

IN THE NEVADA SUPREME COURT

Electronically Filed
May 03 2021 05:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Evaristo Jonathan Garcia,

Petitioner-Appellant,

v.

James Dzurenda, et al.

Respondents-Appellees.

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

**Petitioner-Appellant's Appendix in Support of Brief
Volume 3 of 10**

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ALPHABETICAL INDEX

1.	Aerial Maps (Petition Ex. 22).....	176
	7/9/2013	
2.	Amended Notice of Appeal	2238
	2/2/2021	
3.	Appellant's Opening Brief	1496
	6/25/2014	
4.	Appellant's Opening Brief	1646
	12/20/2016	
5.	Appellant's Reply Brief.....	1570
	12/9/2014	
6.	Article re: CCSD Police Department (Reply Ex. 32).....	1724
	10/16/2019	
7.	Article re: Frequently Asked Questions Regarding CCSD Police Department (Reply Ex. 33).....	1728
	10/16/2019	
8.	Case Appeal Statement	1644
	11/17/2016	
9.	Case Appeal Statement	1786
	12/11/2019	
10.	Certified Records from CCSD Police Department (originally received 11/26/2018) (Evid. Hrg. Ex. 2).....	27
	2/6/2006	
11.	Crime Scene Diagram (Petition Ex. 23).....	180
	7/9/2013	
12.	Declaration of Dayvid Figler (Evid. Hrg. Ex. 18)	1770
	11/18/2019	
13.	Declaration of Kathy Pezdek, Ph.D. (Evid. Hrg. Ex. 20)	1983
	6/9/2020	
14.	Declaration of Ross Goodman (Evid. Hrg. Ex. 19).....	1782
	11/27/2019	
15.	Declaration of Tammy R. Smith (Evid. Hrg. Ex. 17).....	1668
	2/5/2019	

16.	Declaration of Warrant/Summons (Evaristo Garcia) (Evid. Hrg. Ex. 8).....	155 6/15/2006
17.	Defendant's Motion for Discovery (Evid. Hrg. Ex. 9).....	166 8/25/2010
18.	District Court Minutes — All Pending Motions	1937 6/2/2020
19.	District Court Minutes — Evidentiary Hearing.....	2023 9/21/2020
20.	District Court Minutes — Hearing re: Habeas Corpus Petition.....	1750 11/12/2019
21.	District Court Minutes — Minute Order	2150 9/30/2020
22.	District Court Minutes — Motion to Alter or Amend.....	1828 2/6/2020
23.	District Court Minutes — Motion	2185 12/10/2020
24.	Fourth Amended Indictment (Petition Ex. 25).....	994 7/12/2013
25.	Google Maps (Petition Ex. 30).....	1661 9/20/2018
26.	Handwritten Statement of Betty Graves (Evid. Hrg. Ex. 4).....	44 2/6/2006
27.	Handwritten Statement of Yessica Rosales (Petition Ex. 5).....	26 2/6/2006
28.	Handwritten Voluntary Statement of Crystal Perez (Petition Ex. 9).....	58 2/7/2006
29.	Index of Exhibits in Support of Motion to Alter or Amend a Judgment	1779 11/27/2019
30.	Index of Exhibits in Support of Petition for Writ of Habeas Corpus (Post-Conviction)	1699 3/14/2019

31.	Index of Exhibits in Support of Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)	1747 10/17/2019
32.	Instructions to the Jury (Petition Ex. 26)	1331 7/15/2013
33.	Judgment of Conviction (Petition Ex. 27)	1492 9/11/2013
34.	Kathy Pezdek, Ph.D. — List of Factors (Evid. Hrg. Ex. 22)	2022 9/8/2020
35.	Kathy Pezdek, Ph.D. — VITA (Evid. Hrg. Ex. 21)	2010 6/9/2020
36.	LVMPD Incident Report (Evid. Hrg. Ex. 5)	46 2/6/2006
37.	LVMPD Officer's Report (Evid. Hrg. Ex. 6)	51 2/6/2006
38.	LVMPD-CAD Log (Evid. Hrg. Ex. 7)	79 2/7/2006
39.	Motion for Appointment of Counsel; Request for Evidentiary Hearing	1607 6/10/2016
40.	Motion for Court to Prepare and File Order on Petition for Writ of Habeas Corpus (Post-Conviction)	2151 10/7/2020
41.	Motion for Discovery (NRS 34.780(2))	1846 5/1/2020
42.	Motion to Alter or Amend a Judgment	1773 11/27/2019
43.	Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7)	1863 5/1/2020
44.	Notice of Appeal	1494 10/11/2013
45.	Notice of Appeal	1640 11/16/2016

46.	Notice of Appeal.....	1784
	12/11/2019	
47.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order.....	2163
	11/20/2020	
48.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order.....	2191
	12/10/2020	
49.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order.....	2217
	1/22/2021	
50.	Notice of Entry of Findings of Facts, Conclusions of Law and Order (Petition Ex. 29)	1630
	10/26/2016	
51.	Notice of Order from Nevada Supreme Court and Request for Submission of Outstanding Nev. R. Civ. P. 59(e) Motion	1791
	1/21/2020	
52.	Notice of Transfer to Court of Appeals	1653
	3/2/2017	
53.	Order of Affirmance.....	1586
	5/18/2015	
54.	Order of Affirmance.....	1654
	5/16/2017	
55.	Order on Motion for Discovery	1979
	6/9/2020	
56.	Order on Motion to Alter or Amend the Judgment Pursuant to Nev. R. Civ. P. 59(E)	1844
	4/23/2020	
57.	Order on Motion to Alter or Amend the Judgment	1842
	3/2/2020	
58.	Order on Petition for Writ of Habeas Corpus (Post-Conviction)	1766
	11/15/2019	
59.	Order.....	2215
	12/21/2020	
60.	Petition for Writ of Habeas Corpus (Post-Conviction)	1594
	6/10/2016	

61.	Petition for Writ of Habeas Corpus (Post-Conviction)	1669
	3/14/2019	
62.	Photographs shown to Betty Graves (Evid. Hrg. Ex. 1)	161
	2/19/2010	
63.	Remittitur	1592
	10/20/2015	
64.	Remittitur	1659
	6/12/2017	
65.	Reply in Support of Motion for Discovery (NRS 34.780(2))	1912
	5/18/2020	
66.	Reply to Opposition to Motion to Alter or Amend a Judgment	1807
	1/30/2020	
67.	Reply to Opposition to Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7)	1925
	5/18/2020	
68.	Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus.....	1729
	10/17/2019	
69.	Request to CCSD Police Department for Records (Evid. Hrg. Ex. 16)	1662
	10/25/2018	
70.	Respondent's Answering Brief	1532
	10/7/2014	
71.	State's Notice of Witnesses (Evid. Hrg. Ex. 10)	172
	2/24/2011	
72.	State's Opposition to Defendant's Motion to Alter or Amend a Judgment	1801
	1/29/2020	
73.	State's Opposition to Defendant's Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel	1611
	9/12/2016	

74.	State's Opposition to Petitioner's Motion for Discovery (NRS 34.780(2))	1874
	5/11/2020	
75.	State's Opposition to Petitioner's Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing.....	1896
	5/11/2020	
76.	State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)	1705
	10/10/2019	
77.	State's Supplement to Opposition to Defendant's Motion to Alter or Amend a Judgment.....	1826
	1/30/2020	
78.	Transcript — Evidentiary Hearing.....	2024
	9/21/2020	
79.	Transcript — Habeas Corpus Petition.....	1751
	11/12/2019	
80.	Transcript — Jury Trial, Day 2 (Evid. Hrg. Ex. 11).....	182
	7/9/2013	
81.	Transcript — Jury Trial, Day 3 (Evid. Hrg. Ex. 12).....	454
	7/10/2013	
82.	Transcript — Jury Trial, Day 4 (Evid. Hrg. Ex. 13).....	746
	7/11/2013	
83.	Transcript — Jury Trial, Day 5 (Evid. Hrg. Ex. 14).....	997
	7/12/2013	
84.	Transcript — Jury Trial, Day 6 (Evid. Hrg. Ex. 15).....	1367
	7/15/2013	
85.	Transcript — Motion for Court to Prepare and File Order on Petition for Writ of Habeas Corpus (Post-Conviction)	2186
	12/10/2020	
86.	Transcript — Motion to Alter or Amend.....	1829
	2/6/2020	
87.	Transcript — Petitioner's Motion for Discovery (NRS 34.780 (2)); Petitioner's Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7) ..	1938
	6/2/2020	

88.	Transcript — Pro Per Petition; Motion for Appointment of Counsel; Pro Per Motion to Withdraw Counsel.....	1626
	9/29/2016	
89.	Unopposed Motion to Unseal Court File and Court Records.....	1796
	1/23/2020	
90.	Verdict.....	1490
	7/15/2013	
91.	Voluntary Statement of Betty Graves (Evid. Hrg. Ex. 3).....	35
	2/6/2006	
92.	Voluntary Statement of Crystal Perez (Petition Ex. 10).....	62
	2/7/2006	
93.	Voluntary Statement of Gilbert Garcia (Petition Ex. 11).....	90
	2/8/2006	
94.	Voluntary Statement of Jonathan Harper (Petition Ex. 15).....	144
	4/1/2006	
95.	Voluntary Statement of Manuel Anthony Lopez (Petition Ex. 12).....	106
	2/9/2006	
96.	Voluntary Statement of Melissa Gamboa (Petition Ex. 2).....	01
	2/6/2006	
97.	Voluntary Statement of Yessica Lorena Rosales (Petition Ex. 4).....	15
	2/6/2006	

CHRONOLOGICAL INDEX

VOLUME 1

1.	Voluntary Statement of Melissa Gamboa (Petition Ex. 2).....	01
	2/6/2006	
2.	Voluntary Statement of Yessica Lorena Rosales (Petition Ex. 4).....	15
	2/6/2006	
3.	Handwritten Statement of Yessica Rosales (Petition Ex. 5).....	26
	2/6/2006	
4.	Certified Records from CCSD Police Department (originally received 11/26/2018) (Evid. Hrg. Ex. 2).....	27
	2/6/2006	
5.	Voluntary Statement of Betty Graves (Evid. Hrg. Ex. 3)	35
	2/6/2006	
6.	Handwritten Statement of Betty Graves (Evid. Hrg. Ex. 4).....	44
	2/6/2006	
7.	LVMPD Incident Report (Evid. Hrg. Ex. 5)	46
	2/6/2006	
8.	LVMPD Officer's Report (Evid. Hrg. Ex. 6)	51
	2/6/2006	
9.	Handwritten Voluntary Statement of Crystal Perez (Petition Ex. 9).....	58
	2/7/2006	
10.	Voluntary Statement of Crystal Perez (Petition Ex. 10).....	62
	2/7/2006	
11.	LVMPD-CAD Log (Evid. Hrg. Ex. 7).....	79
	2/7/2006	
12.	Voluntary Statement of Gilbert Garcia (Petition Ex. 11).....	90
	2/8/2006	

13.	Voluntary Statement of Manuel Anthony Lopez (Petition Ex. 12).....	106 2/9/2006
14.	Voluntary Statement of Jonathan Harper (Petition Ex. 15).....	144 4/1/2006
15.	Declaration of Warrant/Summons (Evaristo Garcia) (Evid. Hrg. Ex. 8).....	155 6/15/2006
16.	Photographs shown to Betty Graves (Evid. Hrg. Ex. 1).....	161 2/19/2010
17.	Defendant's Motion for Discovery (Evid. Hrg. Ex. 9).....	166 8/25/2010
18.	State's Notice of Witnesses (Evid. Hrg. Ex. 10).....	172 2/24/2011
19.	Aerial Maps (Petition Ex. 22).....	176 7/9/2013
20.	Crime Scene Diagram (Petition Ex. 23).....	180 7/9/2013

Volume 2

21.	Transcript — Jury Trial, Day 2 (Evid. Hrg. Ex. 11).....	182 7/9/2013
-----	---	-----------------

Volume 3

22.	Transcript — Jury Trial, Day 3 (Evid. Hrg. Ex. 12).....	454 7/10/2013
-----	---	------------------

Volume 4

23.	Transcript — Jury Trial, Day 4 (Evid. Hrg. Ex. 13).....	746 7/11/2013
-----	---	------------------

Volume 5

24.	Fourth Amended Indictment (Petition Ex. 25).....	994 7/12/2013
-----	--	------------------

Volume 6

25.	Transcript — Jury Trial, Day 5 (Evid. Hrg. Ex. 14).....	997 7/12/2013
-----	---	------------------

Volume 7

26.	Instructions to the Jury (Petition Ex. 26)	1331
	7/15/2013	
27.	Transcript — Jury Trial, Day 6 (Evid. Hrg. Ex. 15)	1367
	7/15/2013	
28.	Verdict.....	1490
	7/15/2013	
29.	Judgment of Conviction (Petition Ex. 27)	1492
	9/11/2013	
30.	Notice of Appeal.....	1494
	10/11/2013	
31.	Appellant's Opening Brief	1496
	6/25/2014	
32.	Respondent's Answering Brief	1532
	10/7/2014	

Volume 8

33.	Appellant's Reply Brief.....	1570
	12/9/2014	
34.	Order of Affirmance.....	1586
	5/18/2015	
35.	Remittitur	1592
	10/20/2015	
36.	Petition for Writ of Habeas Corpus (Post-Conviction)	1594
	6/10/2016	
37.	Motion for Appointment of Counsel; Request for Evidentiary Hearing	1607
	6/10/2016	
38.	State's Opposition to Defendant's Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel	1611
	9/12/2016	
39.	Transcript — Pro Per Petition; Motion for Appointment of Counsel; Pro Per Motion to Withdraw Counsel.....	1626
	9/29/2016	
40.	Notice of Entry of Findings of Facts, Conclusions of Law and Order (Petition Ex. 29)	1630
	10/26/2016	

41.	Notice of Appeal.....	1640
	11/16/2016	
42.	Case Appeal Statement	1644
	11/17/2016	
43.	Appellant's Opening Brief	1646
	12/20/2016	
44.	Notice of Transfer to Court of Appeals	1653
	3/2/2017	
45.	Order of Affirmance.....	1654
	5/16/2017	
46.	Remittitur	1659
	6/12/2017	
47.	Google Maps (Petition Ex. 30).....	1661
	9/20/2018	
48.	Request to CCSD Police Department for Records (Evid. Hrg. Ex. 16)	1662
	10/25/2018	
49.	Declaration of Tammy R. Smith (Evid. Hrg. Ex. 17).....	1668
	2/5/2019	
50.	Petition for Writ of Habeas Corpus (Post-Conviction)	1669
	3/14/2019	
51.	Index of Exhibits in Support of Petition for Writ of Habeas Corpus (Post-Conviction)	1699
	3/14/2019	
52.	State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)	1705
	10/10/2019	
53.	Article re: CCSD Police Department (Reply Ex. 32).....	1724
	10/16/2019	
54.	Article re: Frequently Asked Questions Regarding CCSD Police Department (Reply Ex. 33).....	1728
	10/16/2019	
55.	Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus.....	1729
	10/17/2019	

56.	Index of Exhibits in Support of Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)	1747
	10/17/2019	
57.	District Court Minutes — Hearing re: Habeas Corpus Petition.....	1750
	11/12/2019	
58.	Transcript — Habeas Corpus Petition.....	1751
	11/12/2019	
59.	Order on Petition for Writ of Habeas Corpus (Post-Conviction)	1766
	11/15/2019	
60.	Declaration of Dayvid Figler (Evid. Hrg. Ex. 18)	1770
	11/18/2019	
61.	Motion to Alter or Amend a Judgment	1773
	11/27/2019	
62.	Index of Exhibits in Support of Motion to Alter or Amend a Judgment	1779
	11/27/2019	
63.	Declaration of Ross Goodman (Evid. Hrg. Ex. 19).....	1782
	11/27/2019	
64.	Notice of Appeal.....	1784
	12/11/2019	
65.	Case Appeal Statement	1786
	12/11/2019	
66.	Notice of Order from Nevada Supreme Court and Request for Submission of Outstanding Nev. R. Civ. P. 59(e) Motion	1791
	1/21/2020	
67.	Unopposed Motion to Unseal Court File and Court Records.....	1796
	1/23/2020	
68.	State's Opposition to Defendant's Motion to Alter or Amend a Judgment	1801
	1/29/2020	

Volume 9

69.	Reply to Opposition to Motion to Alter or Amend a Judgment	1807
	1/30/2020	
70.	State's Supplement to Opposition to Defendant's Motion to Alter or Amend a Judgment	1826
	1/30/2020	
71.	District Court Minutes — Motion to Alter or Amend.....	1828
	2/6/2020	
72.	Transcript — Motion to Alter or Amend.....	1829
	2/6/2020	
73.	Order on Motion to Alter or Amend the Judgment	1842
	3/2/2020	
74.	Order on Motion to Alter or Amend the Judgment Pursuant to Nev. R. Civ. P. 59(E)	1844
	4/23/2020	
75.	Motion for Discovery (NRS 34.780(2))	1846
	5/1/2020	
76.	Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7)	1863
	5/1/2020	
77.	State's Opposition to Petitioner's Motion for Discovery (NRS 34.780(2))	1874
	5/11/2020	
78.	State's Opposition to Petitioner's Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing.....	1896
	5/11/2020	
79.	Reply in Support of Motion for Discovery (NRS 34.780(2))	1912
	5/18/2020	
80.	Reply to Opposition to Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7)	1925
	5/18/2020	

81.	District Court Minutes — All Pending Motions	1937
	6/2/2020	
82.	Transcript — Petitioner's Motion for Discovery (NRS 34.780 (2)); Petitioner's Motion to Disqualify Noreen DeMonte and Taleen Pandukht from Representing Respondents at the Upcoming Evidentiary Hearing (Nev. R. Prof. Cond. 3.7) ..	1938
	6/2/2020	
83.	Order on Motion for Discovery	1979
	6/9/2020	
84.	Declaration of Kathy Pezdek, Ph.D. (Evid. Hrg. Ex. 20)	1983
	6/9/2020	
85.	Kathy Pezdek, Ph.D. — VITA (Evid. Hrg. Ex. 21)	2010
	6/9/2020	
86.	Kathy Pezdek, Ph.D. — List of Factors (Evid. Hrg. Ex. 22)	2022
	9/8/2020	
87.	District Court Minutes — Evidentiary Hearing.....	2023
	9/21/2020	

Volume 10

88.	Transcript — Evidentiary Hearing.....	2024
	9/21/2020	
89.	District Court Minutes — Minute Order	2150
	9/30/2020	
90.	Motion for Court to Prepare and File Order on Petition for Writ of Habeas Corpus (Post-Conviction)	2151
	10/7/2020	
91.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order	2163
	11/20/2020	
92.	District Court Minutes — Motion	2185
	12/10/2020	
93.	Transcript — Motion for Court to Prepare and File Order on Petition for Writ of Habeas Corpus (Post-Conviction)	2186
	12/10/2020	

94.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order	2191 12/10/2020
95.	Order	2215 12/21/2020
96.	Notice of Entry of Findings of Fact, Conclusions of Law, and Order	2217 1/22/2021
97.	Amended Notice of Appeal	2238 2/2/2021

Dated May 3, 2021.

Respectfully submitted,

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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.)	

Before the Honorable ABBI SILVER

Wednesday, July 10, 2013, 9:00 a.m.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

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NOREEN DEMONTE, ESQ.
Deputies District Attorney

For the Defendant: ROSS GOODMAN, ESQ.
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FPD-0336

App.454

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>
<u>STATE'S WITNESSES:</u>				
Edshel Calvillo (cont.)	---	4	57	71
Vanessa Grajeda	79	87	---	---
Dan Eichelberger	93	102	105	106
Joseph Harris	110	---	---	---
Betty Graves	121	131, 135	---	---
Bryan Marquez	138	157	---	---
Crystal Perez	162	182	184	---
Melissa Gamboa	186	210	230	235
Russell Carr	240	246	---	---
Dania Diaz	251	265	265	---

DEFENSE WITNESSES:

(None called.)	---	---	---	---
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EXHIBITS MARKED & ADMITTED IN EVIDENCE:

	<u>MARKED</u>	<u>ADMITTED</u>
(None offered.)	---	---

* * * * *

1 Las Vegas, Clark County, Nevada

2 Wednesday, July 10, 2013, 9:00 a.m.

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

4 * * * * *

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

8
9 THE COURT: Good morning, ladies and gentlemen.

10 We're back on the record on State of Nevada versus
11 Evaristo Garcia, Case Number C262966.

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

15 All right. We are still in the State's case in
16 chief. We're on cross-examination of the witness.

17 THE CLERK: Would you like him re-sworn, Your Honor?

18 THE COURT: Sure.

19
20 EDSHEL CALVILLO

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, ma'am.

1 THE CLERK: Please be seated.

2 State your full name for the record.

3 THE WITNESS: My name is Edshel Cavillo.

4 Edshel Francisco Cavillo.

5 THE CLERK: Thank you.

6 THE COURT: Mr. Figler.

7 MR. FIGLER: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. FIGLER:

11 Q. Good morning, Mr. Calvillo.

12 A. Good morning.

13 Q. I understand you spent the night in jail?

14 A. Yes, sir.

15 Q. That must have been quite scary for you. Were you
16 able to deal with that?

17 A. Yes.

18 Q. Now, you took an oath yesterday. Do you remember
19 that?

20 A. Yes, sir.

21 Q. Do you understand you're still under that same exact
22 oath today?

23 A. No.

24 Q. Okay. Maybe the Judge should remind you, sir.

25 THE COURT: Yesterday you took an oath to swear to

1 tell the truth, the whole truth and nothing but the truth.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And today we just re-swore you to tell
4 the truth, the whole truth and nothing but the truth.

5 THE WITNESS: Yes.

6 THE COURT: You understand that, right?

7 THE WITNESS: Yes, I do.

8 THE COURT: All right.

9 BY MR. FIGLER:

10 Q. And that's to tell the truth and the whole truth.
11 You understand that?

12 A. Yes, sir.

13 Q. Good. And that oath would mean a lot to you that
14 you would never violate that; correct?

15 A. That's right, sir.

16 Q. Now, you did that yesterday, you told the whole
17 truth and nothing but the truth yesterday?

18 A. Yes, sir.

19 Q. So these ladies and gentlemen of the jury heard
20 everything, right?

21 A. Right.

22 Q. Didn't leave anything out?

23 A. Not at all.

24 Q. Are you all right to go forward with a couple more
25 questions with me right now?

1 A. Yeah, go ahead.

2 Q. Okay. Fantastic.

3 Now, you said you are no longer affiliated with
4 that gang or really any gang; is that correct?

5 A. Well, I stopped -- I stopped after what happened
6 with Jonathan, yes, I did. I stopped affiliating with the gang
7 I was affiliating with.

8 Q. Okay.

9 A. Yes, I did.

10 Q. And the one you were affiliated with was the
11 Puros Locos?

12 A. Correct.

13 Q. That means pure crazy?

14 A. Correct.

15 Q. And so you said that you were done with that around
16 February of 2006 then?

17 A. You know, I don't remember the year, sir, but it was
18 after, you know -- right after when Jonathan got, uh, you know,
19 shot.

20 Q. Okay. Now, you remember that Jonathan getting shot
21 was in close proximity -- close time to when this thing that
22 you testified about yesterday was?

23 A. Yes, sir.

24 Q. Okay. So it's your testimony that you're pretty
25 much out of the gang around February of 2006 then; is that

1 right?

2 A. That's right, sir.

3 Q. Okay. And if I told you that Jonathan was shot on
4 February 18th, 2006, is that about when you got out of the gang
5 then forever?

6 A. You know, I don't remember exactly the date that
7 Jonathan got shot, sir. I'm not going to lie to you, but, you
8 know, I can easily tell you, you know, it was a week after
9 regarding to when Jonathan got shot. In fact, I spoke to that
10 day, you know, of, you know, I was going to church and, you
11 know.

12 Q. Okay. All right. Yeah, yeah, you were going to
13 church.

14 A. Absolutely.

15 Q. Yeah. So by then you had -- you had found God, and
16 you were done with the gang lifestyle February of 2006?

17 A. Correct, sir.

18 Q. Okay. Now, yesterday you described to this jury
19 that your gang was like family to you; correct?

20 A. Yes, sir.

21 Q. Okay. In fact, your fellow gang members were like
22 family members?

23 A. The ones that I considered being more family was
24 Jonathan and -- and -- and Sal.

25 Q. Okay. And you would agree with me that, sometime in

1 the gang situation like that, you could be even closer than
2 your real family depending on your situation; correct?

3 A. Depending on how, you know, each person sees it.

4 Q. Okay. And you were -- you said you were tight with
5 Jonathan; correct?

6 A. Correct.

7 Q. And you were tight with Sal?

8 A. Salvador.

9 Q. Okay. These were your homies, right?

10 A. They were the closest ones.

11 Q. Okay. But you were also tight with Giovanni;
12 correct?

13 A. Well, I mean he was around, yes, he was part of the
14 group, but it was more, you know, more the friendship and, you
15 know, with -- with Jonathan and -- and Salvador Garcia.

16 Q. Okay. But you were also good friends with Giovanni;
17 correct?

18 A. Absolutely, we were friends --

19 Q. You would do things for him that --

20 THE REPORTER: One person at a time, please.

21 BY MR. FIGLER:

22 Q. You would do things for him that you wouldn't do for
23 strangers, right?

24 A. What kind of things, sir?

25 Q. Well, like, say, Giovanni called up and said he

1 needed backup over at the Morris school, you wouldn't even
2 think twice about that; correct?

3 A. Oh, well, yeah.

4 Q. Okay. And you wouldn't do that for a stranger if he
5 called you, right?

6 A. Not at all.

7 Q. Okay. You wouldn't do that for me if I called you
8 and said back me up in the park right now, would you?

9 A. Would you do that for me?

10 Q. Exactly.

11 So there's this gang that goes back and forth,
12 they take care of you and you take care of them; correct?

13 A. (No audible response.)

14 Q. Is that right?

15 A. Yes.

16 Q. Yes? Okay.

17 And it's kind of a code being in that kind of
18 situation, you would agree with me that there's a code of being
19 in a gang of that sort?

20 A. I'm not sure if it's a code.

21 Q. Okay. You have honor when you're in the gang?

22 A. Not honor. I can't say honor, sir.

23 Q. Okay. You have allegiance to your fellow gang
24 members, would you agree with that?

25 A. Allegiance?

1 Q. Yeah.

2 A. Could you describe the word, sir. I am honestly not
3 sure what --

4 Q. Sure. That you are loyal to them, that you would do
5 things for them like you would a tight family member?

6 A. Well, yeah.

7 Q. Now, you were in the gang lifestyle for a little bit
8 of time; correct?

9 A. I'll say, you know, not even -- not even two, three
10 years, sir.

11 Q. Okay. So two, three years.

12 And --

13 A. Not -- not even.

14 Q. Not even, okay.

15 And you know that when you're in the gang, one
16 of the main rules of the code is that you don't snitch on each
17 other in the gang; correct?

18 A. That's right.

19 Q. Okay. You don't tell on another gang member, right?

20 A. Correct.

21 Q. That's the code. Okay.

22 Because if someone finds out that you snitched
23 on a gang member, then, you know, it could be trouble for you,
24 you could get physically hurt, right?

25 A. Correct.

1 Q. Okay. Now, these guys, the Puros Locos, some of
2 them had guns, didn't they?

3 A. Okay.

4 Q. Okay. And you -- you testified yesterday that
5 you -- you saw Puppet with a gun in Sal's apartment at one
6 point; correct?

7 A. Correct.

8 Q. Okay. And you had seen at least one gun in Sal's
9 apartment that belonged to Sal a couple weeks later; correct?

10 A. Correct.

11 Q. Okay. And you knew that Giovanny sometimes had a
12 gun; correct?

13 A. Correct.

14 Q. In fact, Puppet had a lot of guns, didn't he?

15 A. No, I only seen one in Puppet.

16 Q. Okay. So, all right, we're back in 2006, and you
17 were in Puros Locos; correct?

18 A. Correct.

19 Q. All right. And in 2006, Mr. Calvillo -- Calvillo,
20 one -- I'm sorry.

21 In 2006, if one of your fellow gang members told
22 you to tell a specific lie to the police, you would then go
23 ahead and tell that lie to the police; wouldn't you?

24 A. You know, sir, that's why I'm up here --

25 Q. It's a yes or no.

1 A. I'm not lying. I'm up here saying the truth.

2 Q. Okay. Back in 2006, if one of your fellow gang
3 members told you to tell a lie to the police, you would then go
4 and flat out lie to the police; isn't that correct, sir?

5 A. If it was like that, sir, I would never be here.

6 Q. Okay. So you would never lie to the police;
7 correct?

8 A. That's right.

9 Q. Okay. All right. We're going to put a little
10 pin -- I put myself a note, "lie to the police," and I'm going
11 to just hold this over here so Mr. Goodman reminds me to get
12 back to that.

13 You testified yesterday that you were in Sal's
14 apartment on February 6th, 2006; is that correct?

15 A. Correct.

16 Q. Okay. And Sal is also known as Boxer or Chavez;
17 correct?

18 A. Correct.

19 Q. All right. And Sal is basically the head of your
20 so-called gang; correct?

21 A. Correct.

22 Q. And you also said that my client was there in that
23 apartment, right?

24 A. Correct.

25 Q. And that Puppet was there; correct?

1 A. Correct.

2 Q. And his girlfriend, Puppet's girlfriend?

3 A. Yeah.

4 Q. Okay. And we saw Puppet's girlfriend. You
5 identified her yesterday. I'm showing you Exhibit 86. This is
6 what she looked like on that day (indicating)?

7 A. I don't remember what she looked like at that day.

8 Q. Do you recognize her from the dark hair?

9 A. I recognize her.

10 Q. Do you recognize her dark hair?

11 A. Not her hair but her face, I do, and the mole she
12 has on her chest.

13 Q. Okay. But she -- she was a dark-haired girl, or you
14 don't even remember?

15 A. I don't remember that, sir.

16 Q. All right. And you said Jonathan Harper was there
17 as well?

18 A. Correct.

19 Q. All right. And it's your testimony that you were
20 all just sitting around when a phone call came in from
21 Giovanni; correct?

22 A. Correct.

23 Q. And Giovanni is known as Little One; is that
24 correct?

25 A. Yes, sir.

1 Q. All right. And you were known as Danger; is that
2 correct?

3 A. Correct.

4 Q. All right. And you told prosecutors in the past
5 that you got that name Danger because of -- because of the way
6 you fight, that you know how to fight; is that correct?

7 A. That's right, sir.

8 Q. And you also testified that this was such a long
9 time ago that you don't really remember it all, so you had to
10 look at the statement a couple of times, actually more than a
11 couple of times yesterday when you were being asked questions;
12 correct?

13 A. Right.

14 Q. All right. And you remember reading that statement
15 and answering the questions based on what you said back in
16 2006; correct?

17 A. Correct.

18 Q. Now, yesterday was the first time that you had seen
19 that statement; isn't that correct?

20 A. Correct.

21 Q. But it wasn't in Court the first time you saw that
22 statement, you had a meeting over in the jail with the
23 prosecutor and her investigator; isn't that correct?

24 A. Yes, sir.

25 Q. Okay. And they brought you that statement to read

1 and go over with you, didn't they? Is that true, that the
2 prosecutor and her investigator went over to the jail and went
3 over that statement with you before you ever even came over to
4 Court; is that correct?

5 A. Correct.

6 Q. Now, that statement was given on July 26th, 2006;
7 correct? Do you remember that?

8 A. Correct.

9 Q. All right. Now, the fight that you talked about
10 yesterday to the jury took place on February 6th, 2006. So
11 this is five and a half months later; is that correct?

12 A. Correct.

13 Q. All right. And you voluntarily went into that
14 police station at 1:35 in the afternoon, on July 26th, 2006, to
15 tell the police the truth and the whole truth; correct?

16 A. Well, you know, it wasn't -- it wasn't voluntarily,
17 sir, you know, I was 17 years old.

18 Q. Okay. So you did not go down there under your own
19 free will?

20 A. Well, I -- I did, sir, but you know --

21 Q. Okay. And --

22 THE REPORTER: One person at a time.

23 BY MR. FIGLER:

24 Q. Okay. You were not under arrest, were you?

25 A. No.

1 Q. In fact, they told you that you were free to go when
2 you were done; correct?

3 A. Correct.

4 Q. They told you they'd even drive you home if you
5 wanted to, right?

6 A. Yes, sir.

7 Q. Okay. So you went down into the police station, on
8 your own free will, not under arrest, on July 26th, 2006, and
9 you said it's because it weighed heavy on your conscience that
10 a young boy had been killed?

11 A. Yes, sir.

12 Q. Okay. So you were just being a good citizen;
13 correct?

14 A. If that's what you call it, yes, sir.

15 Q. Okay. You had nothing to hide, and you were there
16 to tell the truth to the police because that's what you always
17 do; correct?

18 A. Yes, sir.

19 Q. Okay. Now, you had testified yesterday that you
20 interacted with Sal and Puppet and Jonathan Harper and Giovanny
21 and all those guys later in the evening on February 6th, 2006;
22 correct?

23 A. Correct.

24 Q. In fact, you got together with them quite a few
25 times after February 6th, 2006; isn't that correct?

1 A. You know, I seen -- I've seen Little One, yeah, but
2 it wasn't several times.

3 Q. Okay. So Little One being Giovanny, right?

4 A. Correct.

5 Q. Well, we know you all at least got together in Sal's
6 apartment again on February 18th; 2006; isn't that correct?

7 A. Yes, sir.

8 Q. Okay. You do remember that evening?

9 A. Yes, sir.

10 Q. Okay. That date sticks in your mind.

11 And at these get-togethers, like the one on
12 February 18th, you guys all talk about Puros Locos stuff;
13 correct?

14 A. Yes, sir.

15 Q. Okay. Now, let's talk about that February 18th,
16 2006, meeting. Sal was there; correct?

17 A. Yes, sir.

18 Q. Puppet was there, or Miguel Lopez; correct? Is that
19 correct?

20 A. Yes, sir, correct.

21 Q. Jonathan Harper was there; correct?

22 A. Yes.

23 Q. Was Giovanny there, Little One?

24 A. I don't remember, sir.

25 Q. Okay. But Evaristo Garcia was not there on

1 February 18th, 2006, in that meeting, right?

2 A. Yes, sir.

3 Q. Now, after that meeting, on February 18th, 2006,
4 four days later, the police did come to visit you; correct?

5 A. Yes, sir.

6 Q. Is that correct? All right.

7 And the police wanted to talk to you about what
8 happened on February 18th, 2006, in Sal's apartment, didn't
9 they?

10 A. Correct.

11 Q. And you did talk to them; correct?

12 A. Correct.

13 Q. Again, voluntarily; correct?

14 A. Correct.

15 Q. Again, under your own free will; correct?

16 A. Correct.

17 Q. And again, you were not under arrest, right?

18 A. Right.

19 Q. And you looked at the police and with a straight
20 face you lied to them; correct?

21 A. About what, sir?

22 Q. Well, about telling them whose gun it was that shot
23 the person who was in that room?

24 A. No, I didn't lie, sir.

25 Q. You did lie?

1 A. I did not lie.

2 Q. You did not lie. Okay.

3 You don't remember lying to the police in that
4 recorded statement on February 22nd, 2006, when they were
5 asking you whose gun it was that discharged at the
6 February 18th, 2006, get-together; is that your testimony?

7 A. That's -- that's -- that's Salvador's case now
8 you're talking about, right?

9 Q. I'm asking you about February 18th, 2006, in a
10 recorded statement that was taken from you?

11 MS. PANDUKHT: Your Honor, I'd like to approach at
12 this time if that's okay?

13 MR. GOODMAN: Well, no, I -- go ahead.

14 MR. FIGLER: And I don't know if there's need to
15 approach. There's no objectionable --

16 THE COURT: I don't think there's a need to
17 approach.

18 MS. PANDUKHT: That's fine, as long as there isn't a
19 need to approach --

20 THE COURT: We've talked plenty, so let him
21 cross-examine.

22 MS. PANDUKHT: That's fine.

23 THE COURT: The only thing I want to enforce,
24 Mr. Figler, sometimes he's -- he's answering it, and you're
25 going into your next question. And I know my court reporter

1 has said at least two times, you know, don't talk over him.

2 MR. FIGLER: Absolutely.

3 THE COURT: So just be aware that you are
4 questioning him as he's answering your question.

5 MR. FIGLER: That's fine, Your Honor.

6 THE COURT: Thank you.

7 MR. FIGLER: And I totally want the jury to hear it
8 all, so.

9 THE COURT: Okay. I know you do, but sometimes in
10 the heat of trial --

11 MR. FIGLER: We get there.

12 THE COURT: -- you don't realize that you're
13 overlapping, and I'm just trying to help out my court reporter.

14 MR. FIGLER: I appreciate that, Judge.

15 THE COURT: Thanks.

16 BY MR. FIGLER:

17 Q. All right. So February 22nd you made a recorded
18 statement, right? Yes?

19 A. Yes, sir.

20 Q. Okay.

21 A. That was --

22 Q. I'm just asking yes or no, you don't have to give
23 me --

24 A. Because I need to know, sir, you know? I need to
25 know what -- what kind of questions you're asking, that way I

1 can know what to answer, you know?

2 Q. Oh, I get that. I get that.

3 Now, you told the police that the gun belonged
4 to someone named Casper; isn't that correct?

5 A. Yes, sir.

6 Q. Okay.

7 A. Yeah.

8 Q. And you told them that because Chavez, or Sal, told
9 you to tell that lie to the cops; correct?

10 MS. PANDUKHT: I'm going to object at this time to
11 hearsay. Sal --

12 THE COURT: It's his statement.

13 MR. FIGLER: That's right.

14 THE COURT: It's his statement, it's an admission.

15 MR. FIGLER: That's right. You can answer it.

16 THE COURT: Overruled.

17 MR. FIGLER: You can answer that.

18 MS. PANDUKHT: I was just objecting to anything Sal
19 told him.

20 THE COURT: Why are you objecting to that?

21 MS. PANDUKHT: That was -- my objection for hearsay,
22 Your Honor, was just with regard to Sal's statements.

23 THE COURT: Okay. Well, what I heard was what he
24 told the police.

25 MR. FIGLER: That's right.

1 THE COURT: So it's going to be overruled.

2 BY MR. FIGLER:

3 Q. Chavez told you to lie to the cops, you admitted
4 that finally, didn't you?

5 A. Yes, sir.

6 Q. Okay. You were told to protect the gang and lie to
7 the cops; isn't that correct?

8 A. Yes, sir.

9 Q. You even gave a description of this imaginary Casper
10 person to the police, didn't you?

11 A. Yeah, yes, I did.

12 Q. Yeah, you said he was bald-headed, kind of tall,
13 kind of buff looking. He was at least five-nine, maybe as tall
14 as six feet, he had a goatee. He wasn't dark though, he was
15 kind of light-like. You made up all that --

16 A. I just want you to know something, sir --

17 Q. I'm not -- it's not being responsive. You have to
18 answer my question. Okay?

19 A. I want you to know something.

20 Q. You have to answer my questions.

21 A. I wasn't -- I wasn't fully in my conscience back in
22 those times.

23 Q. Okay.

24 A. I was not.

25 Q. So in 2006 you weren't fully in your conscience?

1 A. Sir, we used to consume drugs like crazy.

2 Q. Okay. And that helped you make up things in such
3 great detail?

4 A. Not make up things, not make up things.

5 Q. There never was a Casper at that get-together?

6 A. There was never no Casper, sir.

7 Q. Okay. But you did give a lot of details about the
8 imaginary guy?

9 A. Yes, sir, I did.

10 Q. Okay. So you're pretty good at making stuff up on
11 the fly, aren't you?

12 A. No, not at all.

13 Q. No? Okay.

14 And the police, you would assume, are trained to
15 catch lies, and you got it by them?

16 A. Absolutely.

17 Q. You got it by them, didn't you?

18 A. No, no, no, not at all.

19 Q. Okay. Do you remember testifying under oath that it
20 was Sal who told you what to say to the police, and that you
21 did what Sal told you, do you remember?

22 A. Yes, sir.

23 Q. Okay. So I'll go back to the pin. So you do lie to
24 the police in 2006?

25 A. I did. I did.

1 Q. I get it.

2 Now, when the police took your recorded
3 statement, on February 22nd, 2006, you did not tell them that
4 Evaristo Garcia, this young man over here (indicating), had
5 shot a young man by the school two weeks earlier, did you? You
6 didn't tell them in February, did you?

7 A. No.

8 Q. Okay. So between February 22nd, 2006, when you were
9 going to tell the truth to the police, and July 20 -- I'm
10 sorry, July of 2006, nothing had changed except now you're out
11 of the gang, right, and you just decided you're going to go in
12 and tell the cops the whole truth, right?

13 Is that what you're telling me?

14 A. Yeah.

15 Q. Okay. Of course, you said you still saw Giovanni,
16 Little One; correct, you just testified to that?

17 A. I said yeah, yeah.

18 Q. Okay.

19 A. Yeah.

20 Q. So you knew, on June 22nd, 2006, before you gave the
21 statement, Puros Locos member Giovanni was arrested for the
22 murder of Victor Gamboa, this very case; correct, you knew
23 that?

24 A. Yeah, I knew.

25 Q. Okay. And when you went in to the police, you knew

1 that Giovanni had been in custody for about a month; correct?

2 A. I knew that.

3 Q. Okay. So you went in to the police department
4 because the gang told you to go in there, to blame it on
5 Evaristo Garcia so you could get Giovanni off the hook, that's
6 what the gang does, isn't it?

7 A. No.

8 Q. Chavez told you to do that, didn't he?

9 A. Who?

10 Q. Chavez.

11 A. Who's Chavez?

12 Q. The leader of the gang, Sal.

13 A. Chavie (phonetic).

14 Q. Chavie. He told you to do it, didn't he?

15 A. To do what?

16 Q. To go in and tell the police that Evaristo was the
17 one, not Giovanni?

18 A. Salvador never said that, sir.

19 Q. In fact, that was always the plan, wasn't it, that
20 if anyone got in trouble, it was to convince the police -- for
21 the gang to convince the police that Evaristo did this; isn't
22 that true?

23 A. No, sir.

24 Q. Evaristo wasn't even in your so-called gang, was he?

25 A. He was not. He was not -- not part of it, not yet.

1 Q. Okay. So let's go to July 26th, 2006. That's what
2 the prosecutors were talking to you about so much yesterday.

3 Just to refresh, you went in to the police on
4 your own free will -- here's what I want to do, Mr. Calvillo,
5 instead of going back and forth with the statement, I'm just
6 going to give you a copy of the statement because I've got some
7 questions to ask of you.

8 MR. FIGLER: With the Court's permission, can I just
9 approach him with it, and I'll leave it up there with him, and
10 then I'll come back?

11 THE COURT: Sure.

12 MR. FIGLER: This is his statement.

13 THE COURT: For the record, I don't know what
14 statement it is.

15 MR. FIGLER: It's a statement -- I'm sorry,
16 Your Honor. July 26th, 2006, it's a statement --

17 THE COURT: Oh, his statement.

18 MR. FIGLER: It's his own statement.

19 THE COURT: Sure.

20 MR. FIGLER: Thank you.

21 THE COURT: All right. Do you want him to sit and
22 read it right now?

23 MR. FIGLER: No, I'm going to ask him some -- ask
24 him some questions about it.

25 THE COURT: Okay.

1 MR. FIGLER: And there will be some page references,
2 so I thought it would just be easier for the witness to do it
3 that way.

4 THE COURT: Sure.

5 MR. FIGLER: And I'll shout out page references to
6 the prosecutor so they can follow along as well.

7 BY MR. FIGLER:

8 Q. All right. Now, yesterday when they were asking
9 questions, you kind of bounced around some of the pages, you
10 remember doing that? You were on page 3 and then you were on
11 page 5. Do you remember doing that yesterday when they were
12 showing you the document?

13 MR. FIGLER: Could we maybe release one of his
14 hands --

15 THE COURT: Yeah, if you could release one of his
16 hands.

17 (Sotto voce at this time.)

18 THE COURT: You could --

19 THE WITNESS: Oh, go ahead.

20 BY MR. FIGLER:

21 Q. You all good there?

22 A. Yeah, I'm --

23 Q. All right. Why don't you just take a quick look and
24 make sure that's the same exact statement that the prosecutor
25 showed you both in the jail and in Court yesterday in front of

1 the jury. Is that the same one? It looks the same?

2 A. I mean it looks the same, sir.

3 Q. Okay. And on the front page, it's got your name on
4 there, and do you see where it says that they're interviewing
5 you on 7/26/06, on that first page, do you see that?

6 A. Yeah.

7 Q. Okay. So you don't have any reason to think that
8 I'm trying to give you something that you didn't see before,
9 right?

10 A. No, not at all.

11 Q. All right. Appreciate that.

12 So here's what I'm going to do, Mr. Calvillo,
13 I'm going to go through in order of your -- of your statement
14 so that the jury could hear exactly how you've presented that
15 truthful information to the police that day. Okay?

16 You can do that with me?

17 A. Go ahead, yeah.

18 Q. All right. So let's -- page 1 just basically has
19 them introducing themselves to you and saying who's there,
20 right?

21 So now I'm going to direct your attention to the
22 second page. It actually says page 3 on it. And the very
23 first question, they tell you you're coming here on your own
24 free will --

25 MS. PANDUKHT: Your Honor, I'm going to object as

1 improper impeachment. He just can't read his whole statement,
2 he's got to ask him a question first and then refer to the
3 statement only to impeach or refresh.

4 MR. FIGLER: It's cross-examination, it's going to
5 be --

6 MS. PANDUKHT: He can't go line by line through the
7 whole statement.

8 MR. FIGLER: Sure I can.

9 THE COURT: Here's the deal, you gotta ask a
10 question. So you -- you can preface it by saying: Did you
11 say? And then with the answer.

12 MR. FIGLER: That's fine. And that's exactly what I
13 was going to do. I was just kind of cutting to the chase, I
14 was just saying right after the part, I was trying to orientate
15 the witness, but I'll just get right to that first question.

16 BY MR. FIGLER:

17 Q. First question --

18 MR. FIGLER: That's fine. Thank you, Your Honor.

19 BY MR. FIGLER:

20 Q. So first question they asked you: Do you know where
21 that shooting occurred?

22 Do you remember that?

23 A. Yes, sir.

24 Q. Okay. And your answer was: At the night school,
25 no, like, at the night school.

1 That was your response; correct?

2 A. At the night school, yeah.

3 Q. Okay. And then they asked you if you know what
4 street that's on, right?

5 A. Right.

6 Q. Okay. And told them you didn't know.

7 Do you remember that?

8 A. Yeah.

9 Q. Okay. And then they asked you: Were you there that
10 night?

11 And what was your answer to that?

12 A. I was there.

13 Q. I know you were, but what did you tell the police on
14 page 3?

15 Do you see where they ask you -- it's the very
16 last question on the bottom, they asked you: Were you there
17 that night?

18 Do you -- do you see that question?

19 A. Yes, sir.

20 Q. And what was the response you gave the police that
21 night?

22 A. No, sir.

23 Q. You told them: No, sir. Correct?

24 A. Yeah.

25 Q. Okay. Going on to the very next page, page 4. They

1 asked you: To your knowledge, who was involved in the
2 shooting?

3 And you answered: Evaristo.

4 Isn't that correct?

5 A. Yes, sir.

6 Q. Okay. And they asked you if you knew Evaristo's
7 last name a little bit down that page, and you said you didn't
8 even know his last name; isn't that correct?

9 A. Now, at the time I didn't know his name -- or his
10 last name, sir.

11 Q. Okay. And you told them he was in your same gang;
12 correct?

13 A. Yes, sir.

14 Q. You told them his nickname was Chuckie; correct?

15 A. Yes, sir.

16 Q. And you -- when they asked you -- and now we're on
17 page 5 -- how long you had been a member of the gang, you told
18 them a couple of months; correct?

19 A. See --

20 Q. Is that what you told them, sir?

21 A. About -- about that, sir, that's when we were barely
22 coming into the gang, yes, sir.

23 Q. Okay. All right. So you were barely coming into
24 the gang in July -- all right --

25 A. Put it this way, sir, with -- with Giovanni and --

1 and Little One, we grew up together as kids, seven years old.

2 Q. Okay. And you knew Sal for a really long time too?

3 A. A long time.

4 Q. All right. All right. They then asked you if
5 anyone else was involved in the shooting besides Chuckie.

6 Do you remember that, on page 5?

7 A. Yes, sir.

8 Q. And your answer was: Nobody.

9 That was the first word out of your mouth,
10 "nobody"; correct?

11 A. Yes, sir.

12 Q. And then you went on to mention from what you heard
13 that's what they told you that Yobanni was getting jumped or
14 something. Do you remember telling them that?

15 A. Yes, sir.

16 Q. And Yobanni is also, we established yesterday,
17 Giovanni, the same person, Little One?

18 A. Yes, sir.

19 Q. You told them nobody was involved in the shooting
20 but Evaristo.

21 The police then asked you if Evaristo told you
22 what he used to shoot the kid.

23 Now we're on page 6, right at the top.

24 The police asked you: Evaristo told you what --
25 did Evaristo tell you what he used to shoot this kid?

1 You remember them asking that question?

2 A. Did what? I'm sorry.

3 Q. Do you remember them asking you the question: Did
4 Evaristo tell you what he used to shoot the kid?

5 You don't see that on the top of page 6?

6 A. Yes, sir.

7 Q. And you answered: Just a gun, black gun.

8 Correct?

9 A. Yes, sir.

10 Q. And then they asked you some follow-up questions.
11 They asked you: Did he say where he got it from?

12 And you said: No. Correct?

13 A. Where he got the gun from?

14 Q. Yes.

15 A. Yes, sir.

16 Q. You told them no.

17 And then they asked you: Did he say where he
18 got it from?

19 You said: He didn't mention nothing to me like
20 that. Correct?

21 A. Yes, sir.

22 Q. Now, this is all from the same statement that you
23 testified from yesterday to the jury; correct?

24 A. Yes, sir.

25 Q. Pages 4, 5 and 6 so far, right?

1 A. Yes, sir.

2 Q. All right. Now, Mr. Calvillo, I want you to pay --
3 we're going to stay on page 6, and I want you to pay very close
4 attention to the next segment of questions I give you. This is
5 very important. Okay?

6 The police asked you: When did you find out
7 about the shooting?

8 Do you see that question, sir?

9 A. Yes, sir.

10 Q. Okay. And you responded, didn't you:

11 Well, the same night everything happened, he
12 called me and told me what happened. Uh, then, uh,
13 that was it, he called me and told me that, about
14 what he did.

15 That's what you told the police?

16 A. Yes, sir.

17 Q. And then the police said: How did he get ahold of
18 you?

19 Do you remember that question?

20 A. Yes, sir.

21 Q. And you said: He called me. Right?

22 A. Yes, sir.

23 Q. All right. And then they said: On what phone?

24 Do you remember that question?

25 A. Yes, sir.

1 Q. And you said: On my mom's phone. It was a prepaid
2 phone.

3 Do you remember telling them that?

4 A. Yes, sir.

5 Q. Okay. And they asked you: Do you remember that
6 number? Correct, they asked you that?

7 A. Yes, sir.

8 Q. And you said: No -- nah, N-A-H; correct?

9 A. Yes, sir.

10 Q. All right. So this is all still on page 6.

11 Then they asked you: Did you meet up with him
12 again that night?

13 Isn't that correct?

14 A. Yes, sir.

15 Q. All right. So I just want to get this real clear,
16 sir. You told the police in July -- on July 26th of 2006, that
17 Evaristo called you on the phone to admit this crime?

18 A. Yes, sir.

19 Q. The alleged laughing and the admission and the
20 school, all the stuff you testified to yesterday, yes or no,
21 Mr. Calvillo, you told the police all this happened on the
22 phone; correct?

23 A. Yes, sir.

24 Q. And then yesterday, when you told the whole truth
25 and nothing but the truth to this jury about what you said on

1 that day, you told them that it happened in Sal's apartment;
2 yes?

3 A. Yes, sir.

4 Q. Okay. You didn't mention a darn thing yesterday to
5 this jury about the phone call, did you?

6 A. I did not.

7 Q. Okay. Let's stick on page 7.

8 You then told the police that Evaristo came by
9 and picked you up that night, didn't you?

10 A. Yes, sir.

11 Q. Okay. You told them he was going to take you to a
12 party the night of the shooting, after the shooting had
13 occurred; correct?

14 A. Yes, sir.

15 Q. You told the police he picked you up in a white car;
16 correct?

17 A. Yes, sir.

18 Q. Okay. You told the police -- you described that
19 car, you said that it had tinted windows on it, didn't you?

20 A. Yes, sir.

21 Q. Now, they asked you what he was wearing that night,
22 Evaristo, and you told them a black T-shirt and some blue
23 pants; correct?

24 All of this is page 7 if that will refresh your
25 memory.

1 A. Yeah, that's what I told them, sir.

2 Q. Okay. Now we're on page 8. The police asked you:
3 Why would he tell you about all this shooting in such a way?
4 Correct?

5 A. Yes, sir.

6 Q. And you said: Well, I don't know, 'cause we're from
7 the same crew, you know.

8 That's what you told them, right? That's what
9 you told the police?

10 A. That's what I told them, yes.

11 Q. Okay. You're telling the police that, of all the
12 people in the crew, you, out of all the people, were the one he
13 confided in, right?

14 A. Well, I mean, you know, we spoke about everything,
15 you know.

16 Q. Okay. And you knew a lot about him then, right?

17 A. I didn't know a lot about him, no, I did not.

18 Q. You knew he was a Special Ed kid over in the middle
19 school; correct?

20 A. I didn't know that.

21 Q. Oh, you didn't know that?

22 A. I didn't know.

23 MS. PANDUKHT: And I'm going to object. It calls
24 for speculation and hearsay and move to strike.

25 MR. FIGLER: I asked him if he knew, he said no.

1 He said he knew everything about him, I asked him
2 that question --

3 MS. PANDUKHT: It also assumes facts not in
4 evidence.

5 MR. FIGLER: Could I have an offer of good faith?

6 THE COURT: I don't think you need it in evidence.

7 MR. FIGLER: Do you want me to show you the offer of
8 good faith, Your Honor?

9 THE COURT: Yeah.

10 MR. FIGLER: Okay.

11 I have all his Special Ed records from the time he's
12 in second grade on, Your Honor. So I did ask the question in
13 good faith that if someone would have known that if they
14 claimed to be friends of him.

15 This is from the State. The State gave this to me.

16 THE COURT: All right. Overruled.

17 MS. PANDUKHT: And he's --

18 MS. DEMONTE: He's mischaracterizing what those
19 records --

20 THE COURT: Well, you can redirect.

21 MR. FIGLER: Absolutely.

22 THE COURT: Just because you don't like it doesn't
23 mean you can object to it.

24 MS. PANDUKHT: No, we will.

25 THE COURT: All right. Redirect.

1 BY MR. FIGLER:

2 Q. All right. Let's get back on track here.

3 So when you went in to go tell the police the
4 truth and nothing but the truth and the fact that you don't lie
5 to the police, or maybe you do, you told them that Evaristo
6 picked you up in a white car with tinted windows to go to a
7 party, but then you went to a park instead over on Tropicana
8 and Topaz. And that's where he confessed his crime and told
9 you that he laughed and told you all that other stuff; correct?

10 A. Yes, sir.

11 Q. So now I'm on page 8 of your statement, the pages
12 that you testified to, to this jury yesterday, and you haven't
13 mentioned one thing about being in Sal's apartment to the
14 police, have you, up and to that point in the conversation with
15 the police?

16 A. What do you mean I didn't -- I didn't --

17 Q. Okay. We just went through pages 1 through 8 --

18 A. Yeah.

19 Q. -- of your statement; correct?

20 A. Correct.

21 Q. And you did not tell the police anything about Sal's
22 apartment or meeting up in Sal's apartment afterward in those
23 first eight pages, did you?

24 A. After -- after the shooting?

25 Q. Correct.

1 A. Yes, I did tell them.

2 Q. Okay. You saw the words "Sal's apartment" in the
3 first eight pages?

4 A. Where he laughed, yes, sir.

5 MS. PANDUKHT: It's on page 8, bottom.

6 MR. FIGLER: Okay.

7 BY MR. FIGLER:

8 Q. Okay. Well, actually on page 8, on the bottom, and
9 I appreciate you bringing it to my attention, that's when the
10 police are looking at you and saying: Well, we have
11 information you were over at Sal's apartment. Correct?

12 A. Yeah.

13 Q. They called you on that; isn't that correct?

14 A. That's where we were.

15 Q. Okay. But that's what the police had asked you, on
16 the bottom of page 8; correct?

17 A. Asked me what?

18 Q. They asked you: Are you sure you weren't at Sal's
19 apartment? They asked you that, didn't they?

20 A. They asked me that, yeah.

21 Q. Okay. So now Sal's apartment came up, right?

22 A. Yes, sir.

23 Q. All right. And you said -- now we're on page 9 --
24 oh, wait, before we get to page 9, just one little last thing
25 on page 8, the police asked you: There's got to be more

1 details than what you're telling us?

2 Correct, do you remember them asking you that?

3 A. You know, sir, I really don't remember that, but if
4 it's written in there, it's there.

5 Q. And you told them: Um, I'm being for real, sir.

6 You told them that; correct?

7 A. Yeah, I told them that.

8 Q. Okay. And then they bring up about -- they bring up
9 Sal's apartment; correct? The police do?

10 A. Yes, sir.

11 Q. Okay. So you were being real with that. Great.

12 So then they say: Were you at Sal's place
13 before the shooting?

14 This is now on page 9.

15 Correct, they asked you? On page 9, top.

16 A. Yeah.

17 Q. And your response is: Yeah, before everything, like
18 way earlier, you know.

19 That was your response, correct?

20 A. Before anything, what?

21 Q. Well, that was what you said. Why don't you look at
22 page 9 and see if that refreshes your recollection if that's
23 what you told the police when they asked you if you were at
24 Sal's place before the shooting, that you said: Yeah, it's
25 before everything, like way earlier, you know.

1 A. How do you get to Salvador's apartment? That's what
2 I'm reading here --

3 Q. All right. Skip down to the next -- very next
4 question: So you were at Sal's place before the shooting?
5 Do you see where I'm pointing?

6 A. Okay, yeah.

7 Q. And your response was: Yeah, before everything,
8 like way earlier, you know.

9 That's what you told them, right?

10 A. Yes, sir.

11 Q. Okay. And who did you tell them was there at that
12 time?

13 A. Jonathan and Evaristo.

14 Q. Okay. Now I'm going to direct you to page 10, going
15 in order. The police asked you if Puppet came over there to
16 pick some people up, didn't they?

17 First question on page 10.

18 A. The night of the shooting?

19 Q. Yes.

20 A. Yes, sir.

21 Q. Okay. And you answered: Oh, see, I wasn't there
22 though. The thing -- I don't know if they came back.

23 That -- that's what you told the police that
24 day; correct?

25 A. Yeah.

1 Q. And then the police asked you: Were you there when
2 Puppet showed up to pick up Evaristo and Jonathan?

3 And your answer was -- what did you say?

4 A. It's right there, it's written.

5 Q. Okay. Can you tell me, can you tell the jury?

6 A. Where is it at?

7 Q. When they asked you: Were you there with Puppet --
8 were you there when Puppet showed up to pick up Evaristo and
9 Jonathan? Do you see that question?

10 A. Yeah.

11 Q. And what was your response to the police that night?

12 A. That I was -- that I was there.

13 Q. You said that -- the words "I was there" were right
14 there on the page (indicating)?

15 A. At Sal's house, all right.

16 Q. You spell it -- I was there, N-U-H-U-H, Nuh-uh?

17 A. Can you show me that, sir, please?

18 MR. FIGLER: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 MR. FIGLER: Thank you.

21 BY MR. FIGLER:

22 Q. Okay. We're both on page 10.

23 A. Yes, sir.

24 Q. Were you there when Puppet showed up to pick up
25 Evaristo and Jonathan?

1 And your answer was what?

2 A. You know, I just want you to -- to understand this,
3 sir, okay?

4 Q. I do want to understand, but I need you to answer my
5 question first.

6 A. Okay.

7 Q. What did you say?

8 A. It's --

9 Q. What did you say?

10 A. It's on the paper, you know --

11 Q. And what did you say?

12 A. I want you to understand this, sir --

13 MR. FIGLER: Your Honor, he's not being responsive.

14 THE COURT: Sir, you need to be responsive to the
15 question.

16 The prosecutors have yet another chance to ask you
17 questions if you want to explain yourself.

18 THE WITNESS: Okay.

19 THE COURT: Okay?

20 THE WITNESS: Okay.

21 THE COURT: So it will go faster if you just respond
22 to him.

23 THE WITNESS: Okay.

24 THE COURT: And then they get a whole nother chance
25 to talk to you.

1 THE WITNESS: Okay.

2 THE COURT: Okay?

3 THE WITNESS: All right.

4 Go ahead, sir. I'm sorry about that.

5 BY MR. FIGLER:

6 Q. No problem. Just tell the jury what you told the
7 police that day.

8 A. Okay. Yeah, I said: Nuh-uh.

9 Q. Sir, the police weren't forcing you to give them
10 false information about Evaristo that night, were they?

11 A. No, sir.

12 Q. Okay. You went in there, as you stated, under your
13 own free will; correct?

14 A. Yes, sir.

15 Q. And you had a mission to convince them that Evaristo
16 was the person who shot; correct?

17 A. I didn't have a mission to convince them, no, I did
18 not.

19 Q. Okay. So then the police asked you again, middle of
20 the same page, page 10: Tell us from the beginning.

21 And you said: Yeah, you know what, yeah, I was
22 there.

23 Do you remember telling them that?

24 A. Yes, sir.

25 Q. So now we're over on page 10.

1 A. Yeah.

2 Q. Now, you didn't tell any of this to the jury
3 yesterday, did you?

4 A. No, sir.

5 Q. For someone who had said that they were telling the
6 whole truth, you did leave a lot out, didn't you?

7 A. I wasn't asked.

8 Q. Oh, of course.

9 Let's go to page 12. Now, page 12 is very
10 interesting because it goes into page 13, that's the normal
11 course of events.

