definitely something in that tank;

1 correct?

2 A. Could be, yes.

3 Q. And you do recall then, you said, some kind of  
4 moisture or something like that?

5 A. A mildew smell I remember.

6 Q. Right. And -- and that's how you viewed this --  
7 this gun, it was kind of upside down like that?

8 A. Yes, sir.

9 Q. So that was the -- the positioning of the gun when  
10 you came upon it?

11 A. Absolutely, yes, sir.

12 Q. Okay. Do you recall if you were wearing gloves that  
13 night, just generally speaking?

14 A. I was not wearing gloves.

15 Q. Okay. Did you ever see close enough to that gun,  
16 did you see the gun when they took it out? Did you have an  
17 opportunity to observe it closer?

18 A. I really didn't.

19 Q. Okay.

20 A. Wasn't concerned.

21 Q. Okay. So if -- if you had seen something particular  
22 on it, you probably would have reported that; correct?

23 A. Absolutely, yes.

24 Q. Okay. But you didn't inspect it closely?

25 A. Not at all.

1 Q. Okay. As --

2 MR. FIGLER: Yeah, go back over there.

3 BY MR. FIGLER:

4 Q. When -- when you do collect evidence now or come  
5 upon evidence, you -- you look for biological material  
6 sometimes because that helps you identify DNA; is that correct?

7 A. Correct.

8 Q. Okay. And so you're trained to look for things like  
9 reddish brown substances that might exist on items; is that  
10 correct?

11 A. Um, I can't say red or brown.

12 What are you referring to?

13 Q. Biological materials. If you're looking for a  
14 biological material on an item of evidentiary value, something  
15 that might be reddish or brownish could possibly turn out to be  
16 biological material; correct?

17 A. I'm not going to speculate on that. I'm not going  
18 to look for specific biological evidence.

19 I mean, if I do obtain a piece of evidence, it  
20 could be microscopic, it could be whatever. I'm not trained in  
21 that particular area.

22 Q. Okay.

23 A. I'll gather it, protect it, and then send it to the  
24 crime scene analyst.

25 Q. Perfect. So if you see something, you say

1 something, right? You tell people -- if you see something that  
2 looks like it might be of evidentiary value, you pass that  
3 information along to the people who deal with that?

4 A. Sure, yes.

5 Q. Every time, that's what you do as a cop, right?

6 A. That's what I would do, yes.

7 Q. Okay. Thank you.

8 MR. FIGLER: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 MS. DEMONTE: No, Your Honor.

11 THE COURT: With no redirect, ladies and gentlemen  
12 of the jury, do any of the jurors have any questions for this  
13 witness?

14 (Negative response from the jury panel.)

15 THE COURT: Negative response.

16 Thank you very much for your testimony. You're  
17 excused.

18 THE WITNESS: Thank you.

19 (Whereupon, at this time the witness was excused.)

20 THE COURT: State, call your next witness.

21 MS. DEMONTE: State calls Jena Marquez.

22 May I approach your clerk?

23 THE COURT: You may.

24 THE CLERK: Raise your right hand.  
25



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JENA MARQUEZ

called as a witness on behalf of the State,  
having been first duly sworn,  
was examined and testified as follows:

THE WITNESS: Yes.

THE CLERK: Please state your full name.

THE WITNESS: My name is Jena Marquez.

THE CLERK: Could you spell that for the record,  
please.

THE WITNESS: Mm-hmm. It's J-E-N-A, M-A-R-Q-U-E-Z.

THE CLERK: Please have a seat.

THE WITNESS: Thank you.

THE COURT: Make sure you pull in and speak into the  
mike. Thank you.

THE WITNESS: Mm-hmm.

MS. DEMONTE: May I proceed, Your Honor?

THE COURT: Yes.

MS. DEMONTE: Thank you.

DIRECT EXAMINATION

BY MS. DEMONTE:

Q. Ma'am, how old are you?

A. Twenty-four.

THE REPORTER: What -- okay. Excuse me.

1 THE COURT: Can you hear?

2 THE REPORTER: I think I can, Judge. I'm sorry.

3 THE COURT: You can't -- the acoustics are really  
4 tough in this courtroom. So speak up.

5 THE WITNESS: Okay.

6 THE COURT: Because if my court reporter can't hear  
7 you, the jury can't hear you. Okay? Speak up and speak into  
8 that mike too. You can kind of pull that book in front of you  
9 a little farther. Thank you.

10 THE WITNESS: You're welcome.

11 THE COURT: Go ahead.

12 BY MS. DEMONTE:

13 Q. So you're 24 now?

14 A. Correct.

15 Q. So back in 2006, would that have made you 17 years  
16 old?

17 A. Yes.

18 Q. Okay. In February of 2006, were you attending high  
19 school?

20 A. I was.

21 Q. And what high school did you attend?

22 A. Morris Academy.

23 Q. And where is that?

24 A. On Washington.

25 Q. And is that here in Clark County?

1 A. Yes.

2 Q. Now, have you heard Morris Academy referred to as  
3 Morris Sunset as well?

4 A. Yes.

5 Q. And what's the reason for the word "Sunset," if you  
6 know?

7 A. I don't know.

8 Q. Okay. What time of day did you go to school?

9 A. In the evening.

10 Q. All right. So approximately when would school start  
11 for you?

12 A. Six.

13 Q. And when would school let out?

14 A. Eight.

15 Q. Okay. Now, on February 6th of 2006, were you at  
16 school that day?

17 A. Yes.

18 Q. How long had you been going to Morris Academy?

19 A. I don't know the exact time, but for about a month,  
20 maybe less.

21 Q. Okay. And do you remember some of the people in  
22 school with you?

23 A. Yes. I attended the school with Crystal and  
24 Melissa.

25 Q. And do you know Crystal's last name?

1           A.     Yes, it's Perez.

2           Q.     And do you know Melissa's last name?

3           A.     Yes, it's Gamboa.

4           Q.     Did you know a person by the name of Jesus?

5           A.     Yes.

6           Q.     And do you know Jesus's last name?

7           A.     Yes.

8           Q.     What is it?

9           A.     Alonzo.

10          Q.     How long had you known Jesus?

11          A.     I've known Jesus since maybe 2000, the year.

12          Q.     So you'd known him approximately six years?

13          A.     Yes. We went to junior high together.

14          Q.     And did you meet in junior high?

15          A.     Yes.

16          Q.     At some point did you become more familiar with

17 Jesus?

18          A.     Yes.

19          Q.     And why did you become more familiar with Jesus?

20          A.     I connected with him through a mutual friend, and we

21 hung out together.

22          Q.     And who was that mutual friend?

23          A.     Miguel.

24          Q.     Now, did you know Jesus to be in a relationship with

25 anyone?

1 A. At that time, no.

2 Q. How about in 2006?

3 A. He started dating Melissa.

4 Q. And how well did you know Jesus when he was dating  
5 Melissa?

6 A. I know him well enough I think.

7 Q. Okay. Did you know if he was in any gangs?

8 MR. FIGLER: I'm going to object, Your Honor.  
9 Foundation.

10 THE COURT: Sustained.

11 BY MS. DEMONTE:

12 Q. Okay. Did you know Jesus to have any tattoos?

13 A. Yes.

14 Q. What did he have tattooed?

15 MR. FIGLER: Objection, Your Honor. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: He had a -- he had a saying across his  
18 chest.

19 BY MS. DEMONTE:

20 Q. Do you know what it was?

21 A. Mm-hmm. In Spanish it was Perdoname Madre --

22 THE REPORTER: I'm sorry?

23 THE WITNESS: -- which means: Forgive me, Mother of  
24 Mine.

25 THE REPORTER: I don't know how to write that,

1 Judge.

2 THE COURT: I don't know. Well, can you spell it?

3 THE WITNESS: No.

4 THE COURT: Can you say it slow?

5 THE WITNESS: Yeah.

6 THE COURT: So she can phonetically transcribe it?

7 THE WITNESS: Mm-hmm.

8 THE COURT: Thank you.

9 THE WITNESS: It's Perdoname Madre Mia.

10 THE REPORTER: Thank you.

11 BY MS. DEMONTE:

12 Q. And you translated that a second ago.

13 A. Yeah.

14 Q. Can you repeat that translation?

15 A. Yes. Forgive me, Mother of Mine.

16 Q. Forgive me, Mother of Mine?

17 A. Mm-hmm.

18 Q. Did you see any other tattoos on him?

19 A. No.

20 Q. Okay. And he was dating Melissa?

21 A. Mm-hmm.

22 Q. Is that a yes?

23 A. Yes. I'm sorry.

24 Q. Did you know Jesus to use any other names?

25 A. Just his nickname.

1 Q. And what was that?

2 A. Diablo.

3 Q. And what does that mean?

4 A. Devil.

5 Q. Do you know why he had that nickname?

6 A. No.

7 Q. Do you know where that nickname came from?

8 MR. FIGLER: Objection, calls for speculation,  
9 especially given the last answer.

10 MS. DEMONTE: I just asked if you know.

11 THE COURT: Well, that still calls -- if it -- it  
12 can call for speculation depending on how she knows, or it  
13 could call for hearsay depending on how she knows. So  
14 foundationally it's an improper question.

15 Ask another question.

16 MS. DEMONTE: That's fine, Your Honor.

17 BY MS. DEMONTE:

18 Q. Now, did Jesus go to school with you?

19 A. No.

20 Q. How often would you see Jesus?

21 A. Throughout the week?

22 Q. Yes.

23 A. Sometimes the whole week, sometimes maybe three,  
24 four times.

25 Q. And when you would see Jesus who would be with him?

1 A. We would all be together, me and Melissa and Jesus.

2 Q. Now, I want to direct your attention to the week  
3 prior to February 6th. Do you know a person by the name of  
4 Giovanny?

5 A. Yes.

6 Q. Okay. And how did you know Giovanny?

7 A. We went to school together.

8 Q. And do you know his last name?

9 A. Garcia.

10 Q. And did you call him Giovanny if you would speak to  
11 him?

12 A. Yes.

13 Q. Did you ever use another name to speak to Giovanny?

14 A. No.

15 Q. Okay.

16 MS. DEMONTE: May I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 MS. DEMONTE: Thank you.

20 BY MS. DEMONTE:

21 Q. Showing you a picture -- sorry.

22 Showing you State's Proposed Exhibit 85, do you  
23 recognize that person?

24 A. Yes.

25 Q. And is that a fair and accurate depiction of



1 Jesus Alonzo when you knew him in 2006?

2 A. Yes.

3 MS. DEMONTE: Move for admission of 85.

4 MR. FIGLER: No objection.

5 MS. DEMONTE: Thank you.

6 THE COURT: With no objection, 85 is now admitted.

7 (State's Exhibit 85

8 was admitted into evidence.)

9 BY MS. DEMONTE:

10 Q. Now showing you State's Exhibit 50, do you recognize  
11 the person in that photograph?

12 A. Yes.

13 Q. And is that a fair and accurate depiction of  
14 Giovanni when you knew him in 2006?

15 A. Yes.

16 MS. DEMONTE: Move for admission of 50.

17 THE COURT: There any --

18 MR. FIGLER: No objection.

19 MS. DEMONTE: Thank you.

20 THE COURT: I'm sorry, no objection?

21 MR. FIGLER: No objection, Your Honor.

22 THE COURT: Exhibit Number 50 is now admitted.

23 (State's Exhibit 50

24 was admitted into evidence.)

25 MS. DEMONTE: Thank you.

1 Move to publish, Your Honor?

2 THE COURT: You may.

3 MS. DEMONTE: Thank you.

4 BY MS. DEMONTE:

5 Q. Now, how did you know Giovanny?

6 A. I only knew him because we went to school together.  
7 We have -- we had fifth and sixth period together.

8 Q. Okay. And out of -- with Melissa and Crystal, were  
9 they in fifth or sixth period with you as well?

10 A. Crystal was in my fifth period and Melissa was in my  
11 sixth.

12 Q. Okay. So in fifth period, you were in class with  
13 Giovanny for sure, Crystal for sure?

14 A. Yes.

15 Q. And then in sixth period, Giovanny for sure, and  
16 Melissa for sure?

17 A. Yes.

18 Q. Okay. Now, did you know Giovanny to have any  
19 tattoos?

20 A. Yes.

21 Q. And what tattoos did you see on Giovanny?

22 MR. FIGLER: I'm going to object again as to  
23 relevance.

24 THE COURT: Is it relevant to this case?

25 MS. DEMONTE: It is --

1 THE COURT: Because the last one wasn't relevant.

2 MS. DEMONTE: This one is, Your Honor.

3 THE COURT: Okay. With that, I'll overrule it.

4 MS. DEMONTE: Thank you, Your Honor.

5 THE WITNESS: He had -- the last name Garcia on the  
6 back of his neck. He had a 1-3 on his chest and East Side on  
7 his arms here (indicating) and here.

8 BY MS. DEMONTE:

9 Q. And do you recall when you first saw those tattoos  
10 on Giovanni?

11 A. During fifth period, him and Crystal were comparing  
12 tattoos, talking about tattoos. He showed us his tattoos and  
13 at that time told us the meaning of --

14 MR. FIGLER: I'm going to object, Your Honor.  
15 Hearsay.

16 THE COURT: Sustained.

17 The rest -- and it's also now getting nonresponsive.

18 MS. DEMONTE: Okay.

19 BY MS. DEMONTE:

20 Q. So he showed you your -- the tattoos, correct?

21 A. Yes.

22 Q. Now, prior to Giovanni showing you his tattoos, did  
23 you see how he and Crystal would interact?

24 A. Yeah. They were fine. They talked. I mean it  
25 wasn't a friendship, it was a hi and bye.

1 Q. So would you characterize it as friendly?

2 A. Yes.

3 Q. After Giovanni showed you and Crystal those tattoos,  
4 how did they interact with each other?

5 A. We were -- they were fine.

6 Q. Okay. Now, before -- right before February 6th, the  
7 week before, were you present during an interaction between  
8 Crystal and Giovanni --

9 A. Yes.

10 Q. -- that was different?

11 A. Yes.

12 Q. Okay. And when did this happen?

13 A. During fifth period.

14 Q. Okay. Do you remember what day it was?

15 A. No, I don't.

16 Q. But you know it to be the week prior?

17 A. Yes.

18 Q. Okay. And what happened during fifth period?

19 MR. FIGLER: Calls for a narrative, Your Honor. And  
20 specifically, I think it's going to suggest that there might be  
21 some hearsay involved too.

22 THE COURT: I'm going to overrule it, but I'll  
23 caution the witness not to testify as to what other people  
24 said. You can't testify as to what somebody else said.

25 So if you can answer the question without doing

1 that, I'm overruling it.

2 Perhaps you should be more direct on the questions.

3 MS. DEMONTE: Thank you.

4 BY MS. DEMONTE:

5 Q. Did you observe something physically happening  
6 between Giovanny and Crystal?

7 A. No.

8 Q. Okay. Did you see something involving a book?

9 A. Yes.

10 Q. Okay. What did you see involving a book?

11 A. A book was tossed over to another table that was  
12 next to us.

13 Q. Do you know who did that?

14 A. Yes.

15 Q. Who did that?

16 A. Crystal.

17 Q. Okay. And what happened after Crystal did that?

18 A. They threw insults at each other.

19 Q. And who would that be?

20 A. I'm sorry, Crystal and Giovanny.

21 Q. And what was Crystal's demeanor when she was  
22 throwing insults?

23 A. Angry.

24 Q. And what was Giovanny's demeanor when he was  
25 throwing insults?

1 A. Angry.

2 Q. Do you remember specifically what those insults  
3 were?

4 A. No.

5 Q. Now, after that, where they were throwing insults at  
6 each other, did you go to sixth period that day?

7 A. Yes.

8 Q. Okay. After sixth period -- is sixth period the  
9 last period?

10 A. Yes.

11 Q. Okay. How did you then leave school?

12 A. Jesus would pick us up after school.

13 Q. And did he do that on that day?

14 A. Yes.

15 Q. Okay. And who did you ride home from school with?

16 A. Crystal and Melissa.

17 Q. After you rode home with Jesus and Melissa, did you  
18 inform Jesus what had happened in fifth period?

19 A. No.

20 Q. At some point though did you observe Jesus with  
21 Giovanni?

22 A. Yes.

23 Q. And do you remember when that was?

24 A. That same evening, after school.

25 Q. After school?

1 A. Yes.

2 Q. And without telling me what anyone said, what did  
3 you see?

4 A. Just Jesus approached Giovanni.

5 Q. And how did Jesus appear?

6 A. Angry.

7 Q. Okay. How did Giovanni appear?

8 A. Angry.

9 Q. And how many times did you observe Jesus approach  
10 Giovanni?

11 A. Twice.

12 Q. And the second time, where did that take place?

13 A. In the parking lot.

14 Q. Okay. Where did the first time take place?

15 A. On school, on school grounds.

16 Q. Okay. Where about on school grounds?

17 A. In the front of the school.

18 Q. Okay. Like --

19 A. There was double doors in the front where the people  
20 entered and exit.

21 Q. And then the second time was in the parking lot?

22 A. Yes.

23 Q. Okay. Now, on the second occasion, what was Jesus's  
24 demeanor like?

25 A. They were both very angry.

1 Q. And -- Jesus and Giovanny?

2 A. Yes.

3 Q. Could you hear anything that was said the second  
4 time?

5 A. No.

6 Q. Okay. Could you see Melissa the second time?

7 A. Yes.

8 Q. What did Melissa do?

9 A. She went and pulled Jesus away.

10 Q. Now, I want to take you to Monday, February 6th of  
11 2006.

12 A. Okay.

13 Q. You went to school that day?

14 A. Yes.

15 Q. Okay. And did you see Giovanny that day?

16 A. Yes.

17 Q. Did you say anything to Giovanny?

18 A. Yes. I actually approached Giovanny to calm the  
19 situation and apologize, but he didn't want to. He didn't want  
20 to accept my apology.

21 Q. What was his demeanor like?

22 A. He was angry.

23 Q. And what did he say to you?

24 MR. FIGLER: I'm going to object, Your Honor.

25 THE COURT: Sustained.



1 (Sotto voce at this time.)

2 MS. DEMONTE: Your Honor, pursuant to 51.035, it's  
3 non-hearsay, a statement by a co-conspirator of a party during  
4 the course of the conspiracy.

5 MR. FIGLER: There has been --

6 THE COURT: There's been no evidence of a conspiracy  
7 at this time. Sustained.

8 MR. FIGLER: Thank you, Your Honor.

9 MS. DEMONTE: Thank you.

10 BY MS. DEMONTE:

11 Q. Now, when did you approach Giovanni, what period was  
12 that?

13 A. Fifth.

14 Q. Okay. Did you see Crystal in fifth period as well?

15 A. Yes.

16 Q. And could you see Crystal interact with Giovanni?

17 A. No.

18 Q. Now, after fifth period was over, were you with  
19 Crystal?

20 A. Yes.

21 Q. Okay. Did something happen after fifth period?

22 A. Yes. They got into a confrontation.

23 Q. Who did?

24 A. Crystal and Giovanni.

25 Q. And where did this occur?

1 A. On our way to sixth period in the hallway.

2 Q. Okay. And what was Crystal's demeanor like during  
3 the confrontation?

4 A. Angry.

5 Q. And Giovanni as well?

6 A. Yes.

7 Q. Now, could you hear what was said at all?

8 A. Yes.

9 Q. Okay. After that confrontation did you observe what  
10 Giovanni did?

11 A. He got on his cell phone.

12 Q. And you watched him?

13 A. Yes.

14 Q. Okay. Did you know who he was calling at that  
15 point?

16 A. No.

17 Q. Okay. But could you hear what he was saying?

18 A. Yes.

19 Q. And was he still angry?

20 A. Very.

21 Q. Okay. What did he say?

22 MR. FIGLER: I'd object, Your Honor. I don't  
23 believe they've established excited utterance, if that's what  
24 they're trying to do. Angry is not excited. There's another  
25 exception to the --

1 MS. DEMONTE: State would again offer --

2 THE COURT: I think that you could get it a little  
3 more on foundation if that's what you're -- you haven't  
4 established a conspiracy. You can always go back and ask these  
5 questions once you establish something more. Okay?

6 MS. DEMONTE: Okay.

7 THE COURT: But right now it sounds like hearsay.  
8 You could foundationally go back and ask more questions, so --  
9 and then re-ask it.

10 MS. DEMONTE: Okay.

11 BY MS. DEMONTE:

12 Q. Now, you heard what Giovanny said on the phone?

13 A. Yes.

14 Q. Without telling me what he said, how did that make  
15 you feel?

16 A. At the time, angry, upset.

17 Q. Did you then go to sixth period after hearing that  
18 conversation?

19 A. Yes, I did.

20 Q. Okay. What was your feeling in sixth period?

21 A. Nervous.

22 MR. FIGLER: Your Honor, I'm going to object to the  
23 relevance of this witness's feelings on the named victim.  
24 There's no tie-in.

25 THE COURT: Sustained.

1 MS. DEMONTE: Okay.

2 MR. FIGLER: And I'll move to strike the answer.

3 THE COURT: The answer will be stricken.

4 BY MS. DEMONTE:

5 Q. Did you then have a conversation with somebody  
6 during sixth period?

7 A. Yes.

8 Q. Who were you having that conversation with?

9 A. With Melissa.

10 Q. Okay. And why were you talking to Melissa?

11 MR. FIGLER: I'm going to object, Your Honor, as far  
12 as the relevance as why --

13 THE COURT: Sustained.

14 MR. FIGLER: Thank you.

15 BY MS. DEMONTE:

16 Q. What did you say to Melissa?

17 A. Something was going to happen and we needed to  
18 leave.

19 Q. Did you then leave?

20 A. Yes.

21 Q. Okay. Now, did you leave on your own volition?

22 A. Yes.

23 Q. Okay. To your knowledge was -- did anyone overhear  
24 you?

25 A. The teacher.

1 Q. Okay. So after you talked to Melissa you left?

2 A. Yes.

3 Q. Did Melissa leave with you?

4 A. No.

5 Q. Okay. Where did you go when you left?

6 A. To the 7-Eleven on the corner of Washington.

7 Q. And who was with you when you left school?

8 A. Crystal.

9 Q. Okay. What did you do when you got to the 7-Eleven?

10 A. I called my brother.

11 Q. Okay. And who is your brother?

12 A. Bryan Marquez.

13 THE REPORTER: Bryan Marquez?

14 THE WITNESS: Yes.

15 THE REPORTER: Thank you. Sorry.

16 BY MS. DEMONTE:

17 Q. And is Bryan Marquez younger or older than you?

18 A. We're twins.

19 Q. Did he go to school with you?

20 A. No.

21 Q. What school did he attend?

22 A. He didn't attend school.

23 Q. Okay. And after you called Bryan to pick -- what  
24 was the purpose of calling Bryan?

25 A. To come pick us up, to -- to be there with me.

1 Q. Okay. And did you try to make -- did you make any  
2 other phone calls?

3 A. No.

4 Q. Okay. And did your brother come and pick you up at  
5 that point?

6 A. He did.

7 Q. Who did he have with him?

8 A. Victor.

9 Q. And who is Victor?

10 A. Victor is Melissa's brother.

11 Q. Okay. And how old was Victor?

12 A. I don't know but he had just had a birthday.

13 Q. Okay. Was he younger or older than Melissa?

14 A. Younger.

15 Q. And when Bryan and Victor came to pick you up, where  
16 did you guys go next?

17 A. Back to the school.

18 Q. And why did you go back to the school?

19 A. To meet up with Jesus.

20 Jesus picked us up every night -- not every  
21 night, but usually he would be the one to pick us up.

22 Q. Okay. And when you arrived at the school, did you  
23 see whether or not Jesus arrived?

24 A. We arrived at the same time.

25 Q. Okay. And where did you guys park?

1           A.     We parked across the street from the school on the  
2 street named Virgil. Jesus parked in the parking lot.

3           Q.     Showing you what's already been admitted as State's  
4 Exhibit 2, do you see Virgil on that?

5           A.     Yes.

6           Q.     And you can take your finger and draw on the screen,  
7 if you could draw an X where you parked?

8           A.     Here (indicating).

9           Q.     Okay. And you said Jesus was in the parking lot.  
10 Can you just circle the parking lot?

11          A.     Here (indicating).

12          Q.     Okay. And what happened when you got to the parking  
13 lot? Was school -- had school let out yet?

14          A.     Yes.

15          Q.     Okay. And what happened once school let out?

16          A.     My brother confronted Giovanni.

17          Q.     Bryan did?

18          A.     Correct. And Giovanni, I am assuming, felt --

19                 MR. FIGLER: I'm going to object, Your Honor.

20 BY MS. DEMONTE:

21          Q.     Don't tell me how Giovanni felt.

22                 THE REPORTER: Wait -- whoa, whoa.

23                 THE COURT: Hold on. Everybody, stop. There's one  
24 court reporter. I heard everybody talking.

25                 You made an objection.

1           You gotta to wait.

2           MS. DEMONTE: Okay.

3           THE COURT: You made an objection.

4           MR. FIGLER: It was speculation because the witness  
5 said "assume."

6           THE COURT: Okay. I got it with one word. Okay?  
7 Speculation.

8           Do you have anything to say about that?

9           MS. DEMONTE: No, Your Honor. I was just actually  
10 redirecting the witness.

11          THE COURT: Then I'm going to sustain that.

12 BY MS. DEMONTE:

13          Q. Don't tell me what you think Giovanni felt. What  
14 did you --

15          THE COURT: Well, one other thing, if -- when you  
16 hear the attorneys start talking, and until I say it's okay to  
17 answer, okay, don't answer.

18          THE WITNESS: Okay.

19          THE COURT: Because it's just one more voice for my  
20 court reporter to take down, and she can't take -- she can only  
21 take down one voice at a time. Okay?

22          THE WITNESS: Okay.

23          THE COURT: Thanks.

24                   (Sotto voce at this time.)

25          THE COURT: Okay. Go ahead.



1 BY MS. DEMONTE:

2 Q. What did you see happen?

3 A. Giovanni struck my brother --

4 Q. And when --

5 A. -- Bryan.

6 Q. -- you say struck, can you describe it for me?

7 A. Yes. He punched him.

8 Q. Where did he punch him?

9 A. In the face.

10 Q. And what did you see happen next?

11 A. Chaos.

12 Q. What do you mean by that?

13 A. Everybody started fighting.

14 Q. When you say everybody, where was this taking place?

15 A. In front of the school.

16 Q. Okay. Can you draw a circle on the map for me?

17 A. Here (indicating).

18 Q. And approximately how many people were out there?

19 A. I don't know.

20 Q. Okay. Was it more than two?

21 A. Yes, more than two.

22 Q. Was it more than ten?

23 A. Yes.

24 Q. More than twenty?

25 A. I'm not sure.

1 Q. Okay. Did you recognize them as all being students?

2 A. Yes.

3 Q. Okay. Everybody or just some people?

4 A. Not everybody.

5 Q. How many people do you know that started fighting,  
6 that you saw?

7 A. Four.

8 Q. Okay. Did you yourself start fighting?

9 A. Yes.

10 Q. Okay. Did you see Crystal start fighting?

11 A. Yes.

12 Q. Was your brother still fighting?

13 A. Yes.

14 Q. Was Melissa fighting?

15 A. No.

16 Q. Could you see whether or not Victor was fighting?

17 A. No.

18 Q. Okay. And how long were you fighting?

19 A. I don't have a specific time.

20 (Sotto voce at this time.)

21 BY MS. DEMONTE:

22 Q. Was it more than a minute?

23 A. Yes.

24 Q. More than ten minutes?

25 A. No.

1 Q. Okay. Did something happen to make you stop  
2 fighting?

3 A. Yes.

4 Q. What happened?

5 A. Someone yelled: Cops.

6 So we ran.

7 Q. Now, let me take you back to who you saw fighting.  
8 Did you see Jesus fighting?

9 A. Yes.

10 Q. All right. Now, you said someone yelled: Cops.  
11 And you ran, what direction did you run?

12 A. Towards Virgil.

13 Q. Okay. From that circle that you drew in front of  
14 the school?

15 A. Yes.

16 Q. And who was running with you that you saw?

17 A. My brother; Jesus.

18 Q. And could you -- did you know who else was running  
19 with you?

20 A. No.

21 Q. Were there other people running with you though?

22 A. Yes.

23 Q. Did you make it to your car?

24 A. Yes.

25 Q. And who got to your car with you?

1           A.     My brother, Bryan; myself; and Jesus; and one other  
2 person who I didn't know.

3           Q.     Okay. And did the three of you, plus that one other  
4 person, get in the car together?

5           A.     Yes.

6           Q.     Okay. And did you then start to drive away?

7           A.     Correct, yes.

8           Q.     Who was driving?

9           A.     My -- Bryan.

10          Q.     Okay. And what direction did Bryan start to drive  
11 away to?

12          A.     Down Virgil.

13          Q.     Okay. And can you actually draw an arrow on the  
14 map?

15          A.     Yes (indicating).

16          Q.     Okay. And you actually drew a line down  
17 Valley Forge; is that correct?

18          A.     On my screen it's Virgil.

19          Q.     Oh, okay.

20          A.     I'll turn it around if you'd like.

21          Q.     All right. But you started driving that direction?

22          A.     Yes.

23          Q.     Did something happen -- did you hear or see anything  
24 as you were driving?

25          A.     I didn't see anything but I did hear gunshots.

1 Q. How many gunshots did you hear?

2 A. Five.

3 Q. Did you see any shooting take place?

4 A. No.

5 Q. At some point did you see Melissa again?

6 A. Yes, that night.

7 Q. And where did you see her?

8 A. Her house.

9 Q. Okay. How -- what time -- sorry. Approximately  
10 what time was that?

11 A. Midnight.

12 Q. And what was her demeanor like?

13 MR. FIGLER: Objection, relevance.

14 THE COURT: Overruled.

15 Overruled, you can answer it.

16 THE WITNESS: Upset.

17 BY MS. DEMONTE:

18 Q. Did you find out from Melissa what had happened?

19 A. Yes.

20 Q. Okay. Now, before you saw Melissa again, did you  
21 already have a conversation with Crystal?

22 A. Yes.

23 Q. Okay. And when did that take place?

24 A. Five minutes after we had left the scene.

25 Q. And did you call Crystal or did Crystal call you?

1 A. Crystal called me.

2 Q. Now, without telling me what Crystal said, what did  
3 you do with that information?

4 A. We went to the hospital.

5 Q. Okay. And who did you see at the hospital?

6 A. Melissa's family.

7 Q. And what was their demeanor like?

8 A. Upset.

9 MS. DEMONTE: Pass the witness.

10 THE COURT: Cross-examination.

11 MR. FIGLER: Court's indulgence.

12 (Sotto voce at this time.)

13 MR. FIGLER: Your Honor, may I proceed?

14 THE COURT: Yes.

15 MR. FIGLER: Just very briefly.

16

17 CROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q. Jena, you have tattoos on you?

20 A. Yes.

21 Q. How many tattoos do you have?

22 A. Four.

23 Q. And what are they?

24 A. I have a peacock feather on my arm; I have a saying  
25 on my other arm, two; and I have a butterfly on my chest.

1 Q. And you have a saying?

2 A. Yes.

3 Q. And what's the saying?

4 A. It's: My beautiful life.

5 And: God loves, have faith.

6 Q. Okay. At this time were you in any kind of gang?

7 A. No.

8 Q. Are you in a gang now?

9 A. No.

10 MR. FIGLER: Pass the witness.

11 THE COURT: Redirect?

12 (Sotto voce at this time.)

13 MS. DEMONTE: None, Your Honor.

14 THE COURT: I'm sorry, none?

15 MS. DEMONTE: None, Your Honor.

16 THE COURT: All right. Do the ladies and gentlemen  
17 of the jury have any questions for this witness?

18 (Negative response from the jury panel.)

19 THE COURT: With a negative response, ma'am, you're  
20 excused. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, at this time the witness was excused.)

23 THE COURT: State, call your next witness.

24 MS. PANDUKHT: The State calls Edshel Calvillo.

25 COURT SERVICES OFFICER: Make sure you speak into

1 the microphone.

2 THE CLERK: Remain standing, please.

3 THE COURT: Remain standing.

4 THE CLERK: And raise your right hand as best you  
5 can.

6

7 EDSHEL CALVILLO

8 called as a witness on behalf of the State,

9 having been first duly sworn,

10 was examined and testified as follows:

11

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Please state your full name for the  
14 record.

15 THE WITNESS: My name is Edshel Francisco Calvillo.

16 THE CLERK: Could you spell that, please?

17 THE WITNESS: It's E-D-S-H-E-L; F-R-A-N-C-I-S-C-O;  
18 C-A-L-V-I-L-L-O.

19 THE CLERK: Please be seated.

20 COURT SERVICES OFFICER: Scoot your seat up there.

21 Make sure you speak into the microphone. Okay.

22

23 DIRECT EXAMINATION

24 BY MS. PANDUKHT:

25 Q. Good afternoon, Mr. Calvillo.



1 A. Good afternoon.

2 Q. Did you come to Court on your own volition today?

3 A. No, I did not.

4 Q. Did the State, in fact, arrest you on a material  
5 witness warrant?

6 A. Yes, they did.

7 Q. Did the State attempt to contact you last week and  
8 the week before to come to Court and talk about the case?

9 A. Yes, you did.

10 Q. Did you, in fact, speak with my investigator,  
11 Jamie Honnicker (phonetic) on more than one occasion?

12 A. Yes, I did.

13 Q. And did you promise to come and talk to us at our  
14 office?

15 A. Yes, I did.

16 Q. And did you promise to come to Court yesterday for  
17 the first day of trial?

18 A. Yes, I did.

19 Q. And did you not come to Court?

20 A. I did not.

21 Q. Mr. Calvillo, why didn't you come to Court?

22 A. See, my wife, she's pregnant, right? And she's  
23 almost due, she's due on August 24th. And to me, I really  
24 thought this case was dismissed, it was closed away and, you  
25 know, I really -- you know -- you know, in my situation I took

1 it as, Your Honor, my family comes first, as any other man  
2 would, you know. So, you know, that day I took in my wife to  
3 the hospital.