12 The bottom of page 12 the police asked you:
13 Okay. Who came back?

14 Right? Do you see that? Very bottom, the last
15 question they asked on page 12: Who came back?

16 Who came back?

17 A. Said on the Q last -- last letter?

18 Q. Yes. Right.

19 A. Okay.

20 Q. And that's the police, the police are the Q.

21 They're the ones asking you the questions.

22 A. Okay.

23 Q. You're the A, you're the one giving those answers.

24 A. Okay.

25 Q. And the police ask you: Who came back?

1 Right?

2 A. I can't -- I can't see that. Where is it at?

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

4 THE COURT: Sure.

5 MR. FIGLER: Thanks.

6 BY MR. FIGLER:

7 Q. Very last question on the page.

8 A. Okay.

9 Q. Who came back? They asked you who came back, right?

10 A. Yes, sir.

11 Q. And your answer was: The same people.

12 Correct?

13 A. Yes, sir.

14 Q. And then on the very next page, top of page 13, they
15 asked you to name them again.

16 Do you remember that?

17 A. Yes, sir.

18 Q. Okay. And how do you respond -- what are the first
19 words of your mouth when they say: Name them again.

20 You say: Sal -- I mean, what's his name,
21 Evaristo.

22 That's a direct quote, isn't it, sir? That's
23 exactly what you said?

24 A. Yes, sir.

25 Q. Your good, good homie, what's his name, Evaristo,

1 right? That's what you told them, Evaristo?

2 A. Yes, sir.

3 Q. What's his name.

4 And on that same page, page 13, you said that it
5 was Little One -- middle of that page -- it was Little One who
6 told you that Evaristo had shot a kid, didn't you?

7 A. It was Little One and Jonathan.

8 Q. Who told you -- but in this statement, you said it
9 was just Little One who told you that Evaristo had shot a kid.
10 Didn't you tell that to the police?

11 A. It's in the statement, but it was Jonathan and --
12 and -- and Evaristo.

13 Q. Okay. So your statement --

14 A. And Little One.

15 Q. -- differs from the truth, is that what you're
16 telling me?

17 A. Yes, sir.

18 Q. That's what I thought.

19 Now, let's go to page 15, in order. And at the
20 very top, you told them that Puppet just handed the gun, you
21 know, because Evaristo asked for it, you know, just playing
22 with it, you know, just took it.

23 You told that to the police, didn't you?

24 A. Yes.

25 Q. Okay. You told the police Puppet was playing with

1 that gun; correct?

2 A. You know, sir --

3 Q. Did you tell that to the police, sir?

4 A. Yes. Yes, sir.

5 Q. Okay. And then the police asked you, on page 16, in
6 the middle, if you had ever handled that gun before.

7 Do you remember that?

8 A. Where is that at, sir?

9 Q. In the middle they said: Have you ever handled this
10 gun before, picked it up, touched it?

11 Do you remember that question? Right in the
12 middle, sir.

13 A. Yes, sir.

14 Q. Okay. And your response was what?

15 A. Yeah.

16 Q. You told them yes, you had handled that gun;
17 correct?

18 A. Well, everybody played with it, you know, at the
19 house.

20 Q. Everybody at the house played with that gun?

21 A. That's it.

22 Q. Thank you, sir.

23 Now, yesterday --

24 A. And not just at the house, but all the guns, not
25 just that one, but all guns. All guns.

1 Q. Now, yesterday when you testified you told this jury
2 that Evaristo told you he dropped the gun in a toilet; is that
3 correct?

4 A. Yes, sir.

5 Q. Do you remember telling them that?

6 A. Yes, sir.

7 Q. Okay. And did you also tell that to the police
8 seven years ago?

9 A. I didn't tell them.

10 Q. You didn't tell them that.

11 In fact, if I look through this entire statement
12 from July 26th, 2006, the word "toilet" doesn't show up once in
13 it, does it?

14 A. It don't.

15 Q. But I am looking at page 18, and on page 18 of the
16 statement, when the police asked you where it was, you said:
17 He threw it in a trash can. You told them that; correct?

18 A. Yeah.

19 Q. Okay. Trash can.

20 So some seven years later, toilet just came to
21 you?

22 A. No, sir. No.

23 Q. Okay. Now, you said that you had a discussion with
24 a prosecutor in jail yesterday; correct, before you came to
25 Court?

1 A. Yes, sir.

2 Q. All right. Now, is it possible that the prosecutor
3 or the investigator may have mentioned something about a toilet
4 to you?

5 A. Not at all, sir.

6 Q. All right. Then let me go in a different direction
7 if that's not what happened.

8 You stated that you were contacted by the
9 District Attorney's Office, and that you promised to come to
10 Court, but you didn't show up, and that's why they arrested
11 you; correct?

12 A. Yes, sir.

13 Q. You got a subpoena; correct?

14 A. Yes, sir.

15 Q. It was a legal subpoena as far as you know; correct?

16 A. Yes, sir.

17 Q. You had to honor it.

18 And you testified yesterday that you thought
19 this whole thing was done already, didn't you?

20 A. Yes, sir.

21 Q. And that's why you didn't come to Court because you
22 thought this whole thing was done already, right? Yes, that's
23 what you testified to yesterday?

24 A. Yes, sir.

25 Q. And you thought this whole thing was done because

1 you've recently seen Giovanni, haven't you, out on the streets
2 with no more murder charge hanging on his head?

3 A. I have not seen Giovanni since the incident happened
4 with Salvador Garcia.

5 Q. Okay. Haven't seen him at all?

6 A. At all.

7 Q. Okay. You didn't talk to Giovanni about your
8 subpoena and talk about this case with him then?

9 A. Not at all, sir.

10 Q. Okay. Mr. Calvillo, you told the police lies on
11 July 26th, 2006, didn't you?

12 A. I -- I did, sir, and I admit to.

13 Q. Okay. And you didn't tell the police that you went
14 to the school that night, but you did, didn't you?

15 A. Yes, sir.

16 Q. And you told the jury that you went to the school,
17 didn't you?

18 A. We were there.

19 Q. And you also told the jury that you went all the way
20 to the school with Sal, but you didn't get out of the car to
21 fight, that's what you told them?

22 A. We didn't get out.

23 Q. Okay. You, Danger, the reason your name is
24 Danger --

25 A. Nobody got out.

1 Q. -- is because you're so good at fighting.

2 MS. PANDUKHT: I'm going to object to argumentative,
3 Your Honor.

4 THE COURT: Overruled.

5 BY MR. FIGLER:

6 Q. Danger is you got that nickname because you're so
7 good at fighting, right?

8 A. That's right.

9 Q. Okay. So you lied to the police about going to the
10 school, but yesterday you were truthful that you didn't get out
11 of the car, right?

12 A. That's right, man.

13 Q. All right. All right. I'm -- I'm done with your
14 statement from the 26th.

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

16 THE COURT: You may.

17 BY MR. FIGLER:

18 Q. But I have some more.

19 A. Sure.

20 Q. A whole other statement.

21 Let's move on to when you lied under oath in a
22 Court proceeding on August 23rd, 2006. Okay?

23 You were called as a defense witness to support
24 someone on charges unrelated to this, the Victor Gamboa
25 shooting; isn't that correct?

1 A. Yes, sir.

2 Q. You went to Court that day, right?

3 A. That's right.

4 Q. And that case was about whether a bullet shot into
5 Jonathan Harper's head at that February 22nd, 2006, Puros Locos
6 get-together was self-inflicted or caused by someone in the
7 room; isn't that correct?

8 A. That's right.

9 Q. And what position did you take under oath, sir? Did
10 you say it was self-inflicted, that Jonathan shot himself --

11 A. That's right.

12 Q. -- or that someone else shot him?

13 A. That Jonathan shot himself.

14 Q. And that was false, isn't it?

15 A. Not at all, sir.

16 Q. You weren't testifying out of allegiance to Sal?

17 A. Oh, man, listen, sir, if there's a way we can have a
18 lying detector test, I'm willing to take it --

19 Q. Oh.

20 A. -- because the truth should come out about that.

21 Q. The truth absolutely should.

22 A. That is correct.

23 Q. All right. So if someone said that you were
24 testifying out of allegiance to Sal, they would be lying?

25 A. That's right, sir.

1 Q. Now, after the fight at the school, you saw
2 Jonathan Harper; correct?

3 A. Yes, sir.

4 Q. So this is two weeks before he was shot in the head;
5 correct?

6 A. Yes, sir.

7 Q. And you knew he was right-handed; correct?

8 A. Yeah.

9 Q. Okay. You knew he broke his fingers on his left
10 hand in that fight, you saw his broken fingers in that -- from
11 that fight (indicating)?

12 A. He didn't have broken fingers.

13 Q. Couldn't even close his fist on his left hand; isn't
14 that true?

15 A. No, sir.

16 Q. Okay. So he couldn't even grip a gun with his left
17 hand to shoot himself in the head, could he?

18 A. No.

19 Q. You saw Jonathan up close that day when he got shot
20 in the head, didn't you?

21 A. Right in front of him, sir. I was right in front of
22 him.

23 Q. And you saw there was no indication on his head of a
24 close range shot whatsoever?

25 A. Not at all, man.

1 Q. And Jonathan was your best friend, right? That's
2 what you testified, you were as close to him as anybody?

3 A. Yeah.

4 Q. You had known him forever, right?

5 A. That's right, both.

6 Q. So you called 911: My friend had just shot himself.
7 Right?

8 A. No, we did not.

9 Q. Okay. So you stayed until -- until the ambulance
10 got there to take care of him, right?

11 A. I didn't stay.

12 Q. Okay. You left, didn't you?

13 A. I didn't stay. We left.

14 Q. So to this day, in 2013, you maintain that Sal, the
15 head of your gang, didn't shoot Jonathan Harper, but that
16 Jonathan Harper shot himself with a gun in his left hand on
17 February 18th, 2006?

18 A. That's right.

19 Q. You're sticking with that? Okay.

20 And it's your testimony that you have left that
21 entire gang life behind; correct?

22 A. That's right.

23 Q. Okay. And then yesterday you told the prosecutor,
24 when you were having your little meeting before coming to
25 Court, that you're very afraid of Sal, and you don't want to

1 come to Court because you're afraid of Sal; correct?

2 A. That's right.

3 Q. Okay. But you know Sal is in prison and has been
4 since 2006?

5 A. Oh, yeah, absolutely I know that.

6 Q. You're still flying by the code, aren't you, sir?
7 Still doing what the script tells you to do?

8 A. There's no code, sir.

9 Q. No code.

10 MR. FIGLER: No further questions.

11 THE COURT: Redirect.

12 MS. PANDUKHT: Thank you.

13

14 REDIRECT EXAMINATION

15 BY MS. PANDUKHT:

16 Q. Mr. Calvillo, first I wanted to clarify, did -- I
17 know that the defense asked you if the police made any threats
18 to you, did the State or the State's investigator, myself or my
19 investigator, threaten you in any way?

20 A. Not at all, ma'am.

21 Q. Okay. Did we explain to you why we got the material
22 witness warrant?

23 A. Yeah.

24 Q. Why did you not want to come in here and testify?

25 A. You know, ma'am, I'll tell you, you know, it's been

1 so long, you know? It's been so long since I got away, you
2 know, from all of this stuff, you know, from all this gang
3 banging activity, from, you know, the incident with Jonathan,
4 the incident with, you know, Evaristo.

5 I -- honestly I didn't want to relive all those,
6 I'll say, flashbacks because I was there when Jonathan shot
7 himself, and for the victim's family that's here as well,
8 that's why I'm here.

9 Q. Let me ask you, when I came to visit with you, and I
10 had a copy of the statement that we've been talking about so
11 much, this April -- I mean, I'm sorry, July 26th, 2006,
12 statement, did I show it to you, but did you read it?

13 A. Huh?

14 Q. And when I tried to show it to you and ask you do
15 you need to read it, what did you tell me?

16 A. I remember everything because it's all in my head.
17 I lived it. I went through it.

18 Q. Now, let me ask you this --

19 A. Oh, man.

20 Q. -- when -- when you were interviewed by the police,
21 there were things that you said here in Court that weren't
22 contained in your statement?

23 A. Right.

24 Q. Why did you provide extra details to the jury that
25 you didn't say in your statement?

1 A. Because this is true, man.

2 Q. So let me ask you this, do you actually
3 independently remember what the defendant told you about
4 shooting the kid?

5 A. (No audible response.)

6 Q. I mean do you remember it in your memory?

7 A. I -- I really don't. I really don't, you know. I
8 really don't.

9 Q. So why did you come in here and testify to all the
10 things that you testified to? Because I wanted to go through
11 your statement because you originally talked about snitching,
12 with Mr. Figler. You talked about snitching with him, and I
13 think that wasn't really defined very well.

14 What do you think snitching is?

15 A. Oh, man, snitching is when -- you know, when you do
16 tell on your friends, you know, about -- you know, about what
17 they do, you know, but in this case it's different. It's not
18 snitching, it's really not -- it's not it, you know.

19 Q. Why?

20 A. Because there's -- there's -- there's something, you
21 know, further behind it, you know? Further by behind it. It's
22 not snitching, you know.

23 I'm not snitching nobody out, I'm just saying
24 what it is, you know.

25 Q. Mr. Figler talked a lot about the code. Are gang

1 members supposed to testify against -- against each other?

2 A. No, not at all. That's why when he told me, you
3 know, if I was scared, honestly I am, you know, I'm afraid of,
4 you know, everybody seeing my face up here, you know? That's
5 it.

6 Q. In your mind is that a real fear that something
7 might happen to you?

8 A. Yes, it is. Yes, it is. Because where I work at,
9 it's the local place, you know, where -- where, you know, it's
10 not -- it's located on the east side, you know? And that's
11 what I'm afraid of, you know, where we used to hang out and,
12 you know, everybody used to go to, it was on that area where I
13 work at, you know? And that's why -- that's -- that's my fear.

14 Not for me, but because I got a kid on my way,
15 you know. It's something that I've been trying to, you know,
16 stay away from, you know, those -- those bad influence,
17 friends, you know.

18 Man, I've been -- I've been through a lot, man,
19 to the point that to this day I say, you know what, I'm
20 standing here to get a lot -- a lot, you know, up in the air
21 with, you know, what should be, you know -- what it should --
22 man, get down to the bottom of it, and everybody should know
23 about it, you know.

24 Q. Okay. And --

25 A. The truth shall come out.

1 Q. And is it your testimony that when you talked about
2 the admissions made by the defendant, Evaristo Garcia, that he
3 actually made those admission to you?

4 A. Yes, he did. Yes, he did.

5 Q. You mentioned during Mr. Figler's cross-examination
6 that it weighed heavily on your conscience that a young boy had
7 been killed.

8 A. Yeah.

9 Q. Is that why you came forward to this jury?

10 A. Absolutely. Absolutely.

11 Q. Now, you had talked about -- yesterday you had
12 mentioned that the defendant was in your gang, and you
13 mentioned in your statement the defendant was in your gang,
14 Puros Locos.

15 A. Yeah.

16 Q. But I thought I heard you say something on
17 cross-examination that he was not quite a member yet. You used
18 the word "yet."

19 A. Yeah, not yet.

20 Q. Could you explain that to me?

21 A. Yeah, because -- because, you know, he wasn't in the
22 gang. You know, he never got jumped in, you know, like the way
23 everybody else got -- got in the gang.

24 Q. Do you have to earn being a member of a gang? You
25 have to earn it, right, you can't just become a member of a --

1 MR. FIGLER: Objection, leading now. It started,
2 and then it went into leading.

3 THE COURT: Sustained.

4 BY MS. PANDUKHT:

5 Q. Can you just become a member of a gang by just
6 saying you want to be a member?

7 A. No. Oh, no.

8 Q. What are the ways that you can prove yourself to get
9 into a gang?

10 A. I mean, you know, it's not proving, you know, it's
11 about, you know, your person, you know, what you are capable of
12 doing, you know? Perhaps me, I got that nickname of Danger,
13 you know, because I was a fighter, you know, I fought.

14 You know, people call me on the streets Danger,
15 watch out for Danger, you know, that kid, you know. I mean at
16 my young age, man, I'll tell you, you know, I'm -- I'm a good
17 fighter, you know? Same like Boxer, Boxer got that name
18 because he's a boxer, he knows how to box as well, you know.

19 Q. What about the nickname of Chuckie, where did that
20 come from?

21 A. Oh, man, honestly man, I really don't know.

22 He, you know, at the moment, at the time he
23 looked like Chuckie, you know?

24 Q. Chuckie who?

25 A. He looked like Chuckie, and he got that name, you

1 know?

2 Q. Looked like who though?

3 A. Like -- like Chuckie. Chuckie, you know, from the
4 Rugrats.

5 Q. From the what?

6 A. From the -- you know, from Rugrats, from the
7 cartoon.

8 Q. Rugrats? Okay, I'm sorry, I couldn't hear you.

9 Okay. So you mentioned that -- that incident a
10 few weeks later, February 18th, 2006, you said the defendant
11 wasn't there. Did you know where the defendant was?

12 A. I'm sorry, what was that, ma'am?

13 Q. You said that that incident at -- with Jonathan,
14 that you mentioned Sal and Puppet and Jonathan was there,
15 Little One may have been, but you don't remember, but you said
16 the defendant wasn't there.

17 A. No.

18 Q. Do you know why he wasn't there?

19 MR. FIGLER: Objection, Your Honor, foundation.

20 BY MS. PANDUKHT:

21 Q. Or he was?

22 THE COURT: Sustained.

23 More foundation.

24 BY MS. PANDUKHT:

25 Q. Well, do you know -- do you know where he was?

1 MR. FIGLER: Same question.

2 BY MS. PANDUKHT:

3 Q. Was he living in Las Vegas? Let me ask that.

4 A. I'm not sure if he was still living in Vegas.

5 MS. PANDUKHT: I'll move on.

6 THE COURT: All right.

7 BY MS. PANDUKHT:

8 Q. Defense asked you -- when you were interviewed on
9 February 26th, 2006, you were interviewed on that particular
10 incident regarding what happened with Jonathan; correct?

11 A. Correct.

12 Q. So they asked you why didn't you tell the police
13 about the shooting of Victor Gamboa; they didn't let you
14 answer -- I'm asking why, why didn't you tell the police on
15 February 26th, 2006, about what happened with Victor -- or with
16 the defendant?

17 A. Why I didn't tell them?

18 Q. Yeah, why didn't you tell them?

19 A. Man, you know, honestly, man, it's hard, you know,
20 to actually go back to that time, you know, it's been so long,
21 you know? It really has.

22 Q. Was there a reason why you wouldn't have told them?

23 MR. FIGLER: Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: There was no reason, ma'am.

1 BY MS. PANDUKHT:

2 Q. You were saying that Sal did not tell you to say
3 these things about the defendant with regard to February -- I
4 want to go back to February 6th, 2006.

5 So it was your testimony that Sal didn't tell
6 you to blame it on the defendant?

7 A. No, he did not.

8 Q. Okay. And it was not a plan by the gang to blame
9 the defendant; correct?

10 A. No, it wasn't.

11 Q. And, in fact, nobody told you to come in here and
12 say anything, right?

13 A. Right.

14 Q. I mean I didn't come in here and tell you to say
15 anything?

16 A. Oh, no, not at all.

17 Q. What about -- did I tell you to tell the truth?

18 MR. FIGLER: Objection, Your Honor.

19 THE COURT: Overruled.

20 BY MS. PANDUKHT:

21 Q. But nobody came in before you testified and told you
22 to say certain things in front of this jury?

23 A. Oh, no, not at all.

24 Q. I just want to make sure I'm clear on that.

25 A. No, not at all.

1 Q. And with regard to the statement, Mr. Figler -- I'm
2 going back to the statement in July that we're here about in
3 trial. There was questions asked by the defense regarding what
4 you said at first, and then the detective started asking you
5 some more questions for some more details.

6 A. Right.

7 Q. Did you initially give what the defendant stated
8 about the shooting first, and then they started asking you for
9 more details after?

10 A. Right. Yeah, right.

11 Q. Okay. Did you provide the extra details based upon
12 the questions that you were asked?

13 A. I did not. I did not.

14 Q. So there were some things that you didn't mention in
15 the statement?

16 A. That I didn't -- correct.

17 Q. Okay. And why is that, that there were things that
18 you didn't say in the statement that you said in front of the
19 jury?

20 A. I don't know, ma'am.

21 Q. I wanted to clarify with regard to the phone call,
22 in your statement you talked about a phone call, and then I
23 wanted to direct your attention -- do you still have the
24 statement up there?

25 A. I don't.

1 Q. On page 8 of the statement, defense counsel didn't
2 bring this up, I don't believe, that -- didn't you later talk
3 to the defendant in person?

4 A. Yeah.

5 Q. So didn't you tell the police that he took me back
6 home after what he told me?

7 A. Yes, ma'am.

8 Q. So there was initially a phone call and then there
9 was an in-person discussion?

10 A. Yes, ma'am.

11 Q. Okay. So the defendant made his admissions to you
12 both on the phone and in person?

13 A. Yeah.

14 Q. And then just to make sure that I have it straight,
15 in addition to the defendant admitting to shoot the kid, you
16 might have also heard some things from Jonathan and -- who
17 else?

18 A. It was, um, and -- and Evaristo.

19 Q. So Jonathan and Evaristo, but I didn't know if you
20 had mentioned someone else.

21 But so other people were talking about this
22 incident, but it was the defendant that made the admissions to
23 you?

24 A. Yes, ma'am.

25 Q. And in your statement, you did say that you were at

1 Sal's apartment?

2 A. Right.

3 Q. With regard to the gun, when Mr. Figler referred you
4 to page 16 of your statement with regard to playing with it,
5 which gun were you talking about? Were you talking about the
6 gun that the defendant -- I mean, the gun that was Puppet's?

7 A. Right.

8 Q. Okay. And when the question was asked of you,
9 wasn't it actually: Did you pick it up, touch it or look at
10 it? And your answer was: Oh, yeah?

11 A. Yeah, well, we --

12 Q. Whatever it said?

13 A. Yeah.

14 Q. That's what it said in there?

15 A. Right. Right.

16 Q. Well, which one was it, did you pick it up? Look at
17 it?

18 A. Yeah, we picked it up.

19 Q. Okay.

20 A. Picked it up, played with it.

21 We had other -- they had other guns there, too,
22 you know.

23 Q. Yeah, you mentioned in your cross-examination that
24 there was more than one gun. To me it sounded like there might
25 have been three guns, right?

1 A. Yes. Yes, ma'am.

2 Q. Sal, Puppet, and who else, Little One maybe?

3 A. Yes.

4 Q. Is that common for you guys in your gang to know
5 about those guns and pass those guns around?

6 A. Well, you know, the -- and I'll be honest, you know,
7 Little One and -- and Boxer, you know, they're -- you know,
8 they were -- they were the guys that, you know, we actually
9 look up to, you know.

10 Q. Were they older than you?

11 A. Absolutely.

12 Q. The defense mentioned school records of -- or
13 Special Ed for the defendant. Were you aware of any discipline
14 problems being included in that?

15 A. I don't know.

16 Q. You just don't know anything about it?

17 A. I don't.

18 Q. On page 10, when you were asked about were you there
19 when Puppet showed up to pick up Evaristo and Jonathan, you
20 said: Nuh-uh.

21 Do you remember being shown that and seeing the
22 words, "Nuh-uh"?

23 A. Yeah.

24 Q. Why did you say that?

25 A. Man, you know, I said that because at the time, you

1 know, like the guys say, you know, it's -- it was a gang, you
2 know. It's a gang that you gotta look out for each other, you
3 know.

4 Q. So you were loyal to your gang, which included the
5 defendant?

6 MR. FIGLER: Objection, Your Honor, leading and
7 compound and wrong facts from prior testimony.

8 MS. PANDUKHT: He said he was loyal.

9 THE COURT: Overruled.

10 BY MS. PANDUKHT:

11 Q. Were you loyal to your gang?

12 A. Yes, ma'am.

13 Q. I mean, you already testified to that on
14 cross-examination. So then you would be loyal to the
15 defendant, too, right?

16 MR. FIGLER: Objection, it's leading and it calls
17 for --

18 THE COURT: Overruled.

19 THE WITNESS: Yes, ma'am.

20 BY MS. PANDUKHT:

21 Q. Because, as Mr. Figler was asking you, there is a
22 code -- there was a code of loyalty that you are concerned
23 about. Are you concerned about it right now?

24 A. Yeah.

25 Q. So coming in here and telling this jury what the

1 defendant told you about a shooting, was that easy for you to
2 come in here and tell them that?

3 A. Not at all. Not at all, it's not easy.

4 Q. Are you in any fear right now because of all of
5 that?

6 A. Yes, I am. Honestly, yes, I am.

7 Q. When you came in here yesterday and said -- as well
8 as today -- that the defendant told you that he shot a kid,
9 that he chased him, and that he laughed, is that what happened?
10 Do you remember that?

11 A. Yes, ma'am.

12 Q. For the record?

13 A. Yes, ma'am.

14 (Sotto voce at this time.)

15 MS. PANDUKHT: Pass the witness.

16 THE COURT: Recross.

17 MR. FIGLER: Thank you, Your Honor.

18

19 RECROSS-EXAMINATION

20 BY MR. FIGLER:

21 Q. So as we sit here today, you're -- you're afraid
22 because you've now said Evaristo Garcia shot that -- that boy,
23 right?

24 A. Yes, sir.

25 Q. Okay. So you're being very brave right now;

1 correct?

2 A. Yeah, if you can say that.

3 Q. Okay. So you must have been extremely brave when
4 you said exactly the same thing to the police on July 26th,
5 2006; correct?

6 A. Yep.

7 Q. Yeah.

8 And so for seven years you've just been cowering
9 in fear, and today you're being brave again, right?

10 A. Well, there's no cower, don't put those words,
11 because I ain't no coward.

12 Q. You ain't no coward. And you protect the people who
13 are in your gang, that's what you just testified to on re --
14 redirect; correct?

15 Didn't you say those words not a minute ago?

16 A. Yeah, uh-huh.

17 Q. Okay. And so during this time, which would have
18 been after the shooting but before you testified for Sal at his
19 trial, you went in and told the police that Evaristo shot the
20 guy because you were being loyal to your gang.

21 A. (No audible response.)

22 MR. FIGLER: No further questions.

23 THE COURT: Do the ladies and gentlemen of this jury
24 have any questions for this witness?

25

1 (Negative response from the jury panel.)

2

3 THE COURT: It appears to be a negative response.
4 Okay. Well, this is a good time for our break,
5 ladies and gentlemen.

6 So during this recess you are admonished not to
7 talk or converse among yourselves or with anyone
8 else on any subject connected with this trial;

9 Or read, watch, or listen to any report of or
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 about a ten-minute recess. Okay?
18 Thank you.

19 THE MARSHAL: All rise.

20 THE COURT: Attorneys stay on the record.

21

22 (The following proceedings were had in open
23 Court outside the presence of the jury panel:)

24

25 THE COURT: Okay. We're outside the presence of the

1 jurors. And we're still on the record.

2 Since I have him on calendar, this gentleman on
3 calendar tomorrow, and we're all on the record right now, it
4 appears that there's no other reason to hold him in custody.

5 MS. PANDUKHT: Correct.

6 THE COURT: So the Court's going to release him. It
7 will stay on my calendar, and I'll just say it's moot since
8 he's in here.

9 I just wanted to -- is there anyone else, the
10 defense or State need me to keep him in custody on the material
11 witness warrant at this point?

12 MS. PANDUKHT: Not the State.

13 MR. FIGLER: Defense doesn't need him. There were
14 no questions from the jury, so I think everything's been pretty
15 much sorted out.

16 THE COURT: Okay. So at this time I just wanted to
17 make sure because the officers are here, that way I don't have
18 to call over to the jail.

19 I'm going to OR release him at this time. And
20 tomorrow it will be on calendar.

21 But, sir, you don't need to show up to Court. Okay?
22 I'm just going to close out your material witness case.

23 THE WITNESS: Thank you, ma'am.

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

25 And so we'll be at ease for a moment while they

1 escort him out.

2 MS. PANDUKHT: Your Honor, do I --

3 THE COURT: Let me -- can I -- can you go ahead and
4 take him out or no, do you need Mr. Garcia?

5 I need him in here because he's got to sit here.

6 COURT SERVICES OFFICER: Right. Right.

7 THE COURT: Can we just put him in that holding cell
8 then?

9 THE MARSHAL: We need him back?

10 THE COURT: No, we don't. I just don't want to
11 release him.

12 COURT SERVICES OFFICER: Well, either that or get --
13 go over there by Garcia and we'll just go around.

14 THE COURT: I just need Mr. Garcia still sitting
15 here because we're on the record.

16 THE MARSHAL: Okay.

17 THE COURT: Do you want to just -- let's move
18 Mr. Garcia over while we bring him through.

19 COURT SERVICES OFFICER: We'll go the same way.
20 So -- okay? Come on.

21 THE COURT: If you just -- you know, you can hold
22 him in there until you get a second officer.

23 COURT SERVICES OFFICER: Right, right.

24 THE COURT: Thank you.

25

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

2

3 THE CLERK: Officer, I'm going to get you an OR
4 slip, okay?

5 COURT SERVICES OFFICER: Okay.

6 THE COURT: Do you guys have a copy of the material
7 witness warrant, please, for my clerk?

8 THE CLERK: Do you know the case number?

9 THE COURT: Is it under this case?

10 MS. DEMONTE: It's under this case number.

11 THE COURT: It is under this case number?

12 THE CLERK: They changed the letter number?

13 MS. DEMONTE: We don't do this.

14 THE COURT: It's on a separate case?

15 MS. DEMONTE: It's on this case number.

16 THE COURT: It's under this case number.

17 THE CLERK: Okay. Great.

18 MS. DEMONTE: Yeah, they used to do a U, but they
19 don't do that anymore.

20 THE COURT: Okay. All right.

21 So we're still on the record.

22 The only record I wanted to make was that, prior to
23 the last witness testifying, before I even started trial, I had
24 asked Mr. Goodman if they had had enough time to discuss
25 whatever they need to pretrial that witness about, 'cause I

1 wasn't going to start -- hold on, you can -- I wasn't going to
2 start trial unless they felt satisfied that they had the
3 opportunity to cross-examine him and was able to do that prior
4 to him taking the stand again on cross.

5 And -- and Mr. Goodman had told the Court that it
6 was sufficient time and that he was ready to start trial, and
7 so I did bring the jury in and we began trial.

8 I just want to make a record of that.

9 MR. FIGLER: That's correct, Your Honor.

10 MR. GOODMAN: That's correct, Your Honor.

11 THE COURT: This is, you know, post-conviction, if,
12 in fact, he's convicted, that the defense had enough time, an
13 opportunity to speak to him, like the State did the day before.
14 And they obviously talked to him right before he testified as
15 well.

16 MR. FIGLER: The COs were awesome. They followed
17 the Court's order to a T. They gave us absolute access, and it
18 was perfect. So I thank the COs and I thank Your Honor.

19 THE COURT: All right. Thank you.

20 Is there anything before we take our break that we
21 need to discuss prior to our next witness?

22 MS. PANDUKHT: I don't think so.

23 THE COURT: Okay. Have a good break.

24 MR. FIGLER: What time is that?

25 THE COURT: Well, I'll give you guys ten minutes.

1 MR. FIGLER: Thank you, Your Honor.

2 THE COURT: So 20 till.

3 MS. PANDUKHT: Okay.

4 THE COURT: Thanks.

5 (Recess in proceedings.)

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

9
10 THE COURT: We are back on the record, in the
11 presence of the jurors, in the case of State of Nevada versus
12 Evaristo Garcia, Case Number C262966.

13 Let the record reflect the defendant is present with
14 his attorneys, Mr. Figler and Mr. Goodman; and for the State,
15 Ms. Pandukht and Ms. Demonte.

16 State, call your next witness.

17 MS. DEMONTE: The State calls Vanessa Grajeda.

18 THE CLERK: Raise your right hand, remain standing.

19
20 VANESSA GRAJEDA

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 State and spell your full name for the record,
3 please.

4 THE WITNESS: Okay. It's Vanessa Grajeda.
5 V-A-N-E-S-S-A; Grajeda, G-R-A-J-E-D-A.

6 THE REPORTER: J-E what?

7 THE WITNESS: J-E-D-A.

8 THE REPORTER: Thank you.

9 THE COURT: Sorry. We do courtroom sharing, and
10 sometimes other people come up here and mess up everything.

11 Okay. Go ahead.

12 MS. DEMONTE: Thank you, Your Honor.

13

14 DIRECT EXAMINATION

15 BY MS. DEMONTE:

16 Q. Ma'am, how are you -- how old are you?

17 A. I'm 26.

18 Q. Are you working now?

19 A. Yes.

20 Q. I want to take you back to February of 2006, that
21 puts you about 18 at that time?

22 A. Mm-hmm.

23 Q. Is that a yes?

24 A. Yes.

25 Q. All right. And were you in school at that time?

1 A. Yes.

2 Q. Where did you attend school at that time?

3 A. The Morris Academy.

4 Q. And where is that located?

5 A. On Washington and Pecos.

6 Q. And that's here in Clark County, Nevada?

7 A. Yes.

8 Q. Now, Vanessa, specifically, I want to talk about
9 February 6th of 2006. Did something unusual happen at school
10 that day?

11 A. Yes.

12 Q. What time did school let out?

13 A. Around eight.

14 Q. And were you actually in school that day?

15 A. Yes.

16 Q. So when the bell rang for school to be over, at
17 eight o'clock at night, what did you do?

18 A. I went to the front, and there was people fighting
19 outside.

20 Q. How many people were fighting?

21 A. It was about 20 or more.

22 Q. And when you say you went to the front, are you
23 talking about the front of the school?

24 A. Yes.

25 Q. So you were now outside?

1 A. Yes.

2 Q. And where were the people fighting?

3 A. In the front of the school and on the street, on
4 Washington.

5 Q. Now, putting up on the screen State's Exhibit 2, can
6 you just take your finger on your screen and draw a circle
7 where you saw people fighting?

8 A. Where is the school at?

9 Q. If I were to tell you this is the school
10 (indicating) --

11 A. Okay. (Witness complies.)

12 Q. Okay. So for the record, you've made two circles,
13 one at the front of the school into the parking lot, and the
14 second one is actually on Washington Avenue?

15 A. Yes.

16 Q. All right. Now, Vanessa, you -- how many people did
17 you see fighting?

18 A. There was about over 20.

19 Q. Did you recognize all of them?

20 A. Some people from school.

21 Q. Who did you recognize from school?

22 A. Melissa and people that I went to school, Giovanny.

23 Q. And when you say Melissa, do you know Melissa's last
24 name?

25 A. No.

1 Q. Okay. Did you actually see her fighting, or was she
2 just out there?

3 A. She was just out there.

4 Q. Okay. And Giovanni, do you know Giovanni's last
5 name?

6 A. No, I don't know Giovanni's last name.

7 Q. But did you actually see him fighting?

8 A. No, but he was the one that was talking about it at
9 school.

10 Q. Okay. And when you say he was talking about it at
11 school, you mean earlier that day?

12 A. Yes.

13 Q. Showing you what's been admitted as State's
14 Exhibit 50, is that Giovanni?

15 A. Yes, it is.

16 Q. Okay. So earlier in the day, you had heard Giovanni
17 talking about a fight. Where did you hear this?

18 A. I'm not sure if it was in the hallways or if he was
19 in a class with me.

20 Q. Okay. So --

21 THE COURT: Turn that -- can I interrupt real quick?
22 Can you --

23 MS. DEMONTE: Yeah, my screen doesn't work either.

24 THE COURT: Sorry. I was making that go away on the
25 screen. Go ahead.

1 BY MS. DEMONTE:

2 Q. I'm sorry, you can't remember if it was in the
3 hallway or in a classroom?

4 A. Yes.

5 Q. Do you remember roughly what period it was though?

6 A. It was the sixth period.

7 Q. And is sixth the last period of the day?

8 A. Yes.

9 Q. So when you went outside and saw the fight, did it
10 surprise you to see that?

11 A. Yes.

12 Q. Okay. Why did it surprise you after hearing
13 Giovanni say that?

14 A. Because he was talking about a fight, but I didn't
15 think it was going to actually happen.

16 Q. Okay. And when you saw those 20 people fighting,
17 what did you do?

18 A. I stood outside, just waiting to see what was going
19 to happen. But then when he started shooting, I seen something
20 black in his pocket.

21 Q. Okay. Now, let me stop you right there.

22 Who are you talking about? Do you know this
23 person's name at all?

24 A. No.

25 Q. Have you ever seen this person before?

1 A. No. I know he didn't go to our school.

2 Q. Okay. And can you describe this person for me?

3 A. I can't really describe him, but I knew what he had
4 on. It was like a hoody with some jeans.

5 Q. Okay. What color was the hoody?

6 A. I want to say light gray.

7 Q. All right. And you say you want to say light gray.
8 Has it been some time?

9 A. Yes.

10 Q. Did you previously tell the police what color it
11 was?

12 A. Yes.

13 Q. Would it refresh your recollection to see what you
14 told the police?

15 A. It was light, light gray.

16 Q. Okay. So do you remember it being light gray?

17 A. Yes.

18 Q. All right. And you said he didn't go to your
19 school?

20 A. No.

21 Q. Did he appear to be the same age as you?

22 A. I don't remember what he looked like to see if he
23 was older or young.

24 Q. Okay. Well, did it look like a 40-year-old person?

25 A. No.

1 Q. All right. And you said you saw something black.
2 Can you describe for me what you saw and where you saw it?

3 A. It was in his pocket, but I don't know if it was in
4 his hoody or his pants.

5 Q. Okay. And when you saw that black thing hanging out
6 of his pocket, what did you do?

7 A. I just stood there to see what he was going to do.

8 Q. Okay. Did you keep watching him?

9 A. Yes.

10 Q. And what did you see him do?

11 A. Pulled out and start shooting.

12 Q. And where was he when he pulled out to start
13 shooting?

14 A. He was in the middle of the street on Washington.

15 Q. Okay. And going back to State's Exhibit 2, can you
16 draw a circle or an X where you saw him?

17 A. (Witness complies.)

18 Q. And for the record, you've drawn a circle around the
19 raised -- the median in the middle of Washington; is that
20 correct?

21 A. Mm-hmm, yes.

22 Q. And what direction was he shooting?

23 A. Straight.

24 Q. Okay. But straight back toward the school --

25 A. Like going west.

1 Q. Okay. So can you draw an arrow?

2 A. I think that's west -- no, that's north.

3 Q. Okay. Yeah, for the record, you drew a line heading
4 north; correct?

5 A. Yeah. It was -- the people were running this way,
6 like west/east. There was some people going west and there was
7 some people going east, but he was shooting straight.

8 Q. Across Washington?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. All right. And you said some people were running,
13 could you see who was running?

14 A. No.

15 Q. Did you recognize any of the people that were
16 running?

17 A. No.

18 Q. About how many people were running?

19 A. Some people were running in the houses, and then
20 some people were running west, going on a bus.

21 Q. Okay. And where was the bus?

22 A. On Washington.

23 Q. Whereabouts?

24 A. This way (indicating).

25 Q. So to the west of the school?

1 A. Mm-hmm.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Okay.

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

6 THE COURT: Cross-examination.

7 MR. GOODMAN: Just briefly, Your Honor.

8

9

CROSS-EXAMINATION

10 BY MR. GOODMAN:

11 Q. Vanessa, you gave a statement in this case; correct?

12 A. Yes.

13 Q. All right. And did you review that statement before
14 giving testimony today?

15 A. Um, I reviewed it the other day.

16 Q. Okay. You testified on direct examination there was
17 over 20 people; correct?

18 A. Yes.

19 Q. Okay. In your statement though you told the police
20 that there was around 60 people. Do you recall saying that?

21 A. It was about 20 people outside, but there was people
22 in the back of the school, too, so I don't -- it was just like
23 a rough estimate back then, and I can't remember.

24 Q. And your rough estimate back then was 60 people;
25 correct?

1 A. Yes, uh-huh.

2 Q. So 60 people were fighting; correct?

3 A. No, it was about 20 people in the front that were
4 fighting.

5 Q. Okay.

6 MR. GOODMAN: Could I approach, Your Honor, with the
7 statement?

8 THE COURT: You may.

9 MS. PANDUKHT: Is it written?

10 MR. GOODMAN: It's the written.

11 MS. PANDUKHT: Okay. Thank you.

12 BY MR. GOODMAN:

13 Q. I have this highlighted so you can review it and
14 then look at -- and then look at me when you're done.

15 A. (Witness complies.)

16 Q. Does that refresh your recollection?

17 A. No.

18 Q. Okay. But the statement -- the statement that you
19 wrote on the night of the shooting was: You know, it was
20 about -- you know, it was about 60 people fighting.

21 Correct?

22 A. Mm-hmm.

23 Q. Okay. And there's no reason why seven years later
24 your recollection would be better now than it would be back at
25 the night of the shooting; correct?

1 A. I can't really remember what happened, how many
2 people it was, but it was like a rough estimate about 20.

3 Q. And you said that there was a whole bunch of girls
4 fighting as well; correct?

5 A. Yeah, there was girls and guys involved.

6 Q. Okay. Can you tell me about the girls that were
7 fighting? Were they from your school?

8 A. Some of them were from the school and some of them
9 weren't, but I don't remember who was actually fighting.

10 Q. About how many girls from your school were actually
11 fighting?

12 A. I want to say about three or four.

13 Q. Were they -- were they -- were they affiliated with
14 any gang that you know of?

15 A. No.

16 Q. Now, when you said that -- when the principal came
17 out, 60 people started running; correct?

18 A. Yes.

19 Q. And they were running in two separate directions,
20 you said one --

21 A. In the houses, and one's getting on the bus.

22 Q. Okay. But, you know, a group was going west and
23 another group was going east; correct?

24 A. Yes.

25 Q. Okay. And you said that -- that everybody started

1 running towards 7-Eleven; correct?

2 A. Mm-hmm, yes.

3 Q. Can you -- can you point on that map and tell us
4 where the 7-Eleven is in relation to the school?

5 A. (Witness complies.)

6 Q. Let's just -- so we can help the jury out, Vanessa,
7 I'm going to give you a close-up.

8 A. Okay.

9 Q. A closer up image.

10 That is further up there. The prosecutors are
11 trying to trick me.

12 MS. PANDUKHT: The 7-Eleven may not be located --
13 (Sotto voce at this time.)

14 BY MR. GOODMAN:

15 Q. Would you see the 7-Eleven from that aerial view?

16 A. I want to say it's this one (indicating).

17 Q. Okay. And so where did the shooting happen,
18 Vanessa?

19 A. This is the school, so they were fighting right here
20 in the parking lot. And then across the street is where the
21 guy stood in the middle of the street.

22 Q. Okay. So kind of like draw a circle where the
23 7-Eleven is. Is it off the map?

24 A. I can't see it.

25 Q. Is it off the map?

1 A. Yeah.

2 Q. Okay. Now, show us where the baseball fields are.

3 A. (Indicating.)

4 Q. Okay. And you're familiar with that the school had

5 baseball fields?

6 A. Mm-hmm.

7 Q. What --

8 A. It wasn't actually our baseball field. It was

9 Desert Mine's (phonetic).

10 Q. So to the -- to the east of you?

11 A. Mm-hmm.

12 Q. To the school; correct?

13 A. Yes.

14 Q. Okay. And you saw people running in that direction

15 as well; correct?

16 A. I seen a few people running that way, but it wasn't

17 really that many people. It was usually people going in the

18 houses or going west, like getting on a bus.

19 Q. About how many people did you see running towards

20 the baseball field?

21 A. I don't remember.

22 MR. GOODMAN: Thank you. I'll pass the witness.

23 THE COURT: Redirect?

24 MS. DEMONTE: None, Your Honor.

25 THE COURT: Do any of the ladies and gentlemen have

1 any questions for this witness?

2

3 (Negative response from the jury panel.)

4

5 THE COURT: All right. Being a negative response,
6 thank you very much. You're excused.

7 THE WITNESS: All right.

8

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

10

11 THE COURT: State, call your next witness.

12 MS. DEMONTE: The State calls Dan Eichelberger.

13 THE MARSHAL: You have to stand up here and be
14 sworn.

15

16 DAN EICHELBERGER

17 called as a witness on behalf of the State,

18 having been first duly sworn,

19 was examined and testified as follows:

20

21 THE WITNESS: I do.

22 THE CLERK: Please be seated.

23 State and spell your full name for the record,
24 please.

25 THE WITNESS: Danny Harris Eichelberger.

1 MS. DEMONTE: Can you spell it, please, sir?

2 THE WITNESS: All of it?

3 MS. DEMONTE: All of it.

4 THE WITNESS: D-A-N-N-Y; Harris, H-A-R-R-I-S;
5 Eichelberger, E-I-C-H-E-L-B-E-R-G-E-R.

6

7

DIRECT EXAMINATION

8 BY MS. DEMONTE:

9 Q. Sir, how are you employed?

10 A. Principal at the Clark County School District.

11 Q. And how long have you been a principal?

12 A. This -- I'm -- in total I'm going on my third year.

13 Q. Okay.

14 A. I was two years at the school, Morris Sunset East
15 High School.

16 Q. All right. Let me ask you about that.

17 I want to direct your attention to February 6th
18 of 2006. How were you employed at that time?

19 A. Principal.

20 Q. And where was that?

21 A. Morris Sunset East High School.

22 THE REPORTER: Morris, what is it?

23 THE WITNESS: Morris Sunset East High School.

24 BY MS. DEMONTE:

25 Q. And do some people refer to it as Morris Academy as

1 well?

2 A. Yes.

3 Q. Okay. But the official name is Morris Sunset East
4 High School?

5 A. Right.

6 Q. All right. And is that located here in
7 Clark County?

8 A. Yes.

9 Q. Okay. And how long had you been working at Morris
10 on February 6th of 2006?

11 A. Six days.

12 Q. And while you were working that day, did something
13 unusual happen?

14 A. Yes.

15 Q. Okay. Now, I want to talk to you about -- take you
16 to about the sixth period let out, is that the last class of
17 the day?

18 A. Yeah, there's a labored (phonetic) class that was
19 beyond that, but that's the major release of that day for that
20 school. It's a night program.

21 Q. And approximately what time does that let out?

22 A. Oh, it's been a while. I think like 8:30-ish,
23 something like that.

24 Q. And do you recall what you were doing physically on
25 the school grounds at that point in time?

1 A. At that time the release there was -- we had an
2 episode occur with a student, like a drug infraction, so I had
3 the police on campus, school district police were on campus
4 assisting me with the search and, you know, just dealing with
5 an issue, a drug-related issue with a student in my office.

6 Q. Now, while you were dealing with that drug-related
7 issue -- and that's not related to why we're here today;
8 correct?

9 A. Correct.

10 Q. All right. Were you alerted to something else that
11 might potentially be a problem?

12 A. Yes. I have a campus security monitor named
13 Betty Graves. She came -- she called me on the CB,
14 walkie-talkies, very stressed, a lot of distress in her voice:
15 Dan, need your help out front, please come out.

16 And I left my office immediately, told the
17 police officer if he could handle what's going on there, I was
18 needed out front.

19 Q. Okay. And can you describe Betty Graves for me?

20 A. Betty, African-American.

21 Q. How would you describe her demeanor?

22 A. Oh, demeanor, Betty's strong, she's been -- she's a
23 veteran of the Clark County School District, tough lady.

24 Q. So when you got the call from Betty where she
25 sounded distressed, did that concern you?

1 A. Yes. It was serious business. For Betty to call me
2 in distress, it was go-time. I didn't hesitate. She
3 doesn't -- she doesn't get worked up.

4 Q. Okay. And where did you go once you got Betty's
5 call?

6 A. Right to the front, our front gates of the school.

7 Q. Okay. And I'm putting on the screen in front of you
8 State's Exhibit 2. Do you see where the front of the school is
9 on that?

10 A. Yes.

11 Q. And you can actually take your finger and draw
12 circles and arrows and --

13 A. Got you. I'm assuming this is the front of the
14 school. I think I was, like, in this area.

15 That's where you walked -- I walked out.

16 Q. Okay. And what did you see when you walked out?

17 A. You know, I recall walking out. Betty was trying to
18 break up some fighting going on towards the front.

19 As I walked out, in my vision, my line of
20 vision, the whole area, this whole parking lot area
21 (indicating) was just total mayhem in a sense of, like,
22 multiple people fighting.

23 And I really couldn't get a handle on what's
24 going on. Just most -- most people I've seen fighting in one
25 area in my lifetime.

1 Q. Can you estimate how many people it was?

2 A. I would say between 20 and 30 total in that area.

3 I'm -- I'm throwing -- punching, you know, there
4 was throws, people were throwing down, so.

5 Q. Okay. And approximately what age did these people
6 look?

7 A. Most of them, to me, looked high school age, because
8 I dealt with high school age students at that time. Most of
9 them looked high school age. Maybe some of them could have
10 been older.

11 Q. Were they all students?

12 A. Not students from my school.

13 In -- in reviewing it and going back to look,
14 there were several that just had no part in that school.

15 Q. Okay. And what did you do when you saw this?

16 A. Just got in my loudest voice: Hey, we're going to
17 break this up, I need you to run off this campus now.

18 And that seemed to work. At that time everyone
19 just started scattering, dispersing, going to cars.

20 Q. What directions were people scattering in?

21 A. Most people, they weren't jumping into a car.

22 Every -- for the most part, in pretty quick
23 order, everyone started getting in cars and just getting off
24 campus.

25 Q. And most of the cars were in the parking lot?

1 A. To my recollection, yes.

2 Q. Okay. And as people were leaving, were you actually
3 having to escort some people off too?

4 A. I did. There was a few that didn't seem to have a
5 place to go. They didn't have cars or they were just there.

6 So there was to -- to my recollection about two
7 or three, maybe even four that I had to walk. It just seemed
8 that we just kind of went in this direction across the parking
9 lot (indicating).

10 Q. And you're drawing a -- a line in the northwest
11 direction; is that correct?

12 A. Yes.

13 Q. All right. What happened as you were escorting
14 people off in that direction?

15 A. You know, it just -- from my sake, I didn't
16 recognize these young men. So they were just complying at that
17 point as far as leaving my campus.

18 Q. And did something happen at that point?

19 A. Yeah. At some point -- my recollection, a young
20 man, probably somewhere in what I would say would be the
21 eastbound lane, and there was another young man, seemed to
22 appear to be running from him.

23 Q. Can you describe the first young man in the
24 eastbound lane?

25 A. The young man -- in the eastbound lane, nah, not as

1 tall as me but tall, you know, not -- I'm not a small guy,
2 but -- hoody. He was wearing a hoody, light gray.

3 Q. Okay.

4 A. Pants definitely.

5 Q. So a light gray hoody?

6 A. Yeah.

7 Q. What did you --

8 A. Athletic shoes.

9 Q. And the second young man you said appeared to be
10 running away. Can you describe that person?

11 A. Smaller kid, just running away.

12 Q. Okay. And what did you see the guy in the hoody do?

13 A. The guy in the hoody looked to be cognizant of
14 protecting his, you know, his look. I remember that -- the
15 hoody thing being important because at some point, you know,
16 having that over his head.

17 Q. And you made a motion with your hand as if you were
18 pulling (indicating). Did you actually see him pulling his --

19 A. My recollection is that there was a -- a big
20 awareness of, hey, I want this hood down. So, yeah, pulling it
21 down over his head (indicating).

22 Pulled out a gun, and what I -- what I perceived
23 is a gun, pointed it towards the direction of the other young
24 man that would now be in the westbound lane and fired away
25 every -- it seemed like he gave it everything he had.

1 Q. And did you see what happened with the other young
2 man?

3 A. Well, for me -- when I saw this young man, he was
4 just running away. He was going wherever he could go to get
5 away.

6 There was -- he was -- at all points it appeared
7 that this young man was trying to get away from the other young
8 man.

9 Q. Did you ever see him turn around to look at the guy,
10 square off at any --

11 A. No, no, this was, like, run-for-your-life stuff.

12 Q. Did you see anything in his hands?

13 A. No.

14 Q. Did he appear to have any type of weapon?

15 A. No. He appeared to have feet and be running.

16 Q. Okay. And what happened next?

17 A. Um, when the shots were fired, it was apparent that
18 he was hit because he went down in that wall area.

19 To my recollection he was pretty much just up
20 against the wall, had gone down. Obviously, friends of him --
21 I say obvious because they came to his aid, came to get him and
22 put him in his car.

23 At that point their car was northbound on
24 Virgil, and they were picking -- taking him into that car.

25 Q. Now, while he was running was there anyone with him?

1 A. There were -- there was more than two.

2 What other people were doing, I mean, as far as
3 everyone was just scattering.

4 Q. Did there appear to be somebody who was definitely
5 involved with him?

6 A. Well, the first person I remember coming to his aid
7 was a young Hispanic gentleman, had his hat kind of the bill
8 flipped up.

9 Q. And how did he come to his aid? Did he -- was he on
10 foot, or did he come in a car?

11 A. When they came, and now I kind of remember two or
12 three people grabbing him to put him into what was like -- like
13 a small -- small car.

14 Q. And what color was the car?

15 A. I -- I don't remember. Probably like red.

16 Q. Okay.

17 A. I think it was red, probably maybe some primer on
18 it, but red.

19 Q. And when you saw them trying to put him into the
20 car, what did you yourself do?

21 A. I just -- I asked to look at him. I thought it
22 would be really important to see, you know, what kind of
23 damage. I did see what I saw as an exit wound in his back, but
24 I did -- you know, I felt like he needed to stay there, and we
25 needed to get support.

1 I just didn't trust what was going to happen
2 next, you know, for the safety of the young man. Let's get
3 some support, called 911, stayed with him, brought him out of
4 the car, put him on his back and stayed with him.

5 Q. And did you wait with him for the paramedics to
6 arrive?

7 A. Yeah.

8 Q. Approximately how long did that take?

9 A. You know, I think it was -- I would have to say
10 under the five-minute range, but we were together there on --
11 on the ground for a while.

12 Q. And you said you noticed one wound to his back;
13 correct (indicating)?

14 A. Yes.

15 Q. Did you see any other wounds on him?

16 A. Not that I can remember.

17 (Sotto voce at this time.)

18 MS. DEMONTE: Pass the witness.

19 THE COURT: Cross-examination.

20 MR. FIGLER: I'm going to go real briefly, too,
21 Your Honor.

22

23 CROSS-EXAMINATION

24 BY MR. FIGLER:

25 Q. Principal Dan, is it possible that the car that you

1 saw was like red and gray primer? Does that sound familiar?

2 A. Yeah, I remember it being primarily red with some
3 primer on it.

4 Q. Okay. And that car was on the scene pretty quick
5 once the boy had been shot; is that correct?

6 A. It may have been a car that was actually in the
7 parking lot had rolled out.

8 Q. May have been right there.

9 And so it would have been generally where I'm
10 pointing my pen in this area, and the boy was just kind of
11 generally right up here so they were very close to each other?
12 Is that fair? Can you see that, my pen on your -- right there?

13 A. Yeah.

14 Q. Okay. So that's where the boy was, or that's where
15 the car was?

16 A. Uh, can you see my finger?

17 Q. I can.

18 A. Right here.

19 Q. When you --

20 A. That's where the young man was pinned against the
21 wall.

22 Q. Okay. And where was the car when you first saw it?

23 A. I -- I really do think I first saw it here in the
24 parking lot when people piled in. So it may have exited over
25 here and --

1 Q. And came to his aid?

2 A. Yeah.

3 Q. And how quick was it to him after he had gone down?

4 I guess that's the question I'm getting at.

5 A. Pretty fast.

6 Q. Seconds maybe?

7 A. Pretty fast. I --

8 Q. Okay. That school -- you're not at that school
9 anymore?

10 A. No.

11 Q. Okay. But you know that that school had some video
12 surveillance outside?

13 A. Should have.

14 Q. Yeah. And that would have been something that the
15 police would have looked at to see maybe who was in the fight
16 or whatever if the cameras picked that up, right?

17 A. To my knowledge, those were officially pulled by the
18 police.

19 Q. They were officially pulled by the police?

20 Is that yes?

21 A. To my knowledge they were.

22 Q. Okay. Thank you.

23 So you would -- I'm sorry. I'm sorry.

24 So you wouldn't have had anything to do with the
25 review of those videotapes or anything like that?

1 A. No.

2 Q. You left that to the police?

3 A. That was a police matter.

4 MR. FIGLER: Court's indulgence.

5 (Sotto voce at this time.)

6 MR. FIGLER: That's it. We'll pass the witness.

7 THE COURT: Redirect.

8 MS. DEMONTE: Just one very briefly.

9

10 REDIRECT EXAMINATION

11 BY MS. DEMONTE:

12 Q. On -- on the map you've drawn a line. I believe you
13 drew it on the north side of Washington, which would be the
14 westbound lane, I believe, and said that's where he was pinned
15 against the wall. Who were you talking about?

16 A. The young man that was shot.

17 Q. Okay. And when you said pinned against the wall,
18 why did you use that phrase?

19 A. Because he had nowhere to go. He ran to the -- to
20 the degree he could, ran away. That's just where he -- you
21 know, that's where his body remained.

22 Q. Was right there at the wall?

23 A. (No audible response.)

24 MS. DEMONTE: Thank you. Nothing further.

25 MR. FIGLER: I guess one question to follow up with

1 that.

2 THE COURT: Okay.

3

4 RECROSS-EXAMINATION

5 BY MR. FIGLER:

6 Q. Did you see -- how long had you been tracking that
7 boy -- the first time you saw him was in the -- in the street,
8 or did you see him back in the fight?

9 A. I did not see him in the fight.

10 Q. Okay. Thank you.

11 MR. FIGLER: No further questions.

12 THE COURT: Do the ladies and gentlemen --

13

14 (Affirmative response from the jury panel.)

15

16 THE COURT: Yep, there's one question. So I'll see
17 the attorneys at the bench.

18 Please put your name on there, too, and your badge
19 number, which is 5, right? No, 4.

20 Could I have a bench conference? Thanks.

21 MR. GOODMAN: Right.

22 (Bench conference outside the presence of the jury
23 reported as follows:)

24 THE COURT: This is from Lisa Griffis, Juror
25 Number 1.

1 MR. FIGLER: No, Judge.

2 MS. DEMONTE: No, Judge.

3 THE COURT: This is from Pamela Olson, Number 4.

4 MS. DEMONTE: Sure.

5 MR. FIGLER: No objection.

6 THE COURT: No objection on either one. Okay.

7 (End of bench conference.)

8 (Proceedings in the presence of the jury.)

9 THE COURT: Principal, sir, this is a question from
10 Pamela Olson, Juror Number 4: What is the reason or purpose of
11 a high school operating such late hours?

12 THE WITNESS: This particular school is for
13 generally second year seniors, it's like a credit retrieval,
14 small school program. Generally, the kids haven't been
15 successful in comprehensive high school.

16 So it's -- it's like a -- kind of a nice last chance
17 to get your diploma and get -- being in high school, have a --
18 have a small group setting. The teachers come in and work with
19 you, so there's some advantages to a school this size.

20 These are kids that really don't at this point care
21 about sports or dances and that kind of stuff, so it's --
22 usually they're called Horizon, Sunset programs.

23 THE COURT: And also this is a question from
24 Lisa Griffis, Juror Number 1: Can you give a detailed, more --
25 I'm sorry.

1 Can you give a more detailed explanation of his
2 height in feet and inches, what was his build?

3 THE WITNESS: The gentleman that I saw -- are we
4 talking about the shooter?

5 THE COURT: I can't answer it.

6 THE WITNESS: The shooter, from my perspective, I
7 just remember him being, you know, squared up, kind of -- and I
8 say, you know, not frumpy, not wimpy looking, he looked like an
9 athletic build. I don't remember him being taller than me, I'm
10 about six-two, and shrinking.

11 But, no, he -- I just remember him being fairly -- I
12 don't think he was hitting the six foot mark for him being,
13 like, you know, athletic build, I would say skinnier.

14 But as far as feet and inches, I don't know what to
15 tell you. That would -- I would say not shorter than
16 five-eight, five-nine, not taller than six-one. It's kind of
17 hard to say from that range.

18 THE COURT: Are there any follow-ups from the DA's
19 Office?

20 MS. DEMONTE: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. GOODMAN: No, Your Honor.

23 THE COURT: All right. Thank you so much
24 Mr. Eichelberger.

25 THE WITNESS: Thank you.

1 THE COURT: You're excused. Thank you for
2 testifying.

3 THE WITNESS: All right. Thank you.

4
5 (Whereupon, at this time the witness was excused.)
6

7 THE COURT: State, call your next witness.

8 MS. PANDUKHT: The State calls Joseph Harris.

9
10 JOSEPH HARRIS

11 called as a witness on behalf of the State,

12 having been first duly sworn,

13 was examined and testified as follows:
14

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 And state and spell your full name for the record,
18 please.

19 THE WITNESS: Joseph Paul Harris.

20 THE CLERK: Could you spell that last name, please?

21 THE WITNESS: Excuse me?

22 THE CLERK: Could you spell your last name, please?

23 THE WITNESS: H-A-R-R-I-S.

24 THE CLERK: Thank you.

25

1 DIRECT EXAMINATION

2 BY MS. PANDUKHT:

3 Q. Good morning, Mr. Harris. How old are you now?

4 A. Twenty-seven.

5 Q. Without telling me exactly where you work, do you
6 have a job?

7 A. Yes, I do.

8 Q. What type of work do you do?

9 A. Um, I'm a warehouseman.

10 Q. And what does that mean?

11 A. I work in the warehouse pretty much. I sort brass,
12 brass casings from Metro or shooting park, American Shooters,
13 we sort them out.

14 Q. That type of work?

15 A. Yes.

16 Q. And you live here in Las Vegas currently?

17 A. Yes, I do.

18 Q. I'd like to direct your attention several years ago
19 to February 6th, 2006. On that date how old were you?

20 A. Um, about 20 years old, 19, 20 years old.

21 Q. So about 19, 20 years old.

22 And at that time, were you familiar with a
23 school on Washington and Virgil called the Morris Sunset East
24 High School?

25 A. Yes.

1 Q. How were you familiar with that school?

2 A. I was dating a girl who went there.

3 Q. And the girl that you were dating that went there,
4 did she have a car?

5 A. No, she didn't have a car.

6 Q. Do you know approximately what time school let out?

7 A. It was -- it was in the nighttime. It had to be
8 about nine or ten o'clock, around there somewhere.

9 Q. On this particular date, did you go to that school
10 after school let out to pick her up?

11 A. I was there a little bit before school let out to
12 pick her up.

13 Q. And how did you get there?

14 A. I had a bike, so I rode down there from where I
15 stayed at.

16 Q. Okay. And when you got there on your bike, did you
17 actually stop at a certain location?

18 A. Being that I was there early, I sat at the bus stop
19 and waited until school let out because I know I wasn't going
20 to be able to be on school campus and just sit there.

21 Q. Okay. And where is that bus stop located?

22 A. That bus stop is literally right on the corner, the
23 corner which had the parking lot next to it leading into the
24 school.

25 Q. I'm going to show you what's been admitted as

1 State's Exhibit Number 2. It's an aerial map of the area. Do
2 you recognize this area?

3 A. Yes, I do.

4 Q. And you know -- can you show us where that bus stop
5 was, you said Virgil and Washington?

6 A. This is the school right here (indicating), yeah, so
7 can you see me where I'm pointing?

8 Q. If you touch on your screen, you can make a little
9 mark on there that will show up for everyone.

10 A. Okay. So it would have to be right around this
11 area.

12 Q. The bus stop?

13 A. Yeah. Right around that corner (indicating).

14 Q. So you were approximately in that area and just kind
15 of with your bike waiting?

16 A. Yes.

17 Q. Did you see anything unusual occur?

18 A. Oh, yes.

19 Q. Could you tell the jury about that?

20 A. Yes. Um, as I was sitting there, um, I say school
21 didn't let out for about another 30 minutes or so, and the next
22 thing you know I see a group of people run across the street,
23 and then I see another person run across the street, and then I
24 see another guy run across the street, which had house shoes or
25 house slippers on.

1 And as he pretty much got close to the sidewalk,
2 across the street, there's another guy who ran out to the
3 middle of the street and, um, he reached in his pocket and took
4 out a gun and let off a few shots, hitting the guy obviously in
5 the back because the guy that was in front of him was running
6 away. From there the guy hit the wall and went down to the
7 floor from the gunshot wound.

8 Q. Let me ask you a few more questions about what you
9 had said.

10 The person that you spoke about wearing house
11 shoes, could you describe him in any other way, the one that
12 was running towards the wall?

13 A. He was wearing house shoes. He -- he was
14 bald-headed -- or I don't know if he had, like, a little bit of
15 hair, but from where I was sitting at he was bald-headed.

16 Q. And could you describe what you mean by house shoes?

17 A. House shoes, um, pretty much they're -- a lot of
18 people get them just to walk around in, but they're -- they're
19 house slippers, they're made of -- a lot of them are made of
20 suede or -- it's kind of hard to describe them.

21 Q. Were they kind of like slippers then you said?

22 A. Well, they're house shoes to cover your whole foot,
23 but a lot of people put the heels of them down and use them as
24 just slide-in slippers.

25 Q. Okay. And then you said you saw someone behind him

1 stop in the middle of the street. Could you describe that
2 person, what he was wearing?

3 A. He was -- it was a gray hoody. Once again, it was
4 dark. I do remember it. It had to be like some dark colored
5 pants.

6 Q. Okay. And then could you describe the gun that you
7 saw?

8 A. The gun was a short -- a short gun. It wasn't a
9 long gun. It wasn't a rifle.

10 From me just knowing and seeing guns, whatever,
11 it would have to be somewhere around the size of a snub
12 nosed.38. Somewhere around that size.

13 Q. Could you describe the color of the gun?

14 A. Black.

15 Q. Now, you said that he pulled it out. Did you see
16 where he pulled the gun out from?

17 A. It -- it -- he just pulled it out from his right
18 hand, I do believe.

19 Q. Do you remember if it was in his right hand?

20 A. So it had to be on his right-hand side.

21 Q. So do you remember then that he was holding the gun
22 with his right hand?

23 A. Um, if I'm not mistaken I do believe so.

24 Q. And then were you able to see his head (indicating)?
25 What was on his head?

1 A. His hoody.

2 Q. Were you able to see any of his hair?

3 A. His hair, lengthwise I could say his hair would have
4 to be a couple inches.

5 Q. Do you know what color it was?

6 A. When it started coming off, as he started running
7 by, it was black or very dark brown, being that it was dark.

8 Q. Okay. Now, with regard to two locations -- I first
9 want to ask you, the location where he was standing in the
10 middle of the street where he was shooting, can you circle that
11 area or do an X or something?

12 A. Right. So it would have to be, like, right in that
13 area (indicating).

14 Q. And that was the area that you saw him firing. And
15 then you also mentioned that you saw him running by you.

16 A. Yes.

17 Q. Where did you see him run by you?

18 A. As I was sitting at the bus stop, the shooting had
19 occurred, and, um, from the middle of the street pretty much
20 ran diagonal, which pretty much crosses my path of where the
21 bus stop was.

22 He ran diagonal.

23 Q. Towards what street?

24 A. Towards Parkhurst.

25 Q. And did you see if he went north or south on

1 Parkhurst?

2 A. Well, when he ran, all I seen was him turn left on
3 Parkhurst.

4 Q. Could you draw an arrow?

5 A. Oh (indicating).

6 Q. Thank you.

7 Now, the individual wearing the house shoes or
8 slippers that you described, did you see anything in his hands?

9 A. No, I didn't.

10 Q. Did you ever see him with a weapon?

11 A. No, I didn't.

12 Q. You also mentioned that he hit the wall and kind of
13 fell on the wall. Are you able to show us? Can you
14 demonstrate how that looked?

15 A. Yes. Should I just stand here?

16 Q. Yeah, is that okay?

17 I mean, I just want to make sure we can have an
18 idea of -- of what it was because you seemed to describe it,
19 but I was hoping you could maybe show us.

20 A. Yeah. And so as it happened, I guess the guy had
21 got shot, and as he's near the sidewalk, he got hit, and he hit
22 the wall (indicating). It was like this (indicating) and
23 pretty much going down to the floor.

24 MS. PANDUKHT: Let the record reflect that -- put
25 your hands back where they -- let the record reflect that the

1 witness is holding his -- both of his hands up, maybe a little
2 bit above shoulder length, one on each side.

3 THE WITNESS: Pretty much trying to hold his self
4 up.

5 THE COURT: The record will so reflect.

6 (Sotto voce at this time.)

7 BY MS. PANDUKHT:

8 Q. Yeah. And so you said he was doing what, holding
9 himself up?

10 A. Pretty much like holding his self up, like he got
11 shot, he was injured, he hit the wall, and he had nowhere else
12 to go to hold his self up.

13 Q. And then what happened?

14 A. And then he fell to the floor.

15 Q. And this was on the sidewalk in front of the wall?

16 A. Yes.

17 Q. What kind of wall was it?

18 A. It was a wall separating the house from the business
19 street.

20 Q. You can take your seat again, sir.

21 Approximately, how many gunshots did you hear?

22 A. I would have to say about four or five maybe.

23 Q. Were -- was there any interval between the shots, or
24 did they happen one right after the other?

25 A. It was, like, pow-pow, pow-pow-pow.

1 Q. And then you had mentioned that as he's running by
2 you south on Parkhurst, I remember your saying something about
3 his hoody starting to come off?

4 A. Mm-hmm.

5 Q. Is that a yes?

6 A. Yes.

7 Q. You have to say yes or no for the record.

8 A. Yes. I'm sorry.

9 Q. That's okay.

10 And when his hoody started falling off, was he
11 actually running away, the shooter?

12 A. It was pretty much like running, yeah.

13 Q. Okay. And then is that the point where you saw some
14 of the dark hair, you said?

15 A. Yes, as it started coming off.

16 Q. I'm sorry?

17 A. As it started coming off.

18 Q. Okay. And then when the shooter was standing in the
19 middle of the Washington Avenue, and I apologize if you already
20 said this, but I want to make sure it's clear, what direction
21 was he pointing the gun?

22 A. He -- north.

23 Q. Who was he pointing the gun at?

24 A. At the bald-headed guy.

25 Q. In the house slippers or house shoes?

1 A. In the house slippers.

2 Q. And when the boy with the house shoes or house
3 slippers was shot and up against the wall, was his back towards
4 the shooter?

5 A. Yes.

6 MS. PANDUKHT: Pass the witness.

7 THE COURT: Cross.

8 MR. GOODMAN: We have no questions for this witness,
9 Your Honor. Thank you.

10 THE COURT: Do the ladies and gentlemen of the jury
11 have any questions for this witness?

12

13 (Negative response from the jury panel.)

14

15 THE COURT: Negative response.

16 Thank you very much, sir, for your testimony.
17 You're excused.

18 THE WITNESS: All right.

19

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

21

22 THE COURT: State, call your next witness.

23 MS. PANDUKHT: Could I ask, Your Honor, are you
24 going to take a lunch break around noon?

25 THE COURT: Around there.

1 MS. PANDUKHT: Around noon?

2 THE COURT: I use every second --

3 MS. PANDUKHT: No, I -- well, we have a lot of
4 witnesses.

5 THE COURT: We're -- we're going to have to break
6 about 3:30 today, so I'm trying to get to noon.

7 (Sotto voce at this time.)

8 MS. DEMONTE: Betty Graves. The State calls
9 Betty Graves.

10 THE CLERK: Dave, did you hear that?

11 THE MARSHAL: No.

12 THE CLERK: Betty Graves.

13 THE MARSHAL: Graves?

14 (Sotto voce at this time.)

15 THE MARSHAL: Stand and face the clerk.

16 THE WITNESS: Okay.

17

18 BETTY GRAVES

19 called as a witness on behalf of the State,

20 having been first duly sworn,

21 was examined and testified as follows:

22

23 THE WITNESS: I do.

24 THE CLERK: Please be seated.

25 THE WITNESS: Thank you.

1 THE CLERK: Please state your full name and spell it
2 for the record.

3 THE WITNESS: Betty Jean Graves. B-E-T-T-Y, J-E-A-N
4 G-R-A-V-E-S.

5 THE COURT: Go ahead. Proceed.

6 MS. DEMONTE: Thank you.

7

8 DIRECT EXAMINATION

9 BY MS. DEMONTE:

10 Q. Betty, are you working now?

11 A. Yes, ma'am.

12 Q. Where do you work?

13 A. I work at Rainbow Dreams Academy, and I also work at
14 UNLV.

15 Q. Okay. Had you actually previously retired from
16 another occupation?

17 A. Yes, ma'am.

18 Q. And what occupation was that?

19 A. Clark County School District. I was a campus
20 monitor.

21 Q. Okay. And when did you retire from there?

22 A. In 1908.

23 Q. 1908?

24 A. I mean 2008. Excuse me, 2008.

25 Q. All right. Now, directing your attention to

1 February of 2006, so you were working as a campus monitor at
2 that time; correct?

3 A. Yes, ma'am.

4 Q. And what school were you assigned to?

5 A. Sunset Morris Academy.

6 Q. And is that a night school?

7 A. Yes, ma'am.

8 Q. Now, I want to direct your attention specifically to
9 February 6th of 2006. Do you remember that day?

10 A. Yes, ma'am.

11 Q. Something very unusual happened that day?

12 A. Yes, ma'am.

13 Q. Where were you when school let out?

14 A. In front of the school.

15 Q. And is that normally where you would be?

16 A. Yes, ma'am.

17 Q. And what happened once school let out?

18 A. I was standing in front of the school, and just
19 before school let out, it was some kids, about 20 kids, in the
20 parking lot. And school -- well, the bell rang, and it was a
21 young man standing in front of me, and I told the campus
22 monitor, Terrell, to tell all the students that they had to
23 leave campus.

24 And he was, like, a little slow, and so I said:
25 Terrell, tell them they have to leave campus.

1 Q. Why were you saying that to Terrell?

2 A. Because I'm standing there, and this guy's standing
3 in front of me, and the guy that was standing in front of me,
4 it was so strange because he wouldn't move. And I'm -- I
5 didn't want to move because I didn't want him to go inside the
6 school. So I was telling Terrell to tell the rest of the
7 students to leave.

8 Q. And did you recognize this guy at all?

9 A. Yes, ma'am.

10 Q. Was he a student at the school?

11 A. No, ma'am.

12 Q. Okay. And how did you recognize him? Had you seen
13 him before?

14 A. This was my first time seeing him, but I just --
15 looking at him, I'm -- he was the strangest looking young man
16 because he was standing right in front me, and he had on a gray
17 hoody, and all the time he's standing there, he had his right
18 hand in his pocket. And he was just standing there, and he
19 wouldn't move.

20 Q. And as the students were coming out of the school,
21 what happened next?

22 A. The kids started coming out of the school, and this
23 young man that was standing in front of me, he -- well, one boy
24 ran up to him, and they started fighting, and he wouldn't take
25 his hand out of his pocket. He's still swinging with his left

1 hand and holding something in his hoody with his right hand.

2 Q. And did you find that strange?

3 A. Yes, ma'am.

4 Q. Okay. And he's swinging with his left hand. Was he
5 throwing punches?

6 A. Well, he didn't hit anybody but he was swinging.

7 Q. Okay. And how many people were fighting at this
8 point?

9 A. It was about 20 young men and ladies that had came
10 in the parking lot.

11 Q. And when you saw him fighting this way, did you say
12 something to Terrell?

13 A. Yes. I told Terrell, but Terrell wouldn't move so I
14 just grabbed my radio and called Mr. E. I radioed Mr. E to
15 come outside.

16 Q. What did you tell Terrell though?

17 A. I told Terrell -- I said: Terrell, make them leave
18 campus. Stop them from fighting, make them leave.

19 And he wouldn't move. He's a little slow.

20 Q. Were you concerned about what was in that pocket?

21 A. Yes, ma'am.

22 Q. Did you tell Terrell what you thought was in that
23 pocket?

24 A. After he finally made his little move, I said:
25 Terrell, the young man has a gun.

1 Oh, Miss Betty.

2 Q. And you just did an impersonation, was that Terrell?

3 A. Yes, ma'am.

4 Q. Okay. And you had told Terrell that after you got
5 off the radio --

6 A. Yes, ma'am.

7 Q. -- to the principal?

8 A. Yes, ma'am.

9 Q. All right. And what happened? Did Mr. E come out
10 right away?

11 A. Mr. E came out and he yelled: Break it up.

12 And everybody, like, scattered.

13 But the whole time I got my eye on this one boy,
14 I don't know why, I guess by the grace of God, I'm watching
15 this one young man, and I see him run north across the parking
16 lot.

17 Q. And is this the same young man --

18 A. Yes, ma'am.

19 Q. -- in the gray sweatshirt?

20 And can you describe him other than the gray
21 sweatshirt, was he young? Old?

22 A. He was -- he was like 19 or 20. He was a young man.

23 Q. Okay. Was he white? Black? Hispanic?

24 A. He was Hispanic.

25 Q. Could you see his hair at all?

1 A. Well, he had -- it was -- like the hoody hood was on
2 his head, but he had little black hair.

3 Q. Okay. And you said he was running across
4 Washington.

5 Showing you what's been admitted as State's
6 Exhibit 2. That screen in front of you, you can actually take
7 your finger and draw on it.

8 A. Oh, okay.

9 Q. So can you draw a line where you saw him run to?

10 A. Oh, I see. I see.

11 Okay. This is the parking lot. He ran that way
12 (indicating).

13 Q. Okay. And what did he do -- and you actually
14 stopped in the middle of the street; is that correct?

15 A. Yes, ma'am.

16 Q. Why did you stop in the middle of the street there,
17 with your line?

18 A. Well, because he -- when I seen him, he got right
19 there (indicating).

20 Q. Okay.

21 A. And as he crossed the street, I'm looking, and Mr. E
22 and myself, we hear gunshots.

23 I see smoke and I see fire.

24 And there was four shots.

25 Q. Okay.

1 A. And --

2 Q. Where did you see the smoke?

3 A. Right there on the corner where he was -- the guy
4 was, the young man was when he ran to the corner of Washington.

5 Q. Okay. And when you saw the smoke, was that the same
6 time you were hearing the shots?

7 A. Yes, ma'am.

8 Q. Now, you didn't actually see the firing happen?

9 A. No, ma'am.

10 Q. Okay.

11 A. But I could -- I could see the smoke and I could
12 hear the shots.

13 Q. Okay. And who, based on what you saw and heard, do
14 you think was shooting?

15 A. The same young man, because I seen him run up
16 Washington and, I mean, he wouldn't have been running if he,
17 you know.

18 Q. Okay. So right after the shoot -- after he shot,
19 did you see what direction he went?

20 A. Yes, ma'am.

21 Q. Can you draw an arrow on the screen that way?

22 A. Yes, ma'am. Up Washington -- but not in the middle
23 of the street now.

24 Q. Okay.

25 A. But he was running up Washington.

1 Q. All right. And did you see what he was shooting at?

2 A. No, ma'am.

3 Q. Okay. At some point did you know someone got shot?

4 A. Yes, ma'am.

5 Q. And where was the person that got shot?

6 A. Right here on the corner, right there, by the little
7 brick wall (indicating).

8 Q. Okay.

9 A. But he was laying on the ground.

10 Q. Can you describe the person that got shot?

11 A. He was -- he was a young baby. I mean, may -- I
12 don't know. I didn't know how old he was, but I mean he was
13 holding his sister.

14 Q. Did you recognize his sister?

15 A. Yes, ma'am, 'cause she goes to school. She went to
16 school there, and she starts screaming: It's my brother.

17 And that's, you know, I went and I grabbed her,
18 and when I grabbed her, she said: Please let me go, please let
19 me go see.

20 And, you know, I'm trying to hold her back, and
21 she's crying, she's saying: Miss Betty, I just want to pray
22 for him.

23 I said: Well, let me pray with you, baby.

24 So I'm still holding her, but she say:

25 Miss Betty, my brother --

1 MR. FIGLER: Objection, Your Honor, I'm going to
2 object as to hearsay.

3 THE COURT: Overruled.

4 BY MS. DEMONTE:

5 Q. Was she crying?

6 A. Yes, ma'am.

7 Q. Was she screaming?

8 A. She was screaming real bad. I was just holding her
9 trying to stop her.

10 Q. Okay. What happens next?

11 A. And so after that, we stand in there, and the baby
12 was laying on the ground, and I think the kids was going to try
13 to take him to the hospital.

14 Q. What makes you say that?

15 A. Because somebody was going to put him in the car.
16 Mr. E said: No, don't do it.

17 Q. What kind of car was it?

18 A. It was a little red car. I can't tell you the make
19 or model, but it was a little red car.

20 Q. Okay. And Mr. E told them not to put him in the
21 car?

22 A. Yes, ma'am.

23 Q. Now, could you see him?

24 A. Yes, ma'am.

25 Q. Did he have anything in his hands?

1 A. No, ma'am.

2 Q. Did you see any weapon anywhere around him?

3 A. No, ma'am.

4 Q. Okay. And what happened when Mr. E said: Don't put
5 him in the car?

6 A. Well, the kids kept -- you know, they moved back,
7 but Vanessa -- not Vanessa, Melissa kept crying, bless her
8 heart, she was just crying and crying.

9 Q. And I'm sorry, I'm going to stop you right there.
10 You're using the name Melissa. Is that the sister?

11 A. Yes, ma'am.

12 Q. Okay. And she went to school there?

13 A. Yes, ma'am.

14 Q. All right. And what happened next?

15 A. And so, you know, I'm just holding her, and somebody
16 called the ambulance or whatever, but I'm just holding her, and
17 I don't want to let her go because I didn't want her to, you
18 know, see her brother like that.

19 And then somebody else came and got her, and
20 then that was --

21 Q. Okay. The person that was doing the shooting, you
22 said, did not go to that school?

23 A. No, ma'am.

24 Q. Okay. Before that day, had you ever seen that
25 person before?

1 A. No, ma'am, that was my first time.

2 Q. Okay. Do you remember someone who went to school by
3 the name of Giovanny?

4 A. Yes, ma'am.

5 Q. Was Giovanny the shooter?

6 A. No, ma'am.

7 Q. Did you see Giovanny in the fight though?

8 A. Yes, ma'am.

9 Q. Do you remember what Giovanny was wearing?

10 A. No, I don't.

11 Q. Was it a gray sweatshirt though?

12 A. No.

13 Q. Okay.

14 (Sotto voce at this time.)

15 MS. DEMONTE: Pass the witness.

16 THE COURT: Cross-examination.

17 MR. FIGLER: Just a couple questions.

18 THE COURT: Sure.

19

20 CROSS-EXAMINATION

21 BY MR. FIGLER:

22 Q. Thank you, Miss Graves, for coming in today.
23 Appreciate it.

24 A. You're welcome.

25 Q. This Giovanny, did you see where he went when all

1 this was happening?

2 A. He was in the parking lot fighting with the rest of
3 the kids.

4 Q. Did you see where he went afterward?

5 A. No, ma'am -- I'm mean, I'm sorry, I'm sorry.

6 Q. That's not a mistake I usually get it.

7 All right. So over the years, every now and
8 again the police will talk to you about this case or the
9 prosecution will call you up about it, something like that; is
10 that correct?

11 A. Oh, my God, it's been so long. I told them I done
12 got old and forgot things, but they called me a couple times.

13 Q. Yeah, over the years, yeah?

14 A. Yes.

15 Q. Okay. And you always cooperate, of course you do;
16 right?

17 A. Yes, sir.

18 Q. I appreciate that. Thank you, ma'am.

19 MR. FIGLER: No further questions.

20 THE COURT: Any redirect?

21 MS. DEMONTE: No, Your Honor.

22 THE COURT: Do the ladies and gentlemen of the jury
23 have any questions for this witness?

24

25 (Affirmative response from the jury panel.)

1
2 THE COURT: Yes. All right. I'll see the attorneys
3 at the bench.

4 Make sure to put your name and badge number.
5 (Bench conference outside the presence of the jury
6 reported as follows:)

7 THE COURT: This is from Keith Trombetta, Juror
8 Number 7.

9 MR. FIGLER: Mr. Trombetta.

10 MS. PANDUKHT: What is it?

11 MS. DEMONTE: Her, no objection.

12 THE COURT: Any objection by defense?

13 MR. FIGLER: No.

14 THE COURT: This is from Lisa Griffis, Number 1.

15 MS. DEMONTE: No, Judge.

16 MS. PANDUKHT: No objection.

17 THE COURT: Any objection by defense?

18 MR. FIGLER: No.

19 THE COURT: Hold on, hold on, one more -- oh,
20 there's one more.

21 MS. PANDUKHT: Oh, I thought I only saw two.

22 THE COURT: This is from Kristy Beber, Number 8.

23 MS. DEMONTE: No objection.

24 MR. FIGLER: That's fine.

25 THE COURT: No objection by the defense? Okay.

1 MS. DEMONTE: Okay.

2 MS. PANDUKHT: Okay.

3 (End of bench conference.)

4 (Proceedings in the presence of the jury.)

5 THE COURT: Ma'am, this is some questions from the
6 jury, from Lisa Griffis, Juror Number 1: Why did you say the
7 shooter had a, quote, strange, end of quote, look?

8 THE WITNESS: Because the way he was looking -- I
9 guess because I was at the gate. He had a strange look looking
10 at me.

11 THE COURT: This is from Juror Number 7,
12 Keith Trombetta: Was person in gray hoody facing her?

13 THE WITNESS: Me? Yes, ma'am.

14 THE COURT: And then there are two more questions:
15 Any description on hair length?

16 THE WITNESS: He had little black hair, not -- I
17 can't say long hair, but it was short, real short.

18 THE COURT: And the last question says: And size of
19 man, height, slash, build?

20 THE WITNESS: He was about maybe a little taller
21 than me, and I'm five-six. He was just maybe a little taller
22 than me, and he was about a hundred to a hundred fifty pounds,
23 he was kind of heavyset.

24 THE COURT: Okay. This is from Kristy Beber,
25 Number 8: If the person in the gray hoody was standing that

1 physically close to her, can she stand up and show how tall he
2 was compared to her?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Go ahead.

5 THE WITNESS: This is how tall I am. He might have
6 been just about a little bit tall -- just a little bit taller
7 than me.

8 THE COURT: Does the State have any follow-up
9 questions?

10 MS. DEMONTE: No, Your Honor.

11 THE COURT: Does defense have any follow-up
12 questions?

13 MR. FIGLER: I do have one follow-up question based
14 on that, Your Honor.

15 THE COURT: All right.

16

17 CROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q. Miss Graves, you just testified that he had kind of
20 just short dark hair?

21 A. Yes, sir.

22 Q. Did -- what -- I'm sorry. Can you flip that on?
23 Short like that (indicating)?

24 A. Yes, sir, kind of like that.

25 MR. FIGLER: Thank you.

1 For the record that was State's Exhibit 50.

2 Thank you, Miss Graves.

3 THE WITNESS: You're welcome.

4 THE COURT: Any -- well, that's it.

5 Thank you so much for your testimony.

6 THE WITNESS: You're welcome.

7 THE COURT: You are excused. Go ahead.

8

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

10

11 THE COURT: Well, it's five till right now, so this
12 is a good time to break for lunch.

13 Ladies and gentlemen, during this recess you're
14 admonished you're admonished not to talk or converse
15 among yourselves or with anyone else on any subject
16 connected with this trial;

17 Or read, watch or listen to any report of or
18 commentary on the trial, or any person connected
19 with this trial, by any medium of information,
20 including, without limitation, newspaper,
21 television, radio or internet;

22 Or form or express any opinion on any subject
23 connected with the trial until the case is finally
24 submitted to you.

25 We'll see you back at five until one. Have a

1 good lunch.

2 THE MARSHAL: All rise.

3

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

6

7 THE COURT: All right. We're outside the presence
8 of the jurors.

9 Is there anything we need to do outside the presence
10 of the jury?

11 MS. DEMONTE: No.

12 MR. GOODMAN: No, Your Honor.

13 THE COURT: Have a good lunch.

14 MS. PANDUKHT: Thank you.

15 MR. FIGLER: Thank you.

16 (Recess in proceedings.)

17

18 (The following proceedings were had in open
19 Court in the presence of the jury panel:)

20

21 THE COURT: Good afternoon, ladies and gentlemen.

22 We are back on the record in the presence of the
23 jurors on the case of State of Nevada versus Evaristo Garcia,
24 Case Number C262966.

25 Let the record reflect the defendant is present with

1 his attorneys, Mr. Figler and Mr. Goodman; for the State,
2 Ms. Pandukht and Ms. Demonte.

3 State, go ahead and call your next witness.

4 MS. PANDUKHT: The State calls Bryan Marquez.

5
6 BRYAN MARQUEZ

7 called as a witness on behalf of the State,

8 having been first duly sworn,

9 was examined and testified as follows:

10
11 THE WITNESS: Yes.

12 THE CLERK: Please be seated.

13 State and spell your full name for the record,
14 please.

15 THE WITNESS: Bryan Marquez, B-R-Y-A-N,
16 M-A-R-Q-U-E-Z.

17 THE CLERK: Thank you.

18
19 DIRECT EXAMINATION

20 BY MS. PANDUKHT:

21 Q. Good afternoon, Mr. Marques. How old are you now?

22 A. 26 -- I mean, 25, sorry.

23 Q. 25?

24 A. Yeah.

25 Q. And do you live here in Las Vegas?

1 A. Yes.

2 Q. Do you have any brothers or sisters?

3 A. Yeah, one sister, Gena Marquez.

4 Q. And for the record, how do you spell her first name,
5 Gena?

6 A. G-E-N-A.

7 Q. Okay. And how old is Gena?

8 A. She is -- yeah, 25, yeah.

9 Q. Are you guys twins?

10 A. Oh, no, I'm sorry, 24. Something like that, 24.

11 Q. Are you guys twins or just brother and sister?

12 A. Yeah, we're twins.

13 Q. Okay.

14 A. So 24, sorry, I messed up on the age.

15 Q. Okay. I guess you want to be older than you
16 actually are.

17 A. My bad, sorry about that. I'm a little nervous.

18 Q. That's okay.

19 So you're 24 and you're twins with Gena?

20 A. Yeah, my sister.

21 Q. I'd like to ask you, back in February of 2006, do
22 you know where your sister, Gena, went to school?

23 A. Yeah. Morris Academy. Like the -- I guess it was
24 Horizon back then.

25 Q. Okay. Does it go by another name of Morris Sunset

1 East High School?

2 A. Yeah.

3 Q. Okay. And when she went to school there, did you go
4 to school there?

5 A. No. I was suspended from school. I couldn't go
6 back to school.

7 Q. Okay. And so at that time, in February of 2006,
8 your sister went to that school?

9 A. Yes.

10 Q. And have you -- I apologize. This is actually
11 relevant for a later series of questions.

12 Back then you were how old?

13 A. I was 17.

14 Q. Were you different -- I know -- well, how tall are
15 you now?

16 A. Six-zero, six feet.

17 Q. Were you a different weight back then versus now?

18 A. Yeah.

19 Q. Were you bigger or smaller?

20 A. I was bigger.

21 Q. Okay. Do you know how much bigger?

22 A. I was probably like almost 300.

23 Q. And again, I apologize for asking a personal
24 question like that, I wouldn't do it unless I had to.

25 A. That's all right.

1 Q. All right. So then I also want to ask you about if
2 you ever were the member of a gang?

3 A. Yeah, like a -- like a long ago, but I got out there
4 right away.

5 Q. You're not in a gang now?

6 A. No.

7 Q. But did you used to be a member of Brown Pride
8 Locotes?

9 A. Yeah, I was but I got out of it.

10 Q. I just want to ask you about before, if I may, just
11 a few questions.

12 Sir, when you were a member of Brown Pride
13 Locotes, about what age were you?

14 A. Like Roy Martin, like the seventh grade, like 16.

15 Q. So about 16?

16 A. Yeah.

17 Q. And do you know what the term "jumped in" means?

18 A. Yeah, where they beat you in. They get the 30
19 seconds.

20 Q. Did that happen to you?

21 A. Yeah.

22 Q. Was it 30 seconds?

23 A. Yeah.

24 Q. Okay. And when you're in a gang like that, do you
25 ever formally come out or just -- how do you say now that

1 you're not in it?

2 A. Well, because, like, I realized -- like we were
3 little kids back then, and there was adults doing it, and we
4 thought we were cool, but it's really not.

5 Q. But it's not like there's a formal process where you
6 can formally get out of being a gang?

7 A. No, you can't.

8 Q. You just --

9 A. I just, like, told them I don't want no association
10 with you guys, and they just left me alone, because we were
11 kids back then.

12 Q. Okay. And when you, back in 2006, did you know any
13 other members of Brown Pride Locotes?

14 A. No. Like I told you, I stopped associating with
15 them, so I just -- no contact with nobody.

16 Q. Well, let me ask you about -- I'm going to direct
17 you to February 6, 2006. Do you remember that day?

18 A. Yes.

19 Q. Okay. Do you remember where you were before your
20 sister contacted you?

21 A. Yeah, I was in my house playing video games with
22 Victor.

23 Q. Okay. What is Victor's last name?

24 A. Gamboa.

25 Q. And do you know how old Victor Gamboa was then?

1 A. He was 15.

2 Q. And how old were you then?

3 A. I was --

4 Q. Had you been a little older?

5 A. I think I was 16. I think he was 15. I was a year
6 younger than him. I'm not sure.

7 Q. You're younger or older?

8 A. I'm older than him. He was under -- he was 15.

9 Q. Okay. So it was you and Victor --

10 A. Yes.

11 Q. -- at your house?

12 A. My house, yes.

13 Q. Okay. Playing video games.

14 Then did you receive any sort of a call from
15 your sister, Gena?

16 A. Yeah, Gena called me.

17 Q. Okay. And as a result of her calling you, what did
18 you do?

19 A. Well, we went to go pick her up from school.

20 Q. Do you know about what time you went over to the
21 school?

22 A. It was like -- probably like before school got out,
23 probably like nine -- like nine, ten, nine o'clock.

24 Q. How did you get over there?

25 A. I drove my mom's car.

1 Q. And who went with you?

2 A. Victor.

3 Q. Okay. And when you got over there to the school,
4 did you make contact with your sister?

5 A. Yes.

6 Q. Who else was there with your sister Gena?

7 A. Crystal, Melissa, Jesus, and I think that was it.

8 Q. And I want to ask you a few questions about the
9 people you mentioned since you only used first names. What is
10 Crystal's last name?

11 A. Perez.

12 Q. Perez?

13 A. Yeah. P-E-R-E-Z.

14 Q. And did Crystal go to school --

15 A. Yeah.

16 Q. -- there --

17 A. She went there.

18 THE REPORTER: Yeah, thank you.

19 MS. PANDUKHT: I'm going to tell him right now.

20 BY MS. PANDUKHT:

21 Q. Could you please let me finish my question.

22 A. No problem.

23 Q. Because she can only take one thing down at a time.

24 A. Okay.

25 Q. So I'm going to finish, it may be a long-winded

1 question, then you answer. Is that okay?

2 A. Okay.

3 Q. All right. I want to make sure.

4 So I'm going to say that again. Did Crystal go
5 to school at Morris Sunset?

6 A. Yes.

7 Q. Then you also mentioned Melissa. What is Melissa's
8 last name?

9 A. Gamboa.

10 Q. Okay. Did she go to school at Morris Sunset?

11 A. Yes.

12 Q. Okay. And then you mentioned a person by the name
13 of Jesus. Did you know his last name?

14 A. Alonzo.

15 Q. Did he go by any nicknames?

16 A. Diablo.

17 Q. Do you know what Diablo meant?

18 A. The devil.

19 Q. Okay. Did he have any tattoos that you were aware
20 of?

21 A. Yeah.

22 Q. What?

23 A. He had Brown Pride on his chest, he had --

24 THE REPORTER: What -- oh, got it.

25 THE WITNESS: He had a little devil on his hand.

1 BY MS. PANDUKHT:

2 Q. He had the devil where?

3 A. Right on his hand right here, on his forearm
4 (indicating).

5 MS. PANDUKHT: And may the record reflect he's
6 pointing to the underside of his left forearm.

7 THE WITNESS: Yeah, I think it was this side, yeah
8 (indicating).

9 BY MS. PANDUKHT:

10 Q. And then you said Brown Pride where?

11 A. I think on his fingers and then on his, like, chest
12 right here.

13 Q. Was there any initials for the Brown Pride gang?

14 A. I don't think he had any on him, just on his fingers
15 and then on his chest had it spelled out.

16 Q. Brown Pride?

17 A. Yeah.

18 MS. PANDUKHT: All right. Let me approach, if I
19 may, Your Honor?

20 THE COURT: You may.

21 BY MS. PANDUKHT:

22 Q. I'm showing you what has been admitted as State's
23 Exhibit 85. Do you recognize this person?

24 A. Yes.

25 Q. Who is that?

1 A. That's Jesus.

2 Q. Jesus Alonzo?

3 A. Yeah.

4 Q. And do you know whether he is still alive?

5 A. No. He passed away. He is dead.

6 Q. Do you know when he passed away?

7 A. No, I don't, but it was in the news, you can Google
8 it.

9 Q. So you mentioned that Jesus had Brown Pride tattooed
10 on his chest. Did you know him to be a member of Brown Pride?

11 MR. FIGLER: I'm going to object, Your Honor,
12 foundation.

13 MS. PANDUKHT: And I believe I laid the proper
14 foundation.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MS. PANDUKHT:

18 Q. He was?

19 A. Yes.

20 Q. Now, was he any sort of leader of Brown Pride or do
21 you know?

22 A. No. I guess he was in --

23 MR. FIGLER: Objection, Your Honor, speculation,
24 calls for speculation.

25 THE COURT: Sustained.

1 MS. PANDUKHT: I just asked if he knew.

2 BY M. PANDUKHT:

3 Q. So do you know at all?

4 A. He was in it way before I met him.

5 Q. Okay. So now with regard to Victor Gamboa, was he a
6 member?

7 A. No.

8 Q. And how about Melissa?

9 A. No.

10 Q. Now, when you get to the school -- and I don't want
11 you to say what people have said, but, you know, as a result of
12 something your sister, Gena, told you, what did you do when you
13 got to the school?

14 A. Well, we just got there and then we met up, and then
15 she had told us that we'll just --

16 Q. Don't say what she said.

17 A. Oh.

18 Q. But did you go up to somebody at the school based on
19 something she said?

20 A. Yes.

21 Q. Okay. Who did you go up to?

22 A. Well, he was coming out, then I walked up, and then
23 I asked him, like: Why are you disrespecting my sister?

24 And then he said: No one is disrespecting that
25 little bitch. And then we just started fighting from there.

1 Q. Okay. And do you know the name of who you were
2 fighting?

3 A. No.

4 Q. Do you recall what he looked like?

5 A. No.

6 Q. So let me ask you this: Size-wise, do you recall if
7 he was bigger or smaller than you?

8 A. He was skinny.

9 Q. And, again, please wait for me to finish my question
10 before you answer.

11 So was he bigger or smaller than you?

12 A. Smaller.

13 Q. Okay. Do you know who threw the first punch?

14 A. I think I did.

15 Q. Okay. So you guys started --

16 A. We just started fighting, and then, like, out of
17 nowhere I started getting jumped. And then I hit the ground,
18 and then I rolled myself into a ball, and then I was getting
19 kicked. And then by the time I had got up, everybody started
20 running, and then I heard that he's got a gun, and then I
21 started running. And then we heard all the cops, and then by
22 the time I had crossed the street, that's when we heard the
23 gunshots.

24 Q. Okay. Let me back you up.

25 So there is a fight going on in the front of the

1 school. Are you an active member of this fight then?

2 A. Yes.

3 Q. Were you fighting throughout the course of the
4 fight?

5 A. I wasn't fighting. I was getting jumped. I was on
6 the ground into a ball, I was getting kicked.

7 Q. But are you in the --

8 A. Yeah.

9 Q. You're in the fight?

10 A. Yes.

11 Q. The whole time?

12 A. Yes.

13 Q. Okay. So you're definitely not out watching part of
14 the time, the whole time the fight went on you're in it?

15 A. Yes.

16 Q. Okay. And do you know approximately how many
17 people -- if you know, approximately how many people were
18 around you fighting?

19 A. I'd say, like, ten -- probably like ten people.

20 Q. So were there any boys or girls or both?

21 A. It was, like, everybody. It was, like, a mixture of
22 everybody.

23 Q. So some girls and some boys?

24 A. Yeah. Yes.

25 Q. And where did the fight take place?

1 A. Right there in front of the school.

2 Q. Okay. Like in front of --

3 A. Like -- like in front of the Morris Academy, like
4 where the gate is where they have the big arch.

5 Q. Okay. And then based upon something that you heard,
6 which you've already stated, then you said the fight kind of
7 broke up?

8 A. Yes, everybody scattered.

9 Q. Okay. When you say everybody scattered, where did
10 they go?

11 A. I don't know, everybody ran in, like, different
12 directions, but I had my keys to my car so I ran towards my
13 car.

14 Q. Tell me again what your car looked like?

15 A. It was a '97 Suzuki Sidekick, green.

16 Q. Green?

17 A. Yeah.

18 Q. So it was a green car. And do you know where you
19 had it parked?

20 A. Right there on the corner of Virgil.

21 Q. And?

22 A. I just know the street that cuts through is Virgil.
23 I don't know the ones going up and down.

24 Q. Okay. But it was right there by the school?

25 A. Yes.

1 Q. Okay. So when you were parked there, you had the
2 keys?

3 A. Yes.

4 Q. And then was anyone else running with you towards
5 your car?

6 A. I think my sister -- Gena and, like, two other
7 people I didn't know.

8 Q. So you said earlier in your testimony that you heard
9 gunshots?

10 A. Yes.

11 Q. Approximately, how many gunshots did you hear?

12 A. Five or six.

13 Q. And did there -- was there a space in between each
14 gunshot, or were they one right after the other?

15 A. It was, like, one right after the other.

16 Q. And when you heard the gunshots, did you actually
17 see anybody firing or see the shoot?

18 A. No, I did not. I was already towards my car, like
19 getting in to turn it on when I heard the gunshots.

20 Q. The person that you were fighting, you know the
21 person that you initially started fighting, what color was he
22 wearing?

23 A. A gray sweatshirt, like a hoody, like a pullover.

24 Q. Do you remember noticing that person?

25 A. No. That color --

1 Q. That he was in the fight?

2 A. Yeah.

3 Q. Okay. And was there another person that you were
4 fighting with as well?

5 A. I really -- I really can't say because, like I say,
6 I was getting jumped, like, I had a lot of people on me.

7 Q. So you were fighting more than one person?

8 A. Yeah, I was fighting more than one person.

9 THE REPORTER: One person at a time.

10 BY MS. PANDUKHT:

11 Q. You were fighting more than one person?

12 A. Yes.

13 MS. PANDUKHT: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MS. PANDUKHT:

16 Q. I'm showing you what has been admitted as State's
17 Exhibit Number 50. Do you recognize who is in this photograph?

18 A. Yes.

19 Q. Who is this?

20 A. I don't know him, but I think that's the guy I was
21 fighting.

22 Q. Okay. You were fighting him as well?

23 A. I think so, yes.

24 Q. Okay. Now, you said earlier that you don't recall
25 the name of the person.

1 A. Yes.

2 Q. Did you give a statement shortly after this incident
3 took place?

4 A. Yes.

5 Q. And in that statement, would it refresh your
6 recollection if you had known some names at that time that you
7 told police?

8 A. Yes.

9 Q. Okay. So referring to -- I'm going to show you a
10 copy.

11 MS. PANDUKHT: Referring to page 8, for counsel.

12 MR. FIGLER: Got it. Thank you.

13 MS. PANDUKHT: Got it?

14 BY MS. PANDUKHT:

15 Q. I'm going to come up and show you a clean copy.

16 MS. PANDUKHT: May I approach?

17 THE COURT: You may.

18 BY MS. PANDUKHT:

19 Q. I am showing you a copy of a statement, and do you
20 see whose name it is here?

21 A. Yes, mine.

22 Q. It's your name? Okay.

23 A. Yeah.

24 Q. And this statement was done on February 8th, 2006?

25 A. Yes.

1 Q. It looks like at 8:50 at night?

2 A. Yes.

3 Q. Okay. So that was approximately two days after this
4 happened?

5 A. Yeah, after it happened.

6 Q. Okay. I'd like to refer you to page 8 of your
7 statement. Could you read this to yourself and let me know if
8 that refreshes your recollection.

9 A. (Witness complies.) Yes.

10 Q. Did you read all the way down?

11 A. Yes.

12 Q. Okay. So do you remember the guy that you started
13 fighting with first?

14 A. I -- yes.

15 Q. What was his name?

16 A. I think Giovanny. Because I -- I never -- I didn't
17 go to that school. I don't know them, but I'm -- I think his
18 name is Giovanny, I'm not sure.

19 Q. Okay. But that's who you said in your statement?

20 A. Yes.

21 Q. Okay.

22 A. That's -- that's what they told me that that was his
23 name. So I just -- I figured it was him, but I don't know him.
24 I don't --

25 Q. You didn't know him personally?

1 A. Yeah, I don't know him personally. I didn't go to
2 that school.

3 MR. FIGLER: Your Honor, at this point we've got a
4 discussion going. He indicated something that he didn't have
5 personal knowledge, so without moving to strike, what I'll do
6 is ask who told him that it was Giovanni's name, and that
7 probably will clear it up. So I'll give that with deference to
8 the prosecution.

9 THE COURT: All right.

10 MS. PANDUKHT: Thank you.

11 THE COURT: For foundation, go ahead.

12 MS. PANDUKHT: Thank you.

13 BY MS. PANDUKHT:

14 Q. So I know I told you earlier not to say, you know,
15 what somebody told you, but did -- you said that you had spoken
16 to your sister, and she had pointed someone out?

17 A. Yes. Yes. Gena.

18 Q. Okay. How did you learn about his name?

19 A. She had told me that that was him, but, like I told
20 you, like, I don't know them myself.

21 Q. I know.

22 A. But they had prior altercation with Crystal, and
23 that's when the whole thing started.

24 Q. Okay. So you got the information about his name
25 from your sister, Gena?

1 A. Yes.

2 Q. And then here did it also refresh your recollection
3 as to what Giovanni was wearing?

4 A. Yeah -- yes.

5 Q. What does it say?

6 A. He was wearing all black, like all black jumpsuit.

7 MS. PANDUKHT: Court's indulgence.

8 (Sotto voce at this time.)

9 BY MS. PANDUKHT:

10 Q. Did you actually get beat up during this fight?

11 A. Yes.

12 MS. PANDUKHT: Pass the witness.

13 THE COURT: Cross.

14 MR. FIGLER: Thank you, Your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. FIGLER:

18 Q. Bryan, I just got a few questions for you, all
19 right?

20 A. Yeah.

21 Q. Can you see me okay?

22 A. Yes.

23 Q. All right. Just to make it real crystal clear, at
24 the time of this fight, you weren't in any gang at that time;
25 correct?

1 A. No, I was not.

2 Q. Okay. Now, you described one person that you were
3 fighting with, and you also said that somebody was wearing a
4 gray sweatshirt or hoody, or something like that?

5 A. Yes.

6 Q. Okay. Did you talk about that person to the police
7 when you gave your statement?

8 A. Yes.

9 Q. Okay. And you also described him as being
10 completely bald, that same person; correct?

11 A. Yes.

12 MS. PANDUKHT: Could you -- Counsel --

13 MR. FIGLER: Page 10. But he didn't need it, he
14 remembered.

15 BY MR. FIGLER:

16 Q. Bryan, the police asked you if you knew what "PL"
17 stood for, and you said you didn't know what that meant. Do
18 you remember that?

19 A. No, I do not.

20 Q. Okay.

21 A. Yes.

22 Q. And you did not see who had shot at Victor; correct?

23 A. No, I did not.

24 Q. Okay. You gave us a lot of information, I think you
25 did good. You answered sometimes kind of fast, right?

1 A. Yes.

2 Q. Okay. You -- you met with the prosecutors last week
3 and kind of went over everything?

4 A. Yes.

5 Q. Okay. So you kind of went through a trial run; is
6 that right?

7 A. No, this is my first time --

8 Q. First time in the courtroom?

9 A. Yes.

10 Q. But you went up to their office across the street?

11 A. Yes.

12 Q. Okay. And when you were done, they gave you a piece
13 of paper to get some money?

14 A. Yes.

15 Q. Okay. And then you came over and you cashed out and
16 they gave you cash?

17 A. No. I have the receipt, I guess, for -- this is the
18 only piece of paper that they gave me right here for money
19 (indicating), and I have it.

20 Q. And you got one last week when you went to go visit
21 them?

22 A. No. This is the first one I ever got.

23 Q. Okay. And how much is it for?

24 A. Eighteen dollars. Lunch money.

25 Q. All right. Just curious.

1 One other question.

2 (Sotto voce at this time.)

3 BY MR. FIGLER:

4 Q. Now, you weren't asking people their names when you
5 were fighting with them; correct?

6 A. No, of course not.

7 Q. Okay. And it was all happening pretty fast, right?

8 A. Yeah, it happened super quickly.

9 Q. Okay. So you know somebody was wearing black who
10 was fighting with you; correct?

11 A. Yes.

12 Q. And somebody was wearing gray when they were
13 fighting with you; correct?

14 A. Yes.

15 Q. Okay. So as far as the names attached to different
16 things of clothing, you could be mixed up; correct?

17 A. Probably, yes. But I'll tell you it happened so
18 fast, like I had more than four people on me.

19 Q. Sure.

20 A. So I kind of really didn't see anything.

21 Q. Okay. So the person who you said was Giovanny, for
22 all you know he could have been wearing the gray; correct?

23 A. Yes.

24 MR. FIGLER: Okay. Pass the witness.

25 THE COURT: Redirect?

1 (Sotto voce at this time.)

2 MS. PANDUKHT: No questions.

3 THE COURT: Are any questions from the jurors?

4

5 (Negative response from the jury panel.)

6

7 THE COURT: With a negative response, thank you,
8 sir, for your testimony. You're excused.

9 THE WITNESS: Okay.

10

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

12

13 THE COURT: State, call your next witness.

14 MS. DEMONTE: The State calls Crystal Perez.

15

16 CRYSTAL PEREZ

17 called as a witness on behalf of the State,

18 having been first duly sworn,

19 was examined and testified as follows:

20

21 THE WITNESS: Yes.

22 THE CLERK: Please be seated.

23 State and spell your full name for the record,
24 please.

25 THE WITNESS: Crystal, C-R-Y-S-T-A-L; Perez,

1 P-E-R-E-Z.

2 THE CLERK: Thank you.

3 THE COURT: Go ahead.

4

5 DIRECT EXAMINATION

6 BY MS. DEMONTE:

7 Q. Ma'am, how old are you today?

8 A. 24.

9 Q. So back in 2006 you were 17?

10 A. Yes.

11 Q. And do you work today?

12 A. Yes, I do.

13 Q. And you were in school back then?

14 A. Yes, I was.

15 Q. Now, before I go any further with questioning, do
16 you have any felony convictions?

17 A. Yes, I do.

18 Q. And what are they?

19 A. Conspiracy for burglary and a robbery.

20 Q. And is that from 2009?

21 A. Yes, it is.

22 Q. And that's here in Clark County, Nevada?

23 A. Yes, it is.

24 Q. Okay. Now, back when you were 17 in school, do you
25 know a person -- did you know a person by the name of Giovanny?

1 A. Yes, I did.

2 Q. Okay. Showing you State's Exhibit 50, is that
3 Giovanny?

4 A. Yes, it is.

5 Q. Okay. What was -- did you get along with Giovanny?

6 A. No. I mean it wasn't mutual. It was just like --
7 he went to school, I went to school.

8 Q. Okay. You weren't friends?

9 A. No, we weren't.

10 Q. Now, back in 2006, were you associated with any
11 gangs?

12 A. No, I wasn't.

13 Q. Did you hang out with members of any gang though?

14 A. Yes, I did.

15 Q. Who did you hang out that was a gang member?

16 A. Jesus.

17 Q. And what's Jesus's last name?

18 A. Alonzo.

19 Q. Okay. And showing you State's Exhibit 85, is that
20 Jesus?

21 A. Yes, it is.

22 Q. And how did you meet Jesus?

23 A. We all grew up together -- well, I mean we grew up
24 together. We went to junior high and --

25 Q. And in junior high, did you know him to be in a

1 gang?

2 A. No.

3 Q. Okay. Was it later that --

4 A. Later on, maybe eighth grade.

5 Q. Okay. And what gang did he become a member of?

6 MR. FIGLER: Objection, Your Honor, foundation.

7 THE COURT: Overruled.

8 THE WITNESS: Brown Pride.

9 BY MS. DEMONTE:

10 Q. And to your knowledge, did he have tattoos to that
11 effect?

12 A. I think he did, on his arms.

13 Q. And were you close to Jesus?

14 A. Like how close?

15 Q. Was he one of your closet friends?

16 A. Not the closest but it was mutual.

17 Q. Okay. Would you see each other very often?

18 A. Yes.

19 Q. About how often?

20 A. Maybe three -- three times, four times a week.

21 Q. And was he in a relationship with any of your
22 friends?

23 A. Yes.

24 Q. Who was he in a relationship with?

25 A. Melissa.

1 Q. And what's Melissa's last name?

2 A. Gamboa.

3 Q. Now, did Jesus go to school with you?

4 A. No, he didn't.

5 Q. What school did you go to?

6 A. Morris Sunset East High.

7 Q. And is that the same school Melissa went to?

8 A. Yes, it was.

9 Q. And is that the same school Giovanny went to?

10 A. Yes, it was.

11 Q. Now, let me go back to Giovanny.

12 When you first started going to Morris, was he
13 already there?

14 A. No.

15 Q. Okay. Did he start after you did?

16 A. Yes.

17 Q. About how long after you started?

18 A. Maybe, like, a semester.

19 Q. Okay. And at some point did things between you and
20 Giovanny get confrontational?

21 A. Yes, it did.

22 Q. Okay. And when was that?

23 A. After class.

24 Q. Okay. I want to ask you about the week prior to
25 February 6th. Do you remember that Thursday and Friday?

1 A. Yes, I do.

2 Q. What happened on Thursday?

3 A. We got in an argument in class.

4 Q. Who's we?

5 A. Me and Giovanny.

6 Q. How did this argument start?

7 A. Over a book.

8 Q. What do you mean?

9 A. I tossed my book onto his table and he tossed it

10 back.

11 Q. Why did you toss it onto his table? What were you

12 doing in class?

13 A. Well, it was -- the class was almost finished, and

14 we had to put the books, like, stacked up at the end of the

15 table, so I just threw it on his stack.

16 Q. Okay. And what did he then do?

17 A. Threw it back.

18 Q. And what happened when he threw it?

19 A. It hit my arm.

20 Q. And did you guys have words?

21 A. Well, yeah, we did.

22 Q. Okay. Do you remember what was said?

23 A. Not really.

24 Q. Okay. And which period was this again?

25 A. Fifth period.

1 Q. Okay. So now take me to sixth period, did something
2 happen in sixth period?

3 A. On Thursday?

4 Q. Did you tell anyone what had happened?

5 A. On Thursday?

6 Q. Yes.

7 A. No.

8 Q. Okay. Did anything else happen on Thursday?

9 A. No.

10 Q. Now, take me into Friday. Did you see Giovanny
11 again that day?

12 A. Yes.

13 Q. Okay. Between Thursday and Friday, had you had any
14 conversations where you told Melissa or anyone what had
15 happened?

16 A. Thursday -- back to Thursday actually.

17 Q. Okay. On Thursday?

18 A. Yes.

19 Q. Okay.

20 A. After school.

21 Q. After school?

22 A. Yes.

23 Q. Okay. What happened after school on Thursday?

24 A. Well, Jesus was there to pick up --

25 Q. Jesus Alonzo?

1 A. Jesus Alonzo was there to pick up Melissa.

2 Q. And did you see Jesus?

3 A. Yes, I did.

4 Q. And where was Jesus?

5 A. In the front of the school.

6 Q. And was Giovanni also in front of the school?

7 A. Yes, he had came out.

8 Q. And what happened when Giovanni came out?

9 A. Jesus went to hit him -- hit up -- Jesus went to hit
10 up Giovanni.

11 Q. What is hit up?

12 A. Like basically tell like --

13 MR. FIGLER: I'm going to object, Your Honor, if
14 it's going for hearsay.

15 THE COURT: Sustained.

16 BY MS. DEMONTE:

17 Q. What do you mean by the words "hit up"?

18 A. Like going to another gang member and letting them
19 know where you're from.

20 MR. FIGLER: I'm going to object, Your Honor.

21 THE COURT: On what basis?

22 MR. FIGLER: Well, at this point relevance and
23 foundation. Secondly, it's going around the hearsay exception,
24 saying he told me that he was doing something, he was about to
25 say something, and then -- and I don't know if this witness has

1 foundation for saying any of this either.

2 MS. DEMONTE: I didn't ask what was specifically
3 said, I asked what she means by hit up. It doesn't really call
4 for hearsay.

5 THE COURT: Well, it could be speculative, so
6 sustained.

7 MR. FIGLER: Thank you.

8 (Sotto voce at this time.)

9 BY MS. DEMONTE:

10 Q. Okay. Now, you observed this interaction between
11 Jesus and Giovanni; correct?

12 A. Yes, I did.

13 Q. Okay. And you knew Jesus to be a gang member?

14 A. Yes, I did.

15 Q. Did you ever observe anything on Giovanni or see
16 Giovanni do anything to indicate he was a gang member?

17 MR. FIGLER: I'm going to object, Your Honor, on
18 knowledge based upon an expert asking a layperson for expert
19 opinion as to whether or not there's some indicia of a gang
20 member or something. We don't know if this witness knows
21 anything about that or could properly testify to that.

22 MS. DEMONTE: I'll just ask it a different way.

23 THE COURT: Okay.

24 BY MS. DEMONTE:

25 Q. Did you ever see any tattoos on Giovanni?

1 A. Yes, I did.

2 Q. And did he actually show those to you?

3 A. He was showing them off in the class.

4 Q. Okay. And when was this?

5 A. Probably prior to Thursday.

6 Q. Prior to that Thursday?

7 A. Yes.

8 Q. And what tattoo did Giovanny show you -- show the
9 class?

10 A. Well, one on his chest.

11 Q. Do you remember what it said?

12 A. Yeah, it said Puro Locos.

13 THE REPORTER: What did it say?

14 THE WITNESS: Puro locos.

15 BY MS. DEMONTE:

16 Q. Can you spell it?

17 A. P-U-R-O-S L-O-C-O-S.

18 Q. Okay. Did you see any other tattoos?

19 A. On the back of his neck.

20 Q. Okay. In that -- what did that say on it?

21 A. I think it said his name, Giovanny. It said his
22 name.

23 Q. Okay. Do you know personally what Puro Locos is?

24 A. A gang.

25 MR. FIGLER: And I'll object and move to strike.

1 I mean, again, I think that calls for legal
2 conclusions for the jury to decide if they're a gang or not.

3 THE COURT: Your response?

4 (Sotto voce at this time.)

5 MS. DEMONTE: It just goes to her knowledge as to
6 why she's interpreting the whole "hit up" language.

7 I'm trying to lay a foundation here.

8 THE COURT: It's sustained.

9 MS. DEMONTE: Okay.

10 BY MS. DEMONTE:

11 Q. But Giovanni had Puro Locos on his chest?

12 A. Yes, he did.

13 Q. Did you ever see him do any hand signs?

14 A. Yeah. Yes, I did.

15 Q. Okay. What hand signs?

16 A. The P and the L.

17 Q. Can you demonstrate for me?

18 A. (Indicating.)

19 Q. And had you seen that before?

20 A. Prior to --

21 Q. Prior to Giovanni doing it.

22 A. No.

23 Q. Did he tell you what it meant?

24 A. Yes.

25 Q. Was this the same day he was showing you the

1 tattoos?

2 A. No.

3 Q. Okay. When was this?

4 A. On Thursday.

5 Q. The same Thursday that the book incident?

6 A. The Thursday -- Thursday after school when
7 Jesus Alonzo hit up Giovanny.

8 Q. And then he showed you the hand sign?

9 A. Yeah. Well, he was telling Jesus Alonzo where he
10 was from.

11 MR. FIGLER: I'm going to object, Your Honor, as to
12 what Giovanny was telling Jesus.

13 THE COURT: Sustained.

14 BY MS. DEMONTE:

15 Q. Okay. When Giovanny -- sorry, when Jesus approached
16 Giovanny, don't tell me what was said --

17 (Sotto voce at this time.)

18 BY MS. DEMONTE:

19 Q. -- is that when you saw Giovanny make that hand
20 sign?

21 A. Yes, I did.

22 Q. Okay. Now, what did you hear Giovanny say when he
23 made that hand sign?

24 MR. FIGLER: I'm going to object, Your Honor.

25 MS. DEMONTE: Your Honor, we addressed this

1 yesterday with the conspiracy.

2 MR. FIGLER: This is Thursday before any phone call
3 is made. It's a conspiracy of one. There's no such thing.

4 THE COURT: Sustained.

5 MS. DEMONTE: Okay. That's fine.

6 BY MS. DEMONTE:

7 Q. So that's what you observed on Thursday; correct?

8 A. Yes, I did.

9 Q. Now take me to Friday. Did you stay in school all
10 day?

11 A. No, I didn't.

12 Q. Okay. Why -- did you leave early?

13 A. Because I had girl issues.

14 Q. Okay. I'm sorry. I didn't mean to ask why. I -- I
15 stopped myself and -- but, okay.

16 So you left school early that day. What period
17 did you leave after?

18 A. I don't recall.

19 Q. Okay. Now, over the weekend, on Saturday or Sunday,
20 did you then have a conversation with Melissa?

21 A. Yes, I did.

22 Q. Now, don't tell me what Melissa said, but when you
23 get to school on Monday, what did you think was going to happen
24 on Monday? Without telling me what Melissa said.

25 MR. FIGLER: I'm going to object based --

1 THE COURT: Sustained.

2 MS. DEMONTE: Okay.

3 BY MS. DEMONTE:

4 Q. Tell me what happened on Monday.

5 A. I went to school.

6 Q. Okay. And did you have fifth period with Giovanni?

7 A. Yes, I did.

8 Q. And who else was in your fifth period class?

9 A. Gena.

10 Q. Did you have a conversation with Giovanni during
11 fifth period?

12 A. Yes.

13 Q. And was Gena present?

14 A. Yes, she was.

15 Q. And what was everyone's demeanor during this
16 conversation?

17 A. That something was going to happen.

18 Q. Okay. Now, when fifth period was over, did you see
19 what Giovanni did?

20 A. Yes, I did.

21 Q. What did Giovanni do?

22 A. He got on his cell phone.

23 Q. And could you hear what he was saying on the phone?

24 A. Yes.

25 Q. What was he saying?

1 A. He said: Bring Stacey.

2 Q. Okay. Did you hear anything more than bring Stacey?

3 A. Well, he said: Bring Stacey because this bitch is
4 going to get hurt.

5 Q. At that point, after hearing that conversation, what
6 did you do?

7 A. I left school.

8 Q. Why?

9 A. To go get -- we went to Gena's house.

10 Q. And why were you going to Gena's house?

11 A. To get her brother.

12 Q. Okay. And did -- did you leave by yourself or did
13 you leave with Gena?

14 A. I left with Gena.

15 Q. Okay. And when you got to Gena's house, who was
16 there?

17 A. Bryan and Victor.

18 Q. Okay.

19 A. And some other guy.

20 Q. Who's Victor?

21 A. Victor is Melissa's little brother.

22 (Sotto voce at this time.)