4 Q. Let me -- let me stop you right there.

5 Is it hard for you to be here today?

6 A. Yes, it is.

7 Q. Why is it hard for you to be here today?

8 A. Because this is bringing a lot of flashbacks towards  
9 my life that I was done with, I've moved forward with it.

10 Q. Did any of that include Puros Locos?

11 A. Yes, it did.

12 Q. Mr. Calvillo, could you tell me about yourself and  
13 Puros Locos --

14 MR. FIGLER: I object -- sorry.

15 MS. PANDUKHT: Go ahead.

16 MR. FIGLER: Finish your question.

17 Is that it?

18 THE COURT: No. I think it's done.

19 Do you have an objection? What's your objection?

20 MR. FIGLER: My objection is, first of all,  
21 relevance. It's also 48.1 -- or 0145 (phonetic). And I just  
22 want to make sure that the State has complied with all  
23 discovery in the case they're going to try to admit statements  
24 of anyone that would require that.

25 THE COURT: Overruled.

1                   You can re-ask the question.

2 BY MS. PANDUKHT:

3           Q.     Were you a member of Puros Locos?

4           A.     I was, several years ago.

5           Q.     So you are no longer a member today; correct?

6           A.     I have not been, no.

7           Q.     I wanted to ask you though about what date we're  
8 here about, which is February 6th, 2006. And most of my  
9 questions are going to be limited to that time frame. And I  
10 understand that was seven years ago.

11                   Do you still remember that time?

12          A.     I do.

13          Q.     Mr. Calvillo, were you a member of Puros Locos in  
14 February of 2006?

15                   MR. FIGLER: I'm going to object, Your Honor. This  
16 witness has not been informed of his Fifth Amendment right. If  
17 there's been a conspiracy charge, if that's the case he needs  
18 to be informed of his Fifth Amendment.

19                   THE COURT: I'll see counsel at the bench.

20                   (Bench conference outside the presence of the jury.)

21                   THE REPORTER: Wait, wait, I can't hear. Are you  
22 talking?

23                   THE COURT: Can you hear?

24                   THE REPORTER: Oh, okay.

25                   MR. FIGLER: Your Honor, we have a gang enhancement

1 charge, and he's also been listed as a witness in this case.

2 THE COURT: Okay. So what does he need the Fifth --  
3 what -- why doesn't he have an attorney?

4 MR. FIGLER: He's implicating himself as part of the  
5 conspiracy.

6 THE COURT: To commit murder?

7 MR. FIGLER: I don't know where their conspiracy  
8 goes --

9 THE COURT: It does --

10 MR. FIGLER: It goes if they're saying that the  
11 Puros Locos has intention of a criminal enterprise (phonetic)  
12 to enter that park or that parking lot, to enter the fight,  
13 which seems to be their theory of liability, both for challenge  
14 the fight and for conspiracy, then this individual will be  
15 implicating himself if he testifies. If that's -- which is  
16 fine.

17 THE COURT: You can make your record, go ahead,  
18 State.

19 MS. PANDUKHT: Your Honor, this particular defendant  
20 did not participate in the fight. He's going to talk about the  
21 Puros Locos members. His participation was in Puros Locos.  
22 He's going to talk about admissions made by the defendant after  
23 the crime and seeing him before the crime. He's going to talk  
24 about the gun, but he didn't go to the fight. This witness did  
25 not go.

1 THE COURT: You said the fight, we're talking about  
2 the shooting?

3 MS. PANDUKHT: I'm sorry, Judge?

4 THE COURT: He wasn't at the shooting?

5 MS. PANDUKHT: He was in a car and he heard it, but  
6 he didn't see it and he didn't participate in the fight.

7 THE COURT: Was he in the car with the defendant?

8 MS. PANDUKHT: No. He was in the --

9 MR. FIGLER: I believe it was Salvador.

10 THE COURT: Okay. And my understanding, just based  
11 on your opening statement, is that Manuel Lopez and this  
12 defendant conspired together?

13 MS. PANDUKHT: It was Manuel Lopez and  
14 Giovanni Garcia.

15 THE COURT: Right.

16 MS. PANDUKHT: And the defendant.

17 THE COURT: Giovanni Garcia called these guys,  
18 Manuel Lopez and the defendant, allegedly to come to the school  
19 and fight?

20 MS. PANDUKHT: To back him up.

21 THE COURT: Okay. All righty. My ruling is that  
22 it's going to be overruled.

23 MS. PANDUKHT: Thank you, Your Honor.

24 (End of bench conference.)

25 (Proceedings in the presence of the jury.)

1 THE COURT: Back in the presence.

2 That is overruled.

3 MS. PANDUKHT: Thank you.

4 BY MS. PANDUKHT:

5 Q. Mr. Calvillo, so I want to -- again, I'm going back  
6 to around February 6th, 2006. Were you a member of  
7 Puros Locos?

8 A. Yes, I was.

9 Q. I only want to ask you what's in your personal  
10 knowledge. So please answer that way.

11 I'm not asking you for hearsay. I just want to  
12 know, you know, what it was like back then.

13 So tell me, did you have a nickname?

14 A. Yeah, I had -- I had a nickname, just like any other  
15 body, you know, that's a part of a -- a gang.

16 Q. Okay.

17 A. And, yeah, my nickname was Danger, you know, I  
18 fought, I was a boxer, you know, and that's what -- that was my  
19 reputation in the streets, just -- just fighting.

20 Q. You just said that everybody in the gang had a  
21 nickname?

22 A. Yes.

23 Q. Who was in the gang and what were their nicknames?

24 A. Jonathan Harper was Silent; Sal was Boxer; I don't  
25 know Puppet's name; Little One's Giovanny; and I knew E as

1 Evaristo -- E, Chuckie. That's it, those are the people I was  
2 close to.

3 Q. Do you see Evaristo in the courtroom today?

4 A. Yes, I do.

5 Q. Could you point to him, describe where he's sitting  
6 and what he's wearing today?

7 A. He's wearing a blue shirt, to the right hand  
8 standing in front me -- well, not in front of me but to the  
9 right-hand side.

10 MS. PANDUKHT: May the record reflect identification  
11 of the defendant, Evaristo Garcia?

12 THE COURT: It will. The record will so reflect.

13 BY MS. PANDUKHT:

14 Q. And was there somebody else -- I don't -- and I  
15 apologize if I didn't hear that, was there somebody you said  
16 named Boxer?

17 A. Sal.

18 Q. Okay. And what was Sal's last name?

19 A. I believe it was Garcia.

20 Q. Do you know Giovanni's last name?

21 A. They're brothers, I think the same name, same last  
22 name.

23 Q. And could you tell me, Mr. Calvillo, how long you  
24 were in the gang Puros Locos?

25 A. We were there for a while, you know. I would say

1 about two years.

2 Q. Okay. And -- I'm sorry. Go ahead.

3 A. Okay. About two years.

4 Q. And how did you get into the gang?

5 A. Well, you know, it's -- it all started as kids, you  
6 know? As kids and, you know, the way -- the way it is, in not  
7 just this game but any other game, you know, you get jumped in.

8 Q. What is that?

9 A. You know, you -- you -- you physically take a  
10 beating.

11 Q. By who?

12 A. By the members that are around.

13 Q. By the members of --

14 A. Around, they're all around, from the same group.

15 Q. From the same gang?

16 A. Yeah.

17 Q. Is there a set time period that you are beat up?

18 A. Just ten seconds.

19 Q. Is it an actual certain time that you know about?

20 A. No.

21 Q. Okay.

22 A. No.

23 Q. So could it be ten seconds for one person and 15  
24 seconds for another?

25 A. Right.



1 Q. Okay. Now, what were some of the things that you  
2 did -- first of all, can I ask you how many members were in  
3 your gang?

4 A. See, this group, it wasn't really a well-known gang,  
5 big gang, it was like five, six of us that I can say was in the  
6 group, you know, from the -- the group that we were with.

7 Q. Okay. And were there bigger gangs than yourselves,  
8 than Puros Locos at that time?

9 A. Oh, yes.

10 Q. Okay. So what were some of the things -- were there  
11 any crimes that you and your fellow gang members committed --  
12 was there anything you had to commit in order to be in the  
13 gang?

14 Do you understand my question?

15 A. We -- we had -- we didn't have to commit, you know,  
16 we weren't ordered to do nothing, you know? It was on our own.

17 And -- but as crimes, I'll say, you know, the  
18 worst crime it will be, you know, on my part --

19 MR. FIGLER: Again, Your Honor, he's going to be  
20 admitting to crimes, and he doesn't have an attorney and he  
21 doesn't have a Fifth Amendment warning or anything.

22 MS. PANDUKHT: Can we approach again?

23 MR. FIGLER: Are they giving him immunity?

24 MS. PANDUKHT: Your Honor, the only reason is for  
25 the gang enhancement being charged. I'm asking this solely

1 because of the element within the gang enhancement of prior  
2 felonious activity. That's the only reason.

3 So those are the only reasons it's being offered.

4 THE COURT: Sustained.

5 MS. PANDUKHT: Okay.

6 THE COURT: You're asking him about crimes he did?

7 MS. PANDUKHT: It will be tied in with the gang  
8 expert, so the gang expert is going to talk about those types  
9 of -- it's part of the statute. It's part of the one of the  
10 elements of the gang enhancement.

11 THE COURT: You -- I think you can ask it a  
12 different way.

13 MS. PANDUKHT: Okay. I will.

14 THE COURT: Without him implicating himself.

15 MS. PANDUKHT: I will. And that certainly was not  
16 my intention, Your Honor.

17 THE COURT: Okay.

18 BY MS. PANDUKHT:

19 Q. Mr. Calvillo, what types of activities that were  
20 criminal did the gang perform?

21 THE COURT: Let me also just say, for the record,  
22 that unless it's certain crimes, almost all of them, the  
23 statute of limitations has probably run.

24 MS. PANDUKHT: Again --

25 MR. FIGLER: And again --

1 THE COURT: Except for other ones, certain ones --

2 MS. PANDUKHT: And I'm only asking it because of the  
3 enhancement that we have to prove. That's the only reason.

4 MR. FIGLER: And, Your Honor, the statute requires  
5 there to be concerted effort of felonious activity for the  
6 benefit of the criminal gang.

7 So this is very problematic for the State.

8 THE COURT: I think that they can ask it in a way  
9 that satisfies the statute without necessarily implicating  
10 himself, by himself, in a crime, generally talking about the  
11 gang and what they did. And that's what I want you to stay to  
12 for the questions.

13 MS. PANDUKHT: Okay. I'll do my best, Your Honor.

14 BY MS. PANDUKHT:

15 Q. Do you understand the question? Do you want me to  
16 rephrase it?

17 A. Okay. Yeah, rephrase it, please.

18 Q. Rephrase it? Okay.

19 Were there felony types of crimes that you  
20 were -- that you had knowledge of being committed by  
21 Puros Locos members?

22 A. I can't say felonies.

23 THE REPORTER: I can't say what?

24 THE WITNESS: Felonies. It wasn't felonies.

25 You know, most of the problems, it will be physical,

1 you know, fighting, you know, fistfight, you know. That --  
2 that -- I gotta say that will be the only, you know, crime that  
3 will be, you know?

4 BY MS. PANDUKHT:

5 Q. Anything involving drugs or stolen vehicles?

6 A. Well, you know, we -- we smoked, you know, yes.

7 Q. But anything to do with illegal controlled  
8 substances, just to be clear, either possessing or selling?

9 A. No, not at all.

10 Q. Okay. Now, how about the stolen vehicles, were you  
11 going to answer that question?

12 A. You know, with that group I've never, ever, ever,  
13 you know, committed a crime like that, yes.

14 Q. Okay. And I was asking in terms of not just  
15 specific, because I want to follow the Court's order, not just  
16 specific to yourself, but knowledge of members of the gang?

17 A. Well, with Jonathan Harper, yeah.

18 Q. With regard to what specific activity?

19 A. Regarding grand theft/auto.

20 Q. Okay. Now, what about -- you talked about  
21 nicknames. What about tattoos, did you know any of the members  
22 of Puros Locos that you've already told us about to have  
23 tattoos related to that gang?

24 A. Right, yeah.

25 Q. Who?

1           A.     You know, it was, um, Boxer, you have Puppet, and  
2 Little One.

3           Q.     Okay. Let me start with you said Salvador?

4           A.     Yeah.

5           Q.     What type of tattoo did Salvador have?

6           A.     Well, he had 702 up here (indicating), and then if I  
7 don't make a mistake, I believe he had a PL on his arm, on the  
8 arm.

9                   THE REPORTER: Say that -- I'm sorry.

10                  THE WITNESS: He had a PL on the arm.

11 BY MS. PANDUKHT:

12           Q.     You said PL?

13           A.     PL.

14           Q.     What does PL stand for?

15           A.     Puros Locos.

16           Q.     And you said 702, does that have any significance?

17           A.     Just the area code for Las Vegas.

18           Q.     Why would you tattoo the area code on the body?

19           A.     That's where the chapter began here in Vegas.

20           Q.     Okay. Are you talking about the Puros Locos  
21 chapter?

22           A.     Right.

23           Q.     Okay. What about Giovanni Garcia, what tattoos did  
24 he have?

25           A.     He had a tattoo across his chest.

1 Q. What did it say?

2 A. It said Puros Locos as well.

3 Q. Did he have any other tattoos?

4 A. I'm not sure. That's the only one I've seen in him.

5 (Sotto voce at this time.)

6 MS. PANDUKHT: Approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MS. PANDUKHT:

9 Q. I'm showing you what's already been admitted as  
10 State's Exhibit --

11 MS. PANDUKHT: I -- I don't know if it's been  
12 admitted, State's Exhibit 51?

13 THE CLERK: No.

14 MS. PANDUKHT: Okay. I'll lay the foundation.

15 THE COURT: Okay.

16 BY MS. PANDUKHT:

17 Q. I'm going to show you State's Exhibit Number 51.  
18 Who is that?

19 A. That's Giovanny.

20 Q. Giovanny Garcia?

21 A. Right.

22 Q. Also known as Little One?

23 A. Right.

24 MS. PANDUKHT: State moves to admit State's Proposed  
25 Exhibit 51 into evidence.

1 THE COURT: Any objection?

2 MR. FIGLER: Just relevance, Your Honor.

3 THE COURT: Overruled.

4 It will be admitted as State's Exhibit 51.

5 (State's Exhibit 51

6 was admitted into evidence.)

7 BY MS. PANDUKHT:

8 Q. Number 54, do you recognize that? What do you  
9 recognize that to be?

10 A. The name, the name of a gang.

11 Q. Do you recognize who that tattoo belongs to?

12 A. Yep.

13 Q. Who?

14 A. Code 51.

15 Q. Are you referring back to Number 51 of the exhibit?

16 A. Yep.

17 Q. Okay. So would that be Giovanny Garcia?

18 A. Yes, ma'am.

19 Q. Thank you.

20 MS. PANDUKHT: Then I would move to admit State's  
21 Proposed Exhibit 54 into evidence?

22 THE COURT: Any objection?

23 MR. FIGLER: Same objection, Your Honor.

24 THE COURT: It will be overruled.

25 That will be admitted into evidence.

1 (State's Exhibit 54  
2 was admitted into evidence.)  
3 MS. PANDUKHT: Move to publish?  
4 THE COURT: You may.  
5 BY MS. PANDUKHT:  
6 Q. And for the record, this is State's Exhibit  
7 Number 51, I believe.  
8 And for the members of the jury, who is this  
9 again?  
10 A. (No audible response.)  
11 Q. Mr. Calvillo, who is this again?  
12 A. Giovanny.  
13 Q. Okay. And then I'm going to publish Number 54.  
14 Do you recognize this?  
15 A. Yeah.  
16 Q. What is it?  
17 A. Same guy.  
18 Q. Okay. So is that a tattoo of Puros Locos on  
19 Giovanny Garcia?  
20 A. Yes, ma'am.  
21 Q. Okay. You said anyone else had tattoos?  
22 A. That was it.  
23 Q. Did you know Puppet to have any tattoos?  
24 A. Well, Puppet, he was in the -- he -- he did tattoos,  
25 yeah, he had tats as well.



1 Q. Okay. What tattoos did Puppet have?

2 A. You know, Puppet was the only one that I didn't  
3 really like because he had a lot, he had a couple, yeah.

4 Q. Do you remember any in particular?

5 A. I really don't.

6 Q. Did you say something about he did tattoos?

7 A. Yes.

8 Q. Did I hear you right?

9 A. Right.

10 Q. What does that mean?

11 A. He -- well, that's what he did to -- to, you know,  
12 make little profits on the side for him.

13 Q. So he actually would -- I don't know what the proper  
14 word is -- but create the tattoo?

15 A. Right.

16 Q. And you don't remember any gang-related tattoos on  
17 Puppet?

18 A. No.

19 MS. PANDUKHT: May I approach the witness?

20 THE COURT: You may.

21 MR. FIGLER: Okay.

22 BY MS. PANDUKHT:

23 Q. Mr. Calvillo, I'm showing you a photograph -- two  
24 photographs actually, this is 58. Do you recognize this  
25 person?

1 A. (No audible response.)

2 Q. Who is it?

3 A. It's Puppet.

4 Q. Okay. I'm going to show you now State's Exhibit  
5 Number -- or Proposed Exhibit Number 63. Do you recognize  
6 this?

7 A. Yeah.

8 Q. What is it?

9 A. That's the El Camino car, his car.

10 Q. Whose car?

11 A. Puppet's car.

12 Q. Okay. And could you tell us what color you remember  
13 that being, what color it is?

14 A. Gray.

15 Q. Okay.

16 MS. PANDUKHT: I'm going to move to admit State's  
17 Proposed Exhibits 68 and 63 if they're not already admitted.

18 THE COURT: Is there any objection?

19 MR. FIGLER: No objection.

20 THE COURT: With no objection they'll both be  
21 admitted.

22 (State's Exhibits 63 and 68  
23 were admitted into evidence.)

24 MS. PANDUKHT: And I'm going to move to publish.

25 THE COURT: You may.

1 BY MS. PANDUKHT:

2 Q. So again, Number 58, who is this?

3 A. Puppet.

4 Q. And Number 63?

5 A. That's his car, the El Camino.

6 Q. And could you point to it?

7 A. (Indicating), his car.

8 Q. Well, just describe it.

9 A. It's just his gray El Camino car.

10 Q. And it was Puppet's car?

11 A. Right.

12 Q. Okay.

13 (Sotto voce at this time.)

14 BY MS. PANDUKHT:

15 Q. Okay. So now I'd like to draw your attention to the  
16 night of February 6th, 2006. Do you remember that night?

17 A. Yes, ma'am.

18 Q. Did you give a statement to police? Do you remember  
19 talking to Detective Mogg on July 26th, 2006?

20 A. Yeah, I remember.

21 Q. Okay. And that's the only statement you gave,  
22 right?

23 A. Right.

24 Q. You don't remember giving any other statement in  
25 this case besides -- it was an audio tape recorded statement;

1 correct?

2 A. Correct.

3 Q. But do you actually kind of independently remember  
4 that night as well?

5 A. Absolutely.

6 Q. Could you tell me that night, February 6th, 2006,  
7 where you were? And I'd like to start about eight o'clock at  
8 night.

9 A. We were at Salvador Garcia's house.

10 Q. Do you remember where that was, what the address was  
11 or kind of generally where it was located?

12 A. I don't remember the address. The apartments were  
13 called the Ham -- Hamptons, I believe so.

14 Q. Was it here in Las Vegas?

15 A. Correct.

16 Q. So who was over at Salvador's house with you,  
17 Mr. Calvillo?

18 A. It was Salvador, me, Jonathan, Padre (phonetic),  
19 Periso (phonetic), we had a couple other girlfriends as well  
20 there.

21 Q. Do you know whose girlfriends they were?

22 A. It was just friends, not girlfriends, but friends,  
23 right.

24 Q. Did Puppet have a girlfriend?

25 A. Yes, he did.

1 Q. What was her name?

2 A. I never knew her name.

3 (Sotto voce at this time.)

4 BY MS. PANDUKHT:

5 Q. If I showed you a picture of her, do you think you  
6 might recognize her?

7 A. Yeah.

8 Q. And if you don't, I want you to tell me you don't.  
9 Okay?

10 MS. PANDUKHT: Can I approach the witness,  
11 Your Honor?

12 THE COURT: You may.

13 MS. PANDUKHT: Thank you.

14 BY MS. PANDUKHT:

15 Q. I'm going to show you State's Proposed Exhibit 86.

16 A. Yes, ma'am.

17 Q. Do you recognize --

18 A. Yep.

19 Q. Who do you recognize this to be?

20 A. Puppet's girl.

21 Q. Okay. But you still don't remember her name?

22 A. I don't know, never got her name.

23 Q. Okay. Now --

24 MS. PANDUKHT: The State moves to admit State's  
25 Proposed Exhibit 86 into evidence.

1 MR. FIGLER: Relevance, Your Honor.

2 THE COURT: Overruled, except for -- oh, I guess it  
3 will be admitted as Puppet's girlfriend? That's the  
4 identification limit?

5 MS. PANDUKHT: Well, yeah, and she's one of the  
6 parties that's going to be discussed during the trial by other  
7 witnesses.

8 THE COURT: Okay.

9 MS. PANDUKHT: Move to publish.

10 I move to admit and then move to publish.

11 THE COURT: Okay. She is going to testify, is that  
12 what you're telling me?

13 MS. PANDUKHT: No, but she will be referenced, other  
14 witnesses will discuss her.

15 THE COURT: Do they reference her by name or just  
16 Puppet's girlfriend?

17 MS. PANDUKHT: It could be either.

18 THE COURT: Okay. All right. Go ahead. You can  
19 publish it.

20 (State's Exhibit 86  
21 was admitted into evidence.)

22 MS. PANDUKHT: Thank you.

23 BY MS. PANDUKHT:

24 Q. Number 86, is that how she appeared on February 6th,  
25 2006?

1 A. I really don't remember.

2 Q. But you recognize her?

3 A. Yes.

4 Q. Okay. Was she there at Salvador's house that night,  
5 on February 6th, 2006?

6 A. Yes.

7 Q. Now, when you're there what happens at Sal's house?

8 A. We just received a call. We received a call from  
9 Giovanni. I guess there was this other group of guys, a gang,  
10 you know, that were out to harm him, you know, waiting for him  
11 after school.

12 You know, we received a call -- Salvador  
13 received a call, you know, just telling us that, you know, his  
14 brother's going to get jumped by, you know, 20, 30 guys waiting  
15 for him after school.

16 Q. What gang was that?

17 MR. FIGLER: I'm going to object, Your Honor. Now  
18 we're on a bunch of hearsay.

19 THE COURT: Sustained.

20 BY MS. PANDUKHT:

21 Q. You know what gang?

22 A. He has --

23 MR. FIGLER: I'm going to object, Your Honor.  
24 That's not a question, number one.

25 And, number two, it ties into the one that was

1 sustained.

2 THE COURT: It ties into what was just sustained.

3 MS. PANDUKHT: Okay.

4 THE COURT: You could ask it a different way.

5 MS. PANDUKHT: I will.

6 THE COURT: Sustained.

7 BY MS. PANDUKHT:

8 Q. So are you aware that -- of this phone call from  
9 Giovanni?

10 A. Well, yeah, because Salvador told us.

11 Q. Without saying what he said, when you were there, in  
12 the -- was it a house or an apartment?

13 A. It was an apartment.

14 Q. When you were there in the apartment, and Giovanni  
15 calls, were the same people there -- Sal, Evaristo -- all the  
16 people you previously mentioned?

17 A. Right.

18 Q. Okay. So when that call comes out, what does  
19 everyone do? What do you do?

20 A. We -- we -- you know, that's -- that was a friend of  
21 us, you know, that --

22 MR. FIGLER: I think it's being nonresponsive,  
23 Your Honor. She asked what he did, this is --

24 THE COURT: Sustained.

25 BY MS. PANDUKHT:



1 Q. Did you see anybody leave the apartment?

2 A. Yeah, we all left.

3 Q. Okay. Who left the apartment?

4 A. Everybody that was in there.

5 Q. Okay. Did all of you leave together in one car, or  
6 did some of you leave in one car and some in another?

7 A. There was too many people to go in one car.

8 Q. So I just have to make sure I explain everything --  
9 we get everything out for the jury, so that's why I'm asking  
10 you all these questions.

11 So who got in what car?

12 A. It was Puppet, he was the one driving his girl. It  
13 was Jonathan and Evaristo.

14 Q. In whose car?

15 A. Puppet's car.

16 Q. And then who was in another car?

17 A. It was me, one of my brothers, another guy that was  
18 there, and Sal -- Salvador.

19 Q. And what was the name of your brother that was there  
20 with you?

21 A. Arian, Arian Ealeillo.

22 Q. Could you spell that just for the record?

23 A. A-R-I-A- -- A-N.

24 Q. Okay. Now what car did you guys go in?

25 A. One A.

1 THE REPORTER: What -- wait. One A?

2 THE WITNESS: Right. Arian.

3 THE REPORTER: Spell it over. Spell it over.

4 THE WITNESS: A-R-I-A-N.

5 THE REPORTER: Last name?

6 THE WITNESS: Ealeillo, E-A-L-E-I-L-L-O.

7 BY MS. PANDUKHT:

8 Q. So what car did you and Arian and Salvador, and I  
9 believe you said one other person?

10 A. We left in a -- in a different car.

11 Q. Whose car was it?

12 A. It was Rafael, this other guy that we knew.

13 Q. Okay. What kind of car was it, if you remember?

14 A. I can't remember the model.

15 Q. Who left the apartment first, Puppet in his car with  
16 those people, or you guys?

17 A. They were in front of us and, yeah, they were the  
18 ones -- we followed them.

19 Q. You followed them?

20 A. We followed them.

21 Q. As a result of Giovanny's phone call -- well, first  
22 of all, did you know where Giovanny was?

23 A. All I knew it was a night school. I had no idea  
24 what school we were going to.

25 Q. Okay. Did anything occur inside Sal's apartment

1 before Puppet and the defendant and Jonathan went into that  
2 gray El Camino?

3 A. Did anything happen?

4 Q. That you saw. Did you see anything happen between  
5 Puppet and the defendant?

6 A. Yeah, I -- yeah.

7 Q. Can you tell us?

8 A. That's -- man, yeah, there was -- it was somebody  
9 brought a gun, you know.

10 Q. What kind of gun?

11 A. It was a black gun. I -- I don't remember -- I  
12 don't know what kind of gun it was.

13 Q. Do you know whose gun it was?

14 A. Yeah, it belonged to Puppet.

15 Q. Okay. And what did Puppet do with it? Did you see  
16 who had it first? That's a better question. Who did you see  
17 with the gun?

18 A. Well, he -- he -- it was his gun, you know.

19 Q. I just didn't want to take it for granted.

20 So you see Puppet with the gun?

21 A. Yeah.

22 Q. Okay. What happens after you see Puppet with the  
23 gun?

24 A. Well, they -- then Evaristo takes it, you know.

25 Q. Tell us exactly how you saw Evaristo take it.

1 A. He just put it in his waist.

2 Q. So did you physically see Evaristo take the gun from  
3 Manuel and put it in his waistband?

4 A. I didn't see it-see it, but I mean, you know, it was  
5 his gun and then he had it, you know.

6 Q. I don't want to put words in your mouth. I just  
7 want to know what happened.

8 So then you saw the defendant with the gun?

9 A. Yeah.

10 Q. And was that before you left Sal's apartment?

11 A. Yeah.

12 Q. Did you hear the defendant say anything?

13 A. Seven years ago, you know.

14 Q. So you don't remember -- let me ask you this: Do  
15 you remember if the defendant said anything back at Sal's  
16 apartment?

17 A. It's been a while, so, no, I --

18 Q. So then everybody -- you see the defendant, Jonathan  
19 and Puppet and the girl go in the El Camino. Tell me what you  
20 do next.

21 A. So, you know, we're driving behind them and, you  
22 know, we got caught up in the -- in the light, stop light, and  
23 therefore, you know, they're already there at the -- at the  
24 school. So there was kind of a traffic, you know, because it  
25 was when school was coming out.

1                   So there was traffic, there was a lot of people,  
2 and, you know, we -- we were probably going to, you know,  
3 arrive to the property of the school, and therefore, you know,  
4 we -- we see a crowd, just a crowd of people, just running.

5                   Out of nowhere we see a gunshot.

6           Q.     Where do you see the crowd of people running, do you  
7 remember a location?

8           A.     They were running across the street.

9           Q.     Do you remember the name of the street?

10          A.     I don't remember the name. I know it was at a high  
11 school.

12          Q.     And you don't remember the name of the high school?

13          A.     I think it was Washington school or the street.

14          Q.     Okay. And you said that you heard gunshots. How  
15 many gunshots?

16          A.     You know, I -- I can't say how many I heard, but I  
17 heard a couple. And it's not that I don't want to say, it's  
18 not that. It's that I don't remember. It's been seven years.

19          Q.     I understand.

20                   Was it more than one?

21          A.     Yeah.

22          Q.     And how -- what was the time interval or time lapse  
23 between the shots? Was there a pause or was it kind of quick?

24          A.     You know, we -- we, um, in the car we were -- we  
25 were driving in, we -- we were playing music, you know, and

1 that question is really hard to answer, you know, because I  
2 really don't remember.

3 Q. Okay. And where were you in the car, if you  
4 remember, when you heard the gunshots?

5 A. We were in the back -- I was in the back seat.

6 Q. Do you remember what location in terms of  
7 Washington Street and the school? Like were you in front of  
8 the school, on the side of the school?

9 A. We were already pulled up to the school.

10 Q. Pulling up to the school?

11 A. Yes. We didn't -- we didn't actually make it in the  
12 property because therefore it was traffic coming in, so we  
13 were -- we were stopped -- we stopped into where you make the  
14 left-hand in to go to the school.

15 Q. Did you actually see the shooting?

16 A. I did not see the shooting. We heard the shooting.

17 Q. And did you personally participate in the fight that  
18 may have occurred in front of the school?

19 A. No, I did not.

20 Q. So what do you do after you hear these gunshots?  
21 What happens in the car you're in?

22 A. We didn't -- we didn't know who got hit, you know,  
23 we just -- we took off.

24 Q. Okay.

25 A. We took off and afterwards we just -- we just left,

1 you know.

2 Q. Where did you go?

3 A. We left to Salvador's house.

4 Q. You went back to Salvador's house?

5 A. Yeah.

6 Q. Okay. And that's a yes?

7 A. Yeah.

8 Q. I just want to make sure for the record so nobody  
9 yells at me.

10 So when you go back to Salvador's house, is it  
11 right after the shooting?

12 A. Yeah.

13 Q. You know, when you heard the shooting?

14 A. Yeah.

15 Q. Now, does there come a point when anyone else  
16 returns to Sal's place?

17 A. Everybody.

18 Q. Who is everybody? Just so I know -- so we know.

19 A. Everybody that was involved, you know, into that  
20 fighting.

21 Q. So the same people, Puppet?

22 A. (No audible response.)

23 Q. Did Jonathan come back?

24 A. (No audible response.)

25 Q. How about your brother, Arian? Oh, I'm sorry, you

1 didn't -- you've got to say for the record.

2 MS. PANDUKHT: I'm watching him nod. My apologies.

3 BY MS. PANDUKHT:

4 Q. So let me go back, restart over.

5 Did Puppet come back to Sal's place?

6 A. Right.

7 Q. Okay. Did Jonathan come back?

8 A. Yeah.

9 Q. Did the defendant come back?

10 A. Everybody went back.

11 Q. Okay. I just want to make sure we're clear. It's  
12 important, and I -- how about Giovanni, did he come?

13 A. Man, I don't remember seeing -- seeing Giovanni  
14 there. I don't -- I don't think he got there until later on  
15 that night.

16 Q. Okay. Anyone else that I forgot to ask you about  
17 specifically?

18 A. No.

19 Q. So the defendant comes back to the place, to Sal's  
20 place?

21 A. (No audible response.)

22 Q. Can you tell us --

23 THE COURT: He didn't answer that audibly.

24 MS. PANDUKHT: I'm sorry. Thank you, Judge.

25 BY MS. PANDUKHT:



1 Q. Can you say yes or no for the record?

2 A. Yes.

3 Q. Okay. So how was the defendant acting when he  
4 returned to Sal's place?

5 A. Everybody was scared, you know, everybody was hyped  
6 up and scared at the time, you know. We didn't know what --  
7 what went down until, you know -- you know, he --

8 Q. What did he say?

9 A. Just, man, like, man, I think -- I think I shot him,  
10 I think I got him.

11 Q. Did he say who he was shooting?

12 A. He didn't say where or who he shot or nothing like  
13 that.

14 Q. Did he call him any name or anything? Do you  
15 remember exactly what he said?

16 A. I can't remember, you know, because I wasn't there,  
17 you know.

18 Q. Oh, I know, I'm only asking you about what the  
19 defendant said.

20 What did the defendant say exactly that you  
21 remember?

22 A. You know, that night we -- everybody was drunk.  
23 Everybody was drunk and off -- you know, we were drugged out  
24 off of marijuana, like drugged out.