23 BY MS. DEMONTE:

24 Q. And -- and Bryan is Gena's brother?

25 A. Yes.

1 Q. Okay. And did you ask Bryan to come back to school
2 with you?

3 A. Yes.

4 Q. Okay. Did Bryan come with you?

5 A. Yes, he did.

6 Q. Did Victor also come?

7 A. Yes, he did.

8 Q. Did you want Victor to come?

9 A. No, I didn't.

10 Q. Why not?

11 A. Because I knew our intentions weren't good.

12 Q. What were your intentions?

13 A. To get in a fight.

14 Q. Who were you going to be in a fight with?

15 A. Giovanny.

16 Q. Now, back to the phone call where you overheard
17 Giovanny on the phone, what was his demeanor like?

18 A. His demeanor was that basically for some kind of
19 revenge.

20 Q. Did he seem angry?

21 A. Yes, he did.

22 MR. FIGLER: I would move to strike the prior
23 response as nonresponsive, angry is in response to disposition,
24 revenge is not.

25 THE COURT: It's already been answered. So it's

1 not -- it's not timely, the objection.

2 BY MS. DEMONTE:

3 Q. So who all went back to the school together?

4 A. Me, Gena, Victor and Bryan.

5 Q. Okay. And who was driving?

6 A. I don't recall that.

7 Q. That's all right.

8 And do you remember where you guys parked?

9 A. Yes, I do.

10 Q. Where did you park?

11 A. On Virgil.

12 Q. Okay. Putting up on the screen State's Exhibit 2 --
13 and you can actually use that screen in front of you take your
14 finger and draw a little X -- can you show us where you guys
15 parked?

16 A. (Indicating.)

17 Q. Okay. And so on the east side of Virgil Street?

18 A. Yes, we did.

19 Q. And where -- what happened -- what happened next?

20 A. Well, when the bell rang?

21 Q. Yes.

22 A. Or when --

23 Q. Well, did you walk to the school from there?

24 A. Yeah, from there we walked to the school.

25 Q. Okay. And what happened when the bell rang?

1 A. Everybody came out.

2 Q. Were there already people in front of the school
3 when you got there?

4 A. I wasn't paying attention.

5 Q. Okay. And what happened when everybody came out?

6 A. Then Giovanni came out.

7 Q. Do you remember what he was wearing?

8 A. Yes.

9 Q. What was he wearing that day?

10 A. Black shirt.

11 Q. And what happened when Giovanni came out?

12 A. He waited about a minute, and we were out by the
13 parking lot, like right here (indicating).

14 Q. Okay.

15 A. And then Bryan went up to Giovanni -- Bryan went up
16 to Giovanni and started beating him up.

17 Q. Okay.

18 A. And then that's when everything -- everybody started
19 fighting.

20 Q. Okay. So as soon as Bryan started beating up
21 Giovanni, everybody started fighting?

22 A. Yes.

23 Q. When you say everybody, how many people was it?

24 A. Anywhere from 25 to -- to 35. It was a lot of
25 people.

1 Q. Okay. Was -- you said Bryan and Giovanny, was Jesus
2 fighting?

3 A. I don't recall. I was fighting.

4 Q. All right. How many people were you fighting with?

5 A. Three.

6 Q. Were they male or female?

7 A. Female.

8 Q. Okay. As you were fighting with these three
9 females, about how long does it go on?

10 A. It goes on until the principal comes out.

11 Q. Okay.

12 A. The principal and the school cop.

13 Q. And what happened when the principal and the school
14 cop came out?

15 A. Everybody -- everybody screamed: The cops, the
16 cops. And everybody ran.

17 Q. And which direction did you run?

18 A. Well, I had my friend waiting for me in the parking
19 lot, in the car.

20 Q. Okay.

21 A. And I ran to the parking lot where she was parked,
22 about here (indicating), about this section (indicating).

23 Q. All right. So you've just drawn a line -- sorry, a
24 dot, in what appears to be the middle of the parking lot?

25 A. Yeah, right in this section right here (indicating).

1 Q. Okay. And what happens when you ran to the car?

2 A. I fell.

3 Q. Okay. And did you hit the ground when you fell?

4 A. Yes, I did.

5 Q. Okay. Did you see or hear anything while you were
6 on the ground?

7 A. As I was getting up, yes.

8 Q. Okay. What happened as you were getting up?

9 A. I saw someone running.

10 Q. Can you describe the person that was running?

11 A. No, I can't.

12 Q. Okay. Was it male or female?

13 A. It was -- they had a -- no, I can't.

14 Q. Okay. Where was this person running to?

15 A. Towards Washington.

16 Q. Okay. Did the person cross Washington?

17 A. No.

18 Q. What happened on Washington?

19 A. I saw someone shooting -- well, I saw someone
20 running with a gun.

21 Q. Can you describe the person running with the gun?

22 A. No, I can't.

23 Q. Was it a male or female?

24 A. The way it was built probably male.

25 Q. Okay. Do you know anything that person was wearing?

1 A. No.

2 Q. Okay. Was that person Giovanny?

3 A. No.

4 Q. Okay. What happens when you saw that person running
5 with the gun, what do you see next?

6 A. Well, I get up and I'm -- and I'm getting ready to
7 open the car to go in the car, and I see -- and I hear
8 gunshots.

9 Q. How many gunshots did you hear?

10 A. I don't recall how many.

11 Q. Okay. Was it -- it was more than one?

12 A. Yes, it was.

13 Q. Okay. Did you see who was shot, if -- if anyone was
14 shot?

15 A. Yes.

16 Q. What did you see?

17 A. I saw Victor laying on the ground.

18 Q. And did you see where the person who was doing the
19 shooting was?

20 A. By that time he was probably there no more, he
21 wasn't there no more.

22 Q. Okay.

23 A. He was running towards Washington.

24 Q. He was running towards Washington when you saw him?

25 A. Yes. And I saw Victor laying right here

1 (indicating). They were trying to pick him up, put him in a
2 red car.

3 Q. Okay. Now, you gave a statement to the police right
4 after this happened; correct?

5 A. Yes, I did.

6 Q. Was that statement the truth?

7 A. No, it wasn't.

8 Q. What did you -- who did you tell the police did the
9 shooting?

10 A. Giovanny.

11 Q. Why?

12 A. Because he made the phone call. I wanted it to be
13 him.

14 Q. In truth was it Giovanny that did the shooting?

15 A. No, it wasn't.

16 MS. DEMONTE: Pass the witness.

17 THE COURT: Cross-examination.

18

19

CROSS-EXAMINATION

20 BY MR. FIGLER:

21 Q. Crystal, when the prosecutor asked you just now, was
22 it Giovanny, you took the longest pause of any of your other
23 questions before you answered no. Do you -- do you remember
24 that just now?

25 A. Not really.

1 THE REPORTER: Pardon me?

2 THE WITNESS: I said not really.

3 BY MR. FIGLER:

4 Q. Okay. When the police had stopped you to question
5 you way back in 2006 when it happened, you told them that the
6 shooter was Giovanni. You told them that; correct?

7 A. Yes, I did.

8 Q. And then they asked you: Are you positive? And you
9 said: I'm positive.

10 Correct?

11 A. Yes, I did.

12 Q. Okay. And you testified today that it was a lie
13 because you just wanted it to be that way. So you probably
14 convinced yourself that it was Giovanni, didn't you?

15 A. No. I knew it wasn't him.

16 Q. Okay. So you were intentionally lying to the
17 police, not something that you felt in your heart?

18 A. Yes, I was intentionally lying to the police.

19 Q. Okay. And you got into a -- conflicts with a lot of
20 your friends because they were telling you: No, it wasn't
21 Giovanni; no, it wasn't Giovanni.

22 Isn't that true?

23 A. No.

24 Q. So Melissa didn't come up to you and say: No, it
25 wasn't Giovanni? She never told you that?

1 A. Not that I recall.

2 Q. So you heard in the phone call that Giovanni made
3 mentioning people names and stuff; is that correct?

4 A. Stacey specifically.

5 Q. Specifically.

6 You never heard the name Evaristo; correct?

7 A. No, I didn't.

8 Q. You never heard the name Chuckie; correct?

9 A. No, I didn't.

10 Q. You never heard the name E, did you?

11 A. No.

12 MR. FIGLER: Okay. Pass the witness.

13 THE COURT: Redirect.

14 MS. DEMONTE: Thank you.

15

16 REDIRECT EXAMINATION

17 BY MS. DEMONTE:

18 Q. Now, counsel asked you about pausing. Are you happy
19 with yourself about telling the police it was Giovanni?

20 A. No.

21 Q. Were you angry when you made that statement?

22 A. Yes, I was.

23 Q. Why?

24 A. Because I heard Victor didn't survive.

25 Q. And were you specifically angry at Giovanni?

1 A. Yes. He made that phone call.

2 Q. Now, is that the only time you said Giovanni did it?

3 A. Yes.

4 Q. Okay. And you actually testified under oath in a
5 prior hearing in 2009 in this case; correct?

6 A. Yes. I also said that I lied.

7 Q. And you said that you lied in that?

8 A. Yes, I did.

9 Q. Sorry. You admitted in that hearing that you lied
10 about telling the police it was Giovanni?

11 A. Yes.

12 MS. DEMONTE: Okay. Nothing further.

13 THE COURT: Recross?

14 MR. FIGLER: Nothing further, Your Honor.

15 THE COURT: Are there any jurors that would like to
16 ask a question of this witness?

17

18 (Negative response from the jury panel.)

19

20 THE COURT: Negative response.

21 Thank you very much for your testimony, Miss Perez.
22 And you're free to go, you're excused.

23

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

25

1 THE COURT: State, call your next witness.

2 MS. DEMONTE: Court's indulgence. Let me just see
3 who is out there.

4 MS. PANDUKHT: The State calls Melissa Gamboa.

5 THE CLERK: Could you raise your right hand, please.

6

7 MELISSA GAMBOA

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.

13 THE CLERK: Please be seated.

14 State and spell your full name for the record,
15 please.

16 THE WITNESS: It's Melissa Maria Gamboa. It's
17 M-E-L-I-S-S-A; Maria is M-A-R-I-A; last name is G-A-M-B-O-A.

18 THE CLERK: Thank you.

19 THE COURT: Go ahead.

20

21 DIRECT EXAMINATION

22 BY MS. PANDUKHT:

23 Q. Melissa, could you move the microphone up towards
24 you a little bit, the whole book move up towards you because
25 you're a little soft-spoken, I want to make sure they can hear

1 you.

2 Melissa, how old are you today?

3 A. I'm 24.

4 Q. Back in 2006, in February of 2006, how old were you?

5 A. I was 17.

6 Q. Do you have any brothers and sisters?

7 A. Yes.

8 Q. Please tell me about your siblings.

9 A. I have two brothers and one sister.

10 Q. Okay. What is your sister's name?

11 A. Elizabeth.

12 Q. How old is Elizabeth?

13 A. She's 33.

14 Q. Okay. And how about your brothers?

15 A. Ray, he's 29; and my brother was 15 at the moment,
16 which is Victor Gamboa.

17 Q. And back in 2006, on February 6th, Victor was 15
18 years old?

19 A. Yes.

20 Q. And you were 17 years old?

21 A. Correct.

22 Q. Now, it is very obvious to me that you are expecting
23 a baby.

24 A. Yes.

25 Q. So you are currently expecting which baby, first,

1 second --

2 A. My third.

3 Q. And so you have two prior children. How old are
4 they?

5 A. I have a nine and a six.

6 Q. Who is the father of your nine-year-old?

7 MR. GOODMAN: I'm going to object to relevance,
8 Your Honor.

9 MS. PANDUKHT: I'll -- I'll ask a leading question.
10 I just want to make --

11 THE COURT: Is there relevance to this?

12 MS. PANDUKHT: There is.

13 THE COURT: Is or is not?

14 MS. PANDUKHT: There is relevance to one of her
15 fathers, I'll just ask a leading question.

16 THE COURT: Why don't you ask it?

17 MS. PANDUKHT: Yes.

18 BY MS. PANDUKHT:

19 Q. Is the baby -- is the father of one of your children
20 Jesus Alonzo?

21 A. Yes.

22 Q. Okay.

23 MS. PANDUKHT: May I approach the witness?

24 THE COURT: Yes.

25 BY MS. PANDUKHT:

1 Q. Number 85, do you recognize this photograph?

2 A. Yes.

3 Q. Who is that?

4 A. That's Jesus Alonzo.

5 THE REPORTER: Who? I'm sorry.

6 THE WITNESS: Jesus Alonzo.

7 BY MS. PANDUKHT:

8 Q. And I'm going to show it right here.

9 So which child is he the father of?

10 A. My daughter, Estrella Alonzo. She's six.

11 Q. Six?

12 THE REPORTER: Could you spell that.

13 THE WITNESS: Spell Estrella?

14 THE REPORTER: Yeah.

15 THE WITNESS: S- -- I'm sorry. E-S-T-R-E-L-L-A.

16 BY MS. PANDUKHT:

17 Q. How long did you date Jesus?

18 A. For, like, two years.

19 Q. Okay. And were you dating Jesus Alonzo during

20 February 6th, 2006?

21 A. Yes.

22 Q. Did he go by any nicknames?

23 A. Yes.

24 Q. What nickname?

25 A. Diablo.

1 Q. Do you know what Diablo meant?

2 A. Yes.

3 Q. What does it mean?

4 A. Devil.

5 Q. Did Jesus have any tattoos that you know of?

6 A. Yes.

7 Q. What tattoos?

8 A. He had a little devil on his -- in his arm.

9 Q. Okay.

10 A. He had my daughter's name as well, my name as well,
11 on his neck. He had a few.

12 He had on his -- Dominic, I believe, on his
13 stomach, chest as well.

14 Q. What tattoo was on his stomach?

15 A. Mi vida loca. Mi vida loca, which is Spanish, in
16 English is: My crazy life.

17 THE REPORTER: Could you spell that, please?

18 THE WITNESS: Which part?

19 THE COURT: Can you go slow on the Spanish name?

20 Thanks.

21 THE WITNESS: Mi vida loca.

22 THE REPORTER: And spell it, please.

23 THE WITNESS: M-I, V-I-D-A, L-O-C-A.

24 THE REPORTER: Thank you.

25 BY MS. PANDUKHT:

1 Q. Did Jesus have any tattoos on his fingers?

2 A. Yes.

3 Q. What tattoo on his finger?

4 A. He had BPL.

5 Q. Did you know what that stood for?

6 A. Yes.

7 Q. What?

8 A. Brown Pride Locotes.

9 Q. Did you know him to be a member or associated in any
10 way with Brown Pride?

11 A. Yes.

12 Q. For how long?

13 A. I don't know.

14 Q. Well, specifically during the time that you were
15 dating him?

16 A. Yeah, he was on the BPL at the time I was dating.

17 Q. And is BPL short then for Brown Pride Locotes?

18 A. Correct.

19 Q. Were you ever a member of a gang?

20 A. No.

21 Q. Was Victor, to your knowledge?

22 A. No.

23 Q. All right. Now, back on February 6th, 2006, were
24 you attending school?

25 A. Yes.

1 Q. Which school were you attending?

2 A. Morris Academy.

3 Q. Morris Academy? Do you know if that also goes by
4 the name of Morris Sunset East High School?

5 A. Yes.

6 Q. And was that located at 3801 East Washington, kind
7 of the cross streets of Washington and Virgil?

8 A. Yes.

9 Q. How long did you go to school there?

10 A. Oh, it was months I can say.

11 Q. Okay. So was it at least a semester?

12 A. Yes.

13 Q. And were you going to school there on February 6th,
14 2006?

15 A. Yes.

16 Q. Did you have any friends that were also going to
17 school there?

18 A. Yes.

19 Q. Who?

20 A. Gena Marquez and Crystal Perez.

21 Q. And your brother, he didn't go to school there?

22 A. No.

23 Q. And you know that Gena has a brother, Bryan?

24 A. Yes.

25 Q. And he didn't go to school there?

1 A. No.

2 Q. Okay. So I wanted to ask you about what happened on
3 February 6th, 2006, that Monday.

4 So that Monday, when you went to school, did you
5 go to school the whole day?

6 A. Yes.

7 Q. Was anything unusual going on that day that you were
8 aware of?

9 A. I just heard rumors about a fight.

10 Q. And where was that fight supposed to take place?

11 A. At the school.

12 Q. Did you go to school the entire time?

13 A. Yes.

14 Q. Did school let out after sixth period?

15 A. Yes.

16 Q. And about that time was it like around 8:50 at
17 night?

18 A. Yes.

19 Q. So closer to nine o'clock at night, school got out?

20 A. Mm-hmm.

21 Q. Is that a yes?

22 A. Yes.

23 Q. You have to say yes or no --

24 A. Yes, sorry.

25 Q. -- instead of uh-huh.

1 So when school got out -- and is there a bell
2 that rings?

3 A. Yes.

4 Q. So the bell rings. Okay. Tell us what happens.

5 A. Well, after school I see that everybody's outside,
6 in front of the school, where I did see Giovanni Garcia place
7 the phone call.

8 Q. Okay. So when you see Giovanni Garcia place the
9 phone call, where -- what time period or what period was that?

10 A. This was after school.

11 Q. Okay.

12 A. After class.

13 Q. And where was that?

14 A. In front of the school.

15 Q. And when -- is there something else that happens
16 after that?

17 A. Yes.

18 Q. What happens?

19 A. Um, after that, that's when I see a vehicle arrive.

20 Q. Okay. Could you describe the vehicle?

21 A. El Camino.

22 Q. And could you -- do you remember what color -- what
23 color was it?

24 A. Gray.

25 Q. And could you -- before I go up and show you, could

1 you tell me -- could you kind of describe the vehicle, like the
2 back of the vehicle?

3 A. It was like a -- I want to say like a truck,
4 similar.

5 MS. PANDUKHT: May I approach the witness?

6 THE COURT: You may.

7 MR. GOODMAN: Sure.

8 BY MS. PANDUKHT:

9 Q. I'm showing you what has been admitted as State's
10 Exhibit 63. Do you recognize anything in this photograph?

11 A. Yes.

12 Q. What do you recognize?

13 A. The vehicle that I saw.

14 Q. Okay. And the vehicle specifically that you saw was
15 the gray --

16 A. Yes.

17 Q. -- El Camino?

18 Okay. Now, Melissa, if you touch your screen
19 you are actually able to leave a mark that's going to leave
20 like a -- you can do a circle or an X, and it will show up, and
21 that way we can all see.

22 So can you circle the vehicle that you just
23 talked about, the El Camino?

24 A. Yeah.

25 Q. Because there's several vehicles in the picture.

1 A. (Witness complies.)

2 Q. Okay. Now, when you saw this vehicle where were

3 you?

4 A. I was on the parking lot.

5 Q. And how many people did you see in the vehicle?

6 A. Um, let's say three.

7 Q. Did you see just males or males and females?

8 A. I saw one female and two males.

9 Q. And this vehicle, where did you see it first?

10 A. It was parked in front of the school.

11 Q. Okay. And did you see anybody get out of the

12 vehicle?

13 A. Yes.

14 Q. How many people did you see get out of the vehicle?

15 A. One.

16 Q. And could you describe what you saw?

17 A. I saw them running towards Giovanny.

18 Q. So when you say "them," who did you see running?

19 How many people did you see running?

20 A. I just saw one.

21 Q. Okay.

22 A. Running.

23 Q. Could you describe him?

24 A. Don't remember the description.

25 Q. Okay. So tell me -- why don't you start by telling

1 me what you remember seeing.

2 A. Well, by the time I saw the guy arriving,
3 Bryan Marquez and Giovanny Garcia were already fighting.

4 And I just started seeing everybody fighting
5 against each other. So it was girls and guys going at -- going
6 at the time.

7 Out of that moment I realized the principal came
8 out and everybody started running.

9 Q. How many people were fighting?

10 A. A few.

11 Q. Were you fighting?

12 A. No.

13 Q. So you were just watching?

14 A. Yes.

15 Q. So -- and this fight is taking place in front of the
16 school?

17 A. Correct.

18 Q. So when you say a few, could you give me -- I mean
19 was it just like two or three people?

20 A. No, more than that.

21 Q. And where was your brother, Victor?

22 A. He was next to me.

23 Q. Was he next to you the whole time?

24 A. No.

25 Q. Okay. So was there a period of time you didn't see

1 him?

2 A. Yes.

3 Q. And could you describe kind of -- was that during
4 the fight?

5 A. During -- when the principal came out, we started
6 running. That's when I see my brother. And do you want me to
7 describe?

8 Q. Yeah, continue.

9 A. When we start running I -- I found my brother
10 running. So I ran behind him.

11 He was crossing the street, which was
12 Washington, that's when I saw somebody else running towards him
13 and shot towards my brother.

14 Q. When the person was shooting at your brother, where
15 was he?

16 A. In the street at Washington.

17 Q. Where in the street?

18 A. In the middle of the street.

19 Q. I'm showing you State's Exhibit Number 2. This is
20 an aerial -- this is a map of the area, and right here we have
21 Washington Street. So can you show us -- right here is the
22 school (indicating). Do you recognize this area now?

23 A. Yes.

24 Q. Okay. Could you -- I'm sorry. Could you tell me
25 where you saw the person -- well, first of all, tell me where

1 you and your brother were running?

2 A. I was running, like I say, around here (indicating);
3 my brother was around here (indicating).

4 Q. Okay. And then where did you see the person that
5 you were talking about running after him?

6 A. Around here (indicating).

7 Q. Okay. Could you describe what he looked like?

8 A. I remember a gray sweater, hoody, and some dark
9 shorts.

10 Q. And could you tell me anything else about him?

11 A. He looked at the age around 17, 18.

12 Q. Could you describe the gray hoody?

13 A. I didn't see nothing on the sweater, just a gray
14 plain sweater, gray.

15 Q. And was the hoody on or off the head?

16 A. Off.

17 Q. Could you see his hair?

18 A. Yes.

19 Q. What did it look like?

20 A. Um, how do I -- didn't have much hair.

21 Q. Okay.

22 A. So you could definitely tell it was black. The type
23 of haircut, I -- I don't know how to describe it.

24 Q. So tell me where was your brother, like, give us an
25 idea, was your brother in front of you or behind you?

1 A. He was in front of me.

2 Q. And then the person that you saw in the gray hoody
3 sweatshirt, where was he?

4 A. You mean where I describe him?

5 Q. So were you in front of him or next to him or where
6 were you?

7 A. Well, I wasn't very, very next to him, but do you
8 see where the cement is out in the middle? I remember me being
9 on top of there, and the shooter as well.

10 Q. Okay. So when you say the cement in the middle, is
11 it level with the ground or a little higher?

12 A. It's a little higher.

13 Q. Okay. So you were on one part that's a little
14 higher?

15 A. Yes.

16 Q. And was the other person that was shooting a little
17 higher?

18 A. Correct.

19 Q. Okay. Did you hear gunshots?

20 A. Yes.

21 Q. How many?

22 A. A couple of them.

23 Q. And did you see a gun?

24 A. Yes.

25 Q. Could you describe it?

1 A. A .380, a black gun.

2 Q. And could you see what hand he was holding it in?

3 A. Right hand.

4 Q. Did you see where he got the gun from?

5 A. No.

6 Q. Could you tell me exactly what you saw him do?

7 A. He had the gun in his hand already. I didn't see

8 him pulling it out.

9 Q. Okay. And where was he pointing it at?

10 A. At my brother.

11 Q. And where was your brother exactly?

12 A. Crossing the street on Washington on the sidewalk.

13 Q. Did you see what happened to your brother?

14 A. Yes.

15 Q. What happened to your brother?

16 A. I saw him go down on the floor.

17 Q. Where was he when he went down on the floor?

18 A. He was leaning against the wall sitting.

19 Q. And what kind of wall was it?

20 A. A brick wall.

21 Q. Could you point on your screen where it was?

22 A. Oh, wait, that's -- I can point on that.

23 Q. It -- I know, yeah.

24 A. Yeah, you can't, it doesn't do it exactly where I

25 put it at. But it's right behind the house.

1 Q. Okay.

2 A. The corner house wall.

3 Q. Do you see the person who shot your brother in the
4 courtroom today?

5 A. Can't recognize him.

6 Q. Did you previously identify him in Court?

7 A. Yes.

8 Q. This happened seven years ago?

9 A. Yes.

10 Q. And the person -- shortly after it happened, did you
11 do a statement, handwritten?

12 A. I don't remember.

13 Q. Like a -- a handwritten where you write out a
14 statement?

15 A. During the scene or --

16 Q. Yeah, right after.

17 A. Yes.

18 Q. And when you did that statement, do you remember was
19 it the same night?

20 A. Yes.

21 Q. And in that statement, do you recall a question that
22 was asked --

23 A. Yes.

24 Q. -- that said: Can you identify the suspect?

25 A. Yes.

1 Q. Do you remember what you checked there?

2 A. Yes, I did.

3 Q. And this was on February 6th, 2006?

4 A. Correct.

5 Q. And then at a prior hearing, could you tell us about
6 who you identified?

7 A. The shooter.

8 THE REPORTER: I'm sorry?

9 THE WITNESS: The shooter.

10 BY MS. PANDUKHT:

11 Q. And that prior hearing --

12 MR. FIGLER: I'm going to object about talking about
13 any prior hearings at this point, Your Honor. There's no
14 foundation or relevance at this point.

15 MS. PANDUKHT: I believe it's relevant --

16 MR. FIGLER: Or if they're going to be
17 testifying what this witness --

18 THE COURT: It's relevant. Overruled.

19 BY MS. PANDUKHT:

20 Q. That prior hearing that you testified to, was it on
21 December 18th, 2008, when you were 19 years old?

22 A. Yes.

23 Q. Did you see where the shooter ran afterwards?

24 A. Yes.

25 Q. Where did he run?

1 A. I didn't see --

2 Q. I'm going to put Number 2 back up.

3 A. Okay.

4 Q. Go ahead.

5 A. It was this way (indicating).

6 Q. Did you see him make any turns or anything?

7 A. No.

8 Q. But you saw him running, so that would be west on
9 Washington?

10 A. Yes.

11 Q. Okay. Towards which street?

12 A. Towards this street (indicating).

13 Q. Okay.

14 MS. PANDUKHT: And may the record reflect that she's
15 pointed down Parker Street?

16 THE COURT: The record will so reflect.

17 BY MS. PANDUKHT:

18 Q. What happened after you saw Victor get shot?

19 A. I went towards him.

20 Q. Okay. And --

21 A. I just focused myself on him.

22 Q. You what?

23 A. Focused on my brother.

24 Q. Okay.

25 A. Um, a few minutes later, or seconds, um, a vehicle

1 did arrive, trying to take him to the hospital.

2 When he was inside the vehicle, officers did
3 arrive and said that we needed him out the vehicle, and they --
4 his body was already outside the vehicle.

5 Q. Which vehicle are you talking about?

6 A. That was the red car.

7 Q. And were you near that red car?

8 A. Yes.

9 Q. So you saw that there were some people there that
10 were trying to do something with your brother?

11 A. Yes.

12 Q. Were you asking that he be taken to the hospital?

13 A. Yes.

14 Q. And ultimately did the principal come out and tell
15 you that he had to stay there?

16 A. Yes.

17 Q. So you stayed with your brother the whole time?

18 A. Yes.

19 Q. When you talked about the shooter with the gray
20 hoody sweatshirt, did you ever see him in relation to that gray
21 El Camino vehicle?

22 A. No.

23 Q. You don't remember?

24 A. Not that I remember.

25 Q. Melissa, did you also give an audio recorded

1 interview with a detective, Detective Mogg, on February 6th,
2 2006, the day of the shooting?

3 A. Yes.

4 Q. And in that statement --

5 MS. PANDUKHT: I'd like to refer counsel to
6 page 6 -- I'm sorry, no, correction, page 10.

7 BY MS. PANDUKHT:

8 Q. On page 10 of your statement, in that statement, did
9 you describe the people coming out of the El Camino vehicle?

10 A. Yes.

11 Q. And did you discuss the -- do you remember
12 discussing the gray Chevy El Camino -- I'm sorry, not Chevy,
13 the gray El Camino in your recorded statement?

14 A. Yes.

15 Q. And do you remember in your statement describing who
16 was coming -- who was in the vehicle and who came out of the
17 vehicle?

18 A. Yes.

19 Q. But are you able to tell me that today or --

20 A. No.

21 Q. -- refreshing -- would looking at this refresh your
22 recollection?

23 A. It will.

24 MS. PANDUKHT: May I approach?

25 THE COURT: You may.

1 BY MS. PANDUKHT:

2 Q. What I'm going to ask you to do is look at your
3 statement -- first of all, let me make sure, this is the audio
4 recorded statement. Do you see your name here (indicating)?

5 A. Yes.

6 Q. And the date that it was given was February 6th,
7 2006 (indicating)?

8 A. Yes.

9 Q. And here I'm going to refer you to page 10, to
10 yourself, please read quietly page 10, and then let me know
11 when you're finished?

12 A. Okay. (Witness complies.)

13 Q. Ma'am, it also continues on page 11 as well. Could
14 you read that as well?

15 A. (Witness complies.)

16 Q. Does that refresh your recollection about how many
17 people were inside the gray Chevy El Camino?

18 A. Yes.

19 Q. How many people were inside of it when you saw it?

20 A. Four.

21 Q. How many males and how many females?

22 A. One female, three males.

23 Q. And how many people got out of the Chevy El Camino
24 that you saw?

25 A. Two males.

1 Q. And did you say anything about a description of
2 those two males?

3 A. I said that one of them, I believe, was the shooter.

4 Q. And did you describe the other person?

5 A. No.

6 Q. Do you remember -- do you remember in your
7 statement, on page 11 --

8 MR. GOODMAN: Well, yeah, I'm going to object.
9 That's the improper impeachment, Your Honor.

10 THE COURT: Sustained.

11 BY MS. PANDUKHT:

12 Q. In your statement, on page 11, did you describe the
13 other person as having --

14 MR. GOODMAN: Well, I -- it's the same objection,
15 Your Honor.

16 THE COURT: Sustained.

17 MS. PANDUKHT: Well I -- I asked her if she --

18 THE REPORTER: One person.

19 THE COURT: Stop.

20 Then show her the document.

21 MS. PANDUKHT: I will.

22 THE COURT: And see if her recollection can be
23 refreshed. But the way you're asking it is improper for
24 refreshing recollection.

25 MS. PANDUKHT: May I approach again?

1 THE COURT: Sure.

2 BY MS. PANDUKHT:

3 Q. I'm going to go up again and show you page 11 again,
4 I just want you to look at page 11, specifically read this part
5 and let me know if it refreshes your recollection regarding the
6 description of the other individual that came out of the gray
7 Chevy, gray El Camino.

8 A. (Witness complies.) Okay.

9 Q. Does that refresh your recollection?

10 A. Yes.

11 Q. So could you describe the other person besides who
12 you thought was the shooter come out of the Chevy -- I keep
13 saying Chevy, the gray El Camino?

14 A. Yeah, sorry about that. The second description was
15 I described a bald -- bald guy, shiny hair.

16 Q. Was it shiny hair or shiny head?

17 A. Oh, a shiny head, sorry, bald.

18 Q. I couldn't hear you?

19 A. Bald, he was bald.

20 Q. And wearing what color?

21 A. Blue.

22 (Sotto voce at this time.)

23 MS. PANDUKHT: I'll pass the witness.

24 THE COURT: Cross-examination.

25 MR. GOODMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GOODMAN:

Q. It's okay if I call you Melissa?

A. Yes.

Q. The shooting of your brother happened about seven years ago; correct?

A. Yes.

Q. And you've been speaking with these prosecutors on or off for about seven years; correct?

A. Yes.

Q. You've had lots of meetings with these prosecutors over seven years?

A. What, say, like, five.

Q. So about five meetings in seven years.

You would come over to the prosecutor's office and meet with, if not these two prosecutors, other prosecutors; correct?

A. No.

Q. Was it only these two prosecutors?

A. With them two times I can say.

Q. With them two times?

A. Yes.

Q. With these two ladies here?

A. With Lori (phonetic).

1 Q. Lori, and who is she?

2 A. She's, um, who's working on our case.

3 Q. Okay. Is she -- is she like a witness, a
4 coordinator, does that sound right?

5 A. I don't know.

6 Q. Okay. But when you would come over -- I mean,
7 you're not coming here testifying before this jury just out of
8 the thin air. You've reviewed statements; correct?

9 A. Yes.

10 Q. I mean, you've given a lot of information in this
11 case over seven years, right?

12 A. Mm-hmm, yes.

13 Q. Okay. You gave a -- a statement on the night of
14 your brother's shooting to the police; correct?

15 A. Yes.

16 Q. So you wrote something out; correct?

17 A. Correct.

18 Q. And then you gave a recorded interview the same
19 night of the shooting; correct?

20 A. Correct.

21 Q. Do you remember doing that?

22 A. Yes.

23 Q. And that was transcribed, and you got a copy of what
24 you told the police; correct?

25 A. Don't remember about what I told the detective.

1 Q. Have you -- have you reviewed a transcript of the
2 recorded statement that you gave the police --

3 A. Yes.

4 Q. -- the night of your brother's shooting?

5 A. Sorry.

6 Q. How many times do you think that you -- that you've
7 looked over that statement?

8 A. To be honest, two times.

9 Q. And then you come into Court, not -- not counting
10 today, but on two other occasions, you gave a -- you testified
11 at a Preliminary Hearing; correct?

12 A. Yes.

13 Q. And you also gave testimony before a Grand Jury;
14 correct?

15 A. Um, sorry, don't know.

16 Q. Where -- where somebody like myself wasn't here, but
17 that was a court reporter, there was a panel, and there was a
18 prosecutor asking questions. Do you remember that?

19 A. Yes.

20 Q. Okay. And probably -- and I don't want to put words
21 in your mouth, but before you gave testimony before the
22 Grand Jury, before you came into a Court like this, you
23 testified at a Preliminary Hearing, you probably reviewed some
24 of the statements that you gave; correct?

25 A. Yes.

1 Q. Do you know what statements? Was it -- was it that
2 one-page written statement that you reviewed?

3 A. Yes.

4 Q. Was it the recorded statement that you reviewed?

5 A. The one I wrote.

6 Q. Okay. Did you review your testimony that you gave
7 before Preliminary Hearing?

8 A. No.

9 Q. Have you reviewed a transcript of your testimony
10 that you gave before a Grand Jury?

11 A. Before, yes.

12 Q. Okay. So you reviewed that before coming and
13 testifying today; correct?

14 A. Yes.

15 Q. Okay. Because we're going to go over those
16 documents, so I just wanted to give ground work for the jury.

17 Now, when this -- when this -- when this episode
18 happened, and your brother was shot, you gave a written
19 statement shortly thereafter; correct?

20 A. Yes.

21 Q. Okay. And you described -- you described the person
22 coming out of that El Camino that we just talked about as
23 wearing a gray -- with wearing a gray sweater; correct?

24 A. Yes.

25 Q. And you -- you testified on direct examination

1 before -- before the prosecutors, I guess, impeached you with
2 your own statement, but you said there was one female and two
3 males that came out of the car on direct examination.

4 Do you remember saying that?

5 A. Yes.

6 Q. But then once you reviewed your statement, you know
7 that there was, according to you, three males and one female
8 that came out of the car; correct?

9 A. Yes.

10 Q. Then you -- and you wrote in your statement, right
11 after this happened, that the -- the one -- one girl that came
12 out of the car had blond hair; correct?

13 A. I didn't state she came out. I stated I saw her in
14 the vehicle.

15 Q. Okay. So there's three guys and one girl. And the
16 one girl in that El Camino had blond hair; correct?

17 A. Correct.

18 Q. I'm going to show you what's been marked as State's
19 Exhibit 86. Is that the -- is that the girl that you
20 recognized in the car?

21 A. I didn't see her face when I looked at the vehicle.

22 Q. Okay. But this girl --

23 A. So I wouldn't be able to recognize her.

24 Q. But the girl that you saw in the El Camino --

25 A. I just said I just saw blond hair.

1 Q. Had -- right, had blond hair, not black hair?

2 A. Yeah.

3 Q. So it wouldn't have been this person that is
4 photographed; correct?

5 A. Don't know.

6 MS. PANDUKHT: Objection, calls for speculation.

7 BY MR. GOODMAN:

8 Q. What's that?

9 A. I don't know.

10 THE COURT: I can't even answer. I'm just going to
11 let it stand since she didn't know.

12 MR. GOODMAN: Thank you, Your Honor.

13 THE COURT: When an objection is made, ma'am, wait
14 and don't answer it, and let me answer the objection. Okay?

15 THE WITNESS: Okay.

16 BY MR. GOODMAN:

17 Q. So you said the shooter that who you saw had a gray
18 sweater with a hoody; correct?

19 A. Yes.

20 Q. And you also described the shooter as wearing a
21 black sweater and a black hoody; correct?

22 A. Don't remember.

23 Q. Okay. Well, remember that Grand Jury testimony that
24 we just talked about?

25 A. Yes.

1 Q. Okay. And you just told the jury that you reviewed
2 your testimony before coming in today; correct?

3 A. Yes.

4 Q. Okay. So did you recall seeing where you gave
5 testimony that the shooter, according to you --

6 MS. PANDUKHT: Page?

7 MR. GOODMAN: 53.

8 BY MR. GOODMAN:

9 Q. -- was wearing a black sweater -- quote: Black
10 sweater, black hoody. End quote.

11 A. Don't remember.

12 Q. Okay. Well, let me show that to you, okay?

13 MR. GOODMAN: In fact, I think that since it was
14 under oath, Your Honor, I can just put it up on the screen?

15 THE COURT: It's not in evidence.

16 MR. GOODMAN: Okay.

17 THE COURT: So it's not published.

18 MR. GOODMAN: If I may approach?

19 THE COURT: You may.

20 MR. GOODMAN: Thank you.

21 BY MR. GOODMAN:

22 Q. You can look at that highlight and just look up when
23 you're done. Look at the question and then your answer.

24 A. (Witness complies.) Okay.

25 Q. Does that refresh your recollection?

1 A. Yes.

2 Q. So is it true -- is it true that you testified under
3 oath, in front of a jury much like this jury today, that the
4 shooter was wearing a black sweater and a black hoody?

5 A. Yes.

6 Q. Now, Melissa, you also described the shooter,
7 according to you, as having light hair; correct?

8 A. Yes.

9 Q. And you described the shooter as being -- as looking
10 like he was either 18 or 19; correct?

11 A. Don't remember.

12 Q. And so you remember making a statement to the police
13 right after the shooting; correct?

14 A. Yes.

15 MR. GOODMAN: And I'm going to approach with the
16 Court's permission?

17 THE COURT: You may.

18 MR. GOODMAN: That's on page 6, the Voluntary
19 Statement.

20 BY MR. GOODMAN:

21 Q. Showing you what's been recorded -- the transcript
22 of your recorded statement, if you could look towards the
23 bottom at the question and the answer and then look up when
24 you're done reviewing it?

25 A. (Witness complies.) Okay.

1 Q. Does that refresh your -- does that refresh your
2 recollection --

3 A. Yes.

4 Q. Where you told the police the night of the shooting
5 that the shooter was probably 18 or 19; correct?

6 A. Yes.

7 Q. Now, you also described the height of the shooter.
8 You said the shooter -- well, would you recall saying that the
9 shooter was, like, five-three?

10 A. Yes.

11 Q. Okay. So the shooter wasn't five-eight to six-one?

12 A. That was my description.

13 Q. So -- right. So your description on the night of
14 the shooting, that the shooter was around five-foot
15 three-inches tall; correct?

16 A. Yes.

17 Q. Okay. In fact, Melissa, the description that you
18 gave the police of the -- on the night of the shooting where
19 the shooter was 18 or 19, had light hair, was five-three, you
20 agreed at an earlier proceeding that that didn't match the
21 description of Evaristo Garcia; correct?

22 A. What do you mean that I --

23 Q. The description that you -- the description that you
24 gave the police that night of who the shooter was, that
25 description did not match Mr. Garcia?

1 MS. PANDUKHT: I'm going to object to that question
2 because of time frame.

3 THE COURT: I think it needs more foundation.

4 MS. PANDUKHT: When --

5 THE COURT: Sustained on foundation.

6 BY MR. GOODMAN:

7 Q. Does the description that you gave police the night
8 of the shooting match Evaristo Garcia?

9 MS. PANDUKHT: When?

10 THE COURT: Are you saying as he sits here today or
11 when -- as he sat there when he was -- whatever age he was at?

12 MR. GOODMAN: No, at the -- right, the description
13 of Evaristo Garcia --

14 THE COURT: I think she's saying foundation, when?

15 MR. GOODMAN: Okay.

16 THE COURT: The description of him today versus --

17 MS. PANDUKHT: Seven years ago.

18 THE COURT: -- some years ago.

19 MR. GOODMAN: At the Preliminary Hearing proceeding
20 where she -- where she was asked that question, Your Honor.

21 THE COURT: It --

22 MR. GOODMAN: At the Preliminary --

23 THE COURT: Understood, but --

24 MR. GOODMAN: Okay. Okay. So let me rephrase it
25 then.

1 THE COURT: Okay. On the date of the Prelim, give
2 the date.

3 BY MR. GOODMAN:

4 Q. At the date of the Preliminary Hearing, Melissa, you
5 saw -- you saw Evaristo Garcia in Court; correct?

6 A. Correct.

7 Q. And that was on December 18th, 2008; correct?

8 A. Correct.

9 Q. And you testified that the -- that the description
10 you gave of the shooter on the night that your brother was shot
11 did not match the description of Evaristo Garcia as you saw him
12 December 18th of 2008; correct?

13 A. I don't remember.

14 Q. Okay.

15 MR. GOODMAN: If I may approach, Your Honor?

16 THE COURT: You may.

17 MS. PANDUKHT: Page?

18 MR. GOODMAN: 94.

19 BY MR. GOODMAN:

20 Q. Right where the clean asterisk is, if you could read
21 the question and then the answer.

22 A. (Witness complies.)

23 Q. Does that refresh your recollection, Melissa?

24 A. Yes.

25 Q. Okay. So the question asked of you: Do you

1 acknowledge that he does not meet the description that you gave
2 to the police the same day -- the same day it occurred, yes or
3 no? Your answer was yes. Correct?

4 A. Correct.

5 Q. Now, do you recall also telling the police the night
6 of the shooting that you don't know if the shooter came out of
7 that El Camino?

8 A. Don't remember.

9 Q. Right. Oh, you don't remember if you told the
10 police that?

11 A. No.

12 Q. Okay. Did you review your statement before giving
13 testimony here today?

14 A. No.

15 Q. What statement did you review before giving
16 testimony today at trial, Melissa?

17 A. My -- my written one, the one I wrote.

18 Q. So the one-page statement?

19 A. Yes.

20 Q. Okay.

21 MR. GOODMAN: If I may approach, Your Honor?

22 THE COURT: You may.

23 MR. GOODMAN: Page 13.

24 BY MR. GOODMAN:

25 Q. If you can look at where I just put that asterisk

1 and then look up when you're done.

2 A. (Witness complies.)

3 Q. Does that refresh your recollection, Melissa?

4 A. Yes.

5 Q. And you said that you don't know whether or not the
6 shooter came out of the car; correct?

7 A. Correct.

8 Q. I just saw when he started shooting at my brother?

9 A. Correct.

10 Q. And your -- and your -- and your recollection of
11 what you saw, your personal knowledge of what you saw would
12 have been fresher and in your mind closer in time to when it
13 happened than later in time; correct?

14 A. Um, don't understand. I'm sorry.

15 Q. Well, I mean, you know, after you witnessed what you
16 saw and you gave a statement, the information was fresh in your
17 mind at that time; correct?

18 A. Yes.

19 Q. Now, you also said that you were running behind your
20 brother; correct?

21 A. Yes.

22 Q. Across Washington?

23 A. Yes.

24 Q. Okay. And you saw the shooter coming, like,
25 parallel, or diagonal; correct, to you? At what -- at what

1 point did you see the shooter when you were running behind your
2 brother?

3 A. Um, when he did the first shot.

4 Q. Okay. And so were you close to him at that point?

5 A. It wasn't very close. It wasn't like a me-to-you
6 distance here.

7 Q. It is like this distance or --

8 A. It wasn't.

9 Q. So it's further?

10 A. Yes.

11 Q. You didn't hear the shooter say anything; correct?

12 A. No.

13 Q. Okay. You didn't hear anybody at that time say any
14 words or exchange any words, did you?

15 A. No.

16 Q. So your brother didn't exchange any words?

17 A. No.

18 Q. The shooter didn't say anything?

19 A. No.

20 Q. And anybody next to the shooter didn't say anything;
21 correct?

22 A. Yes.

23 Q. Okay. And you're positive about that?

24 A. Yes.

25 Q. And you said the shooter was wearing a hoody that

1 night?

2 A. Yes.

3 Q. And that it covered his face?

4 A. No.

5 Q. Okay. You said to the -- you just said at the
6 beginning that you reviewed your Preliminary Hearing
7 transcript; correct?

8 A. Yes.

9 Q. That's the testimony when you came into Court before
10 a Judge, and you -- and you gave testimony for the first time;
11 correct?

12 A. (No audible response.)

13 Q. Do you remember that, at the Preliminary Hearing?

14 A. No.

15 Q. Okay.

16 MR. GOODMAN: Well, if I may approach, Your Honor?

17 THE COURT: You may.

18 MR. GOODMAN: Page 81.

19 BY MR. GOODMAN:

20 Q. If you can look at where I just marked it and see --
21 and see if that refreshes your -- your recollection?

22 A. (Witness complies.) Okay.

23 Q. Okay. Now, when you're giving this testimony that
24 you just reviewed, that was under oath; correct?

25 A. Under what?

1 Q. Under oath. You had to stand up and raise your
2 right hand --

3 A. Yes.

4 Q. -- and swear to tell the truth; correct?

5 And it's true that you -- that you testified
6 under oath that he was wearing a hoody that night and it
7 covered his face; correct?

8 A. To be honest, I don't -- I didn't see him covering
9 his face. I think that was probably a wrong communication
10 there, but when this happened that he -- who his -- his hoody
11 wasn't on.

12 Q. Oh, it wasn't on.

13 A. It wasn't.

14 Q. Okay. But you gave testimony from a Preliminary
15 Hearing, and you gave testimony before a Grand Jury --

16 A. I believe that was a wrong communication there.

17 Q. You have never, Melissa, in seven years ever
18 testified before anybody under oath that the shooter was not
19 wearing a hoody, did you?

20 A. That he wasn't --

21 Q. Right.

22 A. -- I always testified he wasn't wearing a hoody.

23 Q. Okay.

24 A. And, yes, I did see it on the paper, but that's not
25 what I saw.

1 Q. Okay. So you acknowledge seeing the transcript --
2 this is a transcript of what a witness testifies to? And
3 you -- and you acknowledge for purposes of this hearing, of
4 this trial, that you testified, under oath, that it covered
5 the -- the hoody covered the shooter's face; correct?

6 A. Yes.

7 Q. And for the first time in seven years you are now
8 saying that the shooter was not wearing a hoody?

9 A. Yes. He was wearing a hoody, but I'm saying -- you
10 asked if it was placed on, and I said it wasn't on. He had a
11 gray hoody.

12 Q. Right. So according --

13 A. It wasn't -- my -- you're asking me if he had it on;
14 correct?

15 Q. Yes.

16 A. Like if it covered -- if it covered his hairs?

17 Q. If it covered his face, like you testified to.

18 A. Right. That's what you're asking me, right?

19 Q. Yes.

20 A. Okay. No, he wasn't.

21 Q. So you're -- so you're changing your sworn
22 testimony --

23 A. My statement was that he was wearing a gray hoody
24 sweater.

25 Q. Okay. I have the -- for the court reporter I have

1 to finish my question, okay?

2 So today, seven years later, you're changing
3 your testimony that the shooter was not wearing a hoody that
4 covered his face, and that, in fact, the shooter was wearing a
5 hoody that didn't cover his face; is that your testimony today?

6 A. Yes.

7 Q. Okay. But you never told the police that, did you?

8 A. I'm sorry, I'm just so confused right now. It's
9 just, I --

10 Q. You reviewed your statement. Did you ever tell the
11 police that the shooter was not wearing a hoody?

12 A. Yes.

13 Q. Oh, you did? Where?

14 A. He wasn't -- it wasn't placed on.

15 Q. Okay. And you put that in some statement; correct?

16 A. Yes.

17 Q. Okay. Well, I'm sure the prosecutors will bring
18 that up if they can find it anywhere.

19 A. Okay.

20 Q. Okay. And obviously your memory would be better
21 closer in time than it would be seven years later; correct?

22 A. Yes.

23 Q. Okay. Now, but for the interaction, seeing the
24 shooter on, you know, Washington, shooting a gun, you had no
25 other -- you had no other interaction with the shooter, did

1 you?

2 A. No.

3 Q. Okay. You never saw the shooter a year later or two
4 years later, did you?

5 A. I remember I recognized him once.

6 Q. Where, at the Preliminary Hearing?

7 A. Yes.

8 Q. And that was about two and a half years later;
9 correct?

10 A. Yes.

11 Q. And that was a courtroom, and there was just lawyers
12 and --

13 A. Yes.

14 Q. -- there was somebody sitting at counsel table. And
15 you said when the prosecutor asked can you identify who the
16 shooter was, you pointed at the person sitting at the table;
17 correct?

18 A. Yes.

19 Q. But you couldn't -- but you can't identify
20 Evaristo Garcia today, can you?

21 A. No.

22 Q. Now, between the shooting and the time two and a
23 half years later when you were at this Preliminary Hearing, you
24 didn't see any pictures of Mr. Garcia, did you?

25 A. No.

1 Q. You weren't, like other witnesses in this case,
2 during that two and a half year period, the police didn't come
3 to you and say: Here's a photo lineup. We just want to make
4 sure to know whether or not you can identify the person. Can
5 you please identify this six pack of pictures?

6 A. No.

7 Q. And to you, when you identified the only person
8 sitting at the table two and a half years later, at that point
9 he wasn't -- he didn't have blond hair; correct?

10 A. No.

11 Q. Okay. And that's what you described -- and that's
12 what you described the shooter as having; correct?

13 A. No.

14 Q. No, you didn't describe the shooter --

15 A. I didn't describe him blond hair.

16 Q. You didn't describe the shooter as having blond
17 hair?

18 A. (No audible response.)

19 Q. Is light hair the same thing as blond hair?

20 A. No.

21 Q. So what is light hair?

22 A. Didn't have, like, much hair.

23 Q. Oh, so you're saying light, as in balding?

24 A. Like not a lot.

25 Q. Did you ever describe the shooter in your statement

1 to the police of having -- of having black hair?

2 A. I don't remember. I don't remember.

3 MR. GOODMAN: Okay. One second, Your Honor.

4 (Sotto voce at this time.)

5 MR. GOODMAN: We'll pass the witness, Your Honor.

6 THE COURT: Redirect.

7 MS. PANDUKHT: Thank you.

8

9 REDIRECT EXAMINATION

10 BY MS. PANDUKHT:

11 Q. Melissa, this case has been going on for seven years
12 now; hasn't it?

13 A. Yes.

14 Q. You've had to come to Court and give multiple
15 statements or testimony about your brother being shot for seven
16 years almost?

17 A. Yes.

18 Q. And when you had just seen this shooting, the very,
19 very first statement that you gave was a handwritten statement;
20 isn't that true?

21 A. Yes.

22 Q. And do you remember the exact description that you
23 gave of the shooter, in your handwritten statement, on the day
24 of the shooting?

25 A. Exact, I don't know.

1 Q. Would looking at your handwritten Voluntary
2 Statement refresh your recollection as to the exact description
3 you gave?

4 A. Yes.

5 MS. PANDUKHT: May I approach?

6 THE COURT: You may.

7 BY MS. PANDUKHT:

8 Q. I'm showing you your handwritten Voluntary Statement
9 that you gave on -- and down here it has all this information:
10 February 6th, 2006; 2300 is eleven o'clock at night. So that's
11 the same night as -- as your brother was shot and killed.

12 What description -- read this to yourself and
13 then let me know when you're done regarding the description you
14 gave, and I'm looking for the exact description.

15 A. (Witness complies.) Okay.

16 Q. Do you recall the description that you gave the
17 shooter the night that you witnessed this?

18 A. Yes.

19 Q. What description did you give about his appearance
20 and what he was wearing?

21 A. Um, black hair, gray sweater, and dark shorts.

22 Q. Did you say anything else about his black hair?

23 A. I don't remember. Sorry. I don't.

24 Q. What else did you say about his hair?

25 A. He had a fade.

1 THE REPORTER: I'm sorry?

2 THE WITNESS: He had a fade.

3 BY MS. PANDUKHT:

4 Q. That's spelled F-A-D-E.

5 Could you describe that for the jury what that
6 is, what you mean?

7 A. Just what -- short hair.

8 Q. It's short black hair?

9 A. Yes.

10 Q. And then you also, in this Voluntary Statement, you
11 described the gun.

12 A. Yes.

13 Q. That you saw. And then you also named -- as you sit
14 here today, did you ever know of a relationship between the
15 shooter and Giovanny?

16 A. Yes.

17 Q. And what was that relationship?

18 A. I know they -- they know each other.

19 Q. And is it true that in your --

20 MR. GOODMAN: I'm going to object, Your Honor, the
21 foundation.

22 MS. PANDUKHT: I --

23 THE COURT: It's already been answered, they know
24 each other. Keep going.

25 BY MS. PANDUKHT:

1 Q. And do you recall referring to the shooter as
2 Giovanni's friend in your Voluntary Statement?

3 A. Yes.

4 MR. GOODMAN: I'm going to object to foundation on
5 that. I mean that's improper impeachment.

6 THE COURT: It's actually beyond the scope of the
7 cross, so I'll just sustain it on that.

8 MR. GOODMAN: So move to strike, Your Honor.

9 MS. PANDUKHT: That's fine.

10 THE COURT: It's ordered to be stricken to the jury.

11 BY MS. PANDUKHT:

12 Q. So when Mr. Goodman asked you about when you had
13 described, at the Grand Jury, about a black sweater or black
14 hoody, that was actually the last time you testified before
15 today, right?

16 A. Yes.

17 Q. So you give a handwritten statement and a recorded
18 statement the day of the murder, on February 6th, 2006, right?

19 A. Yes.

20 Q. And then the Preliminary Hearing was two years
21 later, in 2008.

22 A. Yes.

23 Q. And then this testimony that we have referred to as
24 the Grand Jury testimony, that occurred in 2010, when you were
25 20, and specifically March 4th, 2010?

1 A. Yes.

2 Q. I just want to make sure we all know the dates and
3 the time frames.

4 A. Okay.

5 Q. So your Grand Jury testimony, where you may have
6 described the sweatshirt as being black was actually four years
7 after the shooting?

8 A. Yes.

9 Q. And isn't it also true that you described the
10 sweatshirt that the shooter was wearing as gray in all three of
11 your prior statements -- the handwritten statement, the
12 Voluntary Statement to police, and also the Preliminary Hearing
13 that you described it as a gray hooded sweatshirt?

14 A. Yes.

15 Q. And it was also -- I was going to ask you about the
16 light hair, but you've already clarified that when you say
17 light hair you didn't mean blond?

18 MR. GOODMAN: I'm going to object, Your Honor, it's
19 been asked and answered.

20 THE COURT: Overruled.

21 BY MS. PANDUKHT:

22 Q. Go ahead.

23 A. Yes.

24 Q. You just meant shorter hair?

25 A. Correct.

1 Q. So you did, in fact, provide a description of the
2 shooter to the police on the day of the murder?

3 A. Yes.

4 Q. So it's your testimony, I believe, when Mr. Goodman
5 was asking you questions that you really didn't review your
6 statement before coming to Court that much; is that what I'm
7 gathering?

8 A. Yes.

9 Q. Why didn't you read all of your statements?

10 A. It just hurts.

11 MS. PANDUKHT: I'm not going to ask anything else.

12 THE COURT: Recross.

13 MR. GOODMAN: Thank you, Your Honor.

14

15 RECROSS-EXAMINATION

16 BY MR. GOODMAN:

17 Q. Melissa, I just have to ask you to -- so we can get
18 the full description of the statement that you gave the police,
19 that it was -- that it was a black shirt and brown pants. Do
20 you recall telling the police that?

21 MS. PANDUKHT: That's where?

22 MS. DEMONTE: Where?

23 MS. PANDUKHT: It doesn't say --

24 MR. GOODMAN: Hang on, Your Honor.

25 MS. PANDUKHT: I'm sorry?

1 MR. FIGLER: Court's indulgence.

2 (Sotto voce at this time.)

3 BY MR. GOODMAN:

4 Q. Melissa, I understand that your testimony throughout
5 the seven years is that it's very emotional, and you're trying
6 to hold whoever the shooter is accountable; correct?

7 A. Correct.

8 Q. And that you gave many statements throughout the
9 seven years that we just talked about; correct?

10 A. Correct.

11 Q. And you try your best to give what the accurate
12 information is regarding what you saw to describe the shooter;
13 correct?

14 A. Correct.

15 Q. And that what you know for sure is that the night of
16 the shooting, in your mind, the shooter was five-three;
17 correct? Correct?

18 A. I'm sorry, what was that?

19 Q. The shooter was five-three?

20 A. Yes.

21 Q. And 18 to 19 years old; correct?

22 A. Yes.

23 Q. And you didn't do a photo lineup; correct?

24 A. Correct. Not --

25 Q. You never -- you never saw a picture who the police

1 thought was the shooter until you came into Court more than two
2 and a half years later; correct?

3 A. Never saw a picture.

4 MR. GOODMAN: Okay. Thank you.

5 THE COURT: Do the ladies and gentlemen of the jury
6 have any questions of this witness before I excuse her?

7

8 (Negative response from the jury panel.)

9

10 THE COURT: Negative response.

11 Thank you very much for your testimony, Melissa.

12 THE WITNESS: Thank you.

13 THE COURT: You're excused.

14

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

16

17 THE COURT: State, call your next witness.

18 MS. DEMONTE: State calls Russell Carr.

19 THE COURT: While we're bringing them in, could I
20 see counsel. Bench conference.

21 (Bench conference outside the presence of the jury
22 reported as follows:)

23 THE COURT: I was just curious, we've got one or two
24 more today?

25 MS. DEMONTE: We've got two more.

1 THE COURT: We're going to 3:30, and then we'll
2 start tomorrow at 10:30 right after criminal calendar. Do you
3 think, considering we've gone through a lot of witnesses, we
4 might be done in case in chief tomorrow or not?

5 MS. PANDUKHT: I'm really concerned, Your Honor,
6 because I don't know now if we can finish between 10:30 and
7 5:00 tomorrow because tomorrow we still have Jonathan, he's
8 going to be -- I have several experts. We have firearms. I'm
9 so sorry.

10 THE COURT: No, I'm just curious because we're
11 rolling through it.

12 MS. PANDUKHT: We're a tad behind unfortunately.

13 THE COURT: So you think more it will be Friday your
14 case in chief?

15 MS. PANDUKHT: I think so now, Judge.

16 THE COURT: Because today we've got some experts,
17 and I'm just trying to figure when they should be coming in.

18 MS. PANDUKHT: Guess what though, I think, Judge,
19 there's a good chance that we can finish with the defense and
20 State's case Friday, and closing.

21 THE COURT: It sounds like they might end on Friday
22 morning, and then,

23 MR. GOODMAN: We can close on Monday. I don't see
24 closings before Monday.

25 THE COURT: Oh no, no, and I wouldn't make you do

1 it. There's a lot of evidence and there's no rush.

2 MS. PANDUKHT: Okay. Thank you.

3 THE COURT: I think I allotted two weeks so don't
4 worry about that.

5 I was just wondering about their experts.

6 MS. PANDUKHT: And I also know, Your Honor, that you
7 cut out of -- if anybody had a problem, like, on the 18th you
8 got rid of then, the jury. So no one has any conflicts.

9 THE COURT: No, we can go into next week. It's
10 fine. I was just curious, it seemed like we were going fast,
11 but I didn't know, yeah, Harper is going to take long. All
12 right. So 10:30, yeah, because Friday we're nine to five.

13 MS. PANDUKHT: Yeah, that's what I'm thinking.

14 THE COURT: Okay.

15 MS. PANDUKHT: Thank you, Judge.

16 (End of bench conference.)

17 (Proceedings in the presence of the jury.)

18 THE COURT: You can go ahead and bring that witness
19 in.

20 THE CLERK: Would you remain standing and raise your
21 right hand, please.

22

23 RUSSELL CARR

24 called as a witness on behalf of the State,

25 having been first duly sworn,

1 was examined and testified as follows:

2

3 THE WITNESS: Yes, I do.

4 THE CLERK: Please be seated.

5 THE WITNESS: Thank you.

6 THE CLERK: State your full name and spell it for
7 the record, please.

8 THE WITNESS: Russell Alan Carr. R-U-S-S-E-L-L,
9 A-L-A-N, C-A-R-R.

10

11 DIRECT EXAMINATION

12 BY MS. DEMONTE:

13 Q. Sir, I want to direct your attention to February of
14 2006. Who were you living with at the time?

15 A. My parents.

16 Q. And what was -- what's your mother's name?

17 A. Sharon Carr.

18 Q. Okay. And where was your parent's house located?

19 A. 865 Parkhurst Street.

20 Q. And is that here in Clark County, Nevada?

21 A. Yes, it is.

22 Q. Now, showing you on the screen State's Exhibit 2, do
23 you see your parents' house located on that?

24 A. Yes.

25 Q. Can you please circle it with your finger?

1 A. (Witness complies.)

2 Q. And for the record, you've drawn a circle on the
3 second house just to the south of Washington Street; is that
4 correct?

5 A. That's correct.

6 THE COURT: Sorry, I'm going to have to take a
7 five-minute break.

8 Sorry, sir.

9 During this recess you're admonished not to talk
10 or converse among yourselves or with anyone else on
11 any subject connected with this trial;

12 Or read, watch, or listen to any report of or
13 commentary on the trial, or any person connected
14 with this trial, by any medium of information,
15 including, without limitation, newspapers,
16 television, radio, or internet;

17 Or form or express any opinion on any subject
18 connected with the trial until the case is finally
19 submitted to you.

20 A quick five minutes and we're going to jump
21 right back on because we're going to end at 3:30 today. Okay?
22 Thank you.

23 THE MARSHAL: All rise.

24

25 (The following proceedings were had in open

1 Court outside the presence of the jury panel:)

2

3 THE COURT: All right. We're outside the presence
4 of the jurors. One of the jurors had to take a restroom break.
5 So I'm sorry to do that.