25 Q. And again, what did you hear the defendant say

1 specifically about the shooting?

2 A. Just high, you know.

3 Q. Do you remember him telling you he shot a kid?

4 A. Jonathan Harper was the one that told me that.

5 Q. Did you speak to Jonathan Harper after the shooting?

6 A. Yes, I did.

7 Q. How quickly after the shooting did you speak to  
8 Jonathan Harper?

9 A. Like the next day he told me what happened, like  
10 everything, he was the one that was there.

11 Q. Witnessing it?

12 A. Witnessing, like -- like there with him, like at the  
13 school, he was there.

14 Q. And he told you what he saw?

15 A. Yeah, and what he heard.

16 Q. So let me go back to the defendant, and I just want  
17 to make sure I got everything right.

18 Do you remember the defendant telling you he  
19 shot a kid? Do you remember that word?

20 MS. PANDUKHT: And I'm -- I'm referring to his  
21 statement on page 5 for counsel.

22 THE WITNESS: Yeah.

23 BY MS. PANDUKHT:

24 Q. You do, you remember that?

25 A. (No audible response.)

1 Q. Do you remember what he was doing -- how he was  
2 saying that when he told you that?

3 A. I don't.

4 Q. Do you remember saying that the defendant just  
5 laughed?

6 A. Again, you know, we were all drunk and high, you  
7 know?

8 Q. I'm just wanting to find out what you heard.

9 A. Yeah.

10 Q. Do you remember that?

11 A. No.

12 Q. What, you don't remember him saying that?

13 A. (No audible response.)

14 Q. Let me refer you to page 5, also referring counsel.

15 (Sotto voce at this time.)

16 MS. PANDUKHT: May I approach?

17 THE COURT: You may.

18 BY MS. PANDUKHT:

19 Q. Mr. Calvillo, I'm showing you that statement I told  
20 you about, it's got your name right here (indicating). I'm  
21 going to ask you to look at the page I've referred everyone to.  
22 So I want you to read this and tell me, once you read it, if it  
23 refreshes your recollection. Go ahead.

24 A. Man, I mean, you know, --

25 MR. FIGLER: Objection, Your Honor, nonresponsive.

1 Calls for a yes or no.

2 THE COURT: Sustained.

3 BY MS. PANDUKHT:

4 Q. Could you read it?

5 A. (No audible response.)

6 Q. I'm sorry?

7 A. Okay. Um, who else was involved in the shooting?

8 Q. No, no, just to yourself. Just to yourself.

9 A. (Witness complies.)

10 Q. Are you done reading? Okay.

11 Do you remember the defendant --

12 MR. FIGLER: I'm going to object, Your Honor --

13 THE COURT: Hold on.

14 BY MS. PANDUKHT:

15 Q. Did that refresh your recollection?

16 THE COURT: Hold on. First of all, let her finish  
17 the sentence, and then I can make a ruling.

18 MR. FIGLER: I think she was going to read the  
19 statement directly from the -- which would be improper form.

20 THE COURT: That's true.

21 MS. PANDUKHT: Which I quickly realized, I was going  
22 to rephrase. So could I rephrase?

23 THE COURT: Okay. I'm sure you were. It's just  
24 that you're getting -- go ahead.

25 BY MS. PANDUKHT:

1 Q. So did reading that refresh your recollection?

2 A. Yeah.

3 Q. Do you remember now if the defendant laughed when he  
4 said it?

5 A. Well, yeah.

6 Q. Or that you said: He just laughed?

7 A. I mean we laughed almost after -- it was on the  
8 news, you know?

9 Q. What else did the defendant tell you that night  
10 after the shooting?

11 A. Regarding the shooting?

12 Q. Yes, please.

13 A. I mean, you know, it was just -- you know, we got to  
14 Salvador's house, everybody was just, you know, still drinking,  
15 you know, still drinking.

16 Q. And I just want to find out what else the defendant  
17 told you because there's some other things that you said in  
18 your statement that I want to ask about.

19 MR. FIGLER: Objection, that's leading and --

20 MS. PANDUKHT: I'm trying to direct the witness.

21 THE COURT: Overruled.

22 BY MS. PANDUKHT:

23 Q. What else did the defendant tell you about the  
24 shooting?

25 A. You know, I don't remember. I gotta see the

1 statement.

2 Q. Okay. So do you recall -- do you recall the  
3 defendant telling you the kid was trying to --

4 MR. FIGLER: I'm going to object, Your Honor.

5 MS. PANDUKHT: And this is pursuant to callie  
6 (phonetic) -- he just said he doesn't remember. So now I need  
7 to see if this can refresh his recollection.

8 So I can just have him read the --

9 THE COURT: I don't think you're asking it properly.

10 MS. PANDUKHT: Okay. Well, I'll ask to approach. I  
11 just don't know. I want to be specific on the statements, so I  
12 will instruct him to a page and then have him read that page.

13 He just said he didn't remember, so --

14 THE COURT: Then ask him if it refreshes his  
15 recollection.

16 MS. PANDUKHT: Okay. So I'm just going to direct  
17 him to a page.

18 THE COURT: And you can ask another question from  
19 there, but you can't ask him, did you -- da-da-da --  
20 particularly when you're reading it, and that's improper.

21 MS. PANDUKHT: I just have several statements, I  
22 want to make sure I go through them one by one.

23 So I'm going now to direct counsel to page 6, which  
24 is the next page.

25 BY MS. PANDUKHT:

1 Q. You already said that you wanted to see your  
2 statement again, so would it refresh your recollection to see  
3 the statement?

4 A. I remember clear.

5 Q. What?

6 A. I remember.

7 Q. You do remember?

8 A. Yeah.

9 Q. Okay. Okay. So -- so you do remember?

10 A. Yeah.

11 Q. Okay. You don't need to see this?

12 A. Not at all.

13 Q. All right. Is it hard for you to do this?

14 A. Yes, it is, absolutely it is.

15 Q. Okay. Okay. Can you tell me what else you said?

16 A. Yeah.

17 Q. Go ahead.

18 A. So we got back home and, you know, Evaristo, you  
19 know, not just me but everybody in there, you know, I mean I  
20 did what I did because I seen the kid trying to pull something  
21 out, too, you know, and it was either him or me.

22 Q. Okay. What else did you hear him say?

23 A. (No audible response.)

24 Q. Anything about Giovanny?

25 A. Yeah, that I guess Giovanny was the one, you know,

1 that said, you know, he's got a gun.

2 Q. No, don't say -- don't say what Giovanni said.

3 Did he say anything -- did the defendant -- I  
4 only want to talk about what the defendant said. Did the  
5 defendant say anything about Giovanni?

6 A. Yeah.

7 Q. What?

8 A. What he said, you know, to -- that the other kid  
9 that he seen, you know, that he had no weapon as well, you  
10 know.

11 Q. Okay. Do you remember anything about a fight going  
12 on -- anything being said by the defendant regarding a fight  
13 going on with Giovanni?

14 A. You know, I don't even know if they even fought. I  
15 wasn't even there, you know?

16 Q. Oh, I know.

17 A. I don't even know if they fought.

18 Q. I just want to know what you told the police, that's  
19 all.

20 MS. PANDUKHT: May I approach the witness again,  
21 Your Honor?

22 THE COURT: You may.

23 BY MS. PANDUKHT:

24 Q. I'm going to show you page 6 of your statement.

25 Please review the top portion of page 6 and -- to yourself --



1 and tell me if that refreshes your recollection.

2 A. (Witness complies.)

3 Q. Have you read page 6?

4 A. This page right here?

5 Q. Yeah, this is page 6.

6 A. I'm almost done. I'm almost --

7 Q. Okay. Do you remember talking to the defendant, and  
8 the defendant talking about the fight with -- I believe in the  
9 statement you referred to him as Yobanni?

10 A. Right.

11 Q. Did Giovanny have another name, Yobanni? Did some  
12 people call him Yobanni and some people Giovanny?

13 A. Yeah.

14 Q. I mean, you heard that, right?

15 A. Yeah.

16 Q. Okay. But that's the same person?

17 A. Yeah.

18 Q. Okay. So do you remember the defendant telling you  
19 the kid was trying to jump his cousin Yobanni?

20 A. Yep.

21 Q. Okay.

22 A. Him and several other guys.

23 Q. Okay. And then now do you remember anything about  
24 the defendant saying why he shot the kid?

25 A. I don't remember that.

1 Q. Okay. Do you remember the defendant saying anything  
2 about Yobanni being involved and why he shot the kid?

3 A. I -- yeah, I remember.

4 Q. What did he say?

5 A. Yeah, that Yobanni was, like, you know, like, get  
6 him, you know, he -- he's got a gun, you know?

7 Q. Well, do you remember that the defendant said that  
8 he shot the kid because Little One told him to?

9 A. Right. See here (indicating).

10 Q. You do remember that? Because that's on page 13,  
11 and I can -- I can show it to you.

12 A. Oh, no, no, no, I remember.

13 Q. Okay.

14 A. I remember.

15 Q. You do remember that?

16 A. Uh-huh, yeah. I'm sorry.

17 Q. That's okay. I understand.

18 Just want to make sure -- okay. Did the  
19 defendant tell you anything about a chase?

20 A. See, um, Jonathan was the one that had spoke to me  
21 about that.

22 Q. Okay. So did the defendant say that he chased him?

23 MR. FIGLER: Objection, leading.

24 MS. PANDUKHT: Well --

25 THE COURT: Sustained.

1 MS. PANDUKHT: -- he said he doesn't remember, so --

2 THE COURT: Sustained. The way it was asked is  
3 sustained.

4 BY MS. PANDUKHT:

5 Q. Do you remember anything about the defendant saying  
6 anything about chasing anyone?

7 A. Yes, ma'am.

8 Q. What did the defendant say?

9 A. That he saw the kid, you know, pulling out a gun  
10 and, you know, that I guess he chased him down.

11 Q. Did the defendant say anything about what happened  
12 to the gun afterwards?

13 A. Yeah.

14 Q. What did he say?

15 A. He said he hid it, you know, like -- like that  
16 bathroom, in a toilet.

17 Q. That's what the defendant said?

18 A. Yes, ma'am.

19 Q. Did he say anything else about that?

20 A. That was it.

21 Q. Okay. Did you ever describe the gun?

22 I know you said today -- how would you describe  
23 that gun?

24 A. As a black gun.

25 Q. Do you know what kind of gun it looked like?

1 A. It was not a revolver.

2 Q. Okay. So it was a semiautomatic?

3 A. Yeah, it had to be because it had a clip.

4 Q. Okay. And then did you know what kind of caliber it  
5 looked like?

6 A. I'm not sure if it was a .45. I'm not sure.

7 Q. Do you remember saying in your statement to the  
8 police what you thought it might have looked like?

9 A. It was either a nine or a .45. It was either one of  
10 those two guns.

11 Q. Okay.

12 MS. PANDUKHT: Court's indulgence.

13 (Sotto voce at this time.)

14 BY MS. PANDUKHT:

15 Q. Mr. Calvillo, so it's your testimony today that the  
16 defendant said that the other person had a gun?

17 A. Yes, ma'am.

18 Q. And isn't it true that in your statement that you  
19 gave to the police it doesn't say that anywhere in your  
20 statement?

21 A. Not at all.

22 Q. Okay.

23 A. It didn't.

24 Q. And so you didn't tell the police that back in 2006?

25 A. I did not.

1 Q. Why are you saying that today?

2 A. You know, um, I tell you like this, ma'am, I'm 24  
3 years old. I'm a young kid now, you know? When I was involved  
4 with all of this activity, I was young. I didn't know about  
5 what was right from wrong, you know?

6 Well, maybe I did, you know. And -- but I tell  
7 you one thing, man, these guys were like family, you know? And  
8 I wasn't going to hide nothing because I'm still here. The  
9 truth's got to come out. You know?

10 Q. I know.

11 (Sotto voce at this time.)

12 MS. PANDUKHT: Mr. Calvillo, I thank you, and I have  
13 no further questions.

14 THE COURT: Cross-examination.

15 MR. FIGLER: It's going to go past five. It's your  
16 call.

17 THE COURT: How much past five?

18 MR. FIGLER: We have at least 35 minutes with this  
19 witness, Your Honor.

20 THE COURT: Okay. I'm going to go ahead and take  
21 that break then tonight..

22 All right. Ladies and gentlemen, during this  
23 recess you're admonished not to talk or converse  
24 among yourselves or with anyone else on any subject  
25 connected with this trial;

1           Or read, watch or listen to any report of or  
2           commentary on the trial, or any person connected  
3           with this trial, by any medium of information,  
4           including, without limitation, newspaper,  
5           television, radio or internet;

6           Or form or express any opinion on any subject  
7           connected with the trial until the case is finally  
8           submitted to you.

9           We'll begin tomorrow at nine o'clock. Have a  
10          good -- good evening tonight. Thank you.

11          Marshal, can I see you up at the bench -- hold  
12          on, please wait.

13          THE MARSHAL: All rise.

14  
15          (The following proceedings were had in open.  
16          Court outside the presence of the jury panel:)

17  
18          THE COURT: We're outside the presence of the  
19          jurors.

20          I'm going to have the officers go ahead and escort  
21          this young man out.

22          COURT SERVICES OFFICER: Watch your step, sir.

23          THE COURT: And have a seat, please. Thank you.  
24          Let's allow him --

25          MS. PANDUKHT: May we come up?

1 THE COURT: Yes.

2 MR. GOODMAN: Is it okay if we interview the -- the  
3 witness, Your Honor, just like the prosecutors got to do  
4 earlier?

5 THE COURT: One thing at a time.

6 MR. GOODMAN: But that would be the defense  
7 request -- wait, wait.

8 THE COURT: Hang on.

9 MR. GOODMAN: Hang on, Marshal.

10 THE COURT: You want to speak with him --

11 MR. FIGLER: Judge --

12 MR. GOODMAN: We can --

13 THE REPORTER: One person at a time.

14 THE COURT: Whoa, whoa, whoa, whoa. Hold on. Hold  
15 on, hold on.

16 MR. GOODMAN: Okay.

17 THE COURT: Hold on.

18 Let me make a record -- before you take him off,  
19 sir, hold on one second.

20 Has this witness -- I'm assuming this witness has  
21 been properly questioned for years.

22 MS. PANDUKHT: Yes, Your Honor.

23 THE COURT: How is it that you've not ever  
24 interviewed this witness?

25 MR. GOODMAN: We have not been able to locate him,

1 Your Honor, so he's here on a material witness warrant. We  
2 would like to have the benefit now of interviewing him.

3 THE COURT: Okay.

4 MR. GOODMAN: Since the prosecutors have interviewed  
5 this witness, here on a material witness warrant --

6 THE COURT: All right.

7 MR. GOODMAN: -- we would like to have the same  
8 benefit --

9 THE COURT: You may.

10 MR. GOODMAN: -- of interviewing the witness.

11 THE COURT: I will make that available to you.

12 And what I'm going to ask is if the officers then  
13 could take, in a moment when we're off the record, the  
14 defendant back to Clark County Detention Center.

15 What I'm going to do is then have the other marshal  
16 stay in here, the courtroom will be clear, and allow the  
17 defense counsel to interview this witness.

18 MR. FIGLER: Thank you, Your Honor.

19 MR. GOODMAN: Thank you.

20 THE COURT: Sure. But before we take him back and  
21 before we go off the record, I want to make a couple -- I want  
22 to make a record of a couple things, if I could find my notes.

23 First, I want to make a record one more time, I  
24 forgot to make a record of the offer that had been made to the  
25 defendant prior to trial.



1                   So what, Prosecutor, was the offer prior to trial?

2                   MS. PANDUKHT: Not in the presence of the witness,  
3 Your Honor.

4                   THE COURT: Can we just let the -- can we just put  
5 him -- just outside the door shot while we're doing the rest of  
6 this? Thank you.

7                   COURT SERVICES OFFICER: Sure.

8                   MS. PANDUKHT: For the record --

9                   THE COURT: So we've made a record. Go ahead.

10                  MS. PANDUKHT: Can I just say something else for the  
11 record, the only reason I went over there to talk to the  
12 Corrections officer was to make sure the witness was kept  
13 separate from the defendant.

14                  THE COURT: Well, I let him know that -- same thing.  
15 He'll be put into protective custody.

16                  MS. PANDUKHT: Thank you. I just wanted that clear  
17 for the record. I didn't talk to him about his testimony at  
18 all.

19                  THE COURT: No, no, no, you're fine.

20                  MS. PANDUKHT: For the record, Your Honor, I came on  
21 to this case rather late, but this is my understanding of the  
22 offer --

23                  THE COURT: Who gave an offer?

24                  MS. PANDUKHT: Ms. Jimenez and I made the initial  
25 offer. And then he was allowed to withdraw his plea.