6 MR. FIGLER: Okay.

7 THE COURT: But I don't want to have anybody have an
8 accident here. So we'll be right back on.

9 They're not used to what we're used to, sitting here
10 for hours.

11 MS. DEMONTE: Is the Court okay if the witness stays
12 where he's at?

13 THE COURT: Or he can step down. Whatever he'd
14 like. I'm sorry about that. That happens, just quick.

15 (Recess in proceedings.)

16

17 (The following proceedings were had in open
18 Court in the presence of the jury panel:)

19

20 THE MARSHAL: Remain seated, come to order.
21 The Court in session.

22 THE COURT: All right. We're back on the record in
23 State of Nevada versus Evaristo Garcia, C262966.

24 Let the record reflect that the defendant is
25 present, with his attorneys, Mr. Goodman and Mr. Figler; and

1 for the State, Ms. Pandukht and Ms. Demonte.

2 And we are in the presence of the jury.

3 We are on the direct examination of this witness.

4 And you're still sworn under oath, sir. Thank you.

5 THE WITNESS: Thank you.

6 BY MS. DEMONTE:

7 Q. Mr. Carr, I think we left off with you just
8 identified your parents' house as being the second house if
9 you're traveling south on Parkhurst from Washington; is that
10 correct?

11 A. Yes.

12 Q. All right. And I'm sorry, what was that address
13 again?

14 A. 865 Parkhurst Street.

15 Q. Now, in 2006, particularly February of 2006, the
16 early part of the February, was there work being done on your
17 parents' house?

18 A. Yes, there was.

19 Q. What was being done?

20 A. We were having the flooring in the bathroom redone.

21 Q. Okay. As a result of the flooring in the bathroom
22 being redone, was there some plumbing work that was also took
23 place?

24 A. Yes. We had toilets replaced and we also had the
25 vanities replaced as well.

1 Q. And who did you -- what company did you go through
2 to arrange all this work?

3 A. We went through Home Depot.

4 Q. Now, was it Home Depot themselves that arrived in a
5 truck, or did they contract it out?

6 A. No, they subcontracted.

7 Q. And off the top of your head, do you recall at all
8 the name of the subcontractor that did the plumbing?

9 A. I don't recall even the truck that pulled up to
10 the -- to the house.

11 Q. And that's perfectly fine.

12 Now, Mr. Carr, as a result of that, you said
13 toilets were replaced. Showing you State's Exhibit 36, do you
14 actually see your parents' house in that picture?

15 A. Yes.

16 Q. Can you kind of maybe give some indication as to
17 where it is?

18 A. (Indicating.)

19 Q. And is that the front portion of the house by the
20 garage?

21 A. That's by the garage, yes.

22 Q. Okay. Now, up to the front, are we looking at the
23 sidewalk?

24 A. Yes.

25 Q. And there's two toilets there. Were those toilets

1 that had just been removed from your home?

2 A. Yes.

3 Q. Now, did you yourself place those there?

4 A. No.

5 Q. Or your parents?

6 A. No.

7 Q. Were those done by the workers?

8 A. Yes.

9 Q. Okay. Now, showing you State's Exhibit 37 -- but
10 you know these were the toilets that were in your home;
11 correct?

12 A. Yes.

13 Q. Now to show you State's Exhibit 37, there's an
14 object in the tank of one of those toilets. Do you recognize
15 that at all?

16 A. No.

17 Q. Is that yours or your parents'?

18 A. No.

19 Q. Was that item, particularly this firearm that I'm
20 pointing to right there (indicating), ever in your home?

21 A. No.

22 Q. Can you think of any reason why a firearm would be
23 stored in a toilet tank in your house?

24 A. Not unless you never wanted to use it.

25 MS. DEMONTE: Okay. Nothing further. I'll pass the

1 witness.

2 THE COURT: Cross-examination.

3 MR. FIGLER: Thank you, Your Honor.

4

5 CROSS-EXAMINATION

6 BY MR. FIGLER:

7 Q. Good afternoon, Mr. Carr.

8 A. Hello.

9 Q. You were living in the house on February 6th, 2006,
10 with your folks?

11 A. Yes.

12 Q. And I understand your mom passed away. I'm very
13 sorry to hear that.

14 A. Both my parents passed away.

15 Q. Oh, I'm sorry, double side, my condolences.

16 A. Thank you.

17 Q. Mr. Carr, you indicated that an independent company
18 was sent out to your house by Home Depot, you remember that,
19 right?

20 A. Yes.

21 Q. And they were going to do some of the floor tile
22 work back there in February?

23 A. Yes.

24 Q. And as part of that, that's why the -- the toilet
25 bowls got moved outside; is that correct?

1 A. Correct.

2 Q. All right. I appreciate that.

3 Do you know if -- yes or no, if you know, if
4 your mom spoke to the police afterwards?

5 A. I believe so. In fact, I actually remember talking
6 to an officer about something. I don't know if it was
7 regarding this case or not.

8 Q. Okay.

9 A. I don't remember the officer's name.

10 Q. You remember your mom talking to police though?

11 A. Yes.

12 Q. Do you remember anything about your mom going down
13 and doing a photo lineup of maybe some of the workers?

14 A. No.

15 Q. Okay. So you weren't involved in that part?

16 A. No.

17 Q. But if she would have done that, that would have
18 been her thing, you might not know about that; correct?

19 A. Correct.

20 Q. Were you asked if you could identify any of the
21 workers who were working on your house in February?

22 A. No.

23 Q. Okay. Were you ever shown a -- a photo lineup, kind
24 of looks like that (indicating)?

25 A. No.

1 Q. Okay. So if it was done with your mom, you don't
2 have knowledge of that?

3 A. No.

4 Q. Okay. I appreciate that.

5 Thanks for coming in today, sir.

6 MR. FIGLER: No further questions.

7 THE COURT: Redirect.

8 MS. DEMONTE: None, Your Honor.

9 THE COURT: No redirect.

10 Any questions from the jurors of this witness?

11

12 (Negative response from the jury panel.)

13

14 THE COURT: All right. With a negative response.

15 Thank you so much, sir, for coming in.

16 THE WITNESS: You're welcome.

17 THE COURT: You're excused.

18

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

20

21 THE COURT: State, call your next witness.

22 MS. PANDUKHT: We're waiting, she's in the building,
23 and I think she will be here momentarily. I will check
24 outside.

25 THE COURT: Okay. How long is that next witness

1 about, the next one?

2 MS. DEMONTE: Oh, about five, ten minutes.

3 THE COURT: While we're sitting here, ladies and
4 gentlemen, we're going to reconvene tomorrow at 10:30. We have
5 a pretty big criminal calendar, but I should be done, and
6 hopefully I'll have you right on at 10:30. I'll really move
7 those attorneys quickly. No argument.

8 They know when I'm in trial to go quicker, and they
9 will.

10 So hopefully we will be getting on at 10:30.

11 MS. PANDUKHT: She's going to be here momentarily,
12 if that's okay. She's coming straight from work.

13 THE COURT: No problem.

14 May I see the attorneys at the bench? I'd like to
15 make a record on something?

16 MS. DEMONTE: Okay.

17 THE COURT: Could I have it on bench conference?

18 (Bench conference outside the presence of the jury
19 reported as follows:)

20 THE COURT: This is from Juror Number 7,
21 Keith Trombetta. The question is: Is it a fact that both
22 transcripts, in parentheses, Prelim and Grand Jury, end of
23 parentheses, show that hoody was covering face as defense
24 stated from this witness Melissa?

25 And then he writes: Is above question proper, not

1 of witness, but of Court?

2 It's just not proper. It was given to my Marshal
3 during the break, a bathroom break, and just, like, handed to
4 him. I'm going to -- I read it into the record, and it's now
5 going to be a Court exhibit, and --

6 MS. PANDUKHT: Can I look at it?

7 THE COURT: I'm going to give it to both of you, but
8 I'm sure that there's no objection to either side me just not
9 answering a question of a juror regarding evidence.

10 MS. DEMONTE: Absolutely.

11 MS. PANDUKHT: Thank you so much.

12 THE COURT: Lets bring her in.

13 Go ahead.

14 THE CLERK: Are you done?

15 THE COURT: Not quite.

16 Any objection?

17 MR. FIGLER: The defense agrees with the Court's
18 assessment that at tops all the Court could do was admonish
19 that the witness needs to pay attention to the evidence
20 received.

21 THE COURT: Well, I'm not going to admonish him.

22 MR. FIGLER: Okay.

23 (End of bench conference.)

24 (Proceedings in the presence of the jury.)

25 THE COURT: Come on up and be sworn.

1 THE CLERK: Raise your right hand.

2
3 DANIA DIAZ
4 called as a witness on behalf of the State,
5 having been first duly sworn,
6 was examined and testified as follows:
7

8 THE WITNESS: Yes.

9 THE CLERK: Please be seated.

10 State and spell your full name for the record,
11 please.

12 THE WITNESS: Dania.

13 THE CLERK: Pardon me?

14 THE WITNESS: D-A-N-I-A.

15 THE CLERK: And spell your last name for us.

16 THE WITNESS: D-I-A-Z.
17

18 DIRECT EXAMINATION

19 BY MS. PANDUKHT:

20 Q. Make sure you can move that book up to you or move
21 the seat up. That's the microphone.

22 A. Okay.

23 Q. Okay?

24 A. Thank you.

25 Q. And thank you for coming here. I understand you

1 came straight from work.

2 Where do you work?

3 A. At a studio.

4 Q. Okay. And what do you do?

5 A. I'm a janitor.

6 Q. And are you -- how old are you right now?

7 A. 24.

8 Q. Back on February 6th, 2006, were you about 17 years
9 old?

10 A. Yes.

11 Q. And you lived here in Las Vegas?

12 A. Mm-hmm.

13 Q. Okay. And if you could answer yes or no for the
14 record?

15 A. Oh, yes. Okay.

16 Q. Instead of uh-huh because we have to get everything
17 on the record.

18 A. Okay.

19 Q. So back on February 6th, 2006, did you go to school?

20 A. Yes, I did.

21 Q. What school did you go to?

22 A. Harris Morris, I don't remember the name really
23 good.

24 Q. Was it a school on Washington --

25 A. Yes, it was.

1 Q. -- called --

2 A. It was behind --

3 THE REPORTER: One -- I didn't hear the answer,
4 please.

5 BY MS. PANDUKHT:

6 Q. Okay. I'll -- I'm going to just finish my question,
7 and then, as soon as I'm done with my question, you can answer,
8 so that she can get everything down.

9 A. Okay.

10 Q. Okay. So was that the school on Washington and
11 Virgil called Morris Sunset East High School?

12 A. Yes, it was.

13 Q. And how long did you go to that school?

14 A. A year.

15 Q. And when you went to that school, were you going
16 there on February 6th, 2006?

17 A. Yes, I was.

18 Q. And did you have any friends that went to that
19 school with you? Did you know other people there?

20 A. Yes, I did.

21 Q. Okay. I'd like to draw your attention to
22 February 6th, 2006, to an incident that occurred that day,
23 which brings us to Court here today.

24 Do you remember that?

25 A. Yes, I do.

1 Q. Okay. Could you tell me in terms of what
2 involvement -- how did it start with you?

3 A. Well, when we were leaving --

4 Q. Okay.

5 A. So --

6 Q. So about what time?

7 A. It was about 8:50.

8 Q. Okay.

9 A. Around there, almost nine.

10 Q. Okay.

11 A. We were leaving the school with my friends going to
12 the right, to go home. I lived on Lamb and Bonanza.

13 Q. Okay.

14 A. And that's when we heard the shots. We saw the
15 person that shot him -- I -- we didn't see his face, but I saw
16 somebody shooting at Victor Gamboa.

17 Q. Did you know Victor Gamboa?

18 A. Yes, I did.

19 Q. Did Victor Gamboa go to Morris Sunset?

20 A. No, he didn't.

21 Q. Did he have any relatives that went there?

22 A. Yes, he did.

23 Q. Do you know her name?

24 A. Yeah, Melissa Gamboa.

25 Q. And you mentioned earlier that you had some friends

1 that you were traveling with or going to leave with?

2 A. Uh-huh.

3 Q. Who were there?

4 A. Carla Rosales and Jessica Rosales and Carla's
5 boyfriend. I just know his first name is Javier.

6 Q. Okay. And so when you were -- you had already said
7 that you heard shots. Tell me, when you come out of the
8 school, do you see a fight that occurs in front of the school?

9 A. Yes.

10 Q. Let's start there.

11 A. Yeah, we did, I saw the fight there.

12 Q. So when you see this fight occurring in front of the
13 school, was it right after the bell rang and school's out?

14 A. Yeah, it was right after the bell -- the bell rang.

15 Q. Did you yourself participate in that fight?

16 A. I was just there looking like Victor was too. We
17 were just staring at what was going on and that was it. I
18 didn't fight or anything.

19 Q. You weren't fighting?

20 A. No, I was not.

21 Q. But there were girls and boys that were fighting?

22 A. Mm-hmm.

23 Q. Make sure it's a yes or no.

24 A. Yes.

25 Q. Did you -- could you estimate approximately how many

1 people were fighting?

2 A. I could tell you it was a lot of people.

3 Q. Okay.

4 A. It was people that weren't even going to the school.

5 Q. Okay. Now, how did the fight stop?

6 A. This -- me and Victor, we called out that the
7 principal was coming, and everybody started running off.

8 Q. So the principal came?

9 A. The principal came.

10 Q. Do you remember his name?

11 A. No, I don't.

12 Q. So when the principal came, did he kind of break up
13 the fight?

14 A. I really don't know, we all -- everybody started
15 running.

16 Q. Okay.

17 A. I just know when we saw him, we said the principal,
18 and everybody started running off.

19 Q. Where did you run?

20 A. With my friend Carla, to her car -- to her
21 boyfriend's car.

22 Q. And where did you run to?

23 A. Right there at the same -- at the parking lot, we
24 were just -- we just ran inside the car.

25 Q. I'm going to show you an aerial map that's been

1 admitted as State's Exhibit Number 2, and just so you can
2 see -- could you click for me -- the school's right here and
3 Washington and Virgil (indicating). Could you show me -- first
4 of all, did you have the car -- it was parked somewhere you
5 said?

6 A. Yeah, it was parked inside the school.

7 Q. Where was that? If you mark on your screen it'll
8 show up.

9 A. Oh, it will show you? Okay. It was, like, around
10 here (indicating).

11 Q. Well, the school was right here.

12 A. Mm-hmm.

13 Q. Were you in the parking -- where was that car
14 parked?

15 A. Around here (indicating).

16 Q. Okay.

17 A. You got it?

18 Q. Could you make it a little bigger?

19 A. Oh.

20 Q. It's hard to see. Okay, there we go.

21 A. Yeah.

22 Q. So in the parking lot?

23 A. That's why I'm telling you we ran because the fight
24 occurred around here, I'm guessing (indicating). I'm pretty
25 sure it was right there, and we ran over there.

1 Q. Now, could you describe this car?

2 A. It was a red car.

3 Q. Do you know anything else about it besides it being
4 a red car?

5 A. No.

6 Q. Was it your car?

7 A. No, it was my friend's car -- my friend's
8 boyfriend's car.

9 Q. So when you were there running across the street
10 tell me what you saw.

11 A. Well, we didn't --

12 Q. You didn't go across the street at all?

13 A. We went across the street when we heard the gunshots
14 but with the car.

15 Q. Okay. So I want you to go slowly about exactly --
16 so tell me, you get to the car?

17 A. We get to the car, we were leaving, we were heading
18 out this way (indicating).

19 Q. Okay.

20 A. To go this way (indicating).

21 Q. Okay.

22 A. And that's when we hear the gunshots.

23 Q. How many gunshots did you hear?

24 A. Three.

25 Q. And how close, were they together or far apart?

1 A. They were -- they were one after another.

2 Q. One after another?

3 A. Mm-hmm.

4 Q. Okay. And when you heard the gunshots, were you
5 inside your car?

6 A. Yeah, we were inside the car.

7 Q. And tell me what you saw then.

8 A. We saw Victor hit the wall and fall.

9 Q. Okay. So which wall, could you point on the map?

10 A. Right here (indicating).

11 Q. Okay. And did you see Victor with any kind of
12 weapon?

13 A. No.

14 Q. Did you see the person who was doing any shooting?

15 A. I didn't see his face.

16 Q. Could you describe what you did see?

17 A. I saw that he had a hoody on, (indicating), like a
18 big jacket and the hoody top.

19 Q. Okay. What color?

20 MR. FIGLER: And just for the record, Your Honor,
21 the witness indicated a flip over the top of her head
22 (indicating).

23 THE COURT: The record will reflect that the witness
24 did make a movement as to put her hood over her head.

25 BY MS. PANDUKHT:

1 Q. What color was it?

2 A. It was dark. It was a -- it was a dark, black you
3 could say.

4 Q. I was asking about the hoody, what color was -- was
5 the hoody, and then what was he wearing on the bottom?

6 A. The bottom was gray, I remember it was black and
7 gray what he was wearing, I wasn't really focusing on the
8 person. We were more focused on, you know, Victor when we
9 fell, and that's when we went with the car.

10 Q. So you remember he was wearing black and gray?

11 A. Yes.

12 Q. Did you see the gun?

13 A. I didn't see the gun. I saw him sticking his hand
14 out, but I didn't see the gun. I can't tell you I saw the gun
15 or how big it was because I didn't see it.

16 Q. Did you see what color it was?

17 A. No.

18 Q. Did you see what hand the person was holding it in?

19 A. It was the right hand.

20 Q. Are you sure?

21 A. Yes, I'm sure.

22 Q. Now, when you saw the person shooting, was he -- did
23 you actually see him shooting, and what was he doing when he
24 was shooting?

25 A. He was running while he was shooting.

1 Q. And who was easy running towards?

2 A. Towards them -- towards, um, Melissa and her
3 brother.

4 Q. How close was Melissa to her brother?

5 A. She was really close to him.

6 Q. And then where was he aiming -- the shooter, where
7 was he aiming his gun at?

8 A. At Victor.

9 Q. Now, when you saw him shooting --

10 (Sotto voce at this time.)

11 BY MS. PANDUKHT:

12 Q. When you saw him shooting, could you circle where
13 you saw him on the map?

14 A. Right here (indicating). He was walking right
15 there -- running -- first he was walking right there -- oh, let
16 me think. He was walking right there. That's why we thought
17 it was just someone that was, you know, walking because we did
18 see him walking.

19 And that's when he started running towards right
20 here (indicating), towards where Melissa and her brother were.

21 Q. Towards that block wall that was there (indicating)?

22 A. Yes.

23 Q. Now, when Victor got shot, did you see how close he
24 was to that wall?

25 A. Well, I saw him hitting the wall.

1 Q. And did he fall?

2 A. He did.

3 Q. Okay. You had mentioned you saw the hoody. Could
4 you see any hair on the person?

5 A. I did.

6 Q. What kind of hair?

7 A. It wasn't -- it wasn't a lot. It was just, like,
8 the short hair you could say.

9 Q. Could you tell what color?

10 A. It was black, it was dark.

11 Q. Okay. Now, did you know a student by the name of
12 Giovanni Garcia?

13 A. I did.

14 Q. Did you go to school with him?

15 A. Mm-hmm.

16 Q. Is that a yes?

17 A. Yes.

18 MS. PANDUKHT: May I approach the witness?

19 THE COURT: You may.

20 BY MS. PANDUKHT:

21 Q. I'm showing you State's Exhibit number 50. Is this
22 Giovanni?

23 A. Yes, that's him.

24 Q. So you knew him?

25 A. Yeah, I did.

1 Q. Okay. And how long did you know him?

2 A. Not that long. Just while we were going to the
3 school.

4 Q. Put this up for the jury.

5 And then where did you see him in relation to
6 the fight?

7 A. He was going to fight with Crystal, and I do
8 remember I grabbed him and told him not to fight with her.

9 Q. And do you remember what he was wearing that day?

10 A. He was wearing all dark.

11 Q. All dark clothing?

12 A. Mm-hmm.

13 Q. Yes or no?

14 A. Yes.

15 Q. Okay. So when you saw Victor get shot, what did you
16 do? Did you and your friends do anything?

17 A. Yeah. We went towards where the shooting -- where
18 he landed on the floor, 'cause after that he landed on the
19 street, so we went there and we -- my friend put the car right
20 there so no more cars could pass by or run him over or hurt
21 him. And we all got out of the car, and his sister was
22 screaming, she was telling us, you know, to help her out.

23 Q. And what were you trying to do?

24 A. We were just trying -- I was trying to calm her --
25 calm her down, and then she kept on screaming and telling us to

1 take him to the hospital.

2 Q. So were you and your friends trying to get him in
3 the car to take him to the hospital?

4 A. When she asked us to, we did.

5 Q. And could you tell if Victor was still alive at that
6 point?

7 A. He was, because he was breathing. She said he
8 stopped breathing, and since I was more calm than her, I
9 checked his -- I put my finger on his nose and he was still
10 breathing.

11 Q. Did anybody come -- did you actually see anybody put
12 Victor inside the car?

13 A. Yes.

14 Q. Who?

15 A. It was my friend's boyfriend at that time, Javier --
16 I mean, yeah, Javier, and my friend Carla.

17 Q. Did anything happen where Victor was taken out of
18 the car?

19 A. Um, what do you mean? Can you ask that --

20 Q. Did anybody come and get him out of the car?

21 A. Yes, the principal did.

22 Q. Okay. And then he got him -- after he got him out,
23 did you see where he put him?

24 A. He put him on the floor right there on the street.
25 And a couple -- like a minute or two later the ambulance came.

1 MS. PANDUKHT: Okay. Court's indulgence.

2 (Sotto voce at this time.)

3 MS. PANDUKHT: Pass the witness.

4 THE COURT: Cross-examination.

5 MR. FIGLER: Thanks.

6
7 CROSS-EXAMINATION

8 MR. FIGLER:

9 Q. Dania, you just testified that the shooter had a
10 dark top on?

11 A. Mm-hmm.

12 Q. Is that correct?

13 A. Yes.

14 Q. You also testified Giovanni had a dark top on that
15 day; correct?

16 A. Correct.

17 MR. FIGLER: Okay. Thank you.

18 I have no further questions.

19 THE COURT: Redirect.

20
21 REDIRECT EXAMINATION

22 BY MS. PANDUKHT:

23 Q. Are you sure? You said it was black or gray.

24 MR. FIGLER: Objection, Your Honor, it misstates the
25 evidence.

1 MS. PANDUKHT: On direct I was talking about.

2 THE COURT: Sustained.

3 MS. PANDUKHT: His question on direct examination
4 was regarding colors.

5 THE COURT: Was on cross-examination.

6 MS. PANDUKHT: Right.

7 THE COURT: Was the top.

8 MS. PANDUKHT: No, I was just talking about the
9 colors. I'm trying to redirect on his color, the colors, I
10 didn't understand.

11 THE COURT: I understood it. I'm sustaining his
12 objection.

13 MS. PANDUKHT: Okay. Can I have another question?

14 THE COURT: Sure.

15 BY MS. PANDUKHT:

16 Q. So when you gave a statement in this case, did you
17 describe the color of that article of clothing in a statement?

18 A. I did.

19 Q. Do you remember how you described it in your
20 statement?

21 A. It was -- I can't remember that much of that. I --
22 I think it was gray.

23 The thing is that I remember he was wearing gray
24 and black. I just -- to -- where I go back, I don't remember
25 if it was the top or the bottom.

1 Q. That's just what I wanted to clarify.

2 MS. PANDUKHT: Thank you.

3 THE COURT: Recross.

4 MR. FIGLER: Nothing, Your Honor.

5 THE COURT: Do the ladies and gentlemen of the jury
6 have any questions of this witness?

7

8 (Negative response from the jury panel.)

9

10 THE COURT: All right. With a negative response,
11 ma'am, you're excused from testifying.

12 Thank you very much.

13 THE WITNESS: Thank you.

14

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

16

17 THE COURT: All right. Well, it's 3:30, perfect
18 timing, we're going to take our break for the evening. I'll
19 see everybody back at 10:30 tomorrow.

20 During this recess you are admonished not to
21 talk or converse among yourselves or with anyone
22 else on any subject connected with this trial;

23 Or read, watch, or listen to any report of or
24 commentary on the trial, or any person connected
25 with this trial, by any medium of information,

1 including, without limitation, newspapers,
2 television, the internet, and radio;

3 Or form or express any opinion on any subject
4 connected with the trial until the case is finally
5 submitted to you.

6 See you at 10:30 tomorrow. Have a good evening.

7 THE MARSHAL: All rise.

8 THE COURT: Do you want to stay on the record?

9 MR. FIGLER: No, Your Honor. Thank you.

10 THE COURT: No? Okay. Have a good evening.

11
12 (Proceedings concluded.)

13
14 * * * * *

15
16 ATTEST: Full, true and accurate transcript of proceedings.

17
18
19 /S/Renee Silvaggio
20 RENEE SILVAGGIO, C.C.R. 122

'	233:25 2006 [80] - 6:16, 6:25, 7:4, 7:16, 11:16, 11:19, 11:21, 12:2, 12:14, 14:16, 15:6, 15:10, 15:14, 16:8, 16:21, 16:25, 17:6, 17:16, 18:1, 18:3, 18:8, 19:4, 19:6, 19:9, 22:25, 23:24, 24:3, 24:8, 24:10, 24:20, 26:1, 26:16, 35:16, 50:12, 52:11, 53:22, 54:5, 56:17, 57:4, 58:11, 63:10, 64:9, 64:15, 65:4, 72:5, 79:20, 80:9, 93:18, 94:10, 110:19, 122:1, 122:9, 139:21, 140:7, 142:12, 142:17, 154:24, 162:9, 163:10, 183:5, 187:4, 187:17, 189:20, 191:23, 192:14, 193:3, 203:3, 206:2, 207:7, 231:10, 233:18, 240:14, 243:15, 246:9, 252:8, 252:19, 253:16, 253:22 2008 [6] - 121:24, 203:21, 220:7, 220:12, 233:21 2009 [2] - 162:20, 185:5 2010 [2] - 233:24, 233:25 2013 [3] - 1:14, 3:2, 56:14 210 [1] - 2:10 22nd [6] - 19:4, 20:17, 24:3, 24:8, 24:20, 54:5 230 [1] - 2:10 2300 [1] - 231:10 235 [1] - 2:10 23rd [1] - 53:22 24 [7] - 139:10, 139:14, 139:19, 162:8, 187:3, 252:7 240 [1] - 2:11 246 [1] - 2:11 25 [4] - 138:22, 138:23, 139:8, 178:24 251 [1] - 2:11 26 [2] - 79:17, 138:22 265 [2] - 2:11 26th [13] - 15:6, 15:14, 16:8, 26:1, 26:16, 35:16, 50:12, 52:11, 53:14, 58:11, 64:9, 64:15, 72:4 29 [1] - 187:15	40-year-old [1] - 84:24 4th [1] - 233:25
/		5
/S/Renee [1] - 268:19		5 [5] - 27:11, 31:17, 32:6, 33:25, 106:19 50 [5] - 82:14, 136:1, 153:17, 163:2, 262:21 53 [1] - 216:7 57 [1] - 2:7 5:00 [1] - 238:7
1		6
1 [6] - 28:18, 39:17, 106:25, 107:24, 133:14, 134:6 10 [13] - 1:14, 3:2, 42:14, 42:17, 43:22, 45:20, 45:25, 69:18, 158:13, 206:6, 206:8, 207:9, 207:10 102 [1] - 2:8 105 [1] - 2:8 106 [1] - 2:8 10:30 [8] - 238:2, 238:6, 239:12, 249:4, 249:6, 249:10, 267:19, 268:6 11 [5] - 207:13, 208:7, 208:12, 209:3, 209:4 110 [1] - 2:8 12 [4] - 46:9, 46:12, 46:15 121 [1] - 2:9 122 [2] - 1:24, 268:19 13 [4] - 46:10, 47:14, 48:4, 221:23 131,135 [1] - 2:9 138 [1] - 2:9 15 [6] - 48:19, 143:1, 143:5, 143:8, 187:15, 187:17 157 [1] - 2:9 16 [5] - 49:5, 68:4, 141:14, 141:15, 143:5 162 [1] - 2:10 17 [8] - 15:17, 140:13, 162:9, 162:24, 187:5, 187:20, 199:11, 252:8 18 [8] - 50:15, 79:21, 199:11, 217:10, 218:5, 218:19, 236:21 182 [1] - 2:10 184 [1] - 2:10 186 [1] - 2:10 18th [15] - 7:4, 17:6, 17:12, 17:15, 18:1, 18:3, 18:8, 19:6, 19:9, 56:17, 63:10, 203:21, 220:7, 220:12, 239:7 19 [8] - 110:20, 110:21, 125:22, 203:21, 217:10, 218:5, 218:19, 236:21 1908 [2] - 121:22, 121:23 1:35 [1] - 15:14		6 [6] - 32:23, 33:5, 33:25, 34:3, 35:10, 142:17, 206:6, 217:18 60 [5] - 87:20, 87:24, 88:2, 88:20, 89:17 63 [1] - 195:10 6th [26] - 12:14, 15:10, 16:21, 16:25, 65:4, 80:9, 93:17, 94:10, 110:19, 122:9, 165:25, 187:17, 189:20, 191:23, 192:13, 193:3, 203:3, 206:1, 207:6, 231:10, 233:18, 246:9, 252:8, 252:19, 253:16, 253:22
		7
		7 [5] - 36:7, 36:24, 133:8, 134:11, 249:20 7-Eleven [5] - 90:1, 90:4, 90:12, 90:15, 90:23 7/26/06 [1] - 28:5 71 [1] - 2:7 79 [1] - 2:7
		8
		8 [12] - 37:2, 39:11, 39:17, 40:5, 40:8, 40:16, 40:25, 67:1, 133:22, 134:25, 154:11, 155:6 81 [1] - 224:18 85 [3] - 146:23, 163:19, 189:1 86 [2] - 13:5, 214:19 865 [2] - 240:19, 243:14 87 [1] - 2:7 8:30-ish [1] - 94:22 8:50 [3] - 155:1, 193:16, 254:7 8th [1] - 154:24
		9
		9 [5] - 40:23, 40:24, 41:14, 41:15, 41:22 911 [2] - 56:6, 102:3

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

FPD-0604

App.722

93 ^[1] - 2:8 94 ^[1] - 220:18 9:00 ^[2] - 1:14, 3:2	agrees ^[1] - 250:17 ahead ^[20] - 6:1, 11:23, 19:13, 27:19, 28:17, 45:4, 75:3, 79:11, 82:25, 121:5, 135:4, 136:7, 138:3, 156:11, 162:3, 186:19, 204:4, 234:22, 239:18, 250:13 ahold ^[1] - 34:17 aid ^[4] - 100:21, 101:6, 101:9, 104:1 aiming ^[2] - 261:6, 261:7 ain't ^[2] - 72:11, 72:12 air ^[2] - 60:20, 211:8 Alan ^[1] - 240:8 ALAN ^[1] - 240:9 alerted ^[1] - 95:10 alive ^[2] - 147:4, 264:5 alleged ^[1] - 35:19 allegiance ^[4] - 9:23, 9:25, 54:16, 54:24 allotted ^[1] - 239:3 almost ^[4] - 140:22, 166:13, 230:16, 254:9 alone ^[1] - 142:10 Alonzo ^[12] - 145:14, 147:2, 163:18, 167:25, 168:1, 172:7, 172:9, 188:20, 189:4, 189:6, 189:10, 189:19 altercation ^[1] - 156:22 ambulance ^[3] - 56:9, 130:16, 264:25 American ^[2] - 95:20, 110:12 angry ^[4] - 176:20, 176:23, 184:21, 184:25 answer ^[28] - 21:1, 21:15, 21:17, 22:18, 22:20, 29:11, 29:24, 30:11, 32:8, 43:3, 44:1, 44:4, 47:11, 64:14, 68:10, 108:5, 145:1, 149:10, 215:10, 215:14, 216:23, 217:23, 220:21, 221:3, 252:13, 253:3, 253:7 answered ^[9] - 31:3, 33:7, 42:21, 64:23, 158:25, 176:25, 182:23, 232:23, 234:19 answering ^[4] - 14:15, 19:24, 20:4, 250:9 answers ^[1] - 46:23 apart ^[1] - 258:25 apartment ^[17] - 11:5, 11:9, 12:14, 12:23, 17:6, 18:8, 36:1, 39:13, 39:22, 40:2, 40:11, 40:19, 40:21, 41:9, 42:1, 68:1 apologize ^[3] - 118:19, 140:10, 140:23 apparent ^[1] - 100:17 appear ^[4] - 84:21, 98:22, 100:14, 101:4 appearance ^[1] - 231:19 APPEARANCES ^[1] - 1:17 appeared ^[3] - 99:9, 100:6, 100:15 appreciate ^[7] - 20:14, 28:11, 40:9, 131:23, 132:18, 247:2, 248:4 approach ^[23] - 19:11, 19:15, 19:17, 19:19, 26:9, 43:18, 47:3, 53:15, 88:6, 146:18, 153:13, 154:16, 188:23, 195:5, 206:24, 208:25, 216:18, 217:15, 220:15, 221:21, 224:16, 231:5, 262:18	approached ^[1] - 172:15 April ^[1] - 58:11 arch ^[1] - 151:4 area ^[17] - 60:12, 96:14, 96:20, 96:25, 97:2, 100:18, 103:10, 112:1, 112:2, 112:11, 112:14, 115:11, 115:13, 115:14, 198:20, 198:22 argument ^[3] - 166:3, 166:6, 249:7 argumentative ^[1] - 53:2 arm ^[2] - 166:19, 190:8 arms ^[1] - 164:12 arrange ^[1] - 244:2 arrest ^[3] - 15:24, 16:8, 18:17 arrested ^[2] - 24:21, 51:10 arrive ^[4] - 102:6, 194:19, 205:1, 205:3 arrived ^[1] - 244:4 arriving ^[1] - 197:2 arrow ^[3] - 86:1, 116:4, 127:21 arrows ^[1] - 96:12 article ^[1] - 266:17 assessment ^[1] - 250:18 assigned ^[1] - 122:4 assisting ^[1] - 95:4 associated ^[2] - 163:10, 191:9 associating ^[1] - 142:14 association ^[1] - 142:9 assume ^[1] - 23:14 assumes ^[1] - 38:3 assuming ^[1] - 96:13 asterisk ^[2] - 220:20, 221:25 athletic ^[3] - 99:8, 108:9, 108:13 attached ^[1] - 160:15 attend ^[1] - 80:2 attending ^[2] - 191:24, 192:1 attention ^[12] - 28:21, 34:4, 40:9, 66:23, 93:17, 110:18, 121:25, 122:8, 178:4, 240:13, 250:19, 253:21 ATTEST ^[1] - 268:16 Attorney ^[1] - 1:19 Attorney's ^[1] - 51:9 attorneys ^[9] - 3:13, 73:20, 78:14, 106:17, 133:2, 138:1, 242:25, 249:7, 249:14 Attorneys ^[1] - 1:22 audible ^[6] - 9:13, 59:5, 72:21, 105:23, 224:12, 229:18 audio ^[2] - 205:25, 207:3 August ^[1] - 53:22 Avenue ^[2] - 81:14, 118:19 aware ^[4] - 20:3, 69:13, 145:19, 193:8 awareness ^[1] - 99:20 awesome ^[1] - 77:16
A		B
a.m ^[2] - 1:14, 3:2 ABBI ^[1] - 1:13 able ^[9] - 4:16, 77:3, 111:20, 114:24, 115:2, 116:13, 195:19, 206:19, 214:23 absolute ^[1] - 77:17 absolutely ^[11] - 7:14, 8:18, 20:2, 23:16, 38:21, 54:21, 57:5, 61:10, 69:11, 250:10 Academy ^[8] - 80:3, 93:25, 121:13, 122:5, 139:23, 151:3, 192:2, 192:3 access ^[1] - 77:17 accident ^[1] - 242:8 according ^[4] - 214:7, 216:5, 217:7, 226:12 accountable ^[1] - 236:6 accurate ^[2] - 236:11, 268:16 acknowledge ^[3] - 221:1, 226:1, 226:3 active ^[1] - 150:1 activity ^[1] - 58:3 addition ^[1] - 67:15 address ^[1] - 243:12 addressed ^[1] - 172:25 admission ^[3] - 21:14, 35:19, 61:3 admissions ^[3] - 61:2, 67:11, 67:22 admit ^[2] - 35:17, 52:12 admitted ^[9] - 22:3, 82:13, 111:25, 126:5, 146:22, 153:16, 185:9, 195:9, 257:1 ADMITTED ^[2] - 2:17 admitting ^[1] - 67:15 admonish ^[2] - 250:18, 250:21 admonished ^[5] - 73:6, 136:14, 241:9, 267:20 adults ^[1] - 142:3 advantages ^[1] - 107:19 aerial ^[4] - 90:15, 112:1, 198:20, 256:25 affiliated ^[3] - 6:3, 6:10, 89:13 affiliating ^[2] - 6:6, 6:7 afraid ^[5] - 56:25, 57:1, 60:3, 60:11, 71:21 African ^[1] - 95:20 African-American ^[1] - 95:20 afternoon ^[4] - 15:14, 137:21, 138:21, 246:7 afterwards ^[2] - 203:23, 247:4 age ^[10] - 62:16, 84:21, 97:5, 97:7, 97:8, 97:9, 139:14, 141:13, 199:11, 219:11 ago ^[9] - 14:9, 50:8, 72:15, 110:18, 141:3, 202:8, 210:7, 219:17, 219:18 agree ^[3] - 7:25, 9:18, 9:24 agreed ^[1] - 218:20		baby ^[6] - 128:11, 128:23, 129:11, 187:23, 187:25, 188:19 backup ^[1] - 9:1 bad ^[3] - 60:16, 129:8, 139:17

<p>badge [2] - 106:18, 133:4</p> <p>bald [10] - 22:12, 113:14, 113:15, 118:24, 158:10, 209:15, 209:17, 209:19</p> <p>bald-headed [4] - 22:12, 113:14, 113:15, 118:24</p> <p>balding [1] - 229:23</p> <p>ball [2] - 149:18, 150:6</p> <p>banging [1] - 58:3</p> <p>barely [2] - 31:21, 31:23</p> <p>baseball [4] - 91:2, 91:5, 91:8, 91:20</p> <p>based [8] - 14:15, 66:11, 127:13, 135:13, 148:18, 151:5, 169:18, 173:25</p> <p>basis [1] - 168:21</p> <p>bathroom [3] - 243:20, 243:21, 250:3</p> <p>beat [2] - 141:18, 157:10</p> <p>beating [2] - 178:16, 178:20</p> <p>Beber [2] - 133:22, 134:24</p> <p>become [3] - 61:25, 62:5, 164:5</p> <p>began [1] - 77:7</p> <p>beginning [2] - 45:20, 224:6</p> <p>behalf [10] - 3:21, 78:21, 92:17, 109:11, 120:19, 138:7, 161:17, 186:8, 239:24, 251:4</p> <p>behind [11] - 56:21, 59:21, 113:25, 198:10, 199:25, 201:25, 222:19, 223:1, 238:12, 253:2</p> <p>bell [9] - 80:16, 122:20, 177:20, 177:25, 194:1, 194:4, 255:13, 255:14</p> <p>belonged [2] - 11:9, 21:3</p> <p>bench [10] - 106:17, 106:20, 107:7, 133:3, 134:3, 237:20, 239:16, 249:14, 249:17, 250:23</p> <p>Bench [4] - 106:22, 133:5, 237:21, 249:18</p> <p>best [2] - 56:1, 236:11</p> <p>better [2] - 88:24, 227:20</p> <p>Betty [15] - 2:9, 95:13, 95:19, 95:20, 95:24, 96:1, 96:17, 120:8, 120:9, 120:12, 121:3, 121:10, 125:1, 128:21, 128:25</p> <p>BETTY [2] - 120:18, 121:3</p> <p>Betty's [2] - 95:22, 96:4</p> <p>between [10] - 24:8, 97:2, 117:23, 152:13, 165:19, 167:13, 169:10, 228:22, 232:14, 238:6</p> <p>beyond [2] - 94:19, 233:6</p> <p>big [5] - 99:19, 151:4, 249:5, 259:18, 260:15</p> <p>bigger [6] - 140:19, 140:20, 140:21, 149:7, 149:11, 257:18</p> <p>bike [3] - 111:14, 111:16, 112:15</p> <p>bill [1] - 101:7</p> <p>bit [8] - 10:7, 31:7, 111:11, 113:14, 117:2, 135:6, 186:24</p> <p>bitch [2] - 148:25, 175:3</p> <p>black [38] - 33:7, 36:22, 83:20, 85:1, 85:5, 114:14, 115:7, 125:23, 126:2, 134:16, 157:6, 160:9, 178:10, 199:22, 201:1, 215:1, 215:21, 216:9, 216:10, 217:4, 230:1, 231:21, 231:22, 232:8,</p>	<p>233:13, 234:6, 235:19, 260:2, 260:6, 260:10, 262:10, 265:23, 266:24</p> <p>blame [3] - 25:4, 65:6, 65:8</p> <p>bless [1] - 130:7</p> <p>block [1] - 261:21</p> <p>blond [9] - 214:12, 214:16, 214:25, 215:1, 229:9, 229:15, 229:16, 229:19, 234:17</p> <p>blue [2] - 36:22, 209:21</p> <p>body [2] - 105:21, 205:4</p> <p>Bonanza [1] - 254:12</p> <p>book [5] - 166:7, 166:9, 172:5, 186:24, 251:20</p> <p>books [1] - 166:14</p> <p>bottom [11] - 30:16, 40:5, 40:8, 40:16, 46:12, 46:14, 60:22, 217:23, 260:5, 260:6, 266:25</p> <p>bounced [1] - 27:9</p> <p>bowls [1] - 246:25</p> <p>box [1] - 62:18</p> <p>Boxer [4] - 12:16, 62:17, 69:7</p> <p>boxer [1] - 62:18</p> <p>boy [10] - 16:10, 61:6, 71:22, 103:5, 103:10, 103:14, 106:7, 119:2, 123:23, 125:13</p> <p>boyfriend [2] - 255:5, 264:15</p> <p>boyfriend's [2] - 256:21, 258:8</p> <p>boys [3] - 150:20, 150:23, 255:21</p> <p>BPL [3] - 191:4, 191:16, 191:17</p> <p>brass [2] - 110:11, 110:12</p> <p>brave [3] - 71:25, 72:3, 72:9</p> <p>break [15] - 73:4, 77:20, 77:23, 96:18, 97:17, 119:24, 120:5, 125:11, 136:12, 241:7, 242:4, 250:3, 256:12, 267:18</p> <p>breathing [3] - 264:7, 264:8, 264:10</p> <p>brick [2] - 128:7, 201:20</p> <p>briefly [3] - 87:7, 102:20, 105:8</p> <p>bring [11] - 41:8, 67:2, 75:18, 77:7, 175:1, 175:2, 175:3, 227:17, 239:18, 250:12</p> <p>bringing [2] - 40:9, 237:19</p> <p>brings [1] - 253:23</p> <p>broke [2] - 55:9, 151:7</p> <p>broken [2] - 55:10, 55:12</p> <p>brother [39] - 128:16, 128:25, 130:18, 139:11, 175:11, 175:21, 175:24, 187:15, 192:21, 192:23, 197:21, 198:6, 198:9, 198:13, 198:14, 199:1, 199:3, 199:24, 199:25, 201:10, 201:11, 201:13, 201:15, 202:3, 204:23, 205:10, 205:17, 210:6, 213:18, 220:10, 222:8, 222:20, 223:2, 223:16, 230:15, 231:11, 261:3, 261:4, 261:20</p> <p>brother's [2] - 211:14, 212:4</p> <p>brothers [4] - 139:2, 187:6, 187:9, 187:14</p> <p>brought [2] - 14:25, 102:3</p> <p>brown [2] - 115:7, 235:19</p> <p>Brown [14] - 141:7, 141:12, 142:13, 145:23, 146:10, 146:13, 146:16, 147:9,</p>	<p>147:10, 147:20, 164:8, 191:8, 191:10, 191:17</p> <p>Bryan [16] - 2:9, 138:4, 138:15, 157:18, 158:16, 175:17, 175:24, 176:1, 176:4, 177:4, 178:15, 178:20, 179:1, 192:23, 197:3</p> <p>BRYAN [2] - 138:6, 138:15</p> <p>buff [1] - 22:13</p> <p>build [4] - 108:2, 108:9, 108:13, 134:19</p> <p>building [1] - 248:22</p> <p>built [1] - 180:24</p> <p>bullet [1] - 54:4</p> <p>bunch [1] - 89:3</p> <p>burglary [1] - 162:19</p> <p>bus [11] - 86:20, 86:21, 89:21, 91:18, 111:18, 111:21, 111:22, 112:4, 112:12, 115:18, 115:21</p> <p>business [2] - 96:1, 117:18</p> <p>BY [120] - 1:24, 4:10, 5:9, 8:21, 15:23, 20:16, 22:2, 27:7, 27:20, 29:16, 29:19, 39:1, 40:7, 43:21, 45:5, 47:6, 53:5, 53:17, 57:15, 62:4, 63:20, 63:24, 64:2, 64:7, 65:1, 65:20, 70:10, 70:20, 71:20, 79:15, 83:1, 87:10, 88:12, 90:14, 93:8, 93:24, 102:24, 105:11, 106:5, 110:2, 117:7, 121:9, 129:4, 131:21, 135:18, 138:20, 144:20, 146:1, 146:9, 146:21, 147:17, 148:2, 153:10, 153:15, 154:14, 154:18, 156:13, 157:9, 157:17, 158:15, 160:3, 162:6, 164:9, 168:16, 169:9, 169:24, 170:15, 171:10, 172:14, 172:18, 173:6, 174:3, 175:23, 177:2, 182:20, 183:3, 184:17, 186:22, 188:18, 188:25, 189:7, 189:16, 190:25, 195:8, 203:10, 203:19, 204:17, 206:7, 207:1, 208:11, 209:2, 210:3, 215:7, 215:16, 216:8, 216:21, 217:20, 219:6, 220:3, 220:19, 221:24, 224:19, 230:10, 231:7, 232:3, 232:25, 233:11, 234:21, 235:16, 236:3, 240:12, 243:6, 246:6, 251:19, 253:5, 259:25, 261:11, 262:20, 265:22, 266:15</p> <p style="text-align: center;">C</p> <p>C-A-R-R [1] - 240:9</p> <p>C.C.R [2] - 1:24, 268:19</p> <p>C262966 [6] - 1:9, 2:3, 3:11, 78:12, 137:24, 242:23</p> <p>calendar [6] - 74:2, 74:3, 74:7, 74:20, 238:2, 249:5</p> <p>calm [3] - 263:24, 263:25, 264:8</p> <p>CALVILLO [1] - 3:20</p> <p>Calvillo [10] - 2:7, 4:11, 11:19, 26:4, 28:12, 34:2, 35:21, 52:10, 57:16</p> <p>cameras [1] - 104:16</p> <p>Camino [15] - 194:21, 195:17, 195:23, 205:21, 206:9, 206:12, 206:13, 207:17,</p>
--	---	--

<p>207:23, 209:7, 209:13, 213:22, 214:16, 214:24, 221:7</p> <p>campus [13] - 95:3, 95:12, 97:17, 97:24, 98:17, 111:20, 121:19, 122:1, 122:21, 122:23, 122:25, 124:18</p> <p>capable [1] - 62:11</p> <p>car [69] - 36:15, 36:19, 39:6, 52:20, 53:11, 97:21, 100:22, 100:23, 100:24, 101:10, 101:13, 101:14, 101:20, 102:4, 102:25, 103:4, 103:6, 103:15, 103:22, 111:4, 111:5, 129:15, 129:17, 129:18, 129:19, 129:21, 130:5, 143:25, 151:12, 151:13, 151:14, 151:18, 152:5, 152:18, 179:19, 180:1, 181:7, 182:2, 205:6, 205:7, 214:3, 214:8, 214:12, 214:20, 222:6, 256:20, 256:21, 256:24, 257:4, 257:13, 258:1, 258:2, 258:4, 258:6, 258:7, 258:8, 258:14, 258:16, 258:17, 259:5, 259:6, 260:9, 263:19, 263:21, 264:3, 264:12, 264:18, 264:20</p> <p>care [4] - 9:12, 56:10, 107:20</p> <p>Carla [3] - 255:4, 256:20, 264:16</p> <p>Carla's [1] - 255:4</p> <p>CARR [1] - 239:23</p> <p>Carr [8] - 2:11, 237:18, 240:8, 240:17, 243:7, 244:12, 246:7, 246:17</p> <p>cars [5] - 97:19, 97:23, 97:25, 98:5, 263:20</p> <p>cartoon [1] - 63:7</p> <p>case [32] - 3:15, 19:7, 24:22, 52:8, 54:4, 59:17, 73:15, 74:22, 76:8, 76:9, 76:10, 76:11, 76:14, 76:15, 76:16, 78:11, 87:11, 132:8, 136:23, 137:23, 185:5, 211:2, 211:11, 229:1, 230:11, 238:4, 238:14, 238:20, 241:18, 247:7, 266:16, 268:4</p> <p>Case [5] - 1:9, 2:3, 3:11, 78:12, 137:24</p> <p>cash [1] - 159:16</p> <p>cashed [1] - 159:15</p> <p>casings [1] - 110:12</p> <p>Casper [4] - 21:4, 22:9, 23:5, 23:6</p> <p>catch [1] - 23:15</p> <p>caused [1] - 54:6</p> <p>Cavillo [2] - 4:3, 4:4</p> <p>CB [1] - 95:13</p> <p>cell [2] - 75:7, 174:22</p> <p>cement [2] - 200:8, 200:10</p> <p>certain [2] - 65:22, 111:17</p> <p>chance [4] - 44:16, 44:24, 107:16, 238:19</p> <p>changed [2] - 24:10, 76:12</p> <p>changing [2] - 226:21, 227:2</p> <p>charge [1] - 52:2</p> <p>charges [1] - 53:24</p> <p>chase [1] - 29:13</p> <p>chased [1] - 71:9</p> <p>Chavez [6] - 12:16, 21:8, 22:3, 25:8, 25:10, 25:11</p> <p>Chavie [2] - 25:13, 25:14</p> <p>check [1] - 248:23</p>	<p>checked [2] - 203:1, 264:9</p> <p>chest [8] - 13:12, 145:23, 146:11, 146:15, 147:10, 170:10, 171:11, 190:13</p> <p>Chevy [7] - 206:12, 207:17, 207:23, 209:7, 209:12, 209:13</p> <p>chief [3] - 3:16, 238:4, 238:14</p> <p>child [1] - 189:9</p> <p>children [2] - 188:3, 188:19</p> <p>Chuckie [9] - 31:14, 32:5, 62:19, 62:23, 62:24, 62:25, 63:3, 184:8</p> <p>church [2] - 7:10, 7:13</p> <p>circle [10] - 81:6, 85:16, 85:18, 90:22, 115:10, 195:20, 195:22, 240:25, 241:2, 261:12</p> <p>circles [2] - 81:12, 96:12</p> <p>citizen [1] - 16:12</p> <p>claimed [1] - 38:14</p> <p>clarified [1] - 234:16</p> <p>clarify [3] - 57:16, 66:21, 267:1</p> <p>CLARK [1] - 1:5</p> <p>Clark [8] - 3:1, 80:6, 93:10, 94:7, 95:23, 121:19, 162:22, 240:20</p> <p>class [11] - 82:19, 94:16, 94:18, 165:23, 166:3, 166:12, 166:13, 170:3, 170:9, 174:8, 194:12</p> <p>classroom [1] - 83:3</p> <p>clean [2] - 154:15, 220:20</p> <p>clear [5] - 35:15, 65:24, 118:20, 156:7, 157:23</p> <p>clerk [2] - 76:7, 120:15</p> <p>CLERK [33] - 3:17, 4:1, 4:5, 76:3, 76:8, 76:12, 76:17, 78:18, 79:1, 92:22, 109:16, 109:20, 109:22, 109:24, 120:10, 120:12, 120:24, 121:1, 138:12, 138:17, 161:22, 162:2, 186:5, 186:13, 186:18, 239:20, 240:4, 240:6, 250:14, 251:1, 251:9, 251:13, 251:15</p> <p>click [1] - 257:2</p> <p>client [1] - 12:22</p> <p>close [21] - 6:21, 34:3, 55:13, 55:19, 55:24, 56:2, 74:22, 90:7, 103:11, 113:1, 135:1, 164:13, 164:14, 223:4, 223:5, 238:23, 258:25, 261:4, 261:5, 261:23</p> <p>close-up [1] - 90:7</p> <p>closer [5] - 8:1, 90:9, 193:19, 222:12, 227:21</p> <p>closest [2] - 8:10, 164:16</p> <p>closet [1] - 164:15</p> <p>closing [1] - 238:20</p> <p>closings [1] - 238:24</p> <p>clothing [3] - 160:16, 263:11, 266:17</p> <p>code [11] - 9:17, 9:18, 9:20, 10:16, 10:21, 57:6, 57:8, 57:9, 59:25, 70:22</p> <p>cognizant [1] - 99:13</p> <p>color [17] - 84:5, 84:10, 101:14, 114:13, 115:5, 152:21, 152:25, 194:22, 194:23, 209:20, 259:19, 260:1, 260:4, 260:16, 262:9, 266:9, 266:17</p> <p>colored [1] - 114:4</p> <p>colors [3] - 266:4, 266:9</p>	<p>coming [27] - 28:23, 31:22, 31:23, 56:24, 70:25, 101:6, 115:6, 118:15, 118:17, 123:20, 123:22, 131:22, 148:22, 206:9, 206:16, 211:7, 213:12, 213:22, 216:2, 222:24, 235:6, 238:17, 248:5, 248:15, 249:12, 251:25, 256:7</p> <p>commentary [4] - 73:10, 136:18, 241:13, 267:24</p> <p>common [1] - 69:4</p> <p>communication [2] - 225:9, 225:16</p> <p>company [2] - 244:1, 246:17</p> <p>compared [1] - 135:2</p> <p>completely [1] - 158:10</p> <p>complies [16] - 81:11, 85:17, 88:15, 90:5, 155:9, 196:1, 207:12, 207:15, 209:8, 216:24, 217:25, 220:22, 222:2, 224:22, 231:15, 241:1</p> <p>complying [1] - 98:16</p> <p>compound [1] - 70:7</p> <p>comprehensive [1] - 107:15</p> <p>concern [1] - 95:25</p> <p>concerned [4] - 70:22, 70:23, 124:20, 238:5</p> <p>concluded [1] - 268:12</p> <p>conclusions [1] - 171:2</p> <p>condolences [1] - 246:15</p> <p>conference [11] - 106:20, 106:22, 107:7, 133:5, 134:3, 237:20, 237:21, 239:16, 249:17, 249:18, 250:23</p> <p>confessed [1] - 39:8</p> <p>confided [1] - 37:13</p> <p>conflicts [2] - 183:19, 239:8</p> <p>confrontational [1] - 165:20</p> <p>confused [1] - 227:8</p> <p>connected [12] - 73:8, 73:10, 73:15, 136:16, 136:18, 136:23, 241:11, 241:13, 241:18, 267:22, 267:24, 268:4</p> <p>conscience [4] - 16:9, 22:21, 22:25, 61:6</p> <p>considered [1] - 7:23</p> <p>considering [1] - 238:3</p> <p>conspiracy [3] - 162:19, 173:1, 173:3</p> <p>consume [1] - 23:1</p> <p>cont [1] - 2:7</p> <p>contact [2] - 142:15, 144:4</p> <p>contacted [2] - 51:8, 142:20</p> <p>contained [1] - 58:22</p> <p>continue [1] - 198:8</p> <p>continues [1] - 207:13</p> <p>contract [1] - 244:5</p> <p>conversation [5] - 39:14, 173:20, 174:10, 174:16, 175:5</p> <p>conversations [1] - 167:14</p> <p>converse [4] - 73:7, 136:14, 241:10, 267:21</p> <p>convicted [1] - 77:12</p> <p>conviction [1] - 77:11</p> <p>convictions [1] - 162:16</p> <p>convince [4] - 25:20, 25:21, 45:15,</p>
--	---	---

<p>45:17</p> <p>convinced ^[1] - 183:14</p> <p>cool ^[1] - 142:4</p> <p>cooperate ^[1] - 132:15</p> <p>coordinator ^[1] - 211:4</p> <p>cop ^[2] - 179:12, 179:14</p> <p>cops ^[7] - 21:9, 22:3, 22:7, 24:12, 149:21, 179:15, 179:16</p> <p>copy ^[7] - 26:6, 58:10, 76:6, 154:10, 154:15, 154:19, 211:23</p> <p>corner ^[8] - 111:22, 111:23, 112:13, 127:3, 127:4, 128:6, 151:20, 202:2</p> <p>correct ^[231] - 5:14, 6:4, 6:12, 7:17, 7:19, 8:2, 8:5, 8:6, 8:12, 8:17, 9:2, 9:12, 10:8, 10:17, 11:6, 11:9, 11:12, 11:17, 12:4, 12:7, 12:14, 12:15, 12:17, 12:18, 12:20, 12:25, 13:21, 13:24, 14:2, 14:6, 14:12, 14:16, 14:17, 14:19, 14:23, 15:4, 15:7, 15:11, 15:15, 16:2, 16:13, 16:17, 16:22, 16:25, 17:6, 17:13, 17:16, 17:18, 17:19, 17:20, 17:21, 18:4, 18:6, 18:11, 18:13, 18:15, 18:20, 21:4, 21:9, 22:7, 24:16, 24:22, 25:1, 30:1, 30:23, 31:4, 31:8, 31:12, 31:14, 31:18, 32:10, 33:8, 33:12, 33:20, 33:23, 35:6, 35:8, 35:13, 35:22, 36:13, 36:16, 36:23, 37:4, 37:19, 39:9, 39:19, 40:11, 40:13, 40:16, 41:2, 41:6, 41:9, 41:15, 41:19, 42:24, 45:13, 45:16, 47:12, 49:1, 49:17, 50:3, 50:17, 50:24, 51:11, 51:13, 51:15, 53:25, 54:7, 54:22, 55:2, 55:5, 55:7, 56:21, 57:1, 64:10, 64:11, 65:9, 66:16, 72:1, 72:5, 72:14, 74:5, 77:9, 77:10, 85:20, 86:4, 87:11, 87:17, 87:25, 88:2, 88:21, 88:25, 89:4, 89:17, 89:23, 90:1, 91:12, 91:15, 95:8, 98:11, 102:13, 103:5, 122:2, 126:14, 132:10, 157:25, 158:10, 158:22, 160:5, 160:10, 160:13, 160:16, 160:22, 169:11, 173:7, 182:4, 183:6, 183:10, 184:3, 184:6, 184:8, 185:5, 210:7, 210:10, 210:18, 211:8, 211:14, 211:16, 211:19, 211:20, 211:24, 212:11, 212:14, 212:24, 213:13, 213:19, 213:23, 214:8, 214:12, 214:16, 215:4, 215:18, 215:21, 216:2, 217:7, 217:10, 217:13, 218:5, 218:15, 218:21, 220:5, 220:7, 220:12, 221:3, 222:6, 222:13, 222:17, 222:20, 222:25, 223:11, 223:21, 224:7, 224:11, 224:24, 225:4, 225:7, 226:5, 226:14, 227:15, 227:21, 228:9, 228:17, 229:9, 229:12, 236:6, 236:9, 236:13, 236:17, 236:21, 236:23, 237:2, 241:4, 241:5, 243:10, 245:11, 246:25, 247:18, 265:12, 265:15, 265:16</p> <p>Correct ^[46] - 6:14, 10:20, 10:25, 11:7, 11:10, 11:13, 11:18, 12:21, 12:24, 13:1, 13:18, 13:22, 14:3, 14:20, 15:5, 15:8, 15:12, 16:3, 16:23, 17:4, 18:10, 18:12, 18:14, 18:16, 39:20, 39:25, 95:9,</p>	<p>187:21, 191:18, 197:17, 200:18, 203:4, 211:17, 214:17, 220:6, 220:8, 221:4, 222:7, 222:9, 234:25, 236:7, 236:10, 236:14, 236:24, 247:1, 247:19</p> <p>correction ^[1] - 206:6</p> <p>COs ^[2] - 77:16, 77:18</p> <p>counsel ^[6] - 67:1, 154:11, 184:18, 206:5, 228:14, 237:20</p> <p>Counsel ^[1] - 158:12</p> <p>counting ^[1] - 212:9</p> <p>COUNTY ^[1] - 1:5</p> <p>County ^[8] - 3:1, 80:6, 93:10, 94:7, 95:23, 121:19, 162:22, 240:20</p> <p>couple ^[10] - 5:24, 11:9, 14:10, 14:11, 31:18, 115:4, 131:17, 132:12, 200:22, 264:25</p> <p>course ^[6] - 24:15, 46:8, 46:11, 132:15, 150:3, 160:6</p> <p>court ^[4] - 19:25, 20:13, 212:17, 226:25</p> <p>COURT ^[273] - 1:4, 3:9, 3:18, 4:6, 4:25, 5:3, 5:6, 5:8, 19:16, 19:20, 19:23, 20:3, 20:6, 20:9, 20:12, 20:15, 21:12, 21:14, 21:16, 21:20, 21:23, 22:1, 26:11, 26:13, 26:17, 26:19, 26:21, 26:25, 27:4, 27:15, 27:18, 29:9, 38:6, 38:9, 38:16, 38:20, 38:22, 38:25, 43:19, 44:14, 44:19, 44:21, 44:24, 45:2, 47:4, 53:4, 53:16, 57:11, 62:3, 63:22, 64:6, 64:24, 65:19, 70:9, 70:18, 71:16, 72:23, 73:3, 73:20, 73:25, 74:6, 74:16, 74:24, 75:3, 75:6, 75:7, 75:10, 75:12, 75:14, 75:17, 75:19, 75:21, 75:23, 75:24, 76:5, 76:6, 76:9, 76:11, 76:14, 76:16, 76:20, 77:11, 77:19, 77:23, 77:25, 78:2, 78:4, 78:10, 79:9, 82:21, 82:24, 87:6, 88:8, 91:23, 91:25, 92:5, 92:11, 102:19, 105:7, 106:2, 106:12, 106:16, 106:24, 107:3, 107:6, 107:9, 107:23, 108:5, 108:18, 108:21, 108:23, 109:1, 109:7, 117:5, 119:7, 119:10, 119:15, 119:22, 119:25, 120:2, 120:5, 121:5, 129:3, 131:16, 131:18, 132:20, 132:22, 133:2, 133:7, 133:12, 133:14, 133:17, 133:19, 133:22, 133:25, 134:5, 134:11, 134:14, 134:18, 134:24, 135:4, 135:8, 135:11, 135:15, 136:4, 136:7, 136:11, 137:7, 137:13, 137:21, 146:20, 147:15, 147:25, 153:14, 154:17, 156:9, 156:11, 157:13, 160:25, 161:3, 161:7, 161:13, 162:3, 164:7, 168:15, 168:21, 169:5, 169:23, 171:3, 171:8, 172:13, 173:4, 174:1, 176:25, 182:17, 184:13, 185:13, 185:15, 185:20, 186:1, 186:19, 188:11, 188:13, 188:16, 188:24, 190:19, 195:6, 203:18, 204:16, 206:25, 208:10, 208:16, 208:19, 208:22, 209:1, 209:24, 215:10, 215:13, 216:15, 216:17, 216:19, 217:17, 219:3, 219:5, 219:10, 219:14, 219:16, 219:18, 219:21,</p>	<p>219:23, 220:1, 220:16, 221:22, 224:17, 230:6, 231:6, 232:23, 233:6, 233:10, 234:20, 235:12, 237:5, 237:10, 237:13, 237:17, 237:19, 237:23, 238:1, 238:10, 238:13, 238:16, 238:21, 238:25, 239:3, 239:9, 239:14, 239:18, 241:6, 242:3, 242:7, 242:13, 242:22, 246:2, 248:7, 248:9, 248:14, 248:17, 248:21, 248:25, 249:3, 249:13, 249:17, 249:20, 250:7, 250:12, 250:15, 250:21, 250:25, 259:23, 262:19, 265:4, 265:19, 266:2, 266:5, 266:7, 266:11, 266:14, 267:3, 267:5, 267:10, 267:17, 268:8, 268:10</p> <p>Court ^[34] - 3:7, 14:21, 15:4, 27:25, 50:25, 51:10, 51:21, 53:22, 54:2, 56:25, 57:1, 58:21, 73:23, 74:21, 77:5, 78:8, 137:5, 137:19, 202:6, 212:9, 212:22, 220:5, 224:9, 230:14, 235:6, 237:1, 242:1, 242:11, 242:18, 242:21, 250:1, 250:5, 250:18, 253:23</p> <p>Court's ^[10] - 26:8, 74:6, 77:17, 105:4, 157:7, 186:2, 217:16, 236:1, 250:17, 265:1</p> <p>courtroom ^[4] - 79:9, 159:8, 202:4, 228:11</p> <p>cover ^[2] - 113:22, 227:5</p> <p>covered ^[8] - 224:3, 225:7, 226:4, 226:5, 226:16, 226:17, 227:4</p> <p>covering ^[2] - 225:8, 249:23</p> <p>coward ^[2] - 72:11, 72:12</p> <p>cower ^[1] - 72:10</p> <p>cowering ^[1] - 72:8</p> <p>crazy ^[3] - 6:13, 23:1, 190:16</p> <p>credit ^[1] - 107:13</p> <p>crew ^[2] - 37:7, 37:12</p> <p>crime ^[2] - 35:17, 39:8</p> <p>criminal ^[2] - 238:2, 249:5</p> <p>cross ^[22] - 3:16, 19:21, 29:4, 61:5, 61:17, 68:23, 70:14, 77:3, 77:4, 87:6, 102:19, 119:7, 131:16, 157:13, 180:16, 182:17, 192:7, 209:24, 233:7, 246:2, 265:4, 266:5</p> <p>Cross ^[1] - 2:5</p> <p>CROSS ^[10] - 4:9, 87:9, 102:23, 131:20, 135:17, 157:16, 182:19, 210:2, 246:5, 265:7</p> <p>cross-examination ^[14] - 3:16, 29:4, 61:5, 61:17, 68:23, 70:14, 87:6, 102:19, 131:16, 182:17, 209:24, 246:2, 265:4, 266:5</p> <p>CROSS-EXAMINATION ^[10] - 4:9, 87:9, 102:23, 131:20, 135:17, 157:16, 182:19, 210:2, 246:5, 265:7</p> <p>cross-examine ^[2] - 19:21, 77:3</p> <p>crossed ^[2] - 126:21, 149:22</p> <p>crosses ^[1] - 115:20</p> <p>crossing ^[2] - 198:11, 201:12</p> <p>crying ^[5] - 128:21, 129:5, 130:7, 130:8</p> <p>CRYSTAL ^[2] - 161:16, 161:25</p>
--	--	--

<p>Crystal ^[9] - 2:10, 144:14, 145:4, 156:22, 161:14, 161:25, 182:21, 192:20, 263:7</p> <p>crystal ^[2] - 144:7, 157:23</p> <p>Crystal's ^[1] - 144:10</p> <p>curious ^[4] - 159:25, 237:23, 238:10, 239:10</p> <p>custody ^[3] - 25:1, 74:4, 74:10</p> <p>cut ^[1] - 239:7</p> <p>cuts ^[1] - 151:22</p> <p>cutting ^[1] - 29:13</p>	<p>67:1, 69:12, 74:10, 74:13, 77:12, 108:21, 133:12, 133:17, 133:25, 135:11, 238:19, 249:23, 250:17</p> <p>DEFENSE ^[1] - 2:13</p> <p>deference ^[1] - 156:7</p> <p>defined ^[1] - 59:13</p> <p>definitely ^[4] - 99:4, 101:4, 150:13, 199:22</p> <p>degree ^[1] - 105:20</p> <p>demeanor ^[5] - 95:21, 95:22, 174:15, 176:17, 176:18</p> <p>demonstrate ^[2] - 116:14, 171:17</p> <p>Demonte ^[4] - 3:14, 78:15, 138:2, 243:1</p> <p>DEMONTE ^[74] - 1:19, 38:18, 76:10, 76:13, 76:15, 76:18, 78:17, 79:12, 79:15, 82:23, 83:1, 87:5, 91:24, 92:12, 93:1, 93:3, 93:8, 93:24, 102:18, 105:8, 105:11, 105:24, 107:2, 107:4, 108:20, 120:8, 121:6, 121:9, 129:4, 131:15, 132:21, 133:11, 133:15, 133:23, 134:1, 135:10, 137:11, 161:14, 162:6, 164:9, 168:16, 169:2, 169:9, 169:22, 169:24, 170:15, 171:5, 171:9, 171:10, 172:14, 172:18, 172:25, 173:5, 173:6, 174:2, 174:3, 175:23, 177:2, 182:16, 184:14, 184:17, 185:12, 186:2, 235:22, 237:18, 237:25, 240:12, 242:11, 243:6, 245:25, 248:8, 249:2, 249:16, 250:10</p> <p>department ^[1] - 25:3</p> <p>Depot ^[3] - 244:3, 244:4, 246:18</p> <p>Dept ^[1] - 1:9</p> <p>Deputies ^[1] - 1:19</p> <p>describe ^[43] - 10:2, 84:2, 84:3, 85:2, 95:19, 95:21, 98:23, 99:10, 113:11, 113:16, 113:20, 114:1, 114:6, 114:13, 116:18, 125:20, 128:10, 180:10, 180:21, 194:20, 195:1, 196:16, 196:23, 198:3, 198:7, 199:7, 199:12, 199:23, 200:4, 200:25, 206:9, 208:4, 208:12, 209:11, 229:14, 229:15, 229:16, 229:25, 232:5, 236:12, 258:1, 259:16, 266:17</p> <p>described ^[20] - 7:18, 36:18, 116:8, 158:2, 158:9, 209:15, 213:21, 215:20, 217:6, 217:9, 218:7, 229:11, 229:12, 232:11, 233:13, 234:6, 234:9, 234:13, 266:19</p> <p>describing ^[1] - 206:15</p> <p>description ^[28] - 22:9, 134:15, 196:24, 208:1, 209:6, 209:14, 218:12, 218:13, 218:17, 218:21, 218:23, 218:25, 219:7, 219:12, 219:16, 220:9, 220:11, 221:1, 230:22, 231:2, 231:12, 231:13, 231:14, 231:16, 231:19, 235:1, 235:18</p> <p>Desert ^[1] - 91:9</p> <p>detail ^[1] - 23:3</p> <p>detailed ^[2] - 107:24, 108:1</p> <p>details ^[6] - 23:7, 41:1, 58:24, 66:5,</p>	<p>66:9, 66:11</p> <p>detective ^[3] - 66:4, 206:1, 211:25</p> <p>Detective ^[1] - 206:1</p> <p>detector ^[1] - 54:18</p> <p>devil ^[5] - 145:18, 145:25, 146:2, 190:4, 190:8</p> <p>Diablo ^[4] - 145:16, 145:17, 189:25, 190:1</p> <p>diagonal ^[3] - 115:20, 115:22, 222:25</p> <p>Diaz ^[1] - 2:11</p> <p>DIAZ ^[1] - 251:3</p> <p>different ^[7] - 51:6, 59:17, 140:14, 140:17, 151:11, 160:15, 169:22</p> <p>differs ^[1] - 48:15</p> <p>diploma ^[1] - 107:17</p> <p>direct ^[15] - 28:21, 42:14, 47:22, 66:23, 87:16, 93:17, 110:18, 122:8, 142:16, 213:25, 214:3, 240:13, 243:3, 266:1, 266:3</p> <p>Direct ^[1] - 2:5</p> <p>DIRECT ^[9] - 79:14, 93:7, 110:1, 121:8, 138:19, 162:5, 186:21, 240:11, 251:18</p> <p>directing ^[1] - 121:25</p> <p>direction ^[10] - 51:6, 85:22, 91:14, 98:8, 98:11, 98:14, 99:23, 118:20, 127:19, 179:17</p> <p>directions ^[3] - 89:19, 97:20, 151:12</p> <p>discharged ^[1] - 19:5</p> <p>discipline ^[1] - 69:13</p> <p>discuss ^[3] - 76:24, 77:21, 206:11</p> <p>discussing ^[1] - 206:12</p> <p>discussion ^[3] - 50:23, 67:9, 156:4</p> <p>dispersing ^[1] - 97:19</p> <p>disposition ^[1] - 176:23</p> <p>disrespecting ^[2] - 148:23, 148:24</p> <p>distance ^[2] - 223:6, 223:7</p> <p>distress ^[2] - 95:14, 96:2</p> <p>distressed ^[1] - 95:25</p> <p>DISTRICT ^[1] - 1:4</p> <p>district ^[1] - 95:3</p> <p>District ^[5] - 1:19, 51:9, 93:10, 95:23, 121:19</p> <p>document ^[2] - 27:12, 208:20</p> <p>documents ^[1] - 213:16</p> <p>dollars ^[1] - 159:24</p> <p>Dominic ^[1] - 190:12</p> <p>done ^[24] - 6:15, 7:16, 16:2, 51:19, 51:22, 51:25, 53:13, 88:14, 132:11, 154:24, 159:12, 216:23, 217:24, 222:1, 231:13, 238:4, 243:16, 243:19, 245:7, 247:17, 248:1, 249:5, 250:14, 253:7</p> <p>dot ^[1] - 179:24</p> <p>double ^[1] - 246:15</p> <p>down ^[26] - 15:18, 16:7, 31:7, 42:3, 60:22, 97:4, 99:20, 99:21, 100:18, 100:20, 104:3, 111:14, 113:6, 113:23, 116:23, 144:23, 151:23, 155:10, 201:16, 201:17, 204:15, 231:9, 242:13, 247:12, 253:8, 263:25</p>
D		
<p>D-A-N-I-A ^[1] - 251:14</p> <p>D-I-A-Z ^[1] - 251:16</p> <p>DA's ^[1] - 108:18</p> <p>damage ^[1] - 101:23</p> <p>DAN ^[1] - 92:16</p> <p>Dan ^[4] - 2:8, 92:12, 95:15, 102:25</p> <p>dances ^[1] - 107:21</p> <p>Danger ^[7] - 14:1, 14:5, 52:23, 52:24, 62:12, 62:14, 62:15</p> <p>danger ^[1] - 53:6</p> <p>DANIA ^[1] - 251:3</p> <p>Dania ^[3] - 2:11, 251:12, 265:9</p> <p>Danny ^[1] - 92:25</p> <p>DANNY ^[1] - 93:4</p> <p>dark ^[19] - 13:8, 13:10, 13:13, 22:14, 114:4, 115:7, 118:14, 135:20, 199:8, 231:21, 260:2, 262:10, 263:10, 263:11, 265:10, 265:14</p> <p>dark-haired ^[1] - 13:13</p> <p>darn ^[1] - 36:4</p> <p>date ^[9] - 7:6, 17:10, 110:19, 111:9, 189:17, 207:6, 220:1, 220:2, 220:4</p> <p>dates ^[1] - 234:2</p> <p>dating ^[5] - 111:2, 111:3, 189:19, 191:15, 191:16</p> <p>daughter ^[1] - 189:10</p> <p>daughter's ^[1] - 190:10</p> <p>Dave ^[1] - 120:10</p> <p>days ^[3] - 18:4, 94:11, 155:3</p> <p>DAYVID ^[1] - 1:21</p> <p>dead ^[1] - 147:5</p> <p>deal ^[2] - 4:16, 29:9</p> <p>dealing ^[2] - 95:4, 95:6</p> <p>dealt ^[1] - 97:8</p> <p>December ^[3] - 203:21, 220:7, 220:12</p> <p>decide ^[1] - 171:2</p> <p>decided ^[1] - 24:11</p> <p>Defendant ^[2] - 1:11, 1:21</p> <p>defendant ^[26] - 3:12, 59:3, 61:2, 61:12, 61:13, 63:10, 63:11, 63:16, 64:16, 65:3, 65:6, 65:9, 66:7, 67:3, 67:11, 67:15, 67:22, 68:6, 69:13, 70:5, 70:15, 71:1, 71:8, 78:13, 137:25, 242:24</p> <p>defense ^[17] - 53:23, 57:17, 64:8, 66:3,</p>		

<p>draw ^[1] - 81:6, 85:16, 86:1, 90:22, 96:11, 116:4, 126:7, 126:9, 127:21, 177:14, 253:21</p> <p>drawing ^[1] - 98:10</p> <p>drawn ^[4] - 85:18, 105:12, 179:23, 241:2</p> <p>Dreams ^[1] - 121:13</p> <p>drew ^[2] - 86:3, 105:13</p> <p>drive ^[1] - 16:4</p> <p>driving ^[1] - 177:5</p> <p>dropped ^[1] - 50:2</p> <p>drove ^[1] - 143:25</p> <p>drug ^[3] - 95:2, 95:5, 95:6</p> <p>drug-related ^[2] - 95:5, 95:6</p> <p>drugs ^[1] - 23:1</p> <p>dud ^[1] - 175:12</p> <p>duly ^[10] - 3:22, 78:22, 92:18, 109:12, 120:20, 138:8, 161:18, 186:9, 239:25, 251:5</p> <p>During ^[2] - 241:9, 267:20</p> <p>during ^[14] - 61:5, 72:17, 73:6, 136:13, 157:10, 174:10, 174:15, 189:19, 191:14, 198:3, 198:5, 202:15, 229:2, 250:3</p>	<p>eleven ^[1] - 231:10</p> <p>Elizabeth ^[2] - 187:11, 187:12</p> <p>emotional ^[1] - 236:5</p> <p>employed ^[2] - 93:9, 93:18</p> <p>End ^[4] - 107:7, 134:3, 239:16, 250:23</p> <p>end ^[6] - 134:7, 166:14, 216:10, 238:21, 241:21, 249:22</p> <p>enforce ^[1] - 19:23</p> <p>English ^[1] - 190:16</p> <p>entire ^[3] - 50:11, 56:21, 193:12</p> <p>episode ^[2] - 95:2, 213:17</p> <p>escort ^[2] - 75:1, 98:3</p> <p>escorting ^[1] - 98:13</p> <p>ESQ ^[4] - 1:18, 1:19, 1:21, 1:21</p> <p>established ^[1] - 32:16</p> <p>estimate ^[5] - 87:23, 87:24, 89:2, 97:1, 255:25</p> <p>Estrella ^[2] - 189:10, 189:13</p> <p>EVARISTO ^[1] - 1:10</p> <p>Evaristo ^[49] - 2:2, 3:11, 17:25, 24:4, 25:5, 25:16, 25:21, 25:24, 31:3, 32:20, 32:21, 32:24, 32:25, 33:4, 35:17, 36:8, 36:22, 39:5, 42:13, 43:2, 43:8, 43:25, 45:10, 45:15, 47:21, 47:25, 48:1, 48:6, 48:9, 48:12, 48:21, 50:2, 58:4, 61:2, 67:18, 67:19, 69:19, 71:22, 72:19, 78:12, 137:23, 184:6, 218:21, 219:8, 219:13, 220:5, 220:11, 228:20, 242:23</p> <p>Evaristo's ^[1] - 31:6</p> <p>evening ^[5] - 16:21, 17:8, 267:18, 268:6, 268:10</p> <p>events ^[1] - 46:11</p> <p>evidence ^[7] - 38:4, 38:6, 216:15, 239:1, 250:9, 250:19, 265:25</p> <p>EVIDENCE ^[1] - 2:17</p> <p>exact ^[6] - 4:21, 27:24, 230:22, 230:25, 231:2, 231:14</p> <p>exactly ^[11] - 7:6, 9:10, 28:14, 29:12, 47:23, 72:4, 110:5, 201:6, 201:11, 201:24, 258:15</p> <p>examination ^[19] - 3:16, 29:4, 61:5, 61:17, 68:23, 70:14, 87:6, 87:16, 102:19, 131:16, 182:17, 209:24, 213:25, 214:3, 243:3, 246:2, 265:4, 266:3, 266:5</p> <p>EXAMINATION ^[27] - 4:9, 57:14, 71:19, 79:14, 87:9, 93:7, 102:23, 105:10, 106:4, 110:1, 121:8, 131:20, 135:17, 138:19, 157:16, 162:5, 182:19, 184:16, 186:21, 210:2, 230:9, 235:15, 240:11, 246:5, 251:18, 265:7, 265:21</p> <p>examine ^[2] - 19:21, 77:3</p> <p>examined ^[10] - 3:23, 78:23, 92:19, 109:13, 120:21, 138:9, 161:19, 186:10, 240:1, 251:6</p> <p>except ^[1] - 24:10</p> <p>exception ^[1] - 168:23</p> <p>exchange ^[2] - 223:14, 223:16</p> <p>excuse ^[3] - 109:21, 121:24, 237:6</p> <p>excused ^[19] - 76:1, 92:6, 92:9, 109:1,</p>	<p>109:5, 119:17, 119:20, 136:7, 136:9, 161:8, 161:11, 185:22, 185:24, 237:13, 237:15, 248:17, 248:19, 267:11, 267:15</p> <p>exhibit ^[1] - 250:5</p> <p>Exhibit ^[22] - 13:5, 81:5, 82:14, 85:15, 96:8, 112:1, 126:6, 136:1, 146:23, 153:17, 163:2, 163:19, 177:12, 195:10, 198:19, 214:19, 240:22, 244:13, 245:9, 245:13, 257:1, 262:21</p> <p>EXHIBITS ^[1] - 2:17</p> <p>exit ^[1] - 101:23</p> <p>exited ^[1] - 103:24</p> <p>expecting ^[2] - 187:22, 187:25</p> <p>expert ^[2] - 169:18</p> <p>experts ^[3] - 238:8, 238:16, 239:5</p> <p>explain ^[3] - 44:17, 57:21, 61:20</p> <p>explanation ^[1] - 108:1</p> <p>express ^[4] - 73:14, 136:22, 241:17, 268:3</p> <p>extra ^[2] - 58:24, 66:11</p> <p>extremely ^[1] - 72:3</p> <p>eye ^[1] - 125:13</p>
E		
<p>E-I-C-H-E-L-B-E-R-G-E-R ^[1] - 93:5</p> <p>E-S-T-R-E-L-L-A ^[1] - 189:15</p> <p>early ^[4] - 111:18, 173:12, 173:16, 243:16</p> <p>earn ^[2] - 61:24, 61:25</p> <p>ease ^[1] - 74:25</p> <p>easier ^[1] - 27:2</p> <p>easily ^[1] - 7:8</p> <p>east ^[5] - 60:10, 86:7, 89:23, 91:10, 177:17</p> <p>East ^[10] - 93:14, 93:21, 93:23, 94:3, 110:23, 140:1, 165:6, 192:4, 192:6, 253:11</p> <p>eastbound ^[3] - 98:21, 98:24, 98:25</p> <p>easy ^[3] - 71:1, 71:3, 261:1</p> <p>Ed ^[3] - 37:18, 38:11, 69:13</p> <p>EDSHEL ^[1] - 3:20</p> <p>Edshel ^[3] - 2:7, 4:3, 4:4</p> <p>effect ^[1] - 164:11</p> <p>EICHELBERGER ^[1] - 92:16</p> <p>Eichelberger ^[5] - 2:8, 92:12, 92:25, 93:5, 108:24</p> <p>eight ^[6] - 39:23, 40:3, 80:13, 80:17, 108:16, 218:11</p> <p>eighteen ^[1] - 159:24</p> <p>eighth ^[1] - 164:4</p> <p>either ^[6] - 75:12, 82:23, 107:6, 169:1, 217:10, 250:8</p> <p>EI ^[15] - 194:21, 195:17, 195:23, 205:21, 206:9, 206:12, 206:13, 207:17, 207:23, 209:7, 209:13, 213:22, 214:16, 214:24, 221:7</p>	<p>eleven ^[1] - 231:10</p> <p>Elizabeth ^[2] - 187:11, 187:12</p> <p>emotional ^[1] - 236:5</p> <p>employed ^[2] - 93:9, 93:18</p> <p>End ^[4] - 107:7, 134:3, 239:16, 250:23</p> <p>end ^[6] - 134:7, 166:14, 216:10, 238:21, 241:21, 249:22</p> <p>enforce ^[1] - 19:23</p> <p>English ^[1] - 190:16</p> <p>entire ^[3] - 50:11, 56:21, 193:12</p> <p>episode ^[2] - 95:2, 213:17</p> <p>escort ^[2] - 75:1, 98:3</p> <p>escorting ^[1] - 98:13</p> <p>ESQ ^[4] - 1:18, 1:19, 1:21, 1:21</p> <p>established ^[1] - 32:16</p> <p>estimate ^[5] - 87:23, 87:24, 89:2, 97:1, 255:25</p> <p>Estrella ^[2] - 189:10, 189:13</p> <p>EVARISTO ^[1] - 1:10</p> <p>Evaristo ^[49] - 2:2, 3:11, 17:25, 24:4, 25:5, 25:16, 25:21, 25:24, 31:3, 32:20, 32:21, 32:24, 32:25, 33:4, 35:17, 36:8, 36:22, 39:5, 42:13, 43:2, 43:8, 43:25, 45:10, 45:15, 47:21, 47:25, 48:1, 48:6, 48:9, 48:12, 48:21, 50:2, 58:4, 61:2, 67:18, 67:19, 69:19, 71:22, 72:19, 78:12, 137:23, 184:6, 218:21, 219:8, 219:13, 220:5, 220:11, 228:20, 242:23</p> <p>Evaristo's ^[1] - 31:6</p> <p>evening ^[5] - 16:21, 17:8, 267:18, 268:6, 268:10</p> <p>events ^[1] - 46:11</p> <p>evidence ^[7] - 38:4, 38:6, 216:15, 239:1, 250:9, 250:19, 265:25</p> <p>EVIDENCE ^[1] - 2:17</p> <p>exact ^[6] - 4:21, 27:24, 230:22, 230:25, 231:2, 231:14</p> <p>exactly ^[11] - 7:6, 9:10, 28:14, 29:12, 47:23, 72:4, 110:5, 201:6, 201:11, 201:24, 258:15</p> <p>examination ^[19] - 3:16, 29:4, 61:5, 61:17, 68:23, 70:14, 87:6, 87:16, 102:19, 131:16, 182:17, 209:24, 213:25, 214:3, 243:3, 246:2, 265:4, 266:3, 266:5</p> <p>EXAMINATION ^[27] - 4:9, 57:14, 71:19, 79:14, 87:9, 93:7, 102:23, 105:10, 106:4, 110:1, 121:8, 131:20, 135:17, 138:19, 157:16, 162:5, 182:19, 184:16, 186:21, 210:2, 230:9, 235:15, 240:11, 246:5, 251:18, 265:7, 265:21</p> <p>examine ^[2] - 19:21, 77:3</p> <p>examined ^[10] - 3:23, 78:23, 92:19, 109:13, 120:21, 138:9, 161:19, 186:10, 240:1, 251:6</p> <p>except ^[1] - 24:10</p> <p>exception ^[1] - 168:23</p> <p>exchange ^[2] - 223:14, 223:16</p> <p>excuse ^[3] - 109:21, 121:24, 237:6</p> <p>excused ^[19] - 76:1, 92:6, 92:9, 109:1,</p>	<p>109:5, 119:17, 119:20, 136:7, 136:9, 161:8, 161:11, 185:22, 185:24, 237:13, 237:15, 248:17, 248:19, 267:11, 267:15</p> <p>exhibit ^[1] - 250:5</p> <p>Exhibit ^[22] - 13:5, 81:5, 82:14, 85:15, 96:8, 112:1, 126:6, 136:1, 146:23, 153:17, 163:2, 163:19, 177:12, 195:10, 198:19, 214:19, 240:22, 244:13, 245:9, 245:13, 257:1, 262:21</p> <p>EXHIBITS ^[1] - 2:17</p> <p>exit ^[1] - 101:23</p> <p>exited ^[1] - 103:24</p> <p>expecting ^[2] - 187:22, 187:25</p> <p>expert ^[2] - 169:18</p> <p>experts ^[3] - 238:8, 238:16, 239:5</p> <p>explain ^[3] - 44:17, 57:21, 61:20</p> <p>explanation ^[1] - 108:1</p> <p>express ^[4] - 73:14, 136:22, 241:17, 268:3</p> <p>extra ^[2] - 58:24, 66:11</p> <p>extremely ^[1] - 72:3</p> <p>eye ^[1] - 125:13</p>

F

F-A-D-E ^[1] - 232:4

face ^[15] - 13:11, 18:20, 60:4, 120:15, 214:21, 224:3, 225:7, 225:9, 226:5, 226:17, 227:4, 227:5, 249:23, 254:15, 259:15

facing ^[1] - 134:12

fact ^[16] - 7:9, 7:21, 11:14, 16:1, 16:24, 25:19, 39:4, 50:11, 65:11, 77:12, 216:13, 218:17, 227:4, 235:1, 247:5, 249:21

facts ^[2] - 38:3, 70:7

fade ^[2] - 231:25, 232:2

fair ^[1] - 103:12

fairly ^[1] - 108:11

faith ^[3] - 38:5, 38:8, 38:13

fall ^[2] - 259:8, 262:1

falling ^[1] - 118:10

false ^[2] - 45:10, 54:14

familiar ^[4] - 91:4, 103:1, 110:22, 111:1

family ^[6] - 7:19, 7:22, 7:23, 8:2, 10:5, 58:7

fantastic ^[1] - 6:2

far ^[7] - 33:25, 51:15, 98:17, 101:2, 108:14, 160:15, 258:25

fast ^[6] - 104:5, 104:7, 158:25, 160:7, 160:18, 239:10

faster ^[1] - 44:21

father ^[3] - 188:6, 188:19, 189:9

fathers ^[1] - 188:15

fear ^[4] - 60:6, 60:13, 71:4, 72:9

February ^[61] - 6:16, 6:25, 7:4, 7:16, 12:14, 15:10, 16:21, 16:25, 17:6, 17:12, 17:15, 18:1, 18:3, 18:8, 19:4, 19:6,

<p>19:9, 20:17, 24:3, 24:6, 24:8, 54:5, 56:17, 63:10, 64:9, 64:15, 65:3, 65:4, 79:20, 80:9, 93:17, 94:10, 110:19, 122:1, 122:9, 139:21, 140:7, 142:17, 154:24, 165:25, 187:4, 187:17, 189:20, 191:23, 192:13, 193:3, 203:3, 206:1, 207:6, 231:10, 233:18, 240:13, 243:15, 243:16, 246:9, 246:22, 247:21, 252:8, 252:19, 253:16, 253:22</p> <p>feet [5] - 22:14, 100:15, 108:2, 108:14, 140:16</p> <p>fell [5] - 116:13, 117:14, 180:2, 180:3, 260:9</p> <p>fellow [4] - 7:21, 9:23, 11:21, 12:2</p> <p>felony [1] - 162:16</p> <p>felt [3] - 77:2, 101:24, 183:17</p> <p>female [8] - 179:6, 179:7, 180:12, 180:23, 196:8, 207:22, 214:2, 214:7</p> <p>females [3] - 179:9, 196:7, 207:21</p> <p>few [13] - 16:24, 63:10, 91:16, 98:4, 113:4, 113:8, 141:11, 144:8, 157:18, 190:11, 197:10, 197:18, 204:25</p> <p>field [2] - 91:8, 91:20</p> <p>fields [2] - 91:2, 91:5</p> <p>fifth [5] - 166:25, 174:6, 174:8, 174:11, 174:18</p> <p>fifty [1] - 134:22</p> <p>fight [41] - 14:6, 15:9, 52:21, 55:1, 55:10, 55:11, 82:17, 83:9, 83:14, 104:15, 106:8, 106:9, 131:7, 149:25, 150:1, 150:4, 150:9, 150:14, 150:25, 151:6, 153:1, 157:10, 157:24, 176:13, 176:14, 193:9, 193:10, 197:15, 198:4, 255:8, 255:11, 255:12, 255:15, 255:18, 256:5, 256:13, 257:23, 263:6, 263:7, 263:8</p> <p>fighter [2] - 62:13, 62:17</p> <p>fighting [58] - 53:1, 53:7, 80:18, 80:20, 81:2, 81:7, 81:17, 82:1, 82:7, 83:16, 88:2, 88:4, 88:20, 89:4, 89:7, 89:9, 89:11, 90:19, 96:18, 96:22, 96:24, 123:24, 124:7, 124:11, 124:18, 132:2, 148:25, 149:2, 149:16, 150:3, 150:5, 150:18, 152:20, 152:21, 153:4, 153:7, 153:8, 153:11, 153:21, 153:22, 155:13, 158:3, 160:5, 160:10, 160:13, 178:19, 178:21, 179:2, 179:3, 179:4, 179:8, 197:3, 197:4, 197:9, 197:11, 255:19, 255:21, 256:1</p> <p>FIGLER [133] - 1:21, 4:7, 4:10, 5:9, 8:21, 15:23, 19:14, 20:2, 20:5, 20:7, 20:11, 20:14, 20:16, 21:13, 21:15, 21:17, 21:25, 22:2, 26:8, 26:12, 26:15, 26:18, 26:20, 26:23, 27:1, 27:5, 27:7, 27:13, 27:20, 29:4, 29:8, 29:12, 29:16, 29:18, 29:19, 37:25, 38:5, 38:7, 38:10, 38:21, 39:1, 40:6, 40:7, 43:18, 43:20, 43:21, 44:13, 45:5, 47:3, 47:5, 47:6, 53:5, 53:15, 53:17, 57:10, 62:1, 63:19, 64:1, 64:23, 65:18, 70:6, 70:16, 71:17,</p>	<p>71:20, 72:22, 74:13, 77:9, 77:16, 77:24, 78:1, 102:20, 102:24, 105:4, 105:6, 105:25, 106:5, 106:11, 107:1, 107:5, 129:1, 131:17, 131:21, 132:19, 133:9, 133:13, 133:18, 133:24, 135:13, 135:18, 135:25, 137:15, 147:11, 147:23, 154:12, 156:3, 157:14, 157:17, 158:13, 158:15, 160:3, 160:24, 164:6, 168:13, 168:20, 168:22, 169:7, 169:17, 170:25, 172:11, 172:24, 173:2, 173:25, 176:22, 182:20, 183:3, 184:12, 185:14, 203:12, 203:16, 236:1, 242:6, 246:3, 246:6, 248:6, 250:17, 250:22, 259:20, 265:5, 265:8, 265:17, 265:24, 267:4, 268:9</p> <p>Figler [11] - 3:13, 4:6, 19:24, 59:12, 59:25, 66:1, 68:3, 70:21, 78:14, 138:1, 242:25</p> <p>Figler's [1] - 61:5</p> <p>figure [1] - 238:17</p> <p>figured [1] - 155:23</p> <p>finally [6] - 22:4, 73:15, 124:24, 136:23, 241:18, 268:4</p> <p>fine [10] - 19:18, 19:22, 20:5, 29:12, 29:18, 133:24, 173:5, 233:9, 239:10, 244:11</p> <p>finger [8] - 81:6, 96:11, 103:16, 126:7, 177:14, 191:3, 240:25, 264:9</p> <p>fingers [6] - 55:9, 55:10, 55:12, 146:11, 146:14, 191:1</p> <p>finish [7] - 144:21, 144:25, 149:9, 227:1, 238:6, 238:19, 253:6</p> <p>finished [2] - 166:13, 207:11</p> <p>fire [1] - 126:23</p> <p>firearm [2] - 245:19, 245:22</p> <p>firearms [1] - 238:8</p> <p>fired [2] - 99:24, 100:17</p> <p>firing [3] - 115:14, 127:8, 152:17</p> <p>first [54] - 3:22, 14:18, 14:21, 28:5, 28:23, 29:2, 29:15, 29:17, 29:20, 32:9, 39:23, 40:3, 42:17, 44:5, 47:18, 57:16, 66:4, 66:8, 78:22, 92:18, 98:23, 101:6, 103:22, 103:23, 106:7, 109:12, 115:8, 120:20, 123:14, 131:1, 138:8, 139:4, 144:9, 149:13, 155:13, 159:7, 159:8, 159:22, 161:18, 165:12, 186:9, 187:25, 196:9, 198:25, 207:3, 223:3, 224:10, 226:7, 230:19, 239:25, 251:5, 255:5, 257:3, 261:15</p> <p>fist [1] - 55:13</p> <p>five [22] - 15:11, 22:13, 102:10, 108:16, 117:22, 134:21, 136:11, 136:25, 152:12, 210:14, 210:15, 218:9, 218:11, 218:14, 218:19, 236:16, 236:19, 239:12, 241:7, 241:20, 249:2</p> <p>five-eight [2] - 108:16, 218:11</p> <p>five-foot [1] - 218:14</p> <p>five-minute [2] - 102:10, 241:7</p> <p>five-nine [2] - 22:13, 108:16</p> <p>five-six [1] - 134:21</p>	<p>five-three [4] - 218:9, 218:19, 236:16, 236:19</p> <p>flashbacks [1] - 58:6</p> <p>flat [1] - 12:4</p> <p>flip [2] - 135:22, 259:21</p> <p>flipped [1] - 101:8</p> <p>floor [8] - 113:7, 116:23, 117:14, 201:16, 201:17, 246:21, 263:18, 264:24</p> <p>flooring [2] - 243:20, 243:21</p> <p>fly [1] - 23:11</p> <p>flying [1] - 57:6</p> <p>focused [3] - 204:21, 204:23, 260:8</p> <p>focusing [1] - 260:7</p> <p>folks [1] - 246:10</p> <p>follow [7] - 27:6, 33:10, 105:25, 108:18, 135:8, 135:11, 135:13</p> <p>follow-up [4] - 33:10, 135:8, 135:11, 135:13</p> <p>follow-ups [1] - 108:18</p> <p>followed [1] - 77:16</p> <p>following [7] - 3:6, 73:22, 78:7, 137:4, 137:18, 241:25, 242:17</p> <p>follows [14] - 3:23, 78:23, 92:19, 106:23, 109:13, 120:21, 133:6, 138:9, 161:19, 186:10, 237:22, 240:1, 249:19, 251:6</p> <p>foot [4] - 101:10, 108:12, 113:22, 218:14</p> <p>forcing [1] - 45:9</p> <p>forearm [2] - 146:3, 146:6</p> <p>forever [2] - 7:5, 56:4</p> <p>forgot [1] - 132:12</p> <p>form [4] - 73:14, 136:22, 241:17, 268:3</p> <p>formal [1] - 142:5</p> <p>formally [2] - 141:25, 142:6</p> <p>forth [2] - 9:11, 26:5</p> <p>forward [2] - 5:24, 61:9</p> <p>fought [1] - 62:13</p> <p>foundation [15] - 63:19, 63:23, 147:12, 147:14, 156:11, 164:6, 168:23, 169:1, 171:7, 203:14, 219:3, 219:5, 219:14, 232:21, 233:4</p> <p>four [9] - 18:4, 89:12, 98:7, 117:22, 126:24, 160:18, 164:20, 207:20, 234:6</p> <p>frame [1] - 219:2</p> <p>frames [1] - 234:3</p> <p>Francisco [1] - 4:4</p> <p>free [8] - 15:19, 16:1, 16:8, 18:15, 26:4, 28:24, 45:13, 185:22</p> <p>fresh [1] - 222:16</p> <p>fresher [1] - 222:12</p> <p>Friday [8] - 165:25, 167:10, 167:13, 173:9, 238:13, 238:20, 238:21, 239:12</p> <p>friend [7] - 56:1, 56:6, 179:18, 233:2, 256:20, 263:19, 264:16</p> <p>friend's [3] - 258:7, 264:15</p> <p>friends [16] - 8:16, 8:18, 38:14, 59:16, 60:17, 100:20, 163:8, 164:15, 164:22, 183:20, 192:16, 253:18, 254:11,</p>
--	--	---

<p>254:25, 263:16, 264:2</p> <p>friendship ^[1] - 8:14</p> <p>front ^[50] - 27:25, 28:3, 55:21, 65:22, 66:18, 80:18, 80:22, 80:23, 81:3, 81:13, 88:3, 95:15, 95:18, 96:6, 96:7, 96:8, 96:13, 96:18, 113:5, 117:15, 122:14, 122:18, 122:21, 123:3, 123:16, 123:23, 126:6, 149:25, 151:1, 151:2, 151:3, 168:5, 168:6, 177:13, 178:2, 194:6, 194:14, 196:10, 197:15, 199:25, 200:1, 200:5, 217:3, 244:19, 244:22, 255:8, 255:12</p> <p>frumpy ^[1] - 108:8</p> <p>Full ^[1] - 268:16</p> <p>full ^[11] - 4:2, 79:2, 92:23, 109:17, 121:1, 138:13, 161:23, 186:14, 235:18, 240:6, 251:10</p> <p>fully ^[2] - 22:21, 22:25</p>	<p>148:12, 152:6, 156:17, 156:25, 174:9, 174:13, 175:13, 175:14, 177:4, 192:20, 192:23</p> <p>Gena's ^[4] - 175:9, 175:10, 175:15, 175:24</p> <p>generally ^[4] - 103:9, 103:11, 107:13, 107:14</p> <p>gentleman ^[3] - 74:2, 101:7, 108:3</p> <p>gentlemen ^[13] - 3:9, 5:19, 72:23, 73:5, 91:25, 106:12, 119:10, 132:22, 136:13, 137:21, 237:5, 249:4, 267:5</p> <p>get-together ^[3] - 19:6, 23:5, 54:6</p> <p>get-togethers ^[1] - 17:11</p> <p>Giovanni ^[1] - 194:8</p> <p>Giovanny ^[91] - 8:11, 8:16, 8:25, 11:11, 13:21, 13:23, 16:20, 17:3, 17:23, 24:15, 24:21, 25:1, 25:5, 25:17, 31:25, 32:17, 52:1, 52:3, 52:7, 81:22, 82:4, 82:14, 82:16, 83:13, 131:3, 131:5, 131:7, 131:9, 131:25, 155:16, 155:18, 157:3, 160:21, 162:25, 163:3, 163:5, 165:9, 165:11, 165:20, 166:5, 167:10, 168:6, 168:8, 168:10, 169:11, 169:15, 169:16, 169:25, 170:8, 170:21, 171:11, 171:21, 172:7, 172:12, 172:15, 172:16, 172:19, 172:22, 174:6, 174:10, 174:19, 174:21, 176:15, 176:17, 178:6, 178:11, 178:15, 178:16, 178:21, 179:1, 181:2, 182:10, 182:14, 182:22, 183:6, 183:14, 183:21, 183:25, 184:2, 184:19, 184:25, 185:2, 185:10, 194:6, 196:17, 197:3, 232:15, 262:12, 262:22, 265:14</p> <p>Giovanny's ^[4] - 82:4, 82:6, 156:6, 233:2</p> <p>girl ^[10] - 13:13, 111:2, 111:3, 173:13, 214:11, 214:15, 214:16, 214:19, 214:22, 214:24</p> <p>girlfriend ^[3] - 13:2, 13:4</p> <p>girls ^[8] - 89:3, 89:5, 89:6, 89:10, 150:20, 150:23, 197:5, 255:21</p> <p>given ^[4] - 15:6, 207:6, 211:10, 250:2</p> <p>go-time ^[1] - 96:2</p> <p>goatee ^[1] - 22:14</p> <p>God ^[3] - 7:15, 125:14, 132:11</p> <p>GOODMAN ^[61] - 1:21, 19:13, 77:10, 87:7, 87:10, 88:6, 88:10, 88:12, 90:14, 91:22, 106:21, 108:22, 119:8, 137:12, 188:7, 195:7, 208:8, 208:14, 209:25, 210:3, 215:7, 215:12, 215:16, 216:7, 216:8, 216:13, 216:16, 216:18, 216:20, 216:21, 217:15, 217:18, 217:20, 219:6, 219:12, 219:15, 219:19, 219:22, 219:24, 220:3, 220:15, 220:18, 220:19, 221:21, 221:23, 221:24, 224:16, 224:18, 224:19, 230:3, 230:5, 232:20, 233:4, 233:8, 234:18, 235:13, 235:16, 235:24, 236:3, 237:4, 238:23</p> <p>Goodman ^[9] - 3:13, 12:11, 76:24, 77:5, 78:14, 138:1, 233:12, 235:4, 242:25</p>	<p>Google ^[1] - 147:7</p> <p>gotta ^[2] - 29:9, 70:2</p> <p>grabbed ^[4] - 124:14, 128:17, 128:18, 263:8</p> <p>grabbing ^[1] - 101:12</p> <p>grace ^[1] - 125:14</p> <p>grade ^[3] - 38:12, 141:14, 164:4</p> <p>GRAJEDA ^[1] - 78:20</p> <p>Grajeda ^[4] - 2:7, 78:17, 79:4, 79:5</p> <p>Grand ^[9] - 212:13, 212:22, 213:10, 215:23, 225:15, 233:13, 233:24, 234:5, 249:22</p> <p>graves ^[1] - 136:2</p> <p>GRAVES ^[1] - 120:18</p> <p>Graves ^[10] - 2:9, 95:13, 95:19, 120:8, 120:9, 120:12, 120:13, 121:3, 131:22, 135:19</p> <p>gray ^[47] - 84:6, 84:7, 84:15, 84:16, 99:2, 99:5, 103:1, 114:3, 123:16, 125:19, 125:20, 131:11, 134:12, 134:25, 152:23, 158:4, 160:12, 160:22, 194:24, 195:15, 199:8, 199:12, 199:13, 199:14, 200:2, 205:19, 205:20, 206:12, 206:13, 207:17, 209:6, 209:7, 209:13, 213:23, 215:17, 226:11, 226:23, 231:21, 234:10, 234:13, 260:6, 260:7, 260:10, 265:23, 266:22, 266:23</p> <p>great ^[3] - 23:3, 41:11, 76:17</p> <p>green ^[3] - 151:15, 151:16, 151:18</p> <p>grew ^[3] - 32:1, 163:23</p> <p>Griffis ^[4] - 106:24, 107:24, 133:14, 134:6</p> <p>grip ^[1] - 55:16</p> <p>ground ^[10] - 102:11, 128:9, 129:12, 149:17, 150:6, 180:3, 180:6, 181:17, 200:11, 213:16</p> <p>grounds ^[1] - 94:25</p> <p>group ^[5] - 8:14, 89:22, 89:23, 107:18, 112:22</p> <p>guess ^[11] - 104:4, 105:25, 116:20, 125:14, 134:9, 139:15, 139:23, 147:22, 159:17, 214:1, 238:18</p> <p>guessing ^[1] - 257:24</p> <p>gun ^[51] - 11:5, 11:8, 11:12, 18:22, 19:5, 21:3, 33:7, 33:13, 48:20, 49:1, 49:6, 49:10, 49:16, 49:20, 50:2, 55:16, 56:16, 68:3, 68:5, 68:6, 68:24, 99:22, 99:23, 113:4, 114:6, 114:8, 114:9, 114:13, 114:16, 114:21, 118:21, 118:23, 124:25, 149:20, 180:20, 180:21, 181:5, 200:23, 201:1, 201:4, 201:7, 227:24, 232:11, 260:12, 260:13, 260:14, 261:7</p> <p>guns ^[10] - 11:2, 11:14, 49:24, 49:25, 68:21, 68:25, 69:5, 114:10</p> <p>gunshot ^[2] - 113:7, 152:14</p> <p>gunshots ^[14] - 117:21, 126:22, 149:23, 152:9, 152:11, 152:16, 152:19, 181:8, 181:9, 200:19, 258:13, 258:22, 258:23, 259:4</p>
G		
<p>G-A-M-B-O-A ^[1] - 186:17</p> <p>G-E-N-A ^[1] - 139:6</p> <p>G-R-A-J-E-D-A ^[1] - 79:5</p> <p>G-R-A-V-E-S ^[1] - 121:4</p> <p>gamboa ^[1] - 142:24</p> <p>Gamboa ^[15] - 2:10, 24:22, 53:24, 64:13, 142:25, 145:9, 148:5, 165:2, 186:4, 186:16, 187:16, 254:16, 254:17, 254:19, 254:24</p> <p>GAMBOA ^[1] - 186:7</p> <p>games ^[2] - 142:21, 143:13</p> <p>gang ^[69] - 6:4, 6:6, 6:25, 7:4, 7:16, 7:19, 7:21, 8:1, 9:11, 9:19, 9:21, 9:23, 10:7, 10:15, 10:17, 10:19, 10:23, 11:21, 12:2, 12:20, 22:6, 24:11, 25:4, 25:6, 25:12, 25:21, 25:24, 31:11, 31:17, 31:22, 31:24, 56:15, 56:21, 58:2, 59:25, 61:12, 61:13, 61:22, 61:23, 61:24, 62:5, 62:9, 65:8, 69:4, 70:1, 70:2, 70:4, 70:11, 72:13, 72:20, 89:14, 141:2, 141:5, 141:24, 142:6, 146:13, 157:24, 163:13, 163:15, 164:1, 164:5, 168:18, 169:13, 169:16, 169:19, 170:24, 171:2, 191:19</p> <p>gangs ^[1] - 163:11</p> <p>garage ^[2] - 244:20, 244:21</p> <p>GARCIA ^[1] - 1:10</p> <p>Garcia ^[28] - 2:2, 3:11, 8:15, 17:25, 24:4, 25:5, 52:4, 61:2, 71:22, 75:4, 75:13, 75:14, 75:18, 78:12, 137:23, 194:6, 194:8, 197:3, 218:21, 218:25, 219:8, 219:13, 220:5, 220:11, 228:20, 228:24, 242:23, 262:12</p> <p>gate ^[2] - 134:9, 151:4</p> <p>gates ^[1] - 96:6</p> <p>gathering ^[1] - 235:7</p> <p>Gena ^[19] - 139:3, 139:5, 139:7, 139:19, 139:22, 143:15, 143:16, 144:6,</p>		

<p>guy [22] - 23:8, 72:20, 90:21, 99:1, 99:12, 99:13, 100:9, 112:24, 113:2, 113:4, 113:5, 113:6, 116:20, 118:24, 123:3, 123:8, 127:3, 153:20, 155:12, 175:19, 197:2, 209:15</p> <p>guys [18] - 11:1, 16:21, 17:12, 69:4, 69:8, 70:1, 76:6, 77:25, 89:5, 139:9, 139:11, 142:10, 149:15, 166:20, 177:8, 177:14, 197:5, 214:15</p>	<p>99:16, 99:21, 114:24, 114:25, 126:2, 199:15, 209:16, 209:17, 244:7, 259:21, 259:24</p> <p>headed [4] - 22:12, 113:14, 113:15, 118:24</p> <p>heading [2] - 86:3, 258:17</p> <p>hear [24] - 20:7, 28:14, 63:8, 82:17, 117:21, 120:10, 126:22, 127:12, 152:11, 172:22, 174:23, 175:2, 180:5, 181:7, 181:9, 186:25, 200:19, 209:18, 223:11, 223:13, 246:13, 253:3, 258:22, 258:23</p>	<p>Home [3] - 244:3, 244:4, 246:18</p> <p>home [6] - 16:4, 67:6, 245:1, 245:10, 245:20, 254:12</p> <p>homie [1] - 47:25</p> <p>homies [1] - 8:9</p> <p>honest [3] - 69:6, 212:8, 225:8</p> <p>honestly [5] - 10:2, 58:5, 60:3, 62:21, 64:19</p>
H		
<p>H-A-R-R-I-S [1] - 109:23</p> <p>hair [44] - 13:8, 13:10, 13:11, 113:15, 115:2, 115:3, 118:14, 125:25, 126:2, 134:15, 134:16, 134:17, 135:20, 199:17, 199:20, 209:15, 209:16, 214:12, 214:16, 214:25, 215:1, 217:7, 218:19, 229:9, 229:15, 229:17, 229:19, 229:21, 229:22, 230:1, 231:21, 231:22, 231:24, 232:7, 232:8, 234:16, 234:17, 234:24, 262:4, 262:6, 262:8</p> <p>haircut [1] - 199:23</p> <p>haired [1] - 13:13</p> <p>hairs [1] - 226:16</p> <p>half [6] - 15:11, 228:8, 228:23, 229:2, 229:8, 237:2</p> <p>hallway [1] - 83:3</p> <p>hallways [1] - 82:18</p> <p>hand [32] - 55:10, 55:13, 55:17, 56:16, 78:18, 99:17, 114:18, 114:19, 114:20, 114:22, 123:18, 123:25, 124:1, 124:4, 145:25, 146:3, 171:13, 171:15, 172:8, 172:19, 172:23, 186:5, 201:2, 201:3, 201:7, 225:2, 239:21, 251:1, 260:13, 260:18, 260:19</p> <p>handed [3] - 48:20, 55:7, 250:3</p> <p>handle [2] - 95:17, 96:23</p> <p>handled [3] - 49:6, 49:9, 49:16</p> <p>hands [7] - 27:14, 27:16, 100:12, 116:8, 116:25, 117:1, 129:25</p> <p>handwritten [8] - 202:11, 202:13, 230:19, 230:23, 231:1, 231:8, 233:17, 234:11</p> <p>hang [4] - 60:11, 163:13, 163:15, 235:24</p> <p>hanging [2] - 52:2, 85:5</p> <p>happy [1] - 184:18</p> <p>hard [4] - 64:19, 108:17, 113:20, 257:20</p> <p>Harper [7] - 13:16, 16:20, 17:21, 55:2, 56:15, 56:16, 239:11</p> <p>Harper's [1] - 54:5</p> <p>Harris [7] - 2:8, 92:25, 93:4, 109:8, 109:19, 110:3, 252:22</p> <p>HARRIS [2] - 93:4, 109:10</p> <p>hat [1] - 101:7</p> <p>head [20] - 12:19, 52:2, 54:5, 55:4, 55:17, 55:20, 55:23, 56:15, 58:16,</p>	<p>heard [24] - 5:19, 21:23, 32:12, 61:16, 67:16, 82:16, 127:13, 149:20, 149:21, 149:22, 151:5, 152:8, 152:16, 152:19, 184:2, 184:6, 184:8, 184:10, 184:24, 193:9, 254:14, 255:7, 258:13, 259:4</p> <p>hearing [9] - 83:12, 127:6, 175:5, 185:5, 185:9, 203:5, 203:11, 203:20, 226:3</p> <p>hearings [1] - 203:13</p> <p>hearsay [7] - 21:11, 21:21, 37:24, 129:2, 168:14, 168:23, 169:4</p> <p>heart [2] - 130:8, 183:17</p> <p>heat [1] - 20:10</p> <p>heavily [1] - 61:6</p> <p>heavy [1] - 16:9</p> <p>heavyset [1] - 134:23</p> <p>heels [1] - 113:23</p> <p>height [3] - 108:2, 134:19, 218:7</p> <p>hello [1] - 246:8</p> <p>help [4] - 20:13, 90:6, 95:15, 263:22</p> <p>helped [1] - 23:2</p> <p>hesitate [1] - 96:2</p> <p>hide [1] - 16:15</p> <p>High [9] - 93:15, 93:21, 93:23, 94:4, 110:24, 140:1, 165:6, 192:4, 253:11</p> <p>high [8] - 97:7, 97:8, 97:9, 107:11, 107:15, 107:17, 163:24, 163:25</p> <p>higher [4] - 200:11, 200:12, 200:14, 200:17</p> <p>highlight [1] - 216:22</p> <p>highlighted [1] - 88:13</p> <p>himself [7] - 54:10, 54:13, 55:17, 56:6, 56:16, 58:7, 117:9</p> <p>Hispanic [3] - 101:7, 125:23, 125:24</p> <p>hit [19] - 100:18, 113:6, 116:12, 116:21, 117:11, 124:6, 149:17, 166:19, 168:9, 168:11, 168:17, 169:3, 171:6, 172:7, 180:3, 259:8</p> <p>hitting [3] - 108:12, 113:4, 261:25</p> <p>hmm [17] - 79:22, 85:21, 87:1, 88:22, 90:2, 91:6, 91:11, 118:4, 193:20, 211:12, 252:12, 255:22, 257:12, 259:3, 262:15, 263:12, 265:11</p> <p>hold [10] - 12:11, 74:4, 75:21, 77:1, 117:3, 117:12, 128:20, 133:19, 236:6</p> <p>holding [13] - 75:7, 114:21, 117:1, 117:8, 117:10, 124:1, 128:13, 128:24, 129:8, 130:15, 130:16, 201:2, 260:18</p>	<p>Honestly [1] - 71:6</p> <p>honor [4] - 9:21, 9:22, 51:17</p> <p>Honor [78] - 3:17, 4:7, 19:11, 20:5, 21:22, 26:16, 28:25, 29:18, 38:8, 38:12, 43:18, 44:13, 47:3, 53:3, 53:15, 63:19, 65:18, 70:6, 71:17, 75:2, 77:9, 77:10, 77:18, 78:1, 79:12, 87:7, 88:6, 91:24, 102:21, 108:20, 108:22, 119:9, 119:23, 129:1, 132:21, 135:10, 135:14, 137:12, 146:19, 147:11, 147:23, 153:13, 156:3, 157:14, 164:6, 168:13, 168:20, 169:17, 172:11, 172:24, 172:25, 185:14, 188:8, 203:13, 208:9, 208:15, 209:25, 215:12, 216:14, 219:20, 220:15, 221:21, 224:16, 230:3, 230:5, 232:20, 233:8, 234:18, 235:13, 235:24, 238:5, 239:6, 246:3, 248:8, 259:20, 265:24, 267:4, 268:9</p> <p>Honorable [1] - 1:13</p> <p>hood [3] - 99:20, 126:1, 259:24</p> <p>hooded [1] - 234:13</p> <p>hoody [49] - 84:4, 84:5, 85:4, 99:2, 99:5, 99:12, 99:13, 99:15, 114:3, 115:1, 118:3, 118:10, 123:17, 124:1, 126:1, 134:12, 134:25, 152:23, 158:4, 199:8, 199:12, 199:15, 200:2, 205:20, 215:18, 215:21, 216:10, 217:4, 223:25, 225:6, 225:10, 225:19, 225:22, 226:5, 226:8, 226:9, 226:11, 226:23, 227:3, 227:5, 227:11, 233:14, 249:23, 259:17, 259:18, 260:4, 260:5, 262:3</p> <p>hook [1] - 25:5</p> <p>hopefully [2] - 249:6, 249:10</p> <p>hoping [1] - 116:19</p> <p>Horizon [2] - 107:22, 139:24</p> <p>hospital [5] - 129:13, 205:1, 205:12, 264:1, 264:3</p> <p>hours [2] - 107:11, 242:10</p> <p>house [40] - 43:15, 49:19, 49:20, 49:24, 112:24, 112:25, 113:10, 113:13, 113:16, 113:17, 113:19, 113:22, 116:7, 117:18, 118:25, 119:1, 119:2, 142:21, 143:11, 143:12, 175:9, 175:10, 175:15, 201:25, 202:2, 240:18, 240:23, 241:3, 243:8, 243:17, 244:10, 244:14, 244:19, 245:23, 246:9, 246:18, 247:21</p> <p>houses [3] - 86:19, 89:21, 91:18</p> <p>hundred [2] - 134:22</p> <p>hurt [3] - 10:24, 175:4, 263:20</p> <p>hurts [1] - 235:10</p>

<p>I</p>	<p>264:12 instead ^[4] - 26:5, 39:7, 193:25, 252:16 intentionally ^[2] - 183:16, 183:18 intentions ^[2] - 176:11, 176:12 interacted ^[1] - 16:20 interaction ^[3] - 169:10, 227:23, 227:25 interesting ^[1] - 46:10 internet ^[4] - 73:13, 136:21, 241:16, 268:2 interpreting ^[1] - 171:6 interrupt ^[1] - 82:21 interval ^[1] - 117:23 interview ^[2] - 206:1, 211:18 interviewed ^[3] - 58:20, 64:8, 64:9 interviewing ^[1] - 28:4 introducing ^[1] - 28:19 investigator ^[5] - 14:23, 15:2, 51:3, 57:18, 57:19 involved ^[6] - 31:1, 32:5, 32:19, 89:5, 101:5, 247:15 involvement ^[1] - 254:2 ion ^[1] - 255:15 issue ^[3] - 95:5, 95:7 issues ^[1] - 173:13 it'll ^[1] - 257:7 item ^[1] - 245:19</p>	<p>JOSEPH ^[1] - 109:10 Joseph ^[3] - 2:8, 109:8, 109:19 Judge ^[9] - 4:24, 20:14, 107:1, 107:2, 133:15, 224:10, 238:15, 238:18, 239:15 July ^[17] - 1:14, 3:2, 15:6, 15:14, 16:8, 24:9, 24:10, 26:1, 26:16, 31:24, 35:16, 50:12, 52:11, 58:11, 66:2, 72:4 jump ^[1] - 241:20 jumped ^[6] - 32:13, 61:22, 141:17, 149:17, 150:5, 153:6 jumping ^[1] - 97:21 jumpsuit ^[1] - 157:6 June ^[1] - 24:20 junior ^[2] - 163:24, 163:25 Juror ^[7] - 106:24, 107:10, 107:24, 133:7, 134:6, 134:11, 249:20 juror ^[1] - 250:9 jurors ^[9] - 74:1, 78:11, 137:8, 137:23, 161:3, 185:15, 242:4, 248:10 JURY ^[1] - 1:16 jury ^[88] - 3:7, 5:19, 7:18, 15:10, 20:7, 28:1, 28:14, 33:23, 35:25, 36:5, 39:12, 43:5, 45:6, 46:2, 50:1, 52:16, 52:19, 58:24, 61:9, 65:22, 66:19, 70:25, 72:23, 73:1, 73:23, 74:14, 77:7, 78:8, 90:6, 92:3, 106:14, 106:22, 107:8, 112:19, 119:10, 119:13, 132:22, 132:25, 133:5, 134:4, 134:6, 137:5, 137:10, 137:19, 161:5, 171:2, 185:18, 211:7, 213:16, 216:1, 217:3, 232:5, 233:10, 237:5, 237:8, 237:21, 239:8, 239:17, 242:1, 242:18, 243:2, 248:12, 249:18, 250:24, 263:4, 267:5, 267:8 Jury ^[9] - 212:13, 212:22, 213:10, 215:23, 225:15, 233:13, 233:24, 234:5, 249:22</p>
	<p>J</p>	<p>K</p>
<p>idea ^[2] - 116:18, 199:25 identified ^[4] - 13:5, 203:6, 229:7, 243:8 identify ^[7] - 202:6, 202:24, 228:15, 228:19, 229:4, 229:5, 247:20 image ^[1] - 90:9 imaginary ^[2] - 22:9, 23:8 immediately ^[1] - 95:16 impeach ^[1] - 29:3 impeached ^[1] - 214:1 impeachment ^[3] - 29:1, 208:9, 233:5 impersonation ^[1] - 125:2 important ^[3] - 34:5, 99:15, 101:22 improper ^[4] - 29:1, 208:9, 208:23, 233:5 IN ^[1] - 2:17 in-person ^[1] - 67:9 inches ^[4] - 108:2, 108:14, 115:4, 218:15 incident ^[10] - 52:3, 58:3, 58:4, 63:9, 63:13, 64:10, 67:22, 154:2, 172:5, 253:22 included ^[2] - 69:14, 70:4 including ^[4] - 73:12, 136:20, 241:15, 268:1 independent ^[1] - 246:17 independently ^[1] - 59:3 indicate ^[1] - 169:16 indicated ^[3] - 156:4, 246:17, 259:21 indicating ^[25] - 13:6, 24:4, 43:14, 55:11, 81:10, 91:3, 96:21, 102:13, 112:6, 114:24, 116:22, 135:23, 159:19, 171:18, 177:16, 179:22, 199:2, 207:4, 207:7, 244:18, 245:20, 247:24, 259:17, 261:20, 261:21 indicating ^[32] - 86:24, 90:16, 98:9, 99:18, 99:21, 112:13, 115:13, 116:5, 116:22, 126:12, 126:19, 128:7, 146:4, 146:8, 178:13, 179:22, 179:25, 182:1, 198:22, 199:3, 199:6, 204:5, 204:12, 257:3, 257:10, 257:15, 257:24, 258:18, 258:20, 259:10, 259:22, 261:14 indication ^[2] - 55:23, 244:16 indicia ^[1] - 169:19 individual ^[2] - 116:7, 209:6 indulgence ^[5] - 105:4, 157:7, 186:2, 236:1, 265:1 inflicted ^[2] - 54:6, 54:10 influence ^[1] - 60:16 information ^[13] - 28:15, 40:11, 45:10, 73:11, 136:19, 156:24, 158:24, 211:10, 222:16, 231:9, 236:12, 241:14, 267:25 infraction ^[1] - 95:2 initials ^[1] - 146:13 injured ^[1] - 117:11 inside ^[9] - 123:5, 205:2, 207:17, 207:19, 256:24, 257:6, 259:5, 259:6,</p>	<p>J-E-D-A ^[1] - 79:7 jacket ^[1] - 259:18 jail ^[6] - 4:13, 14:22, 15:2, 27:25, 50:24, 74:18 janitor ^[1] - 252:5 Javier ^[3] - 255:5, 264:15, 264:16 JE ^[1] - 79:6 Jean ^[1] - 121:3 JEAN ^[1] - 121:3 jeans ^[1] - 84:4 Jessica ^[1] - 255:4 Jesus ^[31] - 144:7, 145:13, 147:1, 147:2, 147:9, 163:16, 163:20, 163:22, 164:13, 165:3, 167:24, 167:25, 168:1, 168:2, 168:4, 168:9, 169:11, 169:13, 172:7, 172:9, 172:12, 172:15, 179:1, 188:20, 189:4, 189:6, 189:17, 189:19, 190:5, 191:1 Jesus's ^[1] - 163:17 job ^[1] - 110:6 JONATHAN ^[1] - 1:10 Jonathan ^[36] - 2:2, 6:6, 6:18, 6:20, 7:3, 7:7, 7:9, 7:24, 8:5, 8:15, 13:16, 16:20, 17:21, 42:13, 43:2, 43:9, 43:25, 48:7, 48:11, 54:5, 54:10, 54:13, 55:2, 55:19, 56:1, 56:15, 56:16, 58:3, 58:6, 63:13, 63:14, 64:10, 67:16, 67:19, 69:19, 238:7</p>	<p>keep ^[4] - 74:10, 85:8, 209:12, 232:24 Keith ^[3] - 133:7, 134:12, 249:21 kept ^[3] - 130:6, 130:7, 263:25 keys ^[2] - 151:12, 152:2 kicked ^[2] - 149:19, 150:6 kid ^[12] - 32:22, 32:25, 33:4, 37:18, 48:6, 48:9, 59:4, 60:14, 62:15, 67:15, 71:8, 99:11 kids ^[11] - 32:1, 107:14, 107:20, 122:19, 123:22, 129:12, 130:6, 132:3, 142:3, 142:11 killed ^[3] - 16:10, 61:7, 231:11 kind ^[43] - 8:24, 9:17, 20:25, 22:12, 22:13, 22:15, 27:9, 29:13, 90:22, 98:8, 101:7, 101:11, 101:22, 103:10, 107:16, 107:21, 108:7, 108:16, 112:14, 113:20, 113:21, 116:12, 117:17, 129:17, 134:23, 135:19, 135:24, 151:6, 158:25, 159:3, 159:5, 160:20, 176:18, 192:6, 195:1, 198:3, 201:19, 244:16, 247:23,</p>