1 THE COURT: Right. I'm talking about --

2 (Multiple speakers at this time.)

3 THE REPORTER: One person at a time, please.

4 THE COURT: Hold on. I'm talking about prior to  
5 trial at calendar call.

6 MS. PANDUKHT: Right.

7 THE COURT: Clearly an offer had been made.

8 MS. PANDUKHT: Yes.

9 THE COURT: Prior to trial.

10 MS. PANDUKHT: I had made the offer of either second  
11 degree murder with a deadly weapon, which would be under the  
12 old law, would be offered ten to life -- ten years to life,  
13 plus a consecutive ten years to life, for a total of 20 years.

14 And he has approximately five years or so credit  
15 because I agreed to allow him to get credit time served since  
16 his arrest date in Mexico in 2008.

17 THE COURT: Right. Okay.

18 MS. PANDUKHT: Now, I had come up with an  
19 alternative offer, which I also conveyed to counsel, of simply  
20 first degree murder, which would be one life sentence, but 20  
21 years to life, but he would only have to parole off of one life  
22 sentence as opposed to paroling off two.

23 THE COURT: Understood.

24 MS. PANDUKHT: And I gave that alternative offer new  
25 to Mr. Goodman again with the same credit.

1 THE COURT: When was that given?

2 MS. PANDUKHT: Um, I gave that --

3 THE COURT: About.

4 MS. PANDUKHT: Was it a couple weeks --

5 MR. GOODMAN: I conveyed that to my client,

6 Your Honor, with Mr. Figler and Mr. Lawson present.

7 THE COURT: All right. And is that correct, sir,  
8 they conveyed the offer to you; correct, both your attorneys  
9 conveyed that offer?

10 THE DEFENDANT: Yes, they did.

11 THE COURT: And you refused that offer; correct?

12 THE DEFENDANT: Your Honor, I've been in Court how  
13 long, three years? Four years?

14 THE COURT: I didn't ask you that, sir.

15 THE DEFENDANT: Yeah, it's been denied.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: It's been denied.

18 MR. FIGLER: It's been denied is what he's saying,  
19 the offer.

20 THE COURT: All right. So you refused that offer.  
21 I'm just making a record, sir.

22 MR. GOODMAN: Wait, hang on, Your Honor, one second,  
23 please.

24 (Sotto voce at this time.)

25 THE COURT: Wait, wait. Can he just answer that

1 question?

2 You refused the offer; correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And you proceeded to trial?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Go ahead, Mr. Goodman.

7 (Sotto voce at this time.)

8 THE COURT: I have one more thing I want to make a  
9 record. For whatever reason I want to make a record because  
10 otherwise you can't tell --

11 MR. FIGLER: Was that sufficient canvass,  
12 Your Honor? Because I --

13 THE COURT: Can I what?

14 MR. FIGLER: Was that a sufficient canvass for  
15 Your Honor because I said earlier I would reduce it to writing  
16 if the Court needed that.

17 THE COURT: Yeah, you guys need to reduce it to  
18 writing, and I think you should, but I think now we've made the  
19 record. There's been no -- nothing by the Supreme Court that  
20 it has to be reduced. I think it's a better practice, but I  
21 think now this is the second record I've made of it. It's in  
22 the middle of trial. It's not like nobody's going to be able  
23 to locate this. This is in trial transcript now. So I think  
24 it's sufficient in the record.

25 MR. FIGLER: Thank you, Your Honor.

1           THE COURT: I do want to make a record that it  
2 appears the jury is made up of the following:

3           Number 1, Lisa Griffis, is a Caucasian female; 2,  
4 Namit Bhatnagar, is a -- an Asian male; Juror 3,  
5 Michael Arcana, is a Caucasian male; Juror 4, Pamela Olson, is  
6 a white female; Juror 5, Jacque Wiese, is a Caucasian female;  
7 6, Angela Numez-Morarrez, is a Hispanic female; 7,  
8 Keith Trombetta, is a Caucasian male; 8, Kristina Beber, is a  
9 white female -- or Caucasian female; 9, Erika Villanueva, is a  
10 Hispanic female; Joseph Catello, 10, is a Caucasian male;  
11 David McCallum, 11, is a Caucasian male; Juror 12,  
12 Elizabeth Uhrle, is either Hispanic or Asian female; 13,  
13 Sarah Morasco, appears to be a Hispanic female; and, 14,  
14 Sandra Gomez, is a Hispanic female.

15           Those are the Court's observations. Anybody wants  
16 to add to the record or change my observations or add their  
17 observations, you may. For whatever reason, I know several  
18 times it's been brought up about keeping Hispanics on the jury,  
19 and so I just want the transcript to reflect the Court's  
20 observations of the diversity on the jury.

21           MS. PANDUKHT: Thank you.

22           THE COURT: All right. So having done that and,  
23 like I said, if you want to pipe up tomorrow after looking and  
24 seeing that's what I wrote down, but if anybody is in conflict  
25 with that, you're free to make a record.

1 All right. Having said that, is there anything  
2 further then this evening?

3 (Sotto voce at this time.)

4 MR. FIGLER: I don't think so.

5 I submitted the proposed jury instructions to your  
6 Court's clerk and the State for the Court's review, as I  
7 promised I would do, in the a.m. hours today. So that's done.

8 THE COURT: Thank you, I appreciate that.

9 MS. PANDUKHT: Your Honor, could I renew something  
10 based on previous objection?

11 THE COURT: Hold on, let -- do you have anything  
12 else?

13 MR. FIGLER: Not at this time, no.

14 THE COURT: All right. I did receive them. I'll  
15 start looking at instructions tomorrow. I just had a doctor's  
16 appointment this morning so I couldn't review them, but I'll  
17 start reviewing them tomorrow.

18 Oh, wait, I've got one more record, hold on, here's  
19 my other record.

20 My other record is in regard to this last witness  
21 and Mr. Figler's prior motion that the Court appoint that  
22 particular witness counsel.

23 Even if, as defense has suggested, that witness was  
24 somehow involved or could be implicated in a crime, the Court  
25 would note at least, and you can add to this record, that, at

1 most, based on his testimony on Direct, it appears that, at  
2 most, in the worst case scenario, he could have been charged  
3 with an accessory to murder, which is a C felony.

4 The statute of limitations is three years on that.  
5 So the statute of limitations for the State to have filed, and  
6 clearly they had a police statement, would have been by 2009 if  
7 they were going to charge him with that crime.

8 Additionally, in the worst case scenario, he could  
9 have, I suppose, in the worst case scenario been charged with a  
10 conspiracy to commit murder just based on him saying that he  
11 had seen the defendant with the gun prior to getting into the  
12 car.

13 If that's the case, in the worst case scenario,  
14 that's a B felony, and I believe it's still a three-year  
15 statute of limitations, which would have been by the State,  
16 again, what it's alluding to the entire time a statement that  
17 defendant gave to the police.

18 The statute would have run on this as of  
19 February 6th of 2009 for the State to have filed a complaint  
20 against him.

21 Therefore, with the statute of limitations running  
22 on those crimes, unless you throw out another crime, it's the  
23 Court's contention that, even in the worst case scenario, which  
24 the Court didn't necessarily -- you know, the facts obviously  
25 are contested, but even in the worst case scenario, it appears

1 that the statute of limitations would have run to which there  
2 would be in this date, which is July 9th, 2013, no need for the  
3 prosecutors to convey immunity to that individual prior to  
4 testifying, nor would there be any need for this individual to  
5 require counsel to advise him of his Fifth Amendment rights  
6 prior to testifying.

7 And, therefore, the Court wants to make a record  
8 that the Court denied the defense's request at the bench.

9 I just want to make a full record of that. And  
10 you're free to pipe in on the record, I think.

11 MR. FIGLER: On that, Your Honor, then thank you.

12 The State has pled this case that a first degree  
13 murder conviction can be premised on the challenge-to-fight  
14 statute, which would have no statute of limitation, which is a  
15 Category A felony found at 200.450.

16 The witness did wind up testifying that he received  
17 a call from Giovanni Garcia or --

18 THE COURT: I don't think he did, Puppet did.

19 MR. FIGLER: Right, but that he responded, that call  
20 was made to the apartment where he was located, that he  
21 responded, and that they all got in the cars and headed down to  
22 it.

23 Now, he denies that he got out of the car, but  
24 the -- the response to the challenge to fight, if that's the  
25 State's theory, was engaged in by this individual. Now he has



1 some other facts surrounding that. They knew a gun was there,  
2 that a gun was going to that direction. He knows that somebody  
3 got shot. They all kind of grouped together by his testimony  
4 and went back to his house again and were then engaged in it as  
5 well.

6 So I believe that, if the State wanted to, he does  
7 have the same exposure under that theory as -- as broad as it's  
8 been pled in Count II to the murder charge.

9 So -- so that was additionally a concern.

10 I appreciate Your Honor's comments on the other  
11 aspects of it. And he wasn't given any immunity for that, and  
12 he wasn't advised of his Fifth Amendment rights or being able  
13 to consult with an attorney on that.

14 So that's what we were looking on that because of  
15 the way that the -- that it was pled.

16 Additionally, Your Honor, there is a concern of  
17 whether or not he would technically be under law an accomplice,  
18 and that would be an issue for us to address during jury  
19 instructions with regard to the necessity for corroborating  
20 evidence, et cetera. But I guess we can cross that bridge when  
21 we get to it, but those are the concerns of the defense.

22 MS. PANDUKHT: May I respond, Your Honor?

23 THE COURT: Sure.

24 MS. PANDUKHT: Thank you. First of all, the charge  
25 is conspiracy to commit murder, not just conspiracy to commit

1 any old crime.

2 And in this case the reason the State charged at  
3 first Giovanny Garcia and then later Manuel Lopez is because  
4 it's the State's contention, it's already starting to be coming  
5 out and will continue to come out that Manuel Lopez, it was his  
6 gun, and he gave it to the defendant prior to the shooting, and  
7 that Giovanny Garcia not only brought them over to the fight  
8 and started the whole fight, but he told the defendant to shoot  
9 him and had some involvement right there immediately before the  
10 shooting.

11 As you know, you can't just charge defendants for  
12 mere presence -- or I mean the State cannot just charge every  
13 single person that's at a crime scene with conspiracy to commit  
14 murder. There is so much of a higher burden than that.

15 And the State believes that Edshel Calvillo's  
16 conduct never rose anywhere close to that level. So I want to  
17 make that --

18 THE COURT: Well, I'm having prosecutor -- I don't  
19 know under what world he could ever truly be prosecuted as to  
20 your contention.

21 I appreciate that. I guess esoterically we can all  
22 argue whatever, but from what he testified to, it didn't appear  
23 that he was -- it did appear that arguably, arguably, perhaps  
24 the ones that got in the car with him and got out and told him  
25 to shoot, those people perhaps, and even when he gets back

1 supposedly the alleged victim, or the victim, the actual  
2 victim, had a -- supposedly had a gun and, you know, that  
3 creates a whole nother issue.

4 MR. FIGLER: It does now.

5 THE COURT: Did the person, if it is this defendant  
6 who shot, you know, and that's why I said, I'm not going to --  
7 I've seen people switch defenses in the middle of a case, and  
8 now, you know, I didn't hear any of this in opening, and ta-da,  
9 somebody is saying he's got the gun, he's admitting to  
10 shooting, quote, the kid.

11 You know, I don't know, but people have changed  
12 defenses in the middle of a trial.

13 MR. FIGLER: Sure.

14 THE COURT: Okay? So I'm glad I made my prior  
15 ruling because you never know what's going to happen at trial.  
16 It's just the name of the game.

17 However, still based on what I heard, this Court,  
18 the rendition of the Direct Examination did not rise to the  
19 level of a first degree murder by this defendant.

20 At best, and that's in the best case scenario, the  
21 best case scenario, on their best day, possibly, maybe,  
22 possibly, unlikely though, conspiracy to commit murder is the  
23 best they ever could have charged, ever --

24 MR. FIGLER: What about the challenge that I said  
25 though? That's what I'm concerned about because I didn't talk

1 about the conspiracy to commit murder charge, I talked about  
2 the challenge to fight and --

3 THE REPORTER: Slow down.

4 MR. FIGLER: I know, I do that sometimes. Sorry,  
5 Renee.

6 THE COURT: That's okay.

7 MR. FIGLER: And if it doesn't apply to this witness  
8 who testified, and it doesn't apply to Jonathan Harper, who  
9 will be testifying, then it shouldn't --

10 THE COURT: What's the punishment on the challenge  
11 to fight?

12 MR. FIGLER: First degree murder. It's an  
13 automatic. It's a strict liability that if there's a response  
14 to a challenge to fight as pled -- and I have a problem with  
15 that --

16 THE COURT: Let me see --

17 MR. FIGLER: -- that it automatically becomes first  
18 degree murder.

19 Now, we'd be happy if the State strikes that from  
20 the Complaint -- from the indictment --

21 (Sotto voce at this time.)

22 THE COURT: It still appears based on that, that it  
23 would be -- you know, as alleged, it would still be the  
24 defendant.

25 MR. FIGLER: I mean where's the --

1 THE COURT: This is under the aiding and abetting  
2 under the challenge to fight.

3 MR. FIGLER: Well, and that's problematic as well.

4 THE COURT: I mean it's just -- it's almost like  
5 it's kind of -- some kind of weird aiding and abetting  
6 bootstrap onto the statute itself.

7 MR. FIGLER: And I don't know if that's even  
8 allowed, and especially if they're --

9 THE COURT: I'm just going to -- I'm going to make  
10 the hard call and say no, how about that? I'm making a hard  
11 call right now because I'm sure there is no law on it. I'm  
12 just making it up as I go.

13 But what I heard doesn't come to the level. It  
14 appears -- it didn't appear to me that, from what he testified  
15 to, that the statute of limitation had run on that. Okay? So  
16 I'll just throw it out there.

17 And I don't think that they could have charged him  
18 with first degree murder based on what I heard. I know you  
19 would -- if he was your client, he definitely wouldn't think  
20 that, but just based on the facts, it's just so farfetched, so  
21 farfetched based on the statute.

22 MR. FIGLER: Well --

23 THE COURT: The statute, as I read it, and as the  
24 State presented their theory, fits this defendant's conduct.  
25 Doesn't necessarily fit that witness's conduct.

1           MR. FIGLER: And I think they're throwing in extra  
2 elements of aiding and abet and -- and conspiring, and they're  
3 conflating it into the theory of challenge to fight, when  
4 challenge to fight doesn't have any of that language, but  
5 challenge to fight has an agency requirement in there, in the  
6 statute.

7           So I think, you know, now that this is all kind of  
8 come to light how the State's proceeding, we really all need to  
9 talk about whether or not this challenge to fight with this  
10 extra language of aiding and abetting and conspiracy is even  
11 appropriate.

12          THE COURT: Let me see. Can I get the third  
13 amended? I'll just look at it because I mean I'll have to deal  
14 with it for instructions.

15          MR. GOODMAN: We have our jury -- yeah, we have our  
16 proposed jury instructions.

17          THE COURT: Here's the thing, I'm going to have to  
18 deal with it for sure, there's no doubt with instructions. I  
19 mean I'm going to have to deal with it, however, that can be  
20 another day.

21          What I'm talking about is having to give this  
22 witness --

23          MR. FIGLER: We're moving down it now. Your Honor  
24 ruled.

25          THE COURT: Yeah, yeah. I'm just saying --

1 MR. FIGLER: I was just saying that this now  
2 triggers our concern --

3 THE COURT: Okay. Got you.

4 MR. FIGLER: -- that we're going to have to deal  
5 with it. And if Your Honor forgets, I will raise it again.

6 THE COURT: No, no, no, I'll start looking at it  
7 because I'm not -- I said that to the parties, I didn't try a  
8 gang case. I mean I may have put on some prelims.

9 I didn't try a gang murder, and I didn't -- as a  
10 Judge, this is my first gang murder, so I'm happy and I'm open  
11 to hearing your arguments, and I'll sit and read all of these  
12 statutes.

13 MS. PANDUKHT: Okay.

14 THE COURT: And I'll -- I'll do the best I can.

15 And if you have any extra gang law, feel free to  
16 send it to me, any kind of, you know -- you know, not general,  
17 you know, law on murder.

18 I mean if there's something specific to the  
19 statute --

20 MR. FIGLER: Yeah.

21 THE COURT: -- feel free to send it to me ahead of  
22 time, and I'll read whatever cases, and I'll be like a gang  
23 expert by the time I've done this case. I promise.

24 Now, I'll have -- that's why I like to see my jury  
25 instructions ahead of time so I reconcile. You know, I should

1 be okay. I had a product liability endoscopy case, quite  
2 complicated, and I made it through.