<p>256:12, 259:11, 262:6</p> <p>knowing ^[1] - 114:10</p> <p>knowledge ^[10] - 31:1, 104:17, 104:21, 156:5, 164:10, 169:18, 171:5, 191:21, 222:11, 248:2</p> <p>known ^[6] - 12:16, 13:23, 14:1, 38:13, 56:4, 154:6</p> <p>knows ^[2] - 62:18, 169:20</p> <p>Kristy ^[2] - 133:22, 134:24</p>	<p>legal ^[2] - 51:15, 171:1</p> <p>length ^[2] - 117:2, 134:15</p> <p>lengthwise ^[1] - 115:3</p> <p>letter ^[2] - 46:17, 76:12</p> <p>letting ^[1] - 168:18</p> <p>level ^[1] - 200:11</p> <p>lie ^[17] - 7:7, 11:22, 11:23, 12:3, 12:4, 12:6, 12:10, 18:24, 18:25, 19:1, 19:2, 21:9, 22:3, 22:6, 23:23, 39:4, 183:12</p> <p>lied ^[6] - 18:20, 53:9, 53:21, 185:6, 185:7, 185:9</p> <p>lies ^[2] - 23:15, 52:10</p> <p>life ^[3] - 56:21, 100:11, 190:16</p> <p>lifestyle ^[2] - 7:16, 10:7</p> <p>lifetime ^[1] - 96:25</p> <p>light ^[15] - 22:15, 84:6, 84:7, 84:15, 84:16, 99:2, 99:5, 217:7, 218:19, 229:19, 229:21, 229:23, 234:16, 234:17</p> <p>light-like ^[1] - 22:15</p> <p>limitation ^[4] - 73:12, 136:20, 241:15, 268:1</p> <p>line ^[9] - 29:6, 86:3, 96:19, 98:10, 105:12, 126:9, 126:17, 179:23</p> <p>lineup ^[4] - 229:3, 236:23, 247:13, 247:23</p> <p>Lisa ^[4] - 106:24, 107:24, 133:14, 134:6</p> <p>listen ^[5] - 54:17, 73:9, 136:17, 241:12, 267:23</p> <p>literally ^[1] - 111:22</p> <p>live ^[2] - 110:16, 138:25</p> <p>lived ^[3] - 58:17, 252:11, 254:12</p> <p>living ^[4] - 64:3, 64:4, 240:14, 246:9</p> <p>loca ^[3] - 190:15, 190:21</p> <p>local ^[1] - 60:9</p> <p>located ^[8] - 60:10, 80:4, 90:12, 94:6, 111:21, 192:6, 240:18, 240:23</p> <p>location ^[2] - 111:17, 115:9</p> <p>locations ^[1] - 115:8</p> <p>Locos ^[10] - 6:11, 11:1, 11:17, 17:12, 24:21, 54:5, 61:14, 170:12, 170:23, 171:11</p> <p>locos ^[1] - 170:14</p> <p>Locotes ^[5] - 141:8, 141:13, 142:13, 191:8, 191:17</p> <p>long-winded ^[1] - 144:25</p> <p>longest ^[1] - 182:22</p> <p>look ^[30] - 14:10, 27:23, 41:21, 50:11, 68:9, 68:16, 69:9, 70:2, 84:24, 88:14, 97:6, 97:13, 99:14, 100:9, 101:21, 134:7, 134:9, 199:19, 207:2, 209:4, 216:22, 216:23, 217:22, 217:23, 221:25, 222:1, 224:20, 250:6</p> <p>looked ^[19] - 13:6, 13:7, 18:19, 62:23, 62:25, 63:2, 84:22, 97:7, 97:9, 99:13, 104:15, 108:8, 116:14, 149:4, 151:14, 199:7, 199:11, 212:7, 214:21</p> <p>looking ^[15] - 22:13, 40:10, 50:15, 108:8, 123:15, 126:21, 134:8, 134:9, 206:21, 217:9, 231:1, 231:14, 244:22,</p>	<p>255:16</p> <p>looks ^[4] - 28:1, 28:2, 155:1, 247:24</p> <p>Lopez ^[1] - 17:18</p> <p>Lori ^[2] - 210:25, 211:1</p> <p>loudest ^[1] - 97:16</p> <p>loyal ^[6] - 10:4, 70:4, 70:8, 70:11, 70:14, 72:20</p> <p>loyalty ^[1] - 70:22</p> <p>lunch ^[5] - 119:24, 136:12, 137:1, 137:13, 159:24</p> <p>lying ^[6] - 12:1, 19:3, 54:18, 54:24, 183:16, 183:18</p>
L		M
<p>L-O-C-A ^[1] - 190:23</p> <p>L-O-C-O-S ^[1] - 170:17</p> <p>labored ^[1] - 94:18</p> <p>ladies ^[15] - 3:9, 5:19, 72:23, 73:5, 91:25, 106:12, 119:10, 124:9, 132:22, 136:13, 137:21, 210:24, 237:5, 249:3, 267:5</p> <p>lady ^[1] - 95:23</p> <p>laid ^[1] - 147:13</p> <p>Lamb ^[1] - 254:12</p> <p>landed ^[2] - 263:18</p> <p>lane ^[5] - 98:21, 98:24, 98:25, 99:24, 105:14</p> <p>language ^[1] - 171:6</p> <p>Las ^[5] - 3:1, 64:3, 110:16, 138:25, 252:11</p> <p>last ^[30] - 30:16, 31:7, 31:8, 31:10, 40:24, 46:14, 46:17, 47:7, 76:23, 81:23, 82:4, 82:6, 83:7, 94:16, 107:16, 109:20, 109:22, 134:18, 142:23, 144:10, 145:8, 145:13, 159:2, 159:20, 163:17, 165:1, 186:17, 233:14, 251:15</p> <p>late ^[1] - 107:11</p> <p>laughed ^[3] - 39:9, 40:4, 71:9</p> <p>laughing ^[1] - 35:19</p> <p>Law ^[1] - 1:22</p> <p>lawyers ^[1] - 228:11</p> <p>lay ^[1] - 171:7</p> <p>laying ^[4] - 128:9, 129:12, 181:17, 181:25</p> <p>layperson ^[1] - 169:18</p> <p>leader ^[2] - 25:12, 147:20</p> <p>leading ^[7] - 62:1, 62:2, 70:6, 70:16, 111:23, 188:9, 188:15</p> <p>leaning ^[1] - 201:18</p> <p>learn ^[1] - 156:18</p> <p>least ^[5] - 11:8, 17:5, 20:1, 22:13, 192:11</p> <p>leave ^[15] - 5:22, 26:9, 46:6, 122:23, 122:25, 123:7, 124:17, 124:18, 173:12, 173:17, 175:12, 175:13, 195:19, 255:1</p> <p>leaving ^[5] - 98:2, 98:17, 254:3, 254:11, 258:17</p> <p>left ^[18] - 55:9, 55:13, 55:16, 56:12, 56:13, 56:16, 56:20, 95:16, 105:2, 116:2, 123:25, 124:4, 142:10, 146:6, 173:16, 175:7, 175:14, 243:7</p>		<p>M-A-R-Q-U-E-Z ^[1] - 138:16</p> <p>ma'am ^[80] - 3:25, 5:2, 57:20, 57:25, 63:12, 64:25, 66:20, 67:7, 67:10, 67:24, 69:1, 70:12, 70:19, 71:11, 71:13, 74:23, 79:16, 121:11, 121:17, 122:3, 122:7, 122:10, 122:12, 122:16, 123:9, 123:11, 124:3, 124:21, 125:3, 125:6, 125:8, 125:18, 126:15, 127:7, 127:9, 127:20, 127:22, 128:2, 128:4, 128:15, 129:6, 129:22, 129:24, 130:1, 130:3, 130:11, 130:13, 130:23, 131:1, 131:4, 131:6, 131:8, 132:5, 132:18, 134:13, 135:3, 162:7, 207:13, 215:13, 267:11</p> <p>Ma'am ^[1] - 134:5</p> <p>main ^[1] - 10:16</p> <p>maintain ^[1] - 56:14</p> <p>major ^[1] - 94:19</p> <p>male ^[4] - 179:6, 180:12, 180:23, 180:24</p> <p>males ^[9] - 196:7, 196:8, 207:21, 207:22, 207:25, 208:2, 214:3, 214:7</p> <p>man ^[40] - 24:4, 24:5, 53:12, 54:17, 55:25, 58:19, 59:1, 59:15, 60:18, 60:22, 62:16, 62:21, 64:19, 69:25, 98:20, 98:21, 98:23, 98:25, 99:9, 99:24, 100:2, 100:3, 100:7, 100:8, 102:2, 103:20, 105:16, 122:21, 123:15, 123:23, 124:25, 125:15, 125:17, 125:22, 127:4, 127:15, 134:19</p> <p>map ^[9] - 90:3, 90:23, 90:25, 105:12, 112:1, 198:20, 256:25, 259:9, 261:13</p> <p>March ^[1] - 233:25</p> <p>Maria ^[2] - 186:16, 186:17</p> <p>MARIA ^[1] - 186:17</p> <p>mark ^[4] - 108:12, 112:9, 195:19, 257:7</p> <p>marked ^[2] - 214:18, 224:20</p> <p>MARKED ^[2] - 2:17</p> <p>Marques ^[1] - 138:21</p> <p>Marquez ^[6] - 2:9, 138:4, 138:15, 139:3, 192:20, 197:3</p> <p>MARQUEZ ^[1] - 138:6</p> <p>Marshal ^[1] - 250:2</p> <p>MARSHAL ^[11] - 73:19, 75:9, 75:16,</p>

<p>92:13, 120:11, 120:13, 120:15, 137:2, 241:23, 242:20, 268:7</p> <p>Martin ^[1] - 141:14</p> <p>match ^[4] - 218:20, 218:25, 219:8, 220:11</p> <p>material ^[4] - 57:21, 74:10, 74:22, 76:6</p> <p>matter ^[1] - 105:3</p> <p>mayhem ^[1] - 96:21</p> <p>mays ^[1] - 146:19</p> <p>me-to-you ^[1] - 223:5</p> <p>mean ^[43] - 5:13, 8:13, 28:2, 37:14, 38:23, 39:16, 47:20, 58:11, 59:6, 62:10, 62:15, 65:14, 68:6, 70:13, 82:11, 101:2, 110:10, 113:16, 116:17, 121:24, 127:16, 128:11, 128:12, 132:5, 138:22, 163:6, 163:23, 166:8, 168:17, 171:1, 173:14, 190:3, 197:18, 200:4, 211:6, 211:10, 218:22, 222:15, 232:6, 233:5, 234:17, 264:16, 264:19</p> <p>means ^[3] - 6:13, 141:17, 169:3</p> <p>meant ^[5] - 145:17, 158:17, 171:23, 190:1, 234:24</p> <p>median ^[1] - 85:19</p> <p>medium ^[4] - 73:11, 136:19, 241:14, 267:25</p> <p>meet ^[4] - 35:11, 163:22, 210:17, 221:1</p> <p>meeting ^[6] - 14:22, 17:16, 18:1, 18:3, 39:22, 56:24</p> <p>meetings ^[2] - 210:12, 210:15</p> <p>MELISSA ^[2] - 186:7, 186:17</p> <p>Melissa ^[39] - 2:10, 81:22, 81:23, 130:7, 130:10, 144:7, 145:7, 148:8, 164:25, 165:7, 167:14, 168:1, 173:20, 173:22, 173:24, 183:24, 186:4, 186:16, 186:23, 187:2, 195:18, 205:25, 210:4, 217:6, 218:17, 220:4, 220:23, 221:16, 222:3, 225:17, 230:11, 235:17, 236:4, 237:11, 249:24, 254:24, 261:2, 261:4, 261:20</p> <p>Melissa's ^[4] - 81:23, 145:7, 165:1, 175:21</p> <p>member ^[24] - 10:5, 10:19, 10:23, 24:21, 31:17, 61:17, 61:24, 61:25, 62:5, 62:6, 141:2, 141:7, 141:12, 147:10, 148:6, 150:1, 163:15, 164:5, 168:18, 169:13, 169:16, 169:20, 191:9, 191:19</p> <p>members ^[8] - 7:21, 7:22, 9:24, 11:21, 12:3, 60:1, 142:13, 163:13</p> <p>memory ^[3] - 36:25, 59:6, 227:20</p> <p>men ^[2] - 98:16, 124:9</p> <p>mention ^[4] - 32:12, 33:19, 36:4, 66:14</p> <p>mentioned ^[19] - 39:13, 51:3, 61:5, 61:12, 61:13, 63:9, 63:14, 67:20, 68:23, 69:12, 115:15, 116:12, 118:1, 144:9, 145:7, 145:12, 147:9, 254:25, 262:3</p> <p>mentioning ^[1] - 184:3</p> <p>mess ^[1] - 79:10</p> <p>messed ^[1] - 139:14</p> <p>met ^[3] - 148:4, 148:14, 159:2</p>	<p>Metro ^[1] - 110:12</p> <p>Mi ^[3] - 190:15, 190:21</p> <p>MI ^[1] - 190:23</p> <p>microphone ^[2] - 186:23, 251:21</p> <p>middle ^[21] - 37:18, 45:19, 48:5, 49:6, 49:9, 49:12, 85:14, 85:19, 90:21, 113:3, 114:1, 115:10, 115:19, 118:19, 126:14, 126:16, 127:22, 179:24, 198:18, 200:8, 200:10</p> <p>might ^[8] - 60:7, 67:16, 68:24, 95:11, 135:5, 238:4, 238:21, 247:18</p> <p>Miguel ^[1] - 17:18</p> <p>mind ^[5] - 17:10, 60:6, 222:12, 222:17, 236:16</p> <p>mine ^[1] - 154:21</p> <p>Mine's ^[1] - 91:9</p> <p>minute ^[6] - 72:15, 73:17, 102:10, 178:12, 241:7, 264:25</p> <p>minutes ^[5] - 77:25, 112:21, 204:25, 241:20, 249:2</p> <p>mischaracterizing ^[1] - 38:18</p> <p>Miss ^[7] - 125:1, 128:21, 128:25, 131:22, 135:19, 136:2, 185:21</p> <p>mission ^[2] - 45:15, 45:17</p> <p>misstates ^[1] - 265:24</p> <p>mistake ^[1] - 132:6</p> <p>mistaken ^[1] - 114:23</p> <p>mixed ^[1] - 160:16</p> <p>mixture ^[1] - 150:21</p> <p>model ^[1] - 129:19</p> <p>Mogg ^[1] - 206:1</p> <p>mole ^[1] - 13:11</p> <p>mom ^[5] - 246:12, 247:4, 247:10, 247:12, 248:1</p> <p>mom's ^[2] - 35:1, 143:25</p> <p>moment ^[4] - 62:22, 74:25, 187:15, 197:7</p> <p>momentarily ^[2] - 248:23, 249:11</p> <p>Monday ^[7] - 173:23, 173:24, 174:4, 193:3, 193:4, 238:23, 238:24</p> <p>money ^[3] - 159:13, 159:18, 159:24</p> <p>monitor ^[4] - 95:12, 121:20, 122:1, 122:22</p> <p>month ^[1] - 25:1</p> <p>months ^[3] - 15:11, 31:18, 192:10</p> <p>moot ^[1] - 74:7</p> <p>morning ^[5] - 3:9, 4:11, 4:12, 110:3, 238:22</p> <p>Morris ^[24] - 9:1, 80:3, 93:14, 93:21, 93:22, 93:23, 93:25, 94:3, 94:9, 110:23, 122:5, 139:23, 139:25, 145:5, 145:10, 151:3, 165:6, 165:12, 192:2, 192:3, 192:4, 252:22, 253:11, 254:19</p> <p>most ^[7] - 96:24, 97:7, 97:8, 97:21, 97:22, 97:25</p> <p>mother's ^[1] - 240:16</p> <p>motion ^[1] - 99:17</p> <p>mouth ^[3] - 32:9, 47:19, 212:21</p> <p>move ^[18] - 37:24, 53:21, 64:5, 75:17, 123:4, 123:5, 123:19, 124:13, 124:19,</p>	<p>124:24, 170:25, 176:22, 186:23, 186:24, 233:8, 249:6, 251:20</p> <p>moved ^[2] - 130:6, 246:25</p> <p>movement ^[1] - 259:24</p> <p>moving ^[1] - 156:5</p> <p>MR ^[192] - 4:7, 4:10, 5:9, 8:21, 15:23, 19:13, 19:14, 20:2, 20:5, 20:7, 20:11, 20:14, 20:16, 21:13, 21:15, 21:17, 21:25, 22:2, 26:8, 26:12, 26:15, 26:18, 26:20, 26:23, 27:1, 27:5, 27:7, 27:13, 27:20, 29:4, 29:8, 29:12, 29:16, 29:18, 29:19, 37:25, 38:5, 38:7, 38:10, 38:21, 39:1, 40:6, 40:7, 43:18, 43:20, 43:21, 44:13, 45:5, 47:3, 47:5, 47:6, 53:5, 53:15, 53:17, 57:10, 62:1, 63:19, 64:1, 64:23, 65:18, 70:6, 70:16, 71:17, 71:20, 72:22, 74:13, 77:9, 77:10, 77:16, 77:24, 78:1, 87:7, 87:10, 88:6, 88:10, 88:12, 90:14, 91:22, 102:20, 102:24, 105:4, 105:6, 105:25, 106:5, 106:11, 106:21, 107:1, 107:5, 108:22, 119:8, 129:1, 131:17, 131:21, 132:19, 133:9, 133:13, 133:18, 133:24, 135:13, 135:18, 135:25, 137:12, 137:15, 147:11, 147:23, 154:12, 156:3, 157:14, 157:17, 158:13, 158:15, 160:3, 160:24, 164:6, 168:13, 168:20, 168:22, 169:7, 169:17, 170:25, 172:11, 172:24, 173:2, 173:25, 176:22, 182:20, 183:3, 184:12, 185:14, 188:7, 195:7, 203:12, 203:16, 208:8, 208:14, 209:25, 210:3, 215:7, 215:12, 215:16, 216:7, 216:8, 216:13, 216:16, 216:18, 216:20, 216:21, 217:15, 217:18, 217:20, 219:6, 219:12, 219:15, 219:19, 219:22, 219:24, 220:3, 220:15, 220:18, 220:19, 221:21, 221:23, 221:24, 224:16, 224:18, 224:19, 230:3, 230:5, 232:20, 233:4, 233:8, 234:18, 235:13, 235:16, 235:24, 236:1, 236:3, 237:4, 238:23, 242:6, 246:3, 246:6, 248:6, 250:17, 250:22, 259:20, 265:5, 265:8, 265:17, 265:24, 267:4, 268:9</p> <p>MS ^[228] - 19:11, 19:18, 19:22, 21:10, 21:18, 21:21, 28:25, 29:6, 37:23, 38:3, 38:17, 38:18, 38:24, 40:5, 53:2, 57:12, 57:15, 62:4, 63:20, 63:24, 64:2, 64:5, 64:7, 65:1, 65:20, 70:8, 70:10, 70:20, 71:15, 74:5, 74:12, 75:2, 76:10, 76:13, 76:15, 76:18, 77:22, 78:3, 78:17, 79:12, 79:15, 82:23, 83:1, 87:5, 88:9, 88:11, 90:12, 91:24, 92:12, 93:1, 93:3, 93:8, 93:24, 102:18, 105:8, 105:11, 105:24, 107:2, 107:4, 108:20, 109:8, 110:2, 116:24, 117:7, 119:6, 119:23, 120:1, 120:3, 120:8, 121:6, 121:9, 129:4, 131:15, 132:21, 133:10, 133:11, 133:15, 133:16, 133:21, 133:23, 134:1, 134:2, 135:10, 137:11, 137:14, 138:4, 138:20, 144:19, 144:20, 146:1, 146:5, 146:9, 146:18, 146:21, 147:13, 147:17,</p>
---	--	--

<p>148:1, 153:10, 153:13, 153:15, 154:11, 154:13, 154:14, 154:16, 154:18, 156:10, 156:12, 156:13, 157:7, 157:9, 157:12, 158:12, 161:2, 161:14, 162:6, 164:9, 168:16, 169:2, 169:9, 169:22, 169:24, 170:15, 171:5, 171:9, 171:10, 172:14, 172:18, 172:25, 173:5, 173:6, 174:2, 174:3, 175:23, 177:2, 182:16, 184:14, 184:17, 185:12, 186:2, 186:4, 186:22, 188:9, 188:12, 188:14, 188:17, 188:18, 188:23, 188:25, 189:7, 189:16, 190:25, 195:5, 195:8, 203:10, 203:15, 203:19, 204:14, 204:17, 206:5, 206:7, 206:24, 207:1, 208:11, 208:17, 208:21, 208:25, 209:2, 209:23, 215:6, 216:6, 219:1, 219:4, 219:9, 219:17, 220:17, 230:7, 230:10, 231:5, 231:7, 232:3, 232:22, 232:25, 233:9, 233:11, 234:21, 235:11, 235:21, 235:22, 235:23, 235:25, 237:18, 237:25, 238:5, 238:12, 238:15, 238:18, 239:2, 239:6, 239:13, 239:15, 240:12, 242:11, 243:6, 245:25, 248:8, 248:22, 249:2, 249:11, 249:16, 250:6, 250:10, 250:11, 251:19, 253:5, 259:25, 261:11, 262:18, 262:20, 265:1, 265:3, 265:22, 266:1, 266:3, 266:6, 266:8, 266:13, 266:15, 267:2</p> <p>multiple [2] - 96:22, 230:14</p> <p>murder [4] - 24:22, 52:2, 233:18, 235:2</p> <p>must [2] - 4:15, 72:3</p> <p>mutual [2] - 163:6, 164:16</p>	<p>77:21, 95:15, 97:17, 137:9, 158:13</p> <p>needed [5] - 9:1, 95:18, 101:24, 101:25, 205:3</p> <p>needs [2] - 219:3, 250:19</p> <p>Negative [8] - 73:1, 92:3, 119:13, 161:5, 185:18, 237:8, 248:12, 267:8</p> <p>negative [8] - 73:3, 92:5, 119:15, 161:7, 185:20, 237:10, 248:14, 267:10</p> <p>nervous [1] - 139:17</p> <p>NEVADA [2] - 1:5, 1:7</p> <p>Nevada [9] - 2:2, 3:1, 3:10, 78:11, 80:6, 137:23, 162:22, 240:20, 242:23</p> <p>never [19] - 5:14, 12:5, 12:6, 23:5, 23:6, 25:18, 61:22, 155:16, 183:25, 184:6, 184:8, 184:10, 225:17, 227:7, 228:3, 236:25, 237:3, 245:24</p> <p>news [1] - 147:7</p> <p>newspaper [2] - 73:12, 136:20</p> <p>newspapers [2] - 241:15, 268:1</p> <p>next [33] - 19:25, 30:25, 34:4, 42:3, 47:14, 77:21, 78:16, 92:11, 100:16, 102:2, 109:7, 111:23, 112:21, 119:22, 123:21, 129:10, 130:14, 138:3, 161:13, 177:19, 181:5, 186:1, 197:22, 197:23, 200:5, 200:7, 223:20, 237:17, 239:9, 248:21, 248:25, 249:1</p> <p>nice [1] - 107:16</p> <p>nickname [5] - 31:14, 53:6, 62:12, 62:19, 189:24</p> <p>nicknames [2] - 145:15, 189:22</p> <p>night [41] - 4:13, 29:24, 29:25, 30:2, 30:10, 30:17, 30:21, 34:11, 35:12, 36:9, 36:12, 36:21, 42:18, 43:11, 45:10, 52:14, 80:17, 88:19, 88:25, 94:20, 122:6, 155:1, 193:17, 193:19, 202:19, 211:13, 211:19, 212:4, 218:4, 218:13, 218:18, 218:24, 219:7, 220:10, 221:5, 224:1, 225:6, 231:10, 231:11, 231:17, 236:15</p> <p>nighttime [1] - 111:7</p> <p>nine [11] - 22:13, 108:16, 111:8, 143:23, 188:5, 188:6, 193:19, 239:12, 254:9</p> <p>nine-year-old [1] - 188:6</p> <p>nobody [8] - 32:8, 32:10, 32:19, 52:25, 59:23, 65:11, 65:21, 142:15</p> <p>none [4] - 2:14, 2:18, 91:24, 248:8</p> <p>nonresponsive [1] - 176:23</p> <p>noon [3] - 119:24, 120:1, 120:6</p> <p>NOREEN [1] - 1:19</p> <p>normal [1] - 46:10</p> <p>normally [1] - 122:15</p> <p>north [6] - 86:2, 86:4, 105:13, 115:25, 118:22, 125:15</p> <p>northbound [1] - 100:23</p> <p>northwest [1] - 98:10</p> <p>nose [1] - 264:9</p> <p>nosed.38 [1] - 114:12</p> <p>note [1] - 12:10</p> <p>nother [1] - 44:24</p>	<p>nothing [14] - 5:1, 5:4, 5:17, 16:15, 24:10, 33:19, 35:25, 39:4, 105:24, 185:12, 185:14, 199:13, 245:25, 267:4</p> <p>noticed [1] - 102:12</p> <p>noticing [1] - 152:24</p> <p>nowhere [3] - 105:19, 117:11, 149:17</p> <p>NUHUH [1] - 43:16</p> <p>Number [20] - 3:11, 78:12, 106:25, 107:3, 107:10, 107:24, 112:1, 133:8, 133:14, 133:22, 134:6, 134:11, 134:25, 137:24, 153:17, 189:1, 198:19, 204:2, 249:20, 257:1</p> <p>number [10] - 35:6, 76:8, 76:10, 76:11, 76:12, 76:15, 76:16, 106:19, 133:4, 262:21</p>
N		
<p>nah [2] - 35:8, 98:25</p> <p>NAH [1] - 35:8</p> <p>name [77] - 4:2, 4:3, 14:5, 28:3, 31:7, 31:8, 31:9, 31:10, 47:15, 47:19, 47:20, 47:25, 48:3, 52:23, 62:17, 62:25, 79:2, 81:24, 82:5, 82:6, 83:23, 92:23, 94:3, 106:18, 109:17, 109:20, 109:22, 121:1, 130:10, 131:3, 133:4, 138:13, 139:4, 139:25, 142:23, 144:10, 145:8, 145:12, 145:13, 149:1, 153:25, 154:20, 154:22, 155:15, 155:18, 155:23, 156:6, 156:18, 156:24, 161:23, 162:25, 163:17, 165:1, 170:21, 170:22, 184:6, 184:8, 184:10, 186:14, 186:17, 187:10, 190:10, 190:19, 192:4, 207:4, 240:6, 240:16, 244:8, 247:9, 251:10, 251:15, 252:22, 254:23, 255:5, 256:10, 262:11</p> <p>named [3] - 21:4, 95:12, 232:13</p> <p>names [5] - 144:9, 154:6, 160:4, 160:15, 184:3</p> <p>near [2] - 116:21, 205:7</p> <p>neck [2] - 170:19, 190:11</p> <p>need [22] - 19:14, 19:16, 19:19, 20:24, 38:6, 44:4, 44:14, 58:15, 74:10, 74:13, 74:21, 75:4, 75:5, 75:9, 75:14, 76:25,</p>		<p>o'clock [5] - 80:17, 111:8, 143:23, 193:19, 231:10</p> <p>oath [16] - 4:18, 4:22, 4:25, 5:13, 23:19, 53:21, 54:9, 185:4, 216:14, 217:3, 224:24, 225:1, 225:6, 225:18, 226:4, 243:4</p> <p>object [22] - 21:10, 28:25, 37:23, 38:23, 53:2, 129:2, 147:11, 168:13, 168:20, 169:17, 170:25, 172:11, 172:24, 173:25, 188:7, 203:12, 208:8, 219:1, 232:20, 233:4, 234:18, 245:14</p> <p>objecting [2] - 21:18, 21:20</p> <p>objection [26] - 21:21, 62:1, 63:19, 65:18, 70:6, 70:16, 107:5, 107:6, 129:1, 133:11, 133:12, 133:16, 133:17, 133:23, 133:25, 147:23, 164:6, 177:1, 208:14, 215:6, 215:13, 215:14, 250:8, 250:16, 265:24, 266:12</p> <p>objectionable [1] - 19:15</p> <p>observe [1] - 169:15</p> <p>observed [2] - 169:10, 173:7</p> <p>obvious [2] - 100:21, 187:22</p> <p>obviously [4] - 77:14, 100:20, 113:4, 227:20</p> <p>occasions [1] - 212:10</p> <p>occupation [2] - 121:16, 121:18</p> <p>occur [2] - 95:2, 112:17</p> <p>occurred [7] - 29:21, 36:13, 115:19, 221:2, 233:24, 253:22, 257:24</p> <p>occurring [1] - 255:12</p> <p>occurs [1] - 255:8</p> <p>OF [1] - 1:7</p> <p>offer [2] - 38:5, 38:7</p> <p>offered [1] - 2:18</p> <p>Office [2] - 51:9, 108:19</p> <p>office [4] - 95:5, 95:16, 159:10, 210:16</p> <p>OFFICER [5] - 75:6, 75:12, 75:19, 75:23, 76:5</p> <p>officer [4] - 75:22, 76:3, 95:17, 247:6</p> <p>officer's [1] - 247:9</p> <p>officers [2] - 74:17, 205:2</p>

official ^[1] - 94:3 officially ^[2] - 104:17, 104:19 often ^[2] - 164:17, 164:19 old ^[28] - 15:17, 32:1, 79:16, 110:3, 110:19, 110:20, 110:21, 125:21, 128:12, 132:12, 138:21, 139:7, 140:12, 142:25, 143:2, 162:7, 187:2, 187:4, 187:12, 187:18, 187:20, 188:3, 188:6, 203:21, 236:21, 252:6, 252:9 older ^[7] - 69:10, 84:23, 97:10, 139:15, 143:4, 143:7, 143:8 Olson ^[2] - 107:3, 107:10 once ^[7] - 50:12, 96:4, 103:5, 114:3, 122:17, 214:6, 228:5 one ^[92] - 6:10, 8:20, 10:15, 11:5, 11:8, 11:15, 11:20, 11:21, 12:2, 15:22, 17:11, 25:17, 27:13, 27:15, 28:1, 37:12, 39:13, 40:24, 46:23, 49:25, 68:16, 68:24, 81:13, 81:14, 82:8, 89:20, 90:16, 96:24, 102:12, 105:8, 105:25, 106:16, 107:6, 108:16, 113:11, 117:2, 117:24, 123:23, 125:13, 125:15, 133:19, 133:20, 135:13, 136:25, 139:3, 144:23, 148:24, 152:14, 152:15, 153:7, 153:8, 153:9, 153:11, 158:2, 159:20, 159:22, 160:1, 164:15, 170:10, 173:3, 181:11, 187:9, 188:14, 188:19, 196:8, 196:15, 196:20, 200:13, 207:22, 208:3, 208:18, 213:2, 213:5, 214:2, 214:7, 214:11, 214:15, 214:16, 218:11, 221:17, 221:18, 230:3, 237:23, 239:8, 242:4, 245:14, 249:1, 253:3, 259:1, 259:2 One ^[15] - 13:23, 17:1, 17:3, 17:23, 24:16, 32:1, 32:17, 48:5, 48:7, 48:9, 48:14, 63:15, 69:2, 69:7 one's ^[1] - 89:21 one-page ^[2] - 213:2, 221:18 ones ^[4] - 7:23, 8:10, 46:21, 151:23 open ^[8] - 3:6, 73:22, 78:7, 137:4, 137:18, 181:7, 241:25, 242:17 operating ^[1] - 107:11 opinion ^[5] - 73:14, 136:22, 169:19, 241:17, 268:3 opportunity ^[2] - 77:3, 77:13 OR ^[2] - 74:19, 76:3 order ^[6] - 28:13, 42:15, 48:19, 77:17, 97:23, 242:20 ordered ^[1] - 233:10 orientate ^[1] - 29:14 originally ^[1] - 59:11 outside ^[22] - 73:23, 73:25, 80:19, 80:25, 83:9, 83:18, 87:21, 104:12, 106:22, 124:15, 133:5, 137:5, 137:7, 137:9, 194:5, 205:4, 237:21, 242:1, 242:3, 246:25, 248:24, 249:18 overheard ^[1] - 176:16 overlapping ^[1] - 20:13 overruled ^[13] - 21:16, 22:1, 38:16, 53:4, 64:24, 65:19, 70:9, 70:18, 129:3, 147:15, 164:7, 203:18, 234:20	own ^[8] - 15:18, 16:8, 18:15, 26:4, 26:18, 28:23, 45:13, 214:2 P P-E-R-E-Z ^[2] - 144:13, 162:1 pack ^[1] - 229:5 page ^[77] - 27:1, 27:5, 27:10, 27:11, 28:3, 28:5, 28:18, 28:22, 30:14, 30:25, 31:7, 31:17, 32:6, 32:23, 33:5, 34:3, 35:10, 36:7, 36:24, 37:2, 39:11, 40:5, 40:8, 40:16, 40:23, 40:24, 40:25, 41:14, 41:15, 41:22, 42:14, 42:17, 43:14, 43:22, 45:20, 45:25, 46:9, 46:10, 46:12, 46:15, 47:7, 47:14, 48:4, 48:5, 48:19, 49:5, 50:15, 67:1, 68:4, 69:18, 154:11, 155:6, 158:13, 206:6, 206:8, 207:9, 207:10, 207:13, 208:7, 208:12, 209:3, 209:4, 213:2, 216:6, 217:18, 220:17, 221:18, 221:23, 224:18 pages ^[6] - 27:9, 33:25, 39:11, 39:17, 39:23, 40:3 Pamela ^[2] - 107:3, 107:10 PANDUKHT ^[157] - 1:18, 19:11, 19:18, 19:22, 21:10, 21:18, 21:21, 28:25, 29:6, 37:23, 38:3, 38:17, 38:24, 40:5, 53:2, 57:12, 57:15, 62:4, 63:20, 63:24, 64:2, 64:5, 64:7, 65:1, 65:20, 70:8, 70:10, 70:20, 71:15, 74:5, 74:12, 75:2, 77:22, 78:3, 88:9, 88:11, 90:12, 109:8, 110:2, 116:24, 117:7, 119:6, 119:23, 120:1, 120:3, 133:10, 133:16, 133:21, 134:2, 137:14, 138:4, 138:20, 144:19, 144:20, 146:1, 146:5, 146:9, 146:18, 146:21, 147:13, 147:17, 148:1, 148:2, 153:10, 153:13, 153:15, 154:11, 154:13, 154:14, 154:16, 154:18, 156:10, 156:12, 156:13, 157:7, 157:9, 157:12, 158:12, 161:2, 186:4, 186:22, 188:9, 188:12, 188:14, 188:17, 188:18, 188:23, 188:25, 189:7, 189:16, 190:25, 195:5, 195:8, 203:10, 203:15, 203:19, 204:14, 204:17, 206:5, 206:7, 206:24, 207:1, 208:11, 208:17, 208:21, 208:25, 209:2, 209:23, 215:6, 216:6, 219:1, 219:4, 219:9, 219:17, 220:17, 230:7, 230:10, 231:5, 231:7, 232:3, 232:22, 232:25, 233:9, 233:11, 234:21, 235:11, 235:21, 235:23, 235:25, 238:5, 238:12, 238:15, 238:18, 239:2, 239:6, 239:13, 239:15, 248:22, 249:11, 250:6, 250:11, 251:19, 253:5, 259:25, 261:11, 262:18, 262:20, 265:1, 265:3, 265:22, 266:1, 266:3, 266:6, 266:8, 266:13, 266:15, 267:2 Pandukht ^[4] - 3:14, 78:15, 138:2, 243:1 panel ^[18] - 3:7, 73:1, 73:23, 78:8, 92:3, 106:14, 119:13, 132:25, 137:5, 137:19, 161:5, 185:18, 212:17, 237:8,	242:1, 242:18, 248:12, 267:8 pants ^[5] - 36:23, 85:4, 99:4, 114:5, 235:19 paper ^[4] - 44:10, 159:13, 159:18, 225:24 parallel ^[1] - 222:25 paramedics ^[1] - 102:5 pardon ^[2] - 183:1, 251:13 parent's ^[1] - 240:18 parentheses ^[2] - 249:22, 249:23 parents ^[3] - 240:15, 245:5, 246:14 parents' ^[5] - 240:23, 243:8, 243:17, 244:14, 245:17 park ^[4] - 9:8, 39:7, 110:12, 177:10 parked ^[9] - 151:19, 152:1, 177:8, 177:15, 179:21, 196:10, 257:4, 257:6, 257:14 Parker ^[1] - 204:15 Parkhurst ^[7] - 115:24, 116:1, 116:3, 118:2, 240:19, 243:9, 243:14 parking ^[21] - 81:13, 90:20, 96:20, 97:25, 98:8, 103:7, 103:24, 111:23, 122:20, 124:10, 125:15, 126:11, 132:2, 178:13, 179:18, 179:21, 179:24, 196:4, 256:23, 257:13, 257:22 part ^[12] - 8:13, 25:25, 29:14, 97:14, 97:22, 150:13, 190:18, 200:13, 209:4, 243:16, 246:24, 247:15 participate ^[1] - 255:15 particular ^[3] - 64:9, 107:12, 111:9 particularly ^[2] - 243:15, 245:19 party ^[2] - 36:12, 39:7 pass ^[17] - 69:5, 71:15, 87:5, 91:22, 102:18, 105:6, 119:6, 131:15, 157:12, 160:24, 182:16, 184:12, 209:23, 230:5, 245:25, 263:20, 265:3 passed ^[4] - 147:5, 147:6, 246:12, 246:14 past ^[1] - 14:4 path ^[1] - 115:20 Paul ^[1] - 109:19 pause ^[1] - 182:22 pausing ^[1] - 184:18 pay ^[3] - 34:2, 34:3, 250:19 paying ^[1] - 178:4 Pecos ^[1] - 80:5 pen ^[2] - 103:10, 103:12 people ^[85] - 37:12, 42:16, 47:11, 62:14, 67:21, 72:12, 79:10, 80:18, 80:20, 81:2, 81:7, 81:16, 81:20, 81:22, 83:16, 86:5, 86:6, 86:7, 86:12, 86:15, 86:18, 86:19, 86:20, 87:17, 87:20, 87:21, 87:24, 88:2, 88:3, 88:20, 89:2, 89:17, 91:14, 91:16, 91:17, 91:19, 93:25, 96:22, 96:24, 97:1, 97:4, 97:5, 97:20, 97:21, 98:2, 98:3, 98:14, 101:2, 101:12, 103:24, 112:22, 113:18, 113:23, 124:7, 144:9, 148:11, 150:17, 150:19, 152:7, 153:6, 160:4, 160:18, 178:2, 178:23, 178:25, 179:4, 184:3,
--	--	---

<p>196:5, 196:14, 196:19, 197:9, 197:19, 205:9, 206:9, 207:17, 207:19, 207:23, 253:19, 256:1, 256:2, 256:4</p> <p>perceived [1] - 99:22</p> <p>Perez [7] - 2:10, 144:11, 144:12, 161:14, 161:25, 185:21, 192:20</p> <p>PEREZ [1] - 161:16</p> <p>perfect [2] - 77:18, 267:17</p> <p>perfectly [1] - 244:11</p> <p>perhaps [1] - 62:12</p> <p>period [18] - 83:5, 83:6, 83:7, 94:16, 166:24, 166:25, 167:1, 167:2, 173:16, 174:6, 174:8, 174:11, 174:18, 193:14, 194:9, 197:25, 229:2</p> <p>permission [2] - 26:8, 217:16</p> <p>person [76] - 8:3, 8:20, 15:22, 18:23, 22:10, 32:17, 45:16, 62:11, 67:3, 67:9, 67:12, 73:10, 83:25, 84:2, 84:24, 99:10, 101:6, 112:23, 113:10, 114:2, 128:5, 128:10, 130:21, 130:25, 134:12, 134:25, 136:18, 145:12, 146:23, 152:20, 152:21, 152:24, 153:3, 153:7, 153:8, 153:9, 153:11, 153:25, 158:2, 158:6, 158:10, 160:21, 162:25, 180:10, 180:14, 180:16, 180:21, 180:25, 181:2, 181:4, 181:18, 198:14, 198:25, 199:4, 200:2, 200:16, 202:3, 202:10, 208:4, 208:13, 208:18, 209:11, 213:21, 215:3, 228:16, 229:4, 229:7, 241:13, 254:15, 259:14, 260:8, 260:18, 260:22, 262:4, 267:24</p> <p>person's [1] - 83:23</p> <p>personal [3] - 140:23, 156:5, 222:11</p> <p>personally [3] - 155:25, 156:1, 170:23</p> <p>perspective [1] - 108:6</p> <p>phone [21] - 13:20, 34:23, 35:1, 35:2, 35:17, 35:22, 36:5, 66:21, 66:22, 67:8, 67:12, 173:2, 174:22, 174:23, 176:16, 176:17, 182:12, 184:2, 185:1, 194:7, 194:9</p> <p>phonetic [1] - 94:18</p> <p>phonetic [3] - 25:13, 91:9, 210:25</p> <p>photo [4] - 229:3, 236:23, 247:13, 247:23</p> <p>photograph [3] - 153:17, 189:1, 195:10</p> <p>photographed [1] - 215:4</p> <p>phrase [1] - 105:18</p> <p>physically [3] - 10:24, 94:24, 135:1</p> <p>pick [13] - 42:16, 43:2, 43:8, 43:24, 68:9, 68:16, 69:19, 111:10, 111:12, 143:19, 167:24, 168:1, 182:1</p> <p>picked [7] - 36:9, 36:15, 39:6, 49:10, 68:18, 68:20, 104:16</p> <p>picking [1] - 100:24</p> <p>picture [4] - 195:25, 236:25, 237:3, 244:14</p> <p>pictures [2] - 228:24, 229:5</p> <p>piece [2] - 159:12, 159:18</p> <p>piled [1] - 103:24</p>	<p>pin [2] - 12:10, 23:23</p> <p>pinned [3] - 103:20, 105:14, 105:17</p> <p>PL [1] - 158:16</p> <p>place [13] - 15:10, 41:12, 41:24, 42:4, 60:9, 98:5, 150:25, 154:3, 193:10, 194:6, 194:8, 197:15, 245:3</p> <p>placed [2] - 226:10, 227:14</p> <p>plain [1] - 199:14</p> <p>Plaintiff [1] - 1:8</p> <p>plan [2] - 25:19, 65:8</p> <p>played [3] - 49:18, 49:20, 68:20</p> <p>playing [5] - 48:21, 48:25, 68:4, 142:21, 143:13</p> <p>pleas [1] - 243:23</p> <p>plenty [1] - 19:20</p> <p>plumbing [2] - 243:22, 244:8</p> <p>pocket [8] - 83:20, 85:3, 85:6, 113:3, 123:18, 123:25, 124:20, 124:23</p> <p>point [28] - 11:6, 39:14, 60:19, 74:11, 90:3, 94:25, 98:17, 98:18, 98:19, 99:15, 100:23, 107:20, 118:13, 124:8, 128:3, 156:3, 165:19, 168:22, 175:5, 201:21, 201:22, 203:13, 203:14, 223:1, 223:4, 229:8, 259:9, 264:6</p> <p>pointed [4] - 99:23, 156:16, 204:15, 228:16</p> <p>pointing [8] - 42:5, 103:10, 112:7, 118:21, 118:23, 146:6, 201:9, 245:20</p> <p>points [1] - 100:6</p> <p>police [126] - 11:22, 11:23, 12:3, 12:4, 12:6, 12:10, 15:14, 15:15, 16:7, 16:16, 18:4, 18:7, 18:19, 19:3, 21:3, 21:24, 22:10, 23:14, 23:20, 23:24, 24:2, 24:9, 24:25, 25:3, 25:16, 25:20, 25:21, 26:3, 28:15, 30:13, 30:20, 32:21, 32:24, 34:6, 34:15, 34:17, 35:16, 35:21, 36:8, 36:15, 36:18, 37:2, 37:9, 37:11, 39:3, 39:5, 39:14, 39:15, 39:21, 40:10, 40:15, 40:25, 41:9, 41:23, 42:15, 42:23, 43:1, 43:11, 45:7, 45:9, 45:19, 46:12, 46:20, 46:25, 48:10, 48:23, 48:25, 49:3, 49:5, 50:7, 50:16, 52:10, 52:13, 53:9, 57:17, 58:20, 64:12, 64:14, 67:5, 72:4, 72:19, 84:10, 84:14, 87:19, 95:3, 95:17, 104:15, 104:18, 104:19, 105:2, 105:3, 132:8, 154:7, 158:6, 158:16, 182:3, 182:8, 183:4, 183:17, 183:18, 184:19, 185:10, 211:14, 211:24, 212:2, 217:12, 218:4, 218:18, 218:24, 219:7, 221:2, 221:5, 221:10, 227:7, 227:11, 229:2, 230:1, 234:12, 235:2, 235:18, 235:20, 236:25, 247:4, 247:10</p> <p>portion [1] - 244:19</p> <p>position [1] - 54:9</p> <p>positive [3] - 183:8, 183:9, 223:23</p> <p>possible [2] - 51:2, 102:25</p> <p>post [1] - 77:11</p> <p>post-conviction [1] - 77:11</p> <p>potentially [1] - 95:11</p> <p>pounds [1] - 134:22</p>	<p>pow [5] - 117:25</p> <p>pow-pow [1] - 117:25</p> <p>pow-pow-pow [1] - 117:25</p> <p>pray [2] - 128:21, 128:23</p> <p>preface [1] - 29:10</p> <p>Prelim [2] - 220:1, 249:22</p> <p>Preliminary [1] - 219:22</p> <p>Preliminary Hearing [12] - 212:11, 212:23, 213:7, 219:19, 220:4, 224:6, 224:13, 225:14, 228:6, 228:23, 233:20, 234:12</p> <p>prepaid [1] - 35:1</p> <p>presence [22] - 3:7, 73:23, 73:25, 78:8, 78:11, 106:22, 107:8, 133:5, 134:4, 137:5, 137:7, 137:9, 137:19, 137:22, 237:21, 239:17, 242:1, 242:3, 242:18, 243:2, 249:18, 250:24</p> <p>present [5] - 3:12, 78:13, 137:25, 174:13, 242:25</p> <p>presented [1] - 28:14</p> <p>pretrial [1] - 76:25</p> <p>pretty [20] - 6:24, 23:10, 74:14, 97:22, 100:19, 103:4, 104:5, 104:7, 110:11, 113:1, 113:17, 115:19, 115:20, 116:23, 117:3, 117:10, 118:12, 160:7, 249:5, 257:24</p> <p>previously [3] - 84:10, 121:15, 202:6</p> <p>Pride [14] - 141:7, 141:12, 142:13, 145:23, 146:10, 146:13, 146:16, 147:9, 147:10, 147:20, 164:8, 191:8, 191:10, 191:17</p> <p>primarily [1] - 103:2</p> <p>primer [3] - 101:17, 103:1, 103:3</p> <p>principal [19] - 89:16, 93:10, 93:11, 93:19, 102:25, 107:9, 125:7, 179:10, 179:12, 179:13, 197:7, 198:5, 205:14, 256:7, 256:8, 256:9, 256:12, 256:17, 264:21</p> <p>prison [1] - 57:3</p> <p>problem [5] - 45:6, 95:11, 144:22, 239:7, 249:13</p> <p>problems [1] - 69:14</p> <p>proceed [1] - 121:5</p> <p>proceeding [3] - 53:22, 218:20, 219:19</p> <p>Proceedings [5] - 1:15, 107:8, 134:4, 239:17, 250:24</p> <p>proceedings [12] - 3:6, 73:22, 78:5, 78:7, 137:4, 137:16, 137:18, 241:25, 242:15, 242:17, 268:12, 268:16</p> <p>process [1] - 142:5</p> <p>program [2] - 94:20, 107:14</p> <p>programs [1] - 107:22</p> <p>promised [1] - 51:9</p> <p>proper [3] - 147:13, 249:25, 250:2</p> <p>properly [1] - 169:21</p> <p>prosecution [2] - 132:9, 156:8</p> <p>prosecutor [10] - 14:23, 15:2, 27:6, 27:24, 50:24, 51:2, 56:23, 182:21, 212:18, 228:15</p> <p>prosecutor's [1] - 210:16</p>
---	--	--

<p>prosecutors ^[12] - 14:4, 26:2, 44:16, 90:10, 159:2, 210:9, 210:12, 210:17, 210:20, 214:1, 227:17</p> <p>protect ^[2] - 22:6, 72:12</p> <p>protecting ^[1] - 99:14</p> <p>prove ^[1] - 62:8</p> <p>provide ^[3] - 58:24, 66:11, 235:1</p> <p>proving ^[1] - 62:10</p> <p>proximity ^[1] - 6:21</p> <p>published ^[1] - 216:17</p> <p>pulled ^[9] - 85:11, 85:12, 99:22, 104:17, 104:19, 114:15, 114:16, 114:17, 244:9</p> <p>pulling ^[4] - 99:18, 99:20, 201:8</p> <p>pullover ^[1] - 152:23</p> <p>punch ^[1] - 149:13</p> <p>punches ^[1] - 124:5</p> <p>punching ^[1] - 97:3</p> <p>Puppet ^[16] - 11:5, 11:14, 11:15, 12:25, 16:20, 17:18, 42:15, 43:2, 43:7, 43:8, 43:24, 48:20, 48:25, 63:14, 69:2, 69:19</p> <p>Puppet's ^[3] - 13:2, 13:4, 68:6</p> <p>pure ^[1] - 6:13</p> <p>Puro ^[3] - 170:12, 170:23, 171:11</p> <p>puro ^[1] - 170:14</p> <p>Puros ^[7] - 6:11, 11:1, 11:17, 17:12, 24:21, 54:5, 61:14</p> <p>PUROS ^[1] - 170:17</p> <p>purpose ^[1] - 107:10</p> <p>purposes ^[1] - 226:3</p> <p>put ^[31] - 12:9, 12:10, 31:25, 72:10, 75:7, 100:22, 101:12, 101:19, 102:4, 106:18, 113:23, 116:24, 129:15, 129:20, 130:4, 133:4, 166:14, 182:1, 201:25, 204:2, 212:20, 216:14, 221:25, 227:15, 259:24, 263:4, 263:19, 264:9, 264:11, 264:23, 264:24</p> <p>puts ^[1] - 79:21</p> <p>putting ^[3] - 81:5, 96:7, 177:12</p>	<p>quote ^[6] - 47:22, 134:7, 216:9, 216:10</p> <p style="text-align: center;">R</p> <p>radio ^[6] - 73:13, 124:14, 125:5, 136:21, 241:16, 268:2</p> <p>radioed ^[1] - 124:14</p> <p>Rainbow ^[1] - 121:13</p> <p>raise ^[5] - 78:18, 186:5, 225:1, 239:20, 251:1</p> <p>raised ^[1] - 85:19</p> <p>ran ^[19] - 105:19, 105:20, 113:2, 115:20, 115:22, 116:2, 123:24, 126:11, 127:4, 151:11, 151:12, 179:16, 179:21, 180:1, 198:10, 203:23, 256:24, 257:23, 257:25</p> <p>rang ^[6] - 80:16, 122:20, 177:20, 177:25, 255:13, 255:14</p> <p>range ^[3] - 55:24, 102:10, 108:17</p> <p>ray ^[1] - 187:15</p> <p>re ^[3] - 3:17, 5:3, 72:13</p> <p>re-swore ^[1] - 5:3</p> <p>re-sworn ^[1] - 3:17</p> <p>reached ^[1] - 113:3</p> <p>read ^[18] - 14:25, 26:22, 29:1, 58:12, 58:15, 73:9, 136:17, 155:7, 155:10, 207:10, 207:14, 209:4, 220:20, 231:12, 235:9, 241:12, 250:4, 267:23</p> <p>reading ^[2] - 14:14, 42:2</p> <p>ready ^[2] - 77:6, 181:6</p> <p>real ^[10] - 8:2, 35:15, 41:5, 41:11, 60:6, 82:21, 102:20, 129:8, 134:17, 157:23</p> <p>realize ^[1] - 20:12</p> <p>realized ^[2] - 142:2, 197:7</p> <p>really ^[33] - 6:4, 14:9, 32:2, 41:3, 59:7, 59:8, 59:13, 59:18, 62:21, 64:21, 84:3, 89:1, 91:17, 96:23, 101:22, 103:23, 107:20, 142:4, 153:5, 160:20, 166:23, 169:3, 182:25, 183:2, 235:5, 238:5, 249:6, 252:22, 256:14, 260:7, 261:5</p> <p>reason ^[8] - 28:7, 52:23, 64:22, 64:25, 74:4, 88:23, 107:10, 245:22</p> <p>receipt ^[1] - 159:17</p> <p>receive ^[1] - 143:14</p> <p>received ^[1] - 250:20</p> <p>recently ^[1] - 52:1</p> <p>recess ^[5] - 73:6, 73:17, 136:13, 241:9, 267:20</p> <p>Recess ^[3] - 78:5, 137:16, 242:15</p> <p>recognize ^[20] - 13:8, 13:9, 13:10, 81:19, 81:21, 86:15, 98:16, 112:2, 123:8, 123:12, 128:14, 146:23, 153:17, 189:1, 195:10, 195:12, 198:22, 202:5, 214:23, 245:14</p> <p>recognized ^[2] - 214:20, 228:5</p> <p>recollection ^[26] - 41:22, 84:13, 88:16, 88:24, 98:1, 98:6, 98:19, 99:19, 100:19, 154:6, 155:8, 157:2, 206:22, 207:16, 208:22, 208:24, 209:5, 209:9, 216:25,</p>	<p>218:2, 220:23, 222:3, 222:10, 224:21, 231:2</p> <p>reconvene ^[1] - 249:4</p> <p>record ^[47] - 3:10, 3:12, 4:2, 26:13, 71:12, 73:20, 74:1, 74:3, 75:15, 76:21, 76:22, 77:8, 78:10, 78:13, 79:2, 81:12, 85:18, 86:3, 92:23, 109:17, 116:24, 116:25, 117:5, 118:7, 121:2, 136:1, 137:22, 137:25, 138:13, 139:4, 146:5, 161:23, 186:14, 204:14, 204:16, 240:7, 241:2, 242:22, 242:24, 249:15, 250:4, 251:10, 252:14, 252:17, 259:20, 259:23, 268:8</p> <p>recorded ^[13] - 19:4, 19:10, 20:17, 24:2, 205:25, 206:13, 207:4, 211:18, 212:2, 213:4, 217:21, 217:22, 233:17</p> <p>records ^[3] - 38:11, 38:19, 69:12</p> <p>Recross ^[1] - 2:5</p> <p>recross ^[7] - 71:16, 71:19, 106:4, 185:13, 235:12, 235:15, 267:3</p> <p>RECROSS-EXAMINATION ^[3] - 71:19, 106:4, 235:15</p> <p>red ^[12] - 101:15, 101:17, 101:18, 103:1, 103:2, 129:18, 129:19, 182:2, 205:6, 205:7, 258:2, 258:4</p> <p>redirect ^[14] - 38:20, 38:25, 57:11, 72:14, 91:23, 105:7, 132:20, 160:25, 184:13, 230:6, 248:7, 248:9, 265:19, 266:9</p> <p>REDIRECT ^[5] - 57:14, 105:10, 184:16, 230:9, 265:21</p> <p>Redirect ^[1] - 2:5</p> <p>redone ^[2] - 243:20, 243:22</p> <p>refer ^[5] - 29:2, 93:25, 155:6, 206:5, 207:9</p> <p>references ^[2] - 27:1, 27:5</p> <p>referred ^[2] - 68:3, 233:23</p> <p>referring ^[3] - 154:9, 154:11, 233:1</p> <p>reflect ^[11] - 3:12, 78:13, 116:24, 116:25, 117:5, 137:25, 146:5, 204:14, 204:16, 242:24, 259:23</p> <p>refresh ^[16] - 26:3, 29:3, 36:24, 84:13, 88:16, 154:5, 157:2, 206:21, 207:16, 209:9, 216:25, 218:1, 220:23, 222:3, 231:2</p> <p>refreshed ^[1] - 208:23</p> <p>refreshes ^[4] - 41:22, 155:8, 209:5, 224:21</p> <p>refreshing ^[2] - 206:21, 208:24</p> <p>regard ^[8] - 21:22, 65:3, 66:1, 66:21, 68:3, 68:4, 115:8, 148:5</p> <p>regarding ^[9] - 7:9, 64:10, 66:3, 209:5, 231:13, 236:12, 247:7, 250:9, 266:4</p> <p>related ^[3] - 95:5, 95:6, 95:7</p> <p>relation ^[3] - 90:4, 205:20, 263:5</p> <p>relationship ^[4] - 164:21, 164:24, 232:14, 232:17</p> <p>relatives ^[1] - 254:21</p> <p>release ^[7] - 27:13, 27:15, 74:6, 74:19, 75:11, 94:19, 95:1</p>
<p style="text-align: center;">Q</p> <p>questioning ^[2] - 20:4, 162:15</p> <p>questions ^[45] - 5:25, 14:11, 14:15, 20:25, 22:20, 26:7, 26:24, 27:9, 33:10, 34:4, 44:17, 46:21, 57:10, 66:3, 66:5, 66:12, 72:22, 72:24, 74:14, 92:1, 106:11, 113:8, 119:8, 119:11, 131:17, 132:19, 132:23, 134:5, 134:14, 135:9, 135:12, 140:11, 141:11, 144:8, 157:18, 161:2, 161:3, 182:23, 212:18, 235:5, 237:6, 248:6, 248:10, 265:18, 267:6</p> <p>quick ^[7] - 27:23, 82:21, 97:22, 103:4, 104:3, 241:20, 242:14</p> <p>quicker ^[1] - 249:8</p> <p>quickly ^[2] - 160:8, 249:7</p> <p>quietly ^[1] - 207:10</p> <p>quite ^[4] - 4:15, 16:24, 61:17, 250:15</p>		