3 So I know I can do this.

4 MS. PANDUKHT: Yeah.

5 THE COURT: And I will.

6 But I just think we're going all the way to jury  
7 instructions though now.

8 MR. FIGLER: Okay.

9 MS. PANDUKHT: And, Your Honor, I just have two  
10 things.

11 THE COURT: Okay.

12 MS. PANDUKHT: One is -- and I know that Mr. Figler  
13 and Mr. Goodman would never do this, but out of an abundance of  
14 caution because I had it happen in another case, I just want to  
15 make sure that they're not advising -- when they speak to  
16 Mr. Calvillo, they're not advising him about being arrested or  
17 anything like that. That should come from a Court.

18 THE COURT: You arrested him.

19 MS. PANDUKHT: No, no, I mean other than material  
20 witness --

21 THE COURT: No. He's in jail.

22 MS. PANDUKHT: No, but I mean everything we  
23 discussed right here with regard to liability by him, I just  
24 want to make sure -- I know they wouldn't do anything like  
25 that, telling him, you know --



1 THE COURT: Well, since I've made my ruling that he  
2 doesn't need counsel --

3 MS. PANDUKHT: That's all I'm saying.

4 THE COURT: -- I know that per the rules of  
5 professional responsibility, since I've already made a ruling  
6 saying he doesn't need counsel, that they're not going to go in  
7 there and somehow intimate to a witness that he needs counsel.

8 MR. FIGLER: Well, if he invokes counsel at this  
9 point, I move for a mistrial because I don't get a chance to  
10 cross-examine under --

11 (Multiple speakers at this time.)

12 THE REPORTER: One person at a time, please.

13 THE COURT: And if that happens, which I'm sure you  
14 don't want it to happen, your -- this client of yours is going  
15 next year to trial. So think long and hard if anybody wants to  
16 start messing up this trial.

17 MR. FIGLER: Exactly.

18 THE COURT: I will put it over another year. Trust  
19 me. Okay?

20 So they have every, every desire to want to conclude  
21 this case without a mistrial. Nobody will want a mistrial,  
22 because Deshawn Reed's mistrial and it was exactly put over a  
23 year. And right now I'm setting into next May. And that would  
24 be a sad thing if I -- if this case mistried --

25 MR. FIGLER: No, I agree.

1 THE COURT: -- over something so ridiculous like  
2 that.

3 MR. FIGLER: Let's just say illogical for them to  
4 even suggest that we would do that.

5 THE COURT: Well, it's not to you.

6 MS. PANDUKHT: No, I know they would never do that.

7 THE COURT: But, you know, having been in that  
8 office before, there are defense attorneys that are  
9 completely -- well, I just won't even say it, but would do  
10 something unethical to throw it.

11 Now, I know that's not either one of you, but I just  
12 want to caution and just state that, you know, just putting it  
13 out there for everyone, there shouldn't be a mistrial, and that  
14 goes both ways.

15 You know, and, of course, if the State made a  
16 mistrial, I've -- I've actually --

17 MR. FIGLER: Jeopardy.

18 THE COURT: Yeah. It was -- was that your case,  
19 Ms. Nyikos?

20 MS. DEMONTE: No, no, no.

21 THE COURT: No, it was one of DiGiacomo's --  
22 Sandy DiGiacomo's case. They threw a mistrial -- threw  
23 something right out there on purpose because they were losing.

24 MS. PANDUKHT: We would never do that.

25 THE COURT: You wouldn't. She did. She did it and

1 it was intentional, and she threw something out on a bad act  
2 without a motion in limine, and threw the whole case. Okay?

3 And I declared not only a mistrial, that jeopardy  
4 attached, and I didn't allow a retrial. Okay?

5 MR. FIGLER: Right.

6 THE COURT: So I'm not afraid to do it on both  
7 sides. I just, you know, with this type of case, and it being  
8 fragile, I don't want a mistrial. We want to get through this,  
9 this case is old, from 2006.

10 MR. FIGLER: Okay.

11 THE COURT: So it's in his best interest, too, you  
12 know. Obviously, this guy's in jail, but, you know, there  
13 better be nothing coming through to him, you know, as far as,  
14 you know, we have a lot of people out there listening.

15 MR. FIGLER: It's all in our best interest to have  
16 him crossed, trust me, Judge.

17 THE COURT: Agreed. Agreed.

18 MR. FIGLER: Right.

19 THE COURT: But I don't know, you know, there could  
20 be a family member that not liked, you know, what this guy said  
21 and --

22 MR. FIGLER: We're not directing anything of that  
23 sort.

24 THE COURT: Right. And, you know, calls his wife  
25 and then, you know, his wife could call him in jail, and the

1 next thing you know he don't want to testify.

2 MS. PANDUKHT: Right.

3 THE COURT: So I can see that happening too. So we  
4 don't want that to happen.

5 MR. FIGLER: Obviously.

6 MS. PANDUKHT: And then I have one more, I just want  
7 to clarify --

8 THE COURT: I don't know how you stop that from  
9 happening by the way, because he can't control perhaps on the  
10 outside, you know, what his family member or friend might do.

11 MR. FIGLER: It's in no one's interest on the  
12 defense side for this person to not be crossed in front of this  
13 jury.

14 THE COURT: Agreed. Agreed, because I would have to  
15 declare a mistrial.

16 MS. PANDUKHT: I have one other -- two other things.

17 THE COURT: Go ahead.

18 I should have let him cross. Go ahead.

19 MS. PANDUKHT: I'm sorry.

20 THE COURT: I should have. No good deed goes  
21 unpunished.

22 MR. FIGLER: I was just giving the Court a heads up.

23 MS. PANDUKHT: I know --

24 MR. FIGLER: I didn't ask for it tomorrow.

25 THE COURT: I know.

1 MS. PANDUKHT: Okay. One more thing, in light of  
2 what you have just said, I also wanted to tell you that, in  
3 light of your very clear ruling, Your Honor, yesterday about  
4 the Salvador shooting, I reread that transcript, you were  
5 absolutely -- you made a very clear ruling, I've admonished all  
6 the witnesses --

7 THE COURT: I don't remember what I said.

8 MS. PANDUKHT: Whatever we argued about yesterday,  
9 you were right, the Salvador Garcia --

10 (Multiple speakers at this time.)

11 THE REPORTER: One person at a time.

12 THE COURT: I'm sorry. Thanks.

13 MS. PANDUKHT: I wanted to tell you that I  
14 admonished this witness --

15 THE COURT: Okay.

16 MS. PANDUKHT: -- not to say anything about  
17 Salvador Garcia and the shooting, that you specifically  
18 excluded it. And I just wanted to make that clear in case it  
19 was in any way unclear yesterday.

20 THE COURT: Okay.

21 MS. PANDUKHT: Wanted to do that.

22 THE COURT: Thanks.

23 MS. PANDUKHT: And then there's one other thing I  
24 want to ask Your Honor.

25 THE COURT: Okay.

1 MS. PANDUKHT: In light of your prior ruling with  
2 regard to the evidence of a conspiracy, it is the State's  
3 contention that now with Edshel's testimony -- remember you had  
4 denied or sustained some hearsay objections?

5 THE COURT: Right.

6 MS. PANDUKHT: Now it is the State's contention that  
7 through the testimony of Edshel, that now there is at least  
8 slight evidence, which is all that's required under the  
9 statute, for a co-conspirator's statement, is slight evidence  
10 of a conspiracy, it is the State's contention that now that  
11 testimony has provided it. And so we would ask that tomorrow  
12 we would be eliciting -- it's Giovanni's statements.

13 THE COURT: Right.

14 MR. FIGLER: And what's the unlawful act that they  
15 are conspiring to do, which is required?

16 MS. PANDUKHT: Giovanni was charged as well as  
17 Manuel Lopez.

18 MR. FIGLER: Okay. They still have to name the  
19 unlawful acts that they were conspiring --

20 THE COURT: And -- and Manuel actually pled  
21 guilty --

22 MS. PANDUKHT: Yes.

23 THE COURT: -- for the record.

24 MS. PANDUKHT: Yes.

25 THE COURT: And why don't you make a record of what

1 he pled guilt to.

2 MS. PANDUKHT: Well --

3 MS. DEMONTE: Manuel pled guilty to conspiracy and  
4 voluntary manslaughter.

5 THE COURT: Right. I think I took the pleas.

6 MS. DEMONTE: Yes.

7 THE COURT: So Manuel Lopez actually pled in front  
8 of me and pled guilty to conspiracy to commit murder with him.

9 MS. PANDUKHT: And then what did --

10 THE COURT: Okay. So --

11 MR. FIGLER: But there's no evidence in the record  
12 yet that establishes that. We can't look outside the record to  
13 establish their conspiracy for the purposes of admitting stuff  
14 under NRS 50 --

15 THE COURT: Well, I understand. I think they've met  
16 the slight evidence -- I -- the burden is they have shown some  
17 evidence now.

18 MS. PANDUKHT: Yes.

19 THE COURT: And them getting in the car with the gun  
20 is enough, being present before, during and after the  
21 commission of the crime is going to be enough to get in  
22 co-conspirator's statements of Giovanni Garcia and Manuel Lopez  
23 at this point. That's what I would say.

24 MS. PANDUKHT: I just want to --

25 THE COURT: The people that were in the car were

1 Puppet -- who's Puppet?

2 MR. FIGLER: Manuel Lopez.

3 THE COURT: Okay. Puppet and Giovanny Garcia, which  
4 was the one that called.

5 And also, I mean it's not listed in here, but  
6 probably Salvador was in that car too. I would probably say  
7 Salvador as well.

8 MR. FIGLER: They're saying Salvador was in the car  
9 with the witness --

10 THE COURT: I'm sorry, there's just a lot of  
11 players.

12 MS. PANDUKHT: I know, I --

13 THE COURT: But then the one that was in the car,  
14 Puppet, Manuel Lopez and then Giovanny Garcia, they certainly  
15 met that burden.

16 To now you can certainly -- I want you, of course,  
17 to contemporaneously make an objection for the record, but  
18 cat's out of the bag now with his testimony. Those statements  
19 would come in.

20 Initially, I had a crime scene analyst, and, you  
21 know, she's cold on the record. So I sustained it. But it's  
22 been met now and, you know, if other people start testifying,  
23 go ahead and make your record, but I'll probably overrule that.

24 MR. FIGLER: And then just clear for the record that  
25 within the four corners of the case that we have in front of



1 Your Honor so far, that they have not established an actual  
2 conspiracy, an agreement to go and commit an unlawful act on  
3 either side of the equation.

4 They're agreeing to go somewhere, that doesn't  
5 make --

6 THE COURT: Well, when you bring a gun, at a minimum  
7 it's an assault with a deadly weapon.

8 MR. FIGLER: Well, someone has a gun. There is no  
9 agreement and there's no testimony that the gun is to be used  
10 in any way.

11 Just because someone has a gun in their pocket, it's  
12 not under the statute for use in any way, and there's no  
13 testimony yet that that gun was intended to be used in any way  
14 with regard to going over there and -- and doing whatever they  
15 were going to do, which is still quite uncertain.

16 So we're saying that based on the record as it  
17 exists today, that we have an objection to Your Honor's ruling.

18 THE COURT: Okay. I appreciate that.

19 MS. PANDUKHT: I can cite a case if you would like,  
20 Your Honor, for the record.

21 THE COURT: You can cite it, and that's fine, but I  
22 mean --

23 MS. PANDUKHT: I do have the case law --

24 THE COURT: Well, I don't have one off the top of my  
25 head.

1 MS. PANDUKHT: No, I know, and I will -- I actually  
2 have a citation. Goldsmith versus Sheriff, and 85 Nevada 295.  
3 It says the amount of independent evidence necessary to prove  
4 the existence of a conspiracy may be slight, and it is enough  
5 that only prima facie evidence of the facts is produced.

6 And what they're talking about is the hearsay  
7 co-conspirator's statement. And so I just wanted to cite that  
8 for the record.

9 THE COURT: Thank you.

10 MR. FIGLER: That doesn't change my opinion.

11 THE COURT: I -- I know, I understand.

12 Both sides have antagonistic approaches, I  
13 understand. The record is made. But I made a ruling on that.  
14 They're probably going to come in at this point at least as to  
15 those two.

16 MR. FIGLER: All right. A couple other things.

17 Number two, the State indicated, and I don't know  
18 the extent, that their investigator had spoken to this witness  
19 prior -- on prior occasions, it was something about promising  
20 to come to Court --

21 THE COURT: It sounded like serving a subpoena and  
22 promising to come to Court.

23 MR. FIGLER: But that's the extent of it. He wasn't  
24 interviewed or gave additional statements of the defendant or  
25 anything like that in reply.

1 MS. PANDUKHT: Well, we have --

2 THE COURT: Well, it's just for the record.

3 MS. PANDUKHT: Well --

4 THE COURT: Go ahead.

5 MS. PANDUKHT: Thank you, Your Honor.

6 Prior to today I wasn't able to get Mr. Calvillo to  
7 come into my office, but we just got him into custody today.

8 And so we went over to the jail, me and my  
9 investigator, and, frankly, the -- he was saying everything to  
10 us, he said everything consistent with his statement.

11 But as I'm sure you heard, I didn't go into this  
12 because I was assuming there was going to be objection, but he  
13 got a statement evidently from -- Edshel heard statements from  
14 Jonathan Harper. The night of the shooting or the night after  
15 the shooting Jonathan told him some stuff. I know he kind of  
16 alluded to that, I -- I anticipated an objection so I didn't  
17 let him.

18 THE COURT: Okay. So he got -- who got a --

19 MS. PANDUKHT: Jonathan made some statements about  
20 witnessing the murder. He testified to it today.

21 THE COURT: Right, right.

22 MS. PANDUKHT: To Edshel.

23 THE COURT: Right, but we're talking -- we're  
24 talking about discovery --

25 MS. PANDUKHT: That's it --

1 MR. FIGLER: I'm just --

2 THE COURT: I just want to know about discovery for  
3 post-conviction so that we know he only gave one statement to  
4 the police.

5 MS. PANDUKHT: Yes.

6 THE COURT: He never gave any other statements, and  
7 you just basically interviewed him today with your investigator  
8 over at jail.

9 MS. PANDUKHT: Right.

10 THE COURT: Prior to testifying.

11 MS. PANDUKHT: Right.

12 THE COURT: Okay.

13 MR. FIGLER: And we'd also like under the discovery  
14 that was already -- the discovery motion was already granted by  
15 Your Honor, if there was any threat of any source that were  
16 conveyed from the State to the -- to the witness --

17 THE COURT: You can cross him on that too.

18 MR. FIGLER: I could, but I also have a right under  
19 Brady to get that information from the State.

20 So I need to know what the State told him about his  
21 continued status, when he'd be released, what is he -- what  
22 would happen if he didn't testify in a certain way -- anything  
23 like that that the State is in possession of, they need to  
24 present that to the defense as discovery. That is not work  
25 product.

1 MS. PANDUKHT: I don't mind at all because I made  
2 no -- I should have asked him before he left.

3 THE COURT: Go ahead.

4 MS. PANDUKHT: But I made no promises and no threats  
5 other than he, you know, as you know, material witness warrant,  
6 once he testifies he can be released, and he can also post  
7 bail. So I didn't make him any promises other than I told him  
8 the only reason I felt I had to do the material witness warrant  
9 because I -- he didn't show up.

10 THE COURT: He's on my calendar for Thursday for the  
11 bench warrant return on the material witness warrant. He has a  
12 bail of \$10,000, and I signed that. So I signed that material  
13 witness warrant yesterday after he didn't show up for Court  
14 as -- as requested in the affidavit.

15 MS. PANDUKHT: And I told him I would call.

16 THE COURT: So there is a bail on him.

17 MR. FIGLER: So it's the State's representation --

18 THE COURT: Basically he's on calendar for Thursday,  
19 for my releasing him on Thursday.

20 MR. FIGLER: Right.

21 THE COURT: Now, if somebody testified sooner,  
22 there's no reason to keep him in custody. I, as the Court, if  
23 I listen to it and I'd ask everybody if they're done, including  
24 yourselves, if he hasn't posted bail, I might call over to jail  
25 and say he should be released sooner, because at that point

1 that's no reason to keep him in until Thursday.

2 MR. FIGLER: I'm not concerned about that. What I'm  
3 concerned about is if the State made any representations of any  
4 sort indicating to him --

5 THE COURT: Sure.

6 MR. FIGLER: -- that if he did not testify, even if  
7 called, if he did not testify consistent with his prior  
8 statement, if he did not testify against Evaristo Garcia, that  
9 there would be any consequence whatsoever to which that  
10 information is conveyed. The State is indicating to me that  
11 they made no representation of that sort.

12 MS. PANDUKHT: I would never do it --

13 MR. FIGLER: Well, again, for an abundance of  
14 caution, I know some prosecutors --

15 MS. PANDUKHT: Absolutely.

16 MR. FIGLER: -- would do something like that.

17 THE COURT: Absolutely. And I think that's --

18 THE REPORTER: One person at a time.

19 THE COURT: I think that's a fair statement,  
20 Mr. Figler. You're exactly right. What's good for one side is  
21 good for the other.