<p>relevance [5] - 168:22, 188:7, 188:11, 188:14, 203:14</p> <p>relevant [3] - 140:11, 203:15, 203:18</p> <p>relive [1] - 58:5</p> <p>remain [3] - 78:18, 239:20, 242:20</p> <p>remained [1] - 105:21</p> <p>remember [123] - 4:18, 6:17, 6:20, 7:6, 13:7, 13:14, 13:15, 14:9, 14:14, 15:7, 17:8, 17:24, 19:3, 23:19, 23:21, 27:10, 27:11, 29:22, 30:7, 32:6, 32:14, 33:1, 33:3, 34:19, 34:24, 35:3, 35:5, 41:2, 41:3, 45:23, 47:16, 49:7, 49:11, 50:5, 58:16, 59:3, 59:6, 63:15, 69:21, 71:10, 83:2, 83:5, 84:16, 84:22, 87:23, 89:1, 89:9, 91:21, 99:14, 101:6, 101:11, 101:15, 102:16, 103:2, 108:7, 108:9, 108:11, 114:4, 114:19, 114:21, 118:2, 122:9, 131:2, 131:9, 142:17, 142:19, 152:24, 155:12, 158:18, 165:25, 166:22, 170:11, 177:8, 178:7, 182:23, 194:22, 196:24, 197:1, 199:8, 200:8, 202:12, 202:18, 203:1, 205:23, 205:24, 206:11, 206:15, 208:6, 211:21, 211:25, 212:18, 214:4, 215:22, 215:23, 216:11, 217:11, 217:12, 220:13, 221:8, 221:9, 224:13, 228:5, 230:2, 230:22, 231:23, 246:18, 247:5, 247:9, 247:10, 247:12, 252:22, 253:24, 256:10, 260:6, 260:10, 263:8, 263:9, 266:19, 266:21, 266:23, 266:24</p> <p>remembered [1] - 158:14</p> <p>remind [1] - 4:24</p> <p>reminds [1] - 12:11</p> <p>removed [1] - 245:1</p> <p>RENEE [2] - 1:24, 268:19</p> <p>rephrase [1] - 219:24</p> <p>replaced [3] - 243:24, 243:25, 244:13</p> <p>report [4] - 73:9, 136:17, 241:12, 267:23</p> <p>reported [4] - 106:23, 133:6, 237:22, 249:19</p> <p>REPORTED [1] - 1:24</p> <p>REPORTER [20] - 8:20, 15:22, 79:6, 79:8, 93:22, 144:18, 145:24, 153:9, 170:13, 183:1, 189:5, 189:12, 189:14, 190:17, 190:22, 190:24, 203:8, 208:18, 232:1, 253:3</p> <p>reporter [4] - 19:25, 20:13, 212:17, 226:25</p> <p>Reporter's [1] - 1:15</p> <p>respond [2] - 44:21, 47:18</p> <p>responded [1] - 34:10</p> <p>response [34] - 9:13, 30:1, 30:20, 41:17, 41:19, 42:7, 43:11, 49:14, 59:5, 72:21, 73:1, 73:3, 92:3, 92:5, 105:23, 106:14, 119:13, 119:15, 132:25, 161:5, 161:7, 171:3, 176:23, 185:18, 185:20, 224:12, 229:18, 237:8, 237:10, 248:12, 248:14, 267:8, 267:10</p> <p>responsive [3] - 22:17, 44:13, 44:14</p>	<p>rest [2] - 123:6, 132:2</p> <p>restroom [1] - 242:4</p> <p>result [4] - 143:17, 148:11, 243:21, 244:12</p> <p>retire [1] - 121:21</p> <p>retired [1] - 121:15</p> <p>retrieval [1] - 107:13</p> <p>revenge [2] - 176:19, 176:24</p> <p>review [7] - 87:13, 88:13, 104:25, 213:6, 221:12, 221:15, 235:5</p> <p>reviewed [13] - 87:15, 211:8, 212:1, 212:23, 213:2, 213:4, 213:9, 213:12, 214:6, 216:1, 224:6, 224:24, 227:10</p> <p>reviewing [2] - 97:13, 217:24</p> <p>rid [1] - 239:8</p> <p>rifle [1] - 114:9</p> <p>right-hand [1] - 114:20</p> <p>right-handed [1] - 55:7</p> <p>rings [2] - 194:2, 194:4</p> <p>rise [4] - 73:19, 137:2, 241:23, 268:7</p> <p>robbery [1] - 162:19</p> <p>rode [1] - 111:14</p> <p>rolled [2] - 103:7, 149:18</p> <p>rolling [1] - 238:11</p> <p>room [2] - 18:23, 54:7</p> <p>Rosales [2] - 255:4</p> <p>ROSS [1] - 1:21</p> <p>rough [3] - 87:23, 87:24, 89:2</p> <p>roughly [1] - 83:5</p> <p>Roy [1] - 141:14</p> <p>Rugrats [3] - 63:4, 63:6, 63:8</p> <p>rules [1] - 10:16</p> <p>rumors [1] - 193:9</p> <p>run [15] - 97:17, 100:11, 112:22, 112:23, 112:24, 115:17, 125:15, 126:9, 127:15, 159:5, 179:17, 203:25, 256:19, 256:22, 263:20</p> <p>run-for-your-life [1] - 100:11</p> <p>running [63] - 86:5, 86:12, 86:13, 86:16, 86:18, 86:19, 86:20, 89:17, 89:19, 90:1, 91:14, 91:16, 91:19, 98:22, 99:10, 99:11, 100:4, 100:15, 100:25, 113:5, 113:12, 115:6, 115:15, 118:1, 118:11, 118:12, 126:3, 127:16, 127:25, 149:20, 149:21, 152:4, 180:9, 180:10, 180:14, 180:20, 180:21, 181:4, 181:23, 181:24, 196:17, 196:18, 196:19, 196:22, 197:8, 198:6, 198:9, 198:10, 198:12, 199:1, 199:2, 199:5, 204:8, 222:19, 223:1, 256:7, 256:15, 256:18, 258:9, 260:25, 261:1, 261:15, 261:19</p> <p>rush [1] - 239:1</p> <p>Russell [3] - 2:11, 237:18, 240:8</p> <p>RUSSELL [2] - 239:23, 240:8</p>	<p>Sal [27] - 7:24, 8:7, 11:9, 12:16, 12:19, 16:20, 17:16, 21:8, 21:11, 21:18, 23:20, 23:21, 25:12, 32:2, 47:20, 52:20, 54:16, 54:24, 56:14, 56:25, 57:1, 57:3, 63:14, 65:2, 65:5, 69:2, 72:18</p> <p>Sal's [20] - 11:5, 11:8, 12:13, 17:5, 18:8, 21:22, 36:1, 39:13, 39:21, 39:22, 40:2, 40:11, 40:18, 40:21, 41:9, 41:12, 41:24, 42:4, 43:15, 68:1</p> <p>Salvador [4] - 8:8, 8:15, 25:18, 52:4</p> <p>Salvador's [2] - 19:7, 42:1</p> <p>sat [2] - 111:18, 219:11</p> <p>satisfied [1] - 77:2</p> <p>Saturday [1] - 173:19</p> <p>saw [98] - 11:5, 13:4, 14:21, 24:15, 40:2, 55:1, 55:10, 55:19, 55:23, 81:7, 83:9, 83:16, 85:1, 85:2, 85:5, 85:16, 91:14, 97:15, 100:3, 101:19, 101:23, 103:1, 103:22, 103:23, 106:7, 108:3, 113:25, 114:7, 115:14, 115:15, 118:13, 124:11, 126:9, 127:5, 127:13, 133:21, 172:19, 180:9, 180:19, 181:4, 181:17, 181:24, 181:25, 195:13, 195:14, 196:2, 196:8, 196:16, 196:17, 196:20, 197:2, 198:12, 198:25, 200:2, 201:6, 201:16, 204:8, 204:18, 205:9, 207:19, 207:24, 214:13, 214:24, 214:25, 215:17, 220:5, 220:11, 222:8, 222:11, 222:16, 222:24, 225:25, 228:3, 232:13, 236:12, 236:25, 237:3, 254:14, 254:15, 255:11, 256:17, 258:10, 259:7, 259:8, 259:17, 260:13, 260:14, 260:22, 261:9, 261:12, 261:13, 261:25, 262:3, 263:15</p> <p>scared [1] - 60:3</p> <p>scary [1] - 4:15</p> <p>scattered [3] - 125:12, 151:8, 151:9</p> <p>scattering [3] - 97:19, 97:20, 101:3</p> <p>scene [2] - 103:4, 202:15</p> <p>school [174] - 9:1, 24:5, 29:24, 29:25, 30:2, 35:20, 37:19, 52:14, 52:16, 52:20, 53:10, 55:1, 69:12, 79:25, 80:2, 80:9, 80:12, 80:14, 80:16, 80:23, 81:3, 81:8, 81:9, 81:13, 81:20, 81:21, 81:22, 82:9, 82:11, 84:1, 84:19, 85:24, 86:25, 87:22, 89:7, 89:8, 89:10, 90:4, 90:19, 91:4, 91:12, 93:14, 94:20, 94:25, 95:3, 96:6, 96:8, 96:14, 97:7, 97:8, 97:9, 97:12, 97:14, 104:8, 104:11, 107:11, 107:12, 107:14, 107:15, 107:17, 107:19, 110:23, 111:1, 111:6, 111:9, 111:10, 111:11, 111:19, 111:20, 111:24, 112:6, 112:20, 122:4, 122:6, 122:13, 122:14, 122:17, 122:18, 122:19, 122:20, 123:6, 123:10, 123:20, 123:22, 128:15, 128:16, 130:12, 130:22, 131:2, 139:22, 140:3, 140:4, 140:5, 140:6, 140:8, 143:19, 143:21, 143:22, 144:3, 144:14, 145:5, 145:10, 148:10, 148:13, 148:18, 150:1, 151:1, 151:24, 155:17, 156:2, 162:13, 162:24, 163:7, 165:3, 165:5,</p>
S		
<p>safety [1] - 102:2</p> <p>sake [1] - 98:15</p>		

<p>165:7, 165:9, 167:20, 167:21, 167:23, 168:5, 168:6, 172:6, 173:9, 173:16, 173:23, 174:5, 175:7, 176:1, 177:3, 177:23, 177:24, 178:2, 179:12, 179:13, 191:24, 192:1, 192:9, 192:13, 192:17, 192:21, 192:25, 193:4, 193:5, 193:11, 193:12, 193:14, 193:19, 194:1, 194:5, 194:6, 194:10, 194:14, 196:10, 197:16, 198:22, 252:19, 252:21, 252:24, 253:10, 253:13, 253:15, 253:19, 254:11, 255:8, 255:13, 256:4, 257:6, 257:11, 262:14, 263:3</p> <p>School ^[11] - 93:10, 93:15, 93:21, 93:23, 94:4, 95:23, 110:24, 121:19, 140:1, 192:4, 253:11</p> <p>school's ^[2] - 255:13, 257:2</p> <p>scope ^[1] - 233:6</p> <p>screamed ^[1] - 179:15</p> <p>screaming ^[5] - 128:16, 129:7, 129:8, 263:22, 263:25</p> <p>screen ^[15] - 81:5, 81:6, 82:23, 82:25, 96:7, 112:8, 126:6, 127:21, 177:12, 177:13, 195:18, 201:21, 216:14, 240:22, 257:7</p> <p>script ^[1] - 57:7</p> <p>search ^[1] - 95:4</p> <p>seat ^[2] - 117:20, 251:21</p> <p>seated ^[11] - 4:1, 79:1, 92:22, 109:16, 120:24, 138:12, 161:22, 186:13, 240:4, 242:20, 251:9</p> <p>second ^[12] - 28:22, 38:12, 75:22, 81:14, 99:9, 107:13, 120:2, 188:1, 209:14, 230:3, 241:3, 243:8</p> <p>secondly ^[1] - 168:23</p> <p>seconds ^[4] - 104:6, 141:19, 141:22, 204:25</p> <p>section ^[2] - 179:22, 179:25</p> <p>security ^[1] - 95:12</p> <p>see ^[163] - 28:4, 28:5, 28:8, 30:15, 30:18, 31:19, 33:5, 34:8, 41:22, 42:5, 42:21, 43:9, 46:14, 47:2, 81:17, 82:1, 82:7, 83:10, 83:18, 84:13, 84:22, 85:7, 85:10, 86:13, 90:15, 90:24, 91:19, 96:8, 96:16, 99:12, 99:18, 100:1, 100:9, 100:12, 101:22, 101:23, 102:15, 103:12, 103:16, 104:15, 106:6, 106:8, 106:9, 106:16, 112:7, 112:17, 112:22, 112:23, 112:24, 114:15, 114:24, 115:2, 115:17, 115:25, 116:8, 116:10, 125:15, 125:25, 126:10, 126:23, 127:2, 127:8, 127:11, 127:19, 128:1, 128:19, 129:23, 130:2, 130:18, 131:7, 131:25, 132:4, 133:2, 136:25, 152:17, 154:20, 157:21, 158:22, 160:20, 164:17, 167:10, 168:2, 169:15, 169:25, 170:18, 171:13, 174:18, 180:5, 181:5, 181:7, 181:13, 181:16, 181:18, 186:2, 194:5, 194:6, 194:8, 194:19, 195:21, 196:5, 196:7, 196:9, 196:11, 196:14, 196:18, 196:19, 197:25, 198:6, 199:4, 199:13, 199:17,</p>	<p>200:8, 200:23, 201:2, 201:4, 201:7, 201:13, 202:3, 203:23, 204:1, 204:6, 205:20, 207:4, 208:22, 214:21, 223:1, 224:20, 224:21, 225:8, 225:24, 228:24, 237:20, 238:23, 240:23, 244:14, 249:14, 254:15, 255:8, 255:12, 257:2, 257:20, 259:11, 259:14, 259:15, 259:16, 260:12, 260:13, 260:14, 260:15, 260:16, 260:18, 260:23, 261:18, 261:23, 262:4, 263:5, 264:11, 264:23, 267:19, 268:6</p> <p>seeing ^[9] - 60:4, 69:21, 114:10, 123:14, 197:1, 197:4, 216:4, 226:1, 227:23</p> <p>seem ^[2] - 98:4, 176:20</p> <p>sees ^[1] - 8:3</p> <p>segment ^[1] - 34:4</p> <p>self ^[5] - 54:6, 54:10, 117:3, 117:10, 117:12</p> <p>self-inflicted ^[2] - 54:6, 54:10</p> <p>semester ^[2] - 165:18, 192:11</p> <p>seniors ^[1] - 107:13</p> <p>sense ^[1] - 96:21</p> <p>sent ^[1] - 246:18</p> <p>separate ^[2] - 76:14, 89:19</p> <p>separating ^[1] - 117:18</p> <p>series ^[1] - 140:11</p> <p>serious ^[1] - 96:1</p> <p>SERVICES ^[5] - 75:6, 75:12, 75:19, 75:23, 76:5</p> <p>session ^[1] - 242:21</p> <p>setting ^[1] - 107:18</p> <p>seven ^[21] - 32:1, 50:8, 50:20, 72:8, 88:23, 110:4, 202:8, 210:6, 210:10, 210:13, 210:15, 211:11, 219:17, 225:17, 226:7, 227:2, 227:21, 230:11, 230:15, 236:5, 236:9</p> <p>seventh ^[1] - 141:14</p> <p>several ^[5] - 17:2, 97:14, 110:18, 195:25, 238:8</p> <p>shall ^[1] - 60:25</p> <p>sharing ^[1] - 79:9</p> <p>Sharon ^[1] - 240:17</p> <p>shiny ^[4] - 209:15, 209:16, 209:17</p> <p>shirt ^[3] - 36:22, 178:10, 235:19</p> <p>shoes ^[10] - 99:8, 112:24, 113:11, 113:13, 113:16, 113:17, 113:22, 116:7, 118:25, 119:2</p> <p>shoot ^[8] - 32:22, 32:25, 33:4, 55:17, 56:15, 67:15, 127:18, 152:17</p> <p>shooter ^[64] - 108:4, 108:6, 118:11, 118:18, 119:4, 131:5, 134:7, 183:6, 200:9, 203:7, 203:9, 203:23, 205:19, 208:3, 209:12, 215:17, 215:20, 216:5, 217:4, 217:6, 217:9, 218:5, 218:7, 218:8, 218:9, 218:11, 218:14, 218:19, 218:24, 220:10, 221:6, 222:6, 222:24, 223:1, 223:11, 223:18, 223:20, 223:25, 225:18, 226:8, 227:3, 227:4, 227:11, 227:24, 227:25, 228:3, 228:16, 229:12,</p>	<p>229:14, 229:16, 229:25, 230:23, 231:17, 232:15, 233:1, 234:10, 235:2, 236:6, 236:12, 236:16, 236:19, 237:1, 261:6, 265:9</p> <p>shooter's ^[1] - 226:5</p> <p>Shooters ^[1] - 110:12</p> <p>shooting ^[66] - 29:21, 31:2, 32:5, 32:19, 34:7, 36:12, 37:3, 39:24, 41:13, 41:24, 42:4, 42:18, 53:25, 59:4, 64:13, 66:8, 71:1, 72:18, 83:19, 85:11, 85:13, 85:22, 86:7, 88:19, 88:25, 90:17, 110:12, 115:10, 115:18, 127:14, 128:1, 130:21, 180:19, 181:19, 182:9, 182:14, 198:14, 200:16, 206:2, 210:6, 211:14, 211:19, 212:4, 217:13, 218:4, 218:14, 218:18, 219:8, 221:6, 222:8, 227:24, 228:22, 230:18, 230:24, 234:7, 236:16, 254:16, 259:14, 260:22, 260:23, 260:24, 260:25, 261:9, 261:12, 263:17</p> <p>short ^[10] - 114:8, 134:17, 135:20, 135:23, 191:17, 232:7, 232:8, 262:8</p> <p>shorter ^[2] - 108:15, 234:24</p> <p>shortly ^[3] - 154:2, 202:10, 213:19</p> <p>shorts ^[2] - 199:9, 231:21</p> <p>shot ^[46] - 6:19, 6:20, 7:3, 7:7, 7:9, 18:22, 24:5, 45:16, 48:6, 48:9, 54:4, 54:10, 54:12, 54:13, 55:4, 55:19, 55:24, 56:6, 56:16, 58:6, 71:8, 71:22, 72:19, 103:5, 105:16, 116:21, 117:11, 119:3, 127:18, 128:3, 128:5, 128:10, 158:22, 181:13, 181:14, 198:13, 202:3, 204:18, 213:18, 220:10, 223:3, 230:15, 231:11, 254:15, 261:23, 263:15</p> <p>shots ^[8] - 100:17, 113:4, 117:23, 126:24, 127:6, 127:12, 254:14, 255:7</p> <p>shoulder ^[1] - 117:2</p> <p>shout ^[1] - 27:5</p> <p>show ^[34] - 38:7, 43:17, 50:12, 51:10, 58:12, 58:14, 74:21, 91:2, 111:25, 112:4, 112:9, 116:13, 116:19, 135:1, 154:9, 154:15, 170:2, 170:8, 177:14, 189:8, 194:25, 195:20, 198:21, 208:20, 209:3, 214:18, 216:12, 245:13, 249:23, 256:25, 257:3, 257:8, 257:9</p> <p>showed ^[6] - 27:25, 43:2, 43:8, 43:24, 69:19, 172:8</p> <p>showing ^[19] - 13:5, 27:12, 82:13, 126:5, 146:22, 153:16, 154:19, 163:2, 163:19, 170:3, 171:25, 195:9, 198:19, 217:21, 231:8, 240:22, 244:13, 245:9, 262:21</p> <p>shown ^[2] - 69:21, 247:23</p> <p>shrinking ^[1] - 108:10</p> <p>siblings ^[1] - 187:8</p> <p>side ^[8] - 60:10, 105:13, 114:20, 117:2, 146:7, 177:17, 246:15, 250:8</p> <p>Sidekick ^[1] - 151:15</p> <p>sidewalk ^[5] - 113:1, 116:21, 117:15, 201:12, 244:23</p> <p>sign ^[3] - 172:8, 172:20, 172:23</p>
---	--	---

<p>signs ^[2] - 171:13, 171:15</p> <p>Silvaggio ^[1] - 268:19</p> <p>SILVAGGIO ^[2] - 1:24, 268:19</p> <p>SILVER ^[1] - 1:13</p> <p>similar ^[1] - 195:4</p> <p>sister ^[19] - 128:13, 128:14, 130:10, 139:3, 139:11, 139:20, 139:22, 140:8, 142:20, 143:15, 144:4, 144:6, 148:12, 148:23, 152:6, 156:16, 156:25, 187:9, 263:21</p> <p>sister's ^[1] - 187:10</p> <p>sisters ^[2] - 139:2, 187:6</p> <p>sit ^[5] - 26:21, 71:21, 75:5, 111:20, 232:13</p> <p>sits ^[1] - 219:10</p> <p>sitting ^[11] - 13:20, 75:14, 112:20, 113:15, 115:18, 201:18, 228:14, 228:16, 229:8, 242:9, 249:3</p> <p>situation ^[3] - 8:1, 8:2, 9:18</p> <p>six ^[14] - 22:14, 94:11, 108:10, 108:12, 108:16, 134:21, 140:16, 152:12, 188:5, 189:10, 189:11, 218:11, 229:5</p> <p>six-one ^[2] - 108:16, 218:11</p> <p>six-two ^[1] - 108:10</p> <p>six-zero ^[1] - 140:16</p> <p>sixth ^[6] - 83:6, 83:7, 94:16, 167:1, 167:2, 193:14</p> <p>size ^[5] - 107:19, 114:11, 114:12, 134:18, 149:6</p> <p>size-wise ^[1] - 149:6</p> <p>skinnier ^[1] - 108:13</p> <p>skinny ^[1] - 149:8</p> <p>skip ^[1] - 42:3</p> <p>slash ^[1] - 134:19</p> <p>slide ^[1] - 113:24</p> <p>slide-in ^[1] - 113:24</p> <p>slip ^[1] - 76:4</p> <p>slippers ^[8] - 112:25, 113:19, 113:21, 113:24, 116:8, 118:25, 119:1, 119:3</p> <p>slow ^[3] - 122:24, 124:19, 190:19</p> <p>slowly ^[1] - 258:15</p> <p>small ^[5] - 99:1, 101:13, 107:14, 107:18</p> <p>smaller ^[5] - 99:11, 140:19, 149:7, 149:11, 149:12</p> <p>smoke ^[4] - 126:23, 127:2, 127:5, 127:11</p> <p>snitch ^[1] - 10:16</p> <p>snitched ^[1] - 10:22</p> <p>snitching ^[7] - 59:11, 59:12, 59:14, 59:15, 59:18, 59:22, 59:23</p> <p>snub ^[1] - 114:11</p> <p>so-called ^[2] - 12:20, 25:24</p> <p>soft ^[1] - 186:25</p> <p>soft-spoken ^[1] - 186:25</p> <p>someone ^[17] - 10:22, 21:4, 38:13, 46:5, 53:24, 54:6, 54:12, 54:23, 67:20, 113:25, 128:3, 131:2, 156:16, 180:9, 180:19, 261:17</p>	<p>sometime ^[1] - 7:25</p> <p>sometimes ^[5] - 11:11, 19:24, 20:9, 79:10, 158:25</p> <p>somewhere ^[5] - 98:20, 111:8, 114:11, 114:12, 257:4</p> <p>soon ^[2] - 178:20, 253:7</p> <p>sorry ^[53] - 11:20, 24:10, 26:15, 33:2, 45:4, 58:11, 63:8, 63:12, 79:9, 82:24, 83:2, 104:23, 107:25, 118:8, 118:16, 130:9, 132:5, 135:22, 138:22, 139:10, 139:14, 139:17, 172:15, 173:14, 179:23, 185:9, 189:5, 189:15, 193:24, 198:24, 203:8, 206:6, 206:12, 209:14, 209:17, 212:5, 212:15, 222:14, 227:8, 231:23, 232:1, 235:25, 236:18, 238:9, 241:6, 241:8, 242:5, 242:14, 243:12, 246:13, 246:15</p> <p>sort ^[5] - 9:19, 110:11, 110:13, 143:14, 147:20</p> <p>sorted ^[1] - 74:15</p> <p>Sotto ^[21] - 27:17, 71:14, 90:13, 102:17, 105:5, 117:6, 120:7, 120:14, 131:14, 157:8, 160:2, 161:1, 169:8, 171:4, 172:17, 175:22, 209:22, 230:4, 236:2, 261:10, 265:2</p> <p>sound ^[2] - 103:1, 211:4</p> <p>sounded ^[2] - 68:24, 95:25</p> <p>sounds ^[1] - 238:21</p> <p>south ^[4] - 115:25, 118:2, 241:3, 243:9</p> <p>space ^[1] - 152:13</p> <p>Spanish ^[2] - 190:15, 190:19</p> <p>speaking ^[1] - 210:9</p> <p>Special ^[3] - 37:18, 38:11, 69:13</p> <p>specific ^[1] - 11:22</p> <p>specifically ^[10] - 80:8, 122:8, 169:2, 184:4, 184:5, 184:25, 191:14, 195:14, 209:4, 233:25</p> <p>speculation ^[4] - 37:24, 147:23, 147:24, 215:6</p> <p>speculative ^[1] - 169:5</p> <p>spell ^[20] - 43:16, 79:2, 92:23, 93:1, 109:17, 109:20, 109:22, 121:1, 138:13, 139:4, 161:23, 170:16, 186:14, 189:12, 189:13, 190:17, 190:22, 240:6, 251:10, 251:15</p> <p>spelled ^[2] - 146:15, 232:4</p> <p>spent ^[1] - 4:13</p> <p>spoken ^[2] - 156:15, 186:25</p> <p>sports ^[1] - 107:21</p> <p>square ^[1] - 100:10</p> <p>squared ^[1] - 108:7</p> <p>Stacey ^[4] - 175:1, 175:2, 175:3, 184:4</p> <p>stack ^[1] - 166:15</p> <p>stacked ^[1] - 166:14</p> <p>stand ^[8] - 77:4, 92:13, 116:15, 120:15, 129:11, 135:1, 215:11, 225:1</p> <p>standing ^[15] - 60:20, 78:18, 115:9, 118:18, 122:18, 122:21, 123:2, 123:3, 123:16, 123:17, 123:18, 123:23, 134:25, 239:20</p>	<p>staring ^[1] - 255:17</p> <p>start ^[12] - 77:1, 77:2, 77:6, 85:11, 85:12, 165:15, 166:6, 196:25, 198:9, 238:2, 254:2, 255:10</p> <p>started ^[39] - 62:1, 66:4, 66:8, 76:23, 83:19, 89:17, 89:25, 97:19, 97:23, 115:6, 118:10, 118:15, 118:17, 123:22, 123:24, 148:25, 149:15, 149:16, 149:17, 149:19, 149:21, 152:21, 155:12, 156:23, 165:12, 165:17, 178:16, 178:18, 178:20, 178:21, 197:4, 197:8, 198:5, 222:8, 256:7, 256:14, 256:18, 261:19</p> <p>starting ^[1] - 118:3</p> <p>starts ^[1] - 128:16</p> <p>STATE ^[1] - 1:7</p> <p>state ^[20] - 4:2, 78:16, 79:2, 92:11, 92:23, 109:7, 109:17, 119:22, 121:1, 138:3, 138:13, 161:13, 161:23, 186:1, 186:14, 214:13, 237:17, 240:6, 248:21, 251:10</p> <p>State ^[35] - 1:18, 2:2, 3:10, 3:13, 3:21, 38:15, 57:18, 74:10, 74:12, 77:13, 78:11, 78:14, 78:17, 78:21, 92:12, 92:17, 109:8, 109:11, 120:8, 120:19, 135:8, 137:23, 138:1, 138:4, 138:7, 161:14, 161:17, 186:4, 186:8, 237:18, 239:24, 242:23, 243:1, 251:4</p> <p>State's ^[24] - 3:15, 57:18, 81:5, 82:13, 85:15, 96:8, 112:1, 126:5, 136:1, 146:22, 153:16, 163:2, 163:19, 177:12, 195:9, 198:19, 214:18, 238:20, 240:22, 244:13, 245:9, 245:13, 257:1, 262:21</p> <p>STATE'S ^[1] - 2:6</p> <p>Statement ^[6] - 217:19, 231:2, 231:8, 232:10, 233:2, 234:12</p> <p>statement ^[111] - 14:10, 14:14, 14:19, 14:22, 14:25, 15:3, 15:6, 19:4, 19:10, 20:18, 21:12, 21:14, 24:3, 24:21, 26:5, 26:6, 26:12, 26:14, 26:15, 26:16, 26:17, 26:18, 27:24, 28:13, 29:1, 29:3, 29:7, 33:22, 39:11, 39:19, 48:8, 48:11, 48:13, 50:11, 50:16, 53:14, 53:20, 58:10, 58:12, 58:22, 58:25, 59:11, 61:13, 66:1, 66:2, 66:15, 66:18, 66:22, 66:24, 67:1, 67:25, 68:4, 87:11, 87:13, 87:19, 88:7, 88:18, 154:2, 154:5, 154:19, 154:24, 155:7, 155:19, 158:7, 182:3, 182:6, 184:21, 202:11, 202:14, 202:18, 202:21, 206:4, 206:8, 206:13, 206:15, 207:3, 207:4, 208:7, 208:12, 211:13, 212:2, 212:7, 213:2, 213:4, 213:19, 214:2, 214:6, 214:10, 217:12, 217:22, 221:12, 221:15, 221:18, 222:16, 226:23, 227:10, 227:15, 229:25, 230:19, 230:23, 233:17, 233:18, 234:11, 235:6, 235:18, 266:16, 266:17, 266:20</p> <p>statements ^[8] - 21:22, 211:8, 212:24, 213:1, 230:15, 234:11, 235:9, 236:8</p>
--	--	---

<p>station [2] - 15:14, 16:7</p> <p>stay [10] - 34:3, 56:11, 56:13, 60:16, 73:20, 74:7, 101:24, 173:9, 205:15, 268:8</p> <p>stayed [5] - 56:9, 102:3, 102:4, 111:15, 205:17</p> <p>stays [1] - 242:11</p> <p>step [1] - 242:13</p> <p>stick [1] - 36:7</p> <p>sticking [2] - 56:19, 260:13</p> <p>sticks [1] - 17:10</p> <p>still [18] - 3:15, 4:21, 24:15, 35:10, 57:6, 57:7, 64:4, 66:23, 74:1, 75:14, 76:21, 123:25, 128:24, 147:4, 238:7, 243:4, 264:5, 264:9</p> <p>stomach [2] - 190:13, 190:14</p> <p>stood [5] - 83:18, 85:7, 90:21, 158:17, 191:5</p> <p>stop [16] - 83:21, 111:17, 111:18, 111:21, 111:22, 112:4, 112:12, 114:1, 115:18, 115:21, 124:18, 126:16, 129:9, 130:9, 208:19, 256:5</p> <p>stopped [8] - 6:5, 6:6, 126:14, 142:14, 173:15, 183:4, 264:8</p> <p>stored [1] - 245:23</p> <p>straight [7] - 18:19, 67:14, 85:23, 85:24, 86:7, 249:12, 252:1</p> <p>strange [4] - 123:4, 124:2, 134:7, 134:9</p> <p>stranger [1] - 9:4</p> <p>strangers [1] - 8:23</p> <p>strangest [1] - 123:15</p> <p>Street [6] - 177:17, 198:21, 204:15, 240:19, 241:3, 243:14</p> <p>street [35] - 30:4, 81:3, 85:14, 90:20, 90:21, 106:7, 112:22, 112:23, 112:24, 113:2, 113:3, 114:1, 115:10, 115:19, 115:23, 117:19, 126:14, 126:16, 126:21, 127:23, 149:22, 151:22, 159:10, 198:11, 198:16, 198:17, 198:18, 201:12, 204:11, 204:12, 258:9, 258:12, 258:13, 263:19, 264:24</p> <p>streets [3] - 52:1, 62:14, 192:7</p> <p>stressed [1] - 95:14</p> <p>stricken [1] - 233:10</p> <p>strike [5] - 37:24, 156:5, 170:25, 176:22, 233:8</p> <p>strong [1] - 95:22</p> <p>student [4] - 95:2, 95:5, 123:10, 262:11</p> <p>students [6] - 97:8, 97:11, 97:12, 122:22, 123:7, 123:20</p> <p>studio [1] - 252:3</p> <p>stuff [8] - 17:12, 23:10, 35:20, 39:9, 58:2, 100:11, 107:21, 184:3</p> <p>subcontracted [1] - 244:6</p> <p>subcontractor [1] - 244:8</p> <p>subject [8] - 73:8, 73:14, 136:15, 136:22, 241:11, 241:17, 267:22, 268:3</p> <p>submitted [4] - 73:16, 136:24, 241:19,</p>	<p>268:5</p> <p>subpoena [3] - 51:13, 51:15, 52:8</p> <p>successful [1] - 107:15</p> <p>suede [1] - 113:20</p> <p>sufficient [1] - 77:6</p> <p>Sunday [1] - 173:19</p> <p>Sunset [13] - 93:14, 93:21, 93:23, 94:3, 107:22, 110:23, 139:25, 145:5, 145:10, 165:6, 192:4, 253:11, 254:19</p> <p>sunset [1] - 122:5</p> <p>super [1] - 160:8</p> <p>support [3] - 53:23, 101:25, 102:3</p> <p>supposed [2] - 60:1, 193:10</p> <p>surprise [2] - 83:10, 83:12</p> <p>surveillance [1] - 104:12</p> <p>survive [1] - 184:24</p> <p>suspect [1] - 202:24</p> <p>suspended [1] - 140:5</p> <p>sustain [1] - 233:7</p> <p>sustained [13] - 62:3, 63:22, 147:25, 168:15, 169:6, 171:8, 172:13, 173:4, 174:1, 208:10, 208:16, 219:5, 266:2</p> <p>sustaining [1] - 266:11</p> <p>Suzuki [1] - 151:15</p> <p>swear [2] - 4:25, 225:4</p> <p>sweater [12] - 199:8, 199:13, 199:14, 213:23, 215:18, 215:21, 216:9, 216:10, 217:4, 226:24, 231:21, 233:13</p> <p>sweatshirt [10] - 125:19, 125:21, 131:11, 152:23, 158:4, 200:3, 205:20, 234:6, 234:10, 234:13</p> <p>swinging [3] - 123:25, 124:4, 124:6</p> <p>swore [1] - 5:3</p> <p>sworn [15] - 3:17, 3:22, 78:22, 92:14, 92:18, 109:12, 120:20, 138:8, 161:18, 186:9, 226:21, 239:25, 243:4, 250:25, 251:5</p> <p style="text-align: center;">T</p> <p>T-shirt [1] - 36:22</p> <p>table [6] - 166:9, 166:11, 166:15, 228:14, 228:16, 229:8</p> <p>tad [1] - 238:12</p> <p>TALEEN [1] - 1:18</p> <p>talkies [1] - 95:14</p> <p>tall [9] - 22:12, 22:13, 99:1, 135:1, 135:5, 135:6, 140:14, 218:15</p> <p>taller [5] - 108:9, 108:16, 134:20, 134:21, 135:6</p> <p>tank [2] - 245:14, 245:23</p> <p>tattoo [3] - 170:8, 190:14, 191:3</p> <p>tattooed [1] - 147:9</p> <p>tattoos [8] - 145:19, 164:10, 169:25, 170:18, 172:1, 190:5, 190:7, 191:1</p> <p>teachers [1] - 107:18</p> <p>television [4] - 73:13, 136:21, 241:16, 268:2</p> <p>ten [7] - 73:17, 77:25, 111:8, 143:23,</p>	<p>150:19, 249:2</p> <p>ten-minute [1] - 73:17</p> <p>term [1] - 141:17</p> <p>terms [1] - 254:1</p> <p>Terrell [14] - 122:22, 122:25, 123:1, 123:6, 124:12, 124:13, 124:16, 124:17, 124:22, 124:25, 125:2, 125:4</p> <p>test [1] - 54:18</p> <p>testified [47] - 3:23, 6:22, 11:4, 12:13, 14:8, 16:19, 24:16, 33:23, 35:20, 39:12, 50:1, 51:18, 51:23, 56:2, 59:10, 65:21, 70:13, 72:13, 72:18, 77:14, 78:23, 87:16, 92:19, 109:13, 120:21, 135:19, 138:9, 161:19, 183:12, 185:4, 186:10, 203:20, 212:10, 212:23, 213:25, 217:2, 220:9, 225:5, 225:18, 225:22, 226:4, 226:17, 233:14, 240:1, 251:6, 265:9, 265:14</p> <p>testifies [1] - 226:2</p> <p>testify [4] - 57:24, 59:9, 60:1, 169:21</p> <p>testifying [9] - 23:19, 54:16, 54:24, 76:23, 109:2, 203:17, 211:7, 213:13, 267:11</p> <p>testimony [37] - 6:24, 13:19, 19:6, 56:20, 61:1, 65:5, 70:7, 87:14, 119:16, 136:5, 152:8, 161:8, 185:21, 212:13, 212:21, 213:6, 213:9, 215:23, 216:2, 216:5, 221:13, 221:16, 224:9, 224:10, 224:23, 225:14, 225:15, 226:22, 227:3, 227:5, 230:15, 233:23, 233:24, 234:5, 235:4, 236:4, 237:11</p> <p>THE [411] - 1:7, 3:9, 3:17, 3:18, 3:25, 4:1, 4:3, 4:5, 4:6, 4:25, 5:2, 5:3, 5:5, 5:6, 5:7, 5:8, 8:20, 15:22, 19:16, 19:20, 19:23, 20:3, 20:6, 20:9, 20:12, 20:15, 21:12, 21:14, 21:16, 21:20, 21:23, 22:1, 26:11, 26:13, 26:17, 26:19, 26:21, 26:25, 27:4, 27:15, 27:18, 27:19, 29:9, 38:6, 38:9, 38:16, 38:20, 38:22, 38:25, 43:19, 44:14, 44:18, 44:19, 44:20, 44:21, 44:23, 44:24, 45:1, 45:2, 45:3, 47:4, 53:4, 53:16, 57:11, 62:3, 63:22, 64:6, 64:24, 64:25, 65:19, 70:9, 70:18, 70:19, 71:16, 72:23, 73:3, 73:19, 73:20, 73:25, 74:6, 74:16, 74:23, 74:24, 75:3, 75:7, 75:9, 75:10, 75:14, 75:16, 75:17, 75:21, 75:24, 76:3, 76:6, 76:8, 76:9, 76:11, 76:12, 76:14, 76:16, 76:17, 76:20, 77:11, 77:19, 77:23, 77:25, 78:2, 78:4, 78:10, 78:18, 78:25, 79:1, 79:4, 79:6, 79:7, 79:8, 79:9, 82:21, 82:24, 87:6, 88:8, 91:23, 91:25, 92:5, 92:7, 92:11, 92:13, 92:21, 92:22, 92:25, 93:2, 93:4, 93:22, 93:23, 102:19, 105:7, 106:2, 106:12, 106:16, 106:24, 107:3, 107:6, 107:9, 107:12, 107:23, 108:3, 108:5, 108:6, 108:18, 108:21, 108:23, 108:25, 109:1, 109:3, 109:7, 109:15, 109:16, 109:19, 109:20, 109:21, 109:22, 109:23, 109:24, 117:3, 117:5,</p>
--	---	---

<p>119:7, 119:10, 119:15, 119:18, 119:22, 119:25, 120:2, 120:5, 120:10, 120:11, 120:12, 120:13, 120:15, 120:16, 120:23, 120:24, 120:25, 121:1, 121:3, 121:5, 129:3, 131:16, 131:18, 132:20, 132:22, 133:2, 133:7, 133:12, 133:14, 133:17, 133:19, 133:22, 133:25, 134:5, 134:8, 134:11, 134:13, 134:14, 134:16, 134:18, 134:20, 134:24, 135:3, 135:4, 135:5, 135:8, 135:11, 135:15, 136:3, 136:4, 136:6, 136:7, 136:11, 137:2, 137:7, 137:13, 137:21, 138:11, 138:12, 138:15, 138:17, 144:18, 145:24, 145:25, 146:7, 146:20, 147:15, 147:16, 147:25, 153:9, 153:14, 154:17, 156:9, 156:11, 157:13, 160:25, 161:3, 161:7, 161:9, 161:13, 161:21, 161:22, 161:25, 162:2, 162:3, 164:7, 164:8, 168:15, 168:21, 169:5, 169:23, 170:13, 170:14, 171:3, 171:8, 172:13, 173:4, 174:1, 176:25, 182:17, 183:1, 183:2, 184:13, 185:13, 185:15, 185:20, 186:1, 186:5, 186:12, 186:13, 186:16, 186:18, 186:19, 188:11, 188:13, 188:16, 188:24, 189:5, 189:6, 189:12, 189:13, 189:14, 189:15, 190:17, 190:18, 190:19, 190:21, 190:22, 190:23, 190:24, 195:6, 203:8, 203:9, 203:18, 204:16, 206:25, 208:10, 208:16, 208:18, 208:19, 208:22, 209:1, 209:24, 215:10, 215:13, 215:15, 216:15, 216:17, 216:19, 217:17, 219:3, 219:5, 219:10, 219:14, 219:16, 219:18, 219:21, 219:23, 220:1, 220:16, 221:22, 224:17, 230:6, 231:6, 232:1, 232:2, 232:23, 233:6, 233:10, 234:20, 235:12, 237:5, 237:10, 237:12, 237:13, 237:17, 237:19, 237:23, 238:1, 238:10, 238:13, 238:16, 238:21, 238:25, 239:3, 239:9, 239:14, 239:18, 239:20, 240:3, 240:4, 240:5, 240:6, 240:8, 241:6, 241:23, 242:3, 242:7, 242:13, 242:20, 242:22, 243:5, 246:2, 248:7, 248:9, 248:14, 248:16, 248:17, 248:21, 248:25, 249:3, 249:13, 249:17, 249:20, 250:7, 250:12, 250:14, 250:15, 250:21, 250:25, 251:1, 251:8, 251:9, 251:12, 251:13, 251:14, 251:15, 251:16, 253:3, 259:23, 262:19, 265:4, 265:19, 266:2, 266:5, 266:7, 266:11, 266:14, 267:3, 267:5, 267:10, 267:13, 267:17, 268:7, 268:8, 268:10</p> <p>themselves [2] - 28:19, 244:4</p> <p>thereafter [1] - 213:19</p> <p>thin [1] - 211:8</p> <p>thinking [1] - 239:13</p> <p>third [2] - 93:12, 188:2</p> <p>threaten [1] - 57:19</p> <p>threats [1] - 57:17</p> <p>three [22] - 10:9, 10:11, 68:25, 89:12, 98:7, 101:12, 164:20, 179:5, 179:8,</p>	<p>196:6, 197:19, 207:22, 214:7, 214:15, 218:9, 218:15, 218:19, 234:10, 236:16, 236:19, 258:24</p> <p>three-inches [1] - 218:15</p> <p>threw [5] - 50:17, 149:13, 166:15, 166:17, 166:18</p> <p>throughout [3] - 150:3, 236:4, 236:8</p> <p>throwing [3] - 97:3, 97:4, 124:5</p> <p>throws [1] - 97:4</p> <p>Thursday [18] - 165:25, 166:2, 167:3, 167:5, 167:8, 167:13, 167:16, 167:17, 167:23, 170:5, 170:6, 172:4, 172:5, 172:6, 173:2, 173:7</p> <p>tight [4] - 8:4, 8:7, 8:11, 10:5</p> <p>tile [1] - 246:21</p> <p>timely [1] - 177:1</p> <p>timing [1] - 267:18</p> <p>tinted [2] - 36:19, 39:6</p> <p>today [33] - 4:22, 5:3, 71:8, 71:21, 72:9, 87:14, 95:7, 120:6, 131:22, 162:7, 162:11, 183:12, 187:2, 202:4, 206:19, 212:10, 213:13, 216:2, 217:3, 219:10, 219:16, 221:13, 221:16, 227:2, 227:5, 228:20, 232:14, 233:15, 237:24, 238:16, 241:21, 248:5, 253:23</p> <p>together [11] - 16:24, 17:5, 19:6, 23:5, 32:1, 54:6, 102:10, 163:23, 163:24, 177:3, 258:25</p> <p>togethers [1] - 17:11</p> <p>toilet [6] - 50:2, 50:12, 50:20, 51:3, 245:23, 246:24</p> <p>toilets [6] - 243:24, 244:13, 244:25, 245:10, 245:14</p> <p>tomorrow [9] - 74:3, 74:20, 238:2, 238:4, 238:7, 249:4, 267:19, 268:6</p> <p>took [10] - 4:18, 4:25, 15:10, 24:2, 48:22, 67:5, 113:3, 154:3, 182:22, 243:22</p> <p>top [13] - 32:23, 33:5, 41:15, 47:14, 48:20, 200:9, 244:7, 259:18, 259:21, 265:10, 265:14, 266:7, 266:25</p> <p>Topaz [1] - 39:8</p> <p>tops [1] - 250:18</p> <p>toss [1] - 166:11</p> <p>tossed [2] - 166:9</p> <p>total [3] - 93:12, 96:21, 97:2</p> <p>totally [1] - 20:7</p> <p>touch [3] - 68:9, 112:8, 195:18</p> <p>touched [1] - 49:10</p> <p>tough [1] - 95:23</p> <p>toward [1] - 85:24</p> <p>towards [30] - 90:1, 91:19, 96:18, 99:23, 113:12, 115:23, 115:24, 119:3, 151:12, 152:4, 152:18, 180:15, 181:23, 181:24, 186:23, 186:24, 196:17, 198:12, 198:13, 204:11, 204:12, 204:19, 217:22, 261:1, 261:2, 261:19, 261:20, 261:21, 263:17</p> <p>track [1] - 39:2</p> <p>tracking [1] - 106:6</p>	<p>trained [1] - 23:14</p> <p>transcribed [1] - 211:23</p> <p>Transcript [1] - 1:15</p> <p>transcript [7] - 212:1, 213:9, 217:21, 224:7, 226:1, 226:2, 268:16</p> <p>transcripts [1] - 249:22</p> <p>trash [2] - 50:17, 50:19</p> <p>traveling [2] - 243:9, 255:1</p> <p>trial [27] - 20:10, 66:3, 72:19, 73:8, 73:10, 73:11, 73:15, 76:23, 77:2, 77:6, 77:7, 136:16, 136:18, 136:19, 136:23, 159:5, 221:16, 226:4, 241:11, 241:13, 241:14, 241:18, 249:8, 267:22, 267:24, 267:25, 268:4</p> <p>TRIAL [1] - 1:16</p> <p>trick [1] - 90:11</p> <p>tried [1] - 58:14</p> <p>Trombetta [4] - 133:7, 133:9, 134:12, 249:21</p> <p>Tropicana [1] - 39:7</p> <p>trouble [2] - 10:23, 25:20</p> <p>truck [3] - 195:3, 244:5, 244:9</p> <p>true [12] - 15:1, 25:22, 55:14, 59:1, 183:22, 217:2, 225:5, 230:20, 232:19, 234:9, 268:16</p> <p>trust [1] - 102:1</p> <p>truth [29] - 5:1, 5:4, 5:10, 5:17, 12:1, 15:15, 16:16, 24:9, 24:12, 35:24, 35:25, 39:4, 46:6, 48:15, 54:20, 54:21, 60:25, 65:17, 182:6, 182:14, 225:4</p> <p>truthful [2] - 28:15, 53:10</p> <p>try [2] - 129:12, 236:11</p> <p>trying [23] - 20:13, 28:8, 29:14, 60:15, 90:11, 96:17, 100:7, 101:19, 117:3, 120:6, 128:20, 129:9, 171:7, 182:1, 205:1, 205:10, 236:5, 238:17, 263:23, 263:24, 264:2, 266:9</p> <p>turn [4] - 82:21, 100:9, 116:2, 152:19</p> <p>turns [1] - 204:6</p> <p>twenty [1] - 110:4</p> <p>twenty-seven [1] - 110:4</p> <p>twice [1] - 9:2</p> <p>twins [4] - 139:9, 139:11, 139:12, 139:19</p> <p>two [44] - 10:9, 10:11, 20:1, 24:5, 55:4, 81:12, 89:19, 93:14, 98:6, 101:1, 101:11, 108:10, 115:8, 133:21, 134:14, 152:6, 155:3, 187:9, 188:3, 189:18, 196:8, 197:19, 207:25, 208:2, 210:17, 210:20, 210:21, 210:22, 210:24, 212:8, 212:10, 214:2, 228:3, 228:8, 228:22, 229:2, 229:8, 233:20, 237:1, 237:23, 237:25, 239:3, 244:25, 264:25</p> <p>type [4] - 100:14, 110:8, 110:14, 199:22</p>
U		
<p>ultimately [1] - 205:14</p>		

<p>under ^[26] - 4:21, 15:18, 15:24, 16:8, 18:15, 18:17, 23:19, 45:12, 53:21, 54:9, 76:9, 76:10, 76:11, 76:16, 102:10, 143:8, 185:4, 216:14, 217:2, 224:24, 224:25, 225:1, 225:6, 225:18, 226:4, 243:4</p> <p>underside ^[1] - 146:6</p> <p>understood ^[2] - 219:23, 266:11</p> <p>unfortunately ^[1] - 238:12</p> <p>unless ^[3] - 77:2, 140:24, 245:24</p> <p>UNLV ^[1] - 121:14</p> <p>unrelated ^[1] - 53:24</p> <p>unusual ^[5] - 80:9, 94:13, 112:17, 122:11, 193:7</p> <p>up ^[136] - 8:25, 9:8, 11:24, 12:1, 22:15, 23:2, 23:4, 23:10, 26:9, 32:1, 33:10, 35:11, 36:9, 36:15, 39:6, 39:14, 39:22, 40:21, 41:8, 42:16, 43:2, 43:8, 43:24, 49:10, 50:12, 51:10, 55:19, 60:4, 60:20, 66:24, 67:2, 68:9, 68:16, 68:18, 68:20, 69:9, 69:19, 74:21, 79:10, 81:5, 90:7, 90:9, 90:10, 92:13, 96:3, 96:18, 97:17, 100:19, 101:8, 103:11, 104:16, 105:25, 108:7, 111:10, 111:12, 112:9, 117:1, 117:4, 117:9, 117:10, 117:12, 119:3, 123:24, 125:11, 127:15, 127:22, 127:25, 132:9, 135:1, 135:8, 135:11, 135:13, 139:14, 143:19, 148:14, 148:18, 148:21, 148:22, 149:19, 149:24, 151:7, 151:23, 154:15, 156:7, 157:10, 159:10, 160:16, 163:23, 166:14, 167:24, 168:1, 168:9, 168:10, 168:11, 168:17, 169:3, 171:6, 172:7, 177:12, 178:15, 178:16, 178:20, 180:7, 180:8, 181:6, 182:1, 183:24, 186:23, 186:24, 194:25, 195:20, 204:2, 209:3, 216:14, 216:22, 217:23, 222:1, 225:1, 227:18, 244:9, 244:22, 250:25, 251:20, 251:21, 256:12, 257:8, 263:4</p> <p>ups ^[1] - 108:18</p> <p>V</p> <p>VANESSA ^[2] - 78:20, 79:5</p> <p>Vanessa ^[10] - 2:7, 78:17, 79:4, 80:8, 81:16, 87:11, 90:6, 90:18, 130:7</p> <p>vanities ^[1] - 243:25</p> <p>Vegas ^[6] - 3:1, 64:3, 64:4, 110:16, 138:25, 252:11</p> <p>vehicle ^[23] - 194:19, 194:20, 195:1, 195:2, 195:13, 195:14, 195:22, 196:2, 196:5, 196:9, 196:12, 196:14, 204:25, 205:2, 205:3, 205:4, 205:5, 205:21, 206:9, 206:16, 206:17, 214:14, 214:21</p> <p>vehicles ^[1] - 195:25</p> <p>versus ^[6] - 3:10, 78:11, 137:23, 140:17, 219:16, 242:23</p> <p>veteran ^[1] - 95:23</p> <p>victim's ^[1] - 58:7</p>	<p>Victor ^[38] - 24:22, 53:24, 64:13, 64:15, 142:22, 142:25, 143:9, 144:2, 148:5, 158:22, 175:17, 175:20, 175:21, 176:6, 176:8, 177:4, 181:17, 181:25, 184:24, 187:16, 187:17, 191:21, 197:21, 204:18, 254:16, 254:17, 254:19, 255:16, 256:6, 259:8, 259:11, 260:8, 261:8, 261:23, 263:15, 264:5, 264:12, 264:17</p> <p>Victor's ^[1] - 142:23</p> <p>vida ^[3] - 190:15, 190:21</p> <p>VIDA ^[1] - 190:23</p> <p>video ^[3] - 104:11, 142:21, 143:13</p> <p>videotapes ^[1] - 104:25</p> <p>view ^[1] - 90:15</p> <p>violate ^[1] - 5:14</p> <p>Virgil ^[10] - 100:24, 110:23, 112:5, 151:20, 151:22, 177:11, 177:17, 192:7, 253:11, 257:3</p> <p>vision ^[2] - 96:19, 96:20</p> <p>visit ^[3] - 18:4, 58:9, 159:20</p> <p>voice ^[21] - 27:17, 71:14, 90:13, 102:17, 105:5, 117:6, 120:7, 120:14, 131:14, 157:8, 160:2, 161:1, 169:8, 171:4, 172:17, 175:22, 209:22, 230:4, 236:2, 261:10, 265:2</p> <p>voice ^[2] - 95:14, 97:16</p> <p>voluntarily ^[3] - 15:13, 15:16, 18:13</p> <p>Voluntary ^[8] - 217:18, 231:1, 231:8, 232:10, 233:2, 234:12</p> <p>vs ^[1] - 1:9</p> <p>W</p> <p>wait ^[5] - 40:24, 102:5, 149:9, 201:22, 215:13</p> <p>waited ^[2] - 111:19, 178:12</p> <p>waiting ^[4] - 83:18, 112:15, 179:18, 248:22</p> <p>walk ^[3] - 98:7, 113:18, 177:23</p> <p>walked ^[6] - 96:15, 96:16, 96:19, 148:22, 177:24</p> <p>walkie ^[1] - 95:14</p> <p>walkie-talkies ^[1] - 95:14</p> <p>walking ^[6] - 96:17, 261:14, 261:15, 261:16, 261:17, 261:18</p> <p>wall ^[26] - 100:18, 100:20, 103:21, 105:15, 105:17, 105:22, 113:6, 113:12, 116:12, 116:13, 116:22, 117:11, 117:15, 117:17, 117:18, 119:3, 128:7, 201:18, 201:19, 201:20, 202:2, 259:8, 259:9, 261:21, 261:24, 261:25</p> <p>warehouse ^[1] - 110:11</p> <p>warehouseman ^[1] - 110:9</p> <p>warrant ^[3] - 57:22, 74:11, 76:7</p> <p>Washington ^[35] - 80:5, 81:4, 81:14, 85:14, 85:19, 86:8, 86:22, 105:13, 110:23, 112:5, 118:19, 126:4, 127:4, 127:16, 127:22, 127:25, 180:15,</p>	<p>180:16, 180:18, 181:23, 181:24, 192:6, 192:7, 198:12, 198:16, 198:21, 201:12, 204:9, 222:22, 227:24, 241:3, 243:9, 252:24, 253:10, 257:3</p> <p>watch ^[5] - 62:15, 73:9, 136:17, 241:12, 267:23</p> <p>watching ^[4] - 85:8, 125:14, 150:13, 197:13</p> <p>ways ^[1] - 62:8</p> <p>weapon ^[4] - 100:14, 116:10, 130:2, 259:12</p> <p>wearing ^[41] - 36:21, 99:2, 113:10, 113:13, 114:2, 116:7, 131:9, 152:22, 157:3, 157:6, 158:3, 160:9, 160:12, 160:22, 178:7, 178:9, 180:25, 209:20, 213:23, 215:20, 216:9, 217:4, 223:25, 225:6, 225:19, 225:22, 226:8, 226:9, 226:23, 227:3, 227:4, 227:11, 231:20, 234:10, 260:5, 260:7, 260:10, 263:9, 263:10, 266:23</p> <p>Wednesday ^[2] - 1:14, 3:2</p> <p>week ^[8] - 7:8, 159:2, 159:20, 164:20, 165:24, 239:9</p> <p>weekend ^[1] - 173:19</p> <p>weeks ^[5] - 11:9, 24:5, 55:4, 63:10, 239:3</p> <p>weighed ^[2] - 16:9, 61:6</p> <p>weight ^[1] - 140:17</p> <p>welcome ^[4] - 131:24, 136:3, 136:6, 248:16</p> <p>west ^[8] - 85:25, 86:2, 86:6, 86:20, 86:25, 89:22, 91:18, 204:8</p> <p>west/east ^[1] - 86:6</p> <p>westbound ^[2] - 99:24, 105:14</p> <p>whatsoever ^[1] - 55:24</p> <p>whereabouts ^[1] - 86:23</p> <p>white ^[3] - 36:15, 39:6, 125:23</p> <p>whole ^[28] - 5:1, 5:4, 5:10, 5:16, 15:15, 24:12, 29:1, 29:7, 35:24, 44:24, 46:6, 51:19, 51:22, 51:25, 53:20, 89:3, 96:20, 113:22, 125:13, 150:11, 150:14, 156:23, 171:6, 186:24, 193:5, 197:23, 205:17</p> <p>willing ^[1] - 54:18</p> <p>wimpy ^[1] - 108:8</p> <p>winded ^[1] - 144:25</p> <p>windows ^[2] - 36:19, 39:6</p> <p>wise ^[1] - 149:6</p> <p>witness ^[96] - 3:16, 3:21, 27:2, 29:15, 43:18, 53:23, 57:22, 71:15, 72:24, 74:11, 74:22, 76:1, 76:7, 76:23, 76:25, 77:21, 78:16, 78:21, 85:17, 87:5, 88:15, 90:5, 91:22, 92:1, 92:9, 92:11, 92:17, 102:18, 105:6, 109:5, 109:7, 109:11, 117:1, 119:6, 119:8, 119:11, 119:20, 119:22, 120:19, 131:15, 132:23, 136:9, 138:3, 138:7, 155:9, 157:12, 160:24, 161:11, 161:13, 161:17, 168:25, 169:20, 182:16, 184:12, 185:16, 185:24, 186:1, 186:8, 188:23, 195:5,</p>
---	---	--

<p>196:1, 203:17, 207:12, 209:23, 211:3, 216:24, 217:25, 220:22, 222:2, 224:22, 226:2, 230:5, 231:15, 237:6, 237:15, 237:17, 239:18, 239:24, 241:1, 242:11, 243:3, 246:1, 248:10, 248:19, 248:21, 248:25, 249:24, 250:1, 250:19, 251:4, 259:21, 259:23, 262:18, 265:3, 267:6, 267:15</p> <p>Witness ^[3] - 81:11, 207:15, 209:8</p> <p>WITNESS ^[79] - 3:25, 4:3, 5:2, 5:5, 5:7, 27:19, 44:18, 44:20, 44:23, 45:1, 45:3, 64:25, 70:19, 74:23, 78:25, 79:4, 79:7, 92:7, 92:21, 92:25, 93:2, 93:4, 93:23, 107:12, 108:3, 108:6, 108:25, 109:3, 109:15, 109:19, 109:21, 109:23, 117:3, 119:18, 120:16, 120:23, 120:25, 121:3, 134:8, 134:13, 134:16, 134:20, 135:3, 135:5, 136:3, 136:6, 138:11, 138:15, 145:25, 146:7, 147:16, 161:9, 161:21, 161:25, 164:8, 170:14, 183:2, 186:12, 186:16, 189:6, 189:13, 189:15, 190:18, 190:21, 190:23, 203:9, 215:15, 232:2, 237:12, 240:3, 240:5, 240:8, 243:5, 248:16, 251:8, 251:12, 251:14, 251:16, 267:13</p> <p>witnessed ^[2] - 222:15, 231:17</p> <p>witnesses ^[3] - 120:4, 229:1, 238:3</p> <p>WITNESSES ^[2] - 2:6, 2:13</p> <p>wondering ^[1] - 239:5</p> <p>word ^[4] - 10:2, 32:9, 50:12, 61:18</p> <p>words ^[12] - 40:2, 43:13, 47:19, 69:22, 72:10, 72:15, 166:20, 168:17, 212:20, 223:14, 223:16</p> <p>workers ^[3] - 245:7, 247:13, 247:21</p> <p>worry ^[1] - 239:4</p> <p>wound ^[3] - 101:23, 102:12, 113:7</p> <p>wounds ^[1] - 102:15</p> <p>write ^[1] - 202:13</p> <p>writes ^[1] - 249:25</p> <p>written ^[7] - 41:4, 43:4, 88:9, 88:10, 213:2, 213:18, 221:17</p> <p>wrote ^[5] - 88:19, 211:16, 213:5, 214:10, 221:17</p>	<p>230:11, 230:16, 233:20, 234:6, 236:5, 236:9, 236:21, 237:2, 252:8</p> <p>yelled ^[1] - 125:11</p> <p>yesterday ^[34] - 4:18, 4:25, 5:16, 5:17, 6:22, 7:18, 11:4, 12:13, 13:5, 14:11, 14:18, 15:10, 16:19, 26:2, 27:8, 27:11, 27:25, 32:16, 33:23, 35:20, 35:24, 36:4, 39:12, 46:3, 49:23, 50:1, 50:24, 51:18, 51:23, 53:10, 56:23, 61:11, 71:7, 173:1</p> <p>Yobanni ^[2] - 32:13, 32:16</p> <p>young ^[33] - 16:10, 24:4, 24:5, 61:6, 62:16, 84:23, 98:16, 98:19, 98:21, 98:23, 98:25, 99:9, 99:23, 100:1, 100:3, 100:7, 101:7, 102:2, 103:20, 105:16, 122:21, 123:15, 123:23, 124:9, 124:25, 125:15, 125:17, 125:21, 125:22, 127:4, 127:15, 128:11</p> <p>younger ^[2] - 143:6, 143:7</p> <p>yourself ^[11] - 44:17, 62:8, 101:20, 155:7, 175:12, 183:14, 184:19, 207:10, 231:12, 245:3, 255:15</p> <p>yourselves ^[4] - 73:7, 136:15, 241:10, 267:21</p>
Z	
<p>zero ^[1] - 140:16</p>	
<p style="text-align: center;">X</p> <p>XV ^[1] - 1:9</p> <p style="text-align: center;">Y</p> <p>year ^[8] - 6:17, 93:12, 107:13, 143:5, 188:6, 228:3, 229:2, 253:14</p> <p>years ^[44] - 10:10, 10:11, 15:17, 32:1, 50:8, 50:20, 72:8, 88:23, 93:14, 110:18, 110:20, 110:21, 132:7, 132:13, 187:18, 187:20, 189:18, 202:8, 203:21, 210:7, 210:10, 210:13, 210:15, 211:11, 219:17, 219:18, 225:17, 226:7, 227:2, 227:21, 228:4, 228:8, 228:23, 229:8,</p>	