22 I don't think Ms. Pandukht would do that.

23 But out of an abundance of caution, we've made a  
24 good record. She said she hasn't done that.

25 MR. FIGLER: Nor her investigator.

1 MS. PANDUKHT: Yeah, he was with me.

2 THE COURT: Your investigator was there. You were  
3 present. Your investigator didn't threaten, promise, do  
4 anything?

5 MS. PANDUKHT: Other than we were hoping he could  
6 finish testifying today, and that didn't work.

7 THE COURT: Right.

8 MS. PANDUKHT: So he's upset about that. But I had  
9 no control over that. I said I would call him.

10 THE COURT: I -- like I said, I would have kept  
11 going, but I -- I knew we weren't getting out of here, and we  
12 needed to get the jury out because I tell them five o'clock,  
13 and we're not supposed to do on overtime -- blah, blah, blah,  
14 it's 5:30 now.

15 MR. FIGLER: Now, last thing.

16 THE COURT: Sure.

17 MR. FIGLER: And this is out of respect to the Court  
18 because you know that, as defense attorneys, Mr. Goodman and I  
19 are strong advocates, but because of what's been raised by the  
20 State, I don't want there to be any concern by the Court that  
21 the defense is trying to do something or violate a Court's  
22 order. So I'm going to bring this up ahead of time, and  
23 normally we wouldn't have to.

24 With that said, there is a -- there is evidence, and  
25 I can make an offer of proof, that in an under-oath proceeding,

1 that this witness, Mr. Calvillo, perjured himself. That is  
2 absolutely relevant evidence for this jury to consider with  
3 regard to his reliability.

4 Your Honor would agree with that statement; correct?  
5 That evidence of perjury?

6 MS. PANDUKHT: I don't know what he's referring to.

7 THE COURT: Well --

8 MR. FIGLER: Would you agree with that?

9 THE COURT: No. I -- here's the thing, what is  
10 your -- what does that mean, evidence of perjury?

11 I mean your definition of evidence of perjury is  
12 somebody who has a perjury conviction --

13 MR. FIGLER: No.

14 THE COURT: -- that's going to be relevant.

15 MR. FIGLER: Correct.

16 THE COURT: If somebody just thinks somebody's  
17 lying, that may not be relevant, and you can certainly try to  
18 impeach them with proper impeachment evidence.

19 MR. FIGLER: That's correct. And that's what we're  
20 looking at.

21 He testified at Salvador Garcia's trial of  
22 Jonathan Harper shooting --

23 THE COURT: Okay.

24 MR. FIGLER: -- that Jonathan Harper shot himself.  
25 He testified under oath to that.



1 THE COURT: Okay.

2 MR. FIGLER: The evidence is overwhelming that he  
3 was convicted beyond a reasonable doubt, Salvador Garcia, that  
4 Jonathan Harper did not shoot himself.

5 The State has taken the position that  
6 Jonathan Harper did not shoot himself. Jonathan Harper --

7 THE COURT: That Salvador Garcia is now in -- in  
8 custody for attempt -- for attempted murder on Jonathan Harper.

9 MR. FIGLER: Right. So this witness has testified  
10 under oath that Jonathan Harper shot himself. That is  
11 provably --

12 THE COURT: In some other --

13 MR. FIGLER: -- perjury.

14 THE COURT: Right. But it's in some other instance,  
15 which I have no information about, which occurred two weeks  
16 later.

17 MR. FIGLER: That's correct, Your Honor.

18 But the trial transcript is available, and I'm  
19 saying this is my offer of proof, and it's an offer of good  
20 faith, that I have the ability to ask this -- first of all, I  
21 don't -- I don't know what the State's interpretation of your  
22 ruling was. If it becomes relevant, we could get into the fact  
23 that Jonathan Harper was shot in the head, and that this  
24 witness was in the room when it happened, and that this witness  
25 said he --

1 THE COURT: Why are you getting into the unrelated  
2 act when --

3 MR. FIGLER: I just want to get into the perjury.

4 THE COURT: -- you didn't want get into the  
5 unrelated act?

6 MR. FIGLER: I want to get into the perjury.

7 MS. PANDUKHT: Well, I have a copy of your  
8 transcript.

9 MR. FIGLER: The perjury is what we're looking for.  
10 The State called this witness. The State put on  
11 somebody who we can't --

12 THE COURT: This person has been endorsed for years.

13 MS. PANDUKHT: Yes.

14 MR. FIGLER: And I appreciate that. And they had to  
15 find him and arrest him. We don't have a police force, you  
16 know that, Your Honor. We can't go out and arrest somebody if  
17 we want --

18 THE COURT: You can get a private investigator just  
19 like anybody.

20 MR. FIGLER: Who came up empty.

21 THE COURT: Okay. I don't know what to tell you.

22 MR. FIGLER: I mean I appreciate that.

23 THE COURT: I'm letting you sit there and talk to  
24 him all night if you want to sit and -- and talk to him.

25 MR. FIGLER: I appreciate that. But I do want to

1 bring up the fact that he indicated in another proceeding under  
2 oath that Jonathan Harper shot himself.

3 And then Jonathan Harper is going to come in and  
4 say: I did not shoot myself.

5 MS. DEMONTE: Well, no, Jonathan Harper is not going  
6 to say that because he's been admonished by us not to talk  
7 about the fact of the shooting.

8 THE COURT: Why are we bringing up that shooting?  
9 Because once you bring it up then I'm letting everything in.  
10 You can't let parts of it in, and you can't have another part  
11 in.

12 MR. FIGLER: They've opened the door for this now.

13 (Multiple speakers at this time.)

14 THE COURT: Let's just open it all up and -- you  
15 didn't want the guy's name to come up because it's the same  
16 name as this gentleman, it's his brother -- is it his brother?

17 MS. DEMONTE: Cousin.

18 THE COURT: I mean there's three Garcias for  
19 goodness sake. And we all know that two of the Garcias are  
20 brothers, so what's the chance the last one who they're  
21 going -- you know.

22 MR. FIGLER: This all goes to bias impeachment of  
23 this witness that the State chose to call.

24 THE COURT: Go ahead.

25 MR. FIGLER: Okay.

1 THE COURT: Go ahead. But they're going to be able  
2 to get into the name of Salvador Garcia and that they're  
3 brothers.

4 MR. FIGLER: If that's the Court's ruling that  
5 that's not overly prejudicial, that's fine, we'll have to live  
6 with that.

7 THE COURT: You'll live with it. If that's what you  
8 want, and you want to start getting into that other shooting,  
9 which you told me is completely unrelated to this case --

10 MR. FIGLER: It is unrelated with regard to the  
11 motive that Jonathan Harper presented, but the fact that he has  
12 a bias about it --

13 THE COURT: Well, it's not bias when it starts  
14 coming in in all forms. I don't know what --

15 MS. PANDUKHT: Because --

16 MR. FIGLER: I get that, Your Honor.

17 THE CLERK: Judge, we have an issue.

18 THE COURT: What?

19 THE CLERK: We have an issue.

20 THE COURT: They will not approve OT to; too cheap.  
21 They will have to go to CCDC tonight or else he can be here at  
22 eight a.m. tomorrow.

23 THE CLERK: They have no choice.

24 THE COURT: Um, they're going to have to take him.  
25 I don't know -- I can't stop this train.

1           So can I either have you -- they either can go over  
2 there to the jail, and I'll make sure my order is that he be  
3 taken down -- he's got -- they've got to see him, or this trial  
4 can't start tomorrow.

5           MR. FIGLER: Right. I don't necessarily want to --

6           THE COURT: Or -- or can I bring him in here at  
7 eight a.m.?

8           MR. FIGLER: Yeah.

9           THE COURT: Or seven. You want him here at seven,  
10 I'll get him here at seven.

11          MR. GOODMAN: What time are we starting, Your Honor?

12          THE CLERK: Nine.

13          THE COURT: I told everybody nine.

14          MR. GOODMAN: So eight?

15          MR. FIGLER: Eight-thirty is fine, and we just  
16 need -- put the guy in the holding cell.

17          THE COURT: Sure. That might be better. Why don't  
18 we do that?

19          MR. GOODMAN: That's fine. Thank you.

20          THE COURT: Thank you. I'm sorry about that.

21          COURT SERVICES OFFICER: We'll just say have him  
22 here by eight.

23          THE COURT: It will probably be better for them  
24 because they have all night to chew on what he just said, and  
25 now he can interview him. And I'll make him available more if

1 that's not enough time for you as well.

2 So I've made a record that, you know, why don't we  
3 make it eight o'clock. Have an hour with him.

4 MR. FIGLER: Thank you, Your Honor.

5 THE COURT: If you need more time, I'll hold the  
6 jury there. You can sit and interview him all day.

7 MR. FIGLER: Thank you, Your Honor.

8 THE COURT: And then we'll go back on the record  
9 when you guys are ready. Okay?

10 MR. GOODMAN: Thank you, Your Honor.

11 MR. FIGLER: Thank you.

12 THE COURT: Okay.

13 MR. FIGLER: That's all we have.

14 THE CLERK: They had to leave.

15 THE COURT: All right. So we'll get the COs out of  
16 here.

17 I will reread whatever my prior ruling is --

18 MS. PANDUKHT: Yes.

19 THE COURT: -- but the thing is, now that I sat  
20 through testimony and an opening statement, I'm not really -- I  
21 can't remember what -- what did you say my ruling was before on  
22 the motion in limine?

23 MS. PANDUKHT: Yes, Your Honor. I took your advice,  
24 and you were very, very detailed on all of your rulings. I  
25 made copies for the defense, I've given them to the defense,

1 the transcript is what helped.

2 THE COURT: Okay.

3 MS. PANDUKHT: Because I was just reading the  
4 minutes, and that's what I think where the confusion came.

5 So I read the transcript, and I'm going to refer  
6 you, Judge, to -- hold on -- okay. The first thing was, on  
7 page 14, was about the flight. You said that not only was  
8 flight admissible, but the extradition was admissible.

9 THE COURT: Okay.

10 MS. PANDUKHT: But certainly if he was arrested for  
11 some other crime, like a sex assault, in Mexico, I couldn't  
12 bring that up, which, of course, he wasn't. He was only  
13 arrested --

14 THE COURT: Well, he brought up that he waived  
15 extradition. They've already brought that up.

16 MS. PANDUKHT: Yeah, you mentioned that.

17 I just want to clarify the record, Your Honor.

18 THE COURT: Okay. Okay.

19 MS. PANDUKHT: Then you -- on page 16, Your Honor,  
20 you start talking about -- oh, I'm sorry, go back, 15 -- no,  
21 you start on the bottom of page 14 of that transcript, and you  
22 start talking about, um, they could talk about the fact that he  
23 was shot in the head because it goes to his ability to testify.

24 THE COURT: Right.

25 MS. PANDUKHT: But that it was too prejudicial to

1 talk about the shooting being by Sal and that whole other  
2 incident where you -- you know, the details about Sal shooting  
3 him in that trial and all the facts.

4 So basically you limited it, and you were very  
5 specific, and that's why I wanted to say that, if I said  
6 anything different yesterday, I was taking it back.

7 THE COURT: Okay.

8 MS. PANDUKHT: So you said it was overly prejudicial  
9 and that we couldn't talk about it. So we are admonishing our  
10 witnesses not to talk about it.

11 MR. FIGLER: See, and --

12 MS. PANDUKHT: Pursuant to your ruling.

13 MR. FIGLER: We read that differently, Judge.

14 On page 15, the Court says: Look, if either side  
15 has something, I would always consider that, but looking at it  
16 right now -- well, right now we didn't have the same purpose.

17 (Sotto voce at this time.)

18 THE COURT: Are they cousins or are they brothers?

19 MS. DEMONTE: They are cousins. Sal is Giovanny's  
20 brother.

21 THE COURT: Right.

22 MS. DEMONTE: Sal and Giovanny are brothers.

23 Evaristo is the cousin of Sal and Giovanny.

24 THE COURT: Okay. Well, what is it you want to  
25 bring in even if they bring in that he shot him in the head?



1 Who cares?

2 MS. PANDUKHT: That's what I said, Judge --

3 THE COURT: No, let's just take what he wants to do,  
4 who cares? It's a big who cares. So what?

5 So what they bring in their belief that he said  
6 something else in another proceeding, who cares?

7 MS. PANDUKHT: Well, you just were saying it opened  
8 the door --

9 THE COURT: No --

10 MR. FIGLER: I think the jury cares but that's it.

11 THE COURT: I mean why are we confusing the jury?

12 P.S., I didn't even know who Puppet was or Puppet's  
13 girlfriend. It's a -- it's a train wreck. I mean you need to  
14 make a flow chart for this case. All right? You want to add  
15 another shooting with more players to it?

16 MS. PANDUKHT: No, I don't think -- we don't want  
17 to --

18 THE COURT: No, I'm just saying, what -- what do you  
19 want to open the door to?

20 MS. PANDUKHT: I didn't want --

21 THE COURT: Okay. So they asked him about what he  
22 testified to this other shooting, everybody knows that Jonathan  
23 got shot in the head. Let's just keep it clean, the record.  
24 He can ask if he wants to ask, if he says that he's lying about  
25 something, he'll say he's not lying.

1 MR. FIGLER: Right.

2 MS. PANDUKHT: All I want to do, Your Honor, is know  
3 what we're doing because it's my job --

4 THE COURT: Right.

5 MS. PANDUKHT: -- to admonish the witnesses --

6 THE COURT: Sure.

7 MS. PANDUKHT: -- so they don't say something so we  
8 don't have a mistrial. That is all I'm trying to do, Judge.  
9 That's it.

10 THE COURT: Okay. Well, it sounds like we're on the  
11 same page.

12 MS. PANDUKHT: I want to be on the same page --

13 MR. FIGLER: That's why I brought it up ahead of  
14 time. And again that was out of respect for the Court.

15 THE COURT: No, I appreciate it, because it's a  
16 mess. There's a lot. There's a lot of players.

17 MR. FIGLER: And I know Your Honor especially  
18 doesn't want this to pop up in the middle of an examination.  
19 So I'm glad we're doing it.

20 THE COURT: No, I appreciate it.

21 MS. PANDUKHT: And let me say this, Your Honor, if  
22 for some reason before I ever, um, went through a door, I'm  
23 going to come ask to approach.

24 THE COURT: Okay.

25 MS. PANDUKHT: Let me promise you that.

1 THE COURT: Just approach the bench because if I see  
2 some doors open, I may very well allow it.

3 I just -- you know, this whole other shooting, it's  
4 complicated enough this shooting.

5 MS. PANDUKHT: I understand.

6 THE COURT: I'm just wondering why even the State  
7 would care or want to bring up an unrelated type of shooting.

8 Jonathan gets shot in the head, okay, they're  
9 allegedly gang members for the State. Not a shock, another  
10 death, I heard. I mean come on. Puros Locos, tattoos, I mean  
11 I don't think anybody's shocked here that there's more  
12 shootings going on.

13 MS. PANDUKHT: Right. I know.

14 THE COURT: But if we start opening the door with  
15 more evidence that they're opposing, now my record is, if he  
16 gets convicted, a mess on appeal. And I prefer to keep it  
17 cleaner.

18 MS. PANDUKHT: Me too.

19 THE COURT: So if you want to ask him how he  
20 testified in a different shooting, I'm going to allow you to do  
21 that. You can intimate lying. That's fine.

22 MR. FIGLER: Thank you.

23 THE COURT: That's your job.

24 MR. FIGLER: Yep.

25 THE COURT: Okay. I appreciate the heads up.

1 MR. FIGLER: Of course.

2 THE COURT: All right. So have a good night, and  
3 then you guys will be able to -- boy, I hope they get him here  
4 at eight a.m. tomorrow.

5 Can you -- can you see -- can you leave a big note  
6 on Gail's desk to make sure she calls the jail if he's not here  
7 tomorrow at eight?

8 THE CLERK: She gets here right around eight  
9 herself. So that won't help. I'm the only one here that  
10 early.

11 THE COURT: No, no, if you just -- just leave her a  
12 note that if he's not here by eight -- wait, how -- Dave, are  
13 you here early?

14 MR. FIGLER: I'm here at 6:30.

15 THE COURT: If you could come up earlier and not,  
16 like, be at the gate.

17 THE MARSHAL: Sure.

18 THE COURT: If you could come up, and that way you  
19 can keep watch of the courtroom or whatever.

20 And make sure, if they don't have him here by, like,  
21 7-like-55, maybe you should call over to the jail and say --  
22 because it's just going to hold our jury up.

23 THE MARSHAL: Okay. I'll have him here.

24 THE COURT: Okay. Thanks.

25 All right. Have a good evening. We'll go off the

1 record.

2

3 (Proceedings concluded.)

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6

7 ATTEST: Full, true and accurate transcript of proceedings.

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10 /S/Renee Silvaggio  
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