

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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INDEX Vol 10
DAVID BURNS, CASE NO. 80834

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE NO.</u>
Burns' Motion in Limine #1-3, 10/12/14	1	0013-0046
Instructions to the Jury: 2/17/15	16	3296-3353
Judgment of Conviction (Jury Trial): 5/5/15	16	3377-3379
Notice of Appeal: 3/17/20	16	3380-3381
Notice of Intent to Seek Death Penalty, 10/28/10	1	0009-0012
State's Opp. Burns' Motion in Limine #1-3, 10/13/14	1	0047-0053
Stip. and Order Waiving Separate Penalty Hrg., 2/9/15	14	2820-2821
Superceding Indictment, 10/13/10	1	0001-0008
Transcript: 10/20/14 All Pending Motions	1	0054-0094
Transcript: 1/20/15 Jury Trial (Day 1)	1	0095-0208
Transcript: 1/20/15 Jury Trial (Day 1) (continued)	2	0209-0361
Transcript: 1/21/15 Jury Trial (Day 2)	2	0362-0424
Transcript: 1/21/15 Jury Trial (Day 2) (continued)	3	0425-0643
Transcript: 1/22/15 Jury Trial (Day 3)	4	0644-0853
Transcript: 1/22/15 Jury Trial (Day 3) (continued)	5	0854-0887
Transcript: 1/23/15 Jury Trial (Day 4)	5	0888-1069
Transcript: 1/23/15 Jury Trial (Day 4) (continued)	6	1070-1223
Transcript: 1/26/15 Jury Trial (Day 5)	6	1224-1289
Transcript: 1/26/15 Jury Trial (Day 5) (continued)	7	1290-1424
Transcript: 1/27/15 Jury Trial (Day 6)	7	1425-1507
Transcript: 1/27/15 Jury Trial (Day 6) (continued)	8	1508-1642
Transcript: 1/28/15 Jury Trial (Day 7)	8	1643-1725
Transcript: 1/28/15 Jury Trial (Day 7) (continued)	9	1726-1757
Transcript: 1/29/15 Jury Trial (Day 8)	9	1758-1889
Transcript: 1/30/15 Jury Trial (Day 9)	9	1890-1944
Transcript: 1/30/15 Jury Trial (Day 9) (continued)	10	1945-2108
Transcript: 2/5/15 Jury Trial (Day 10)	10	2109-2162
Transcript: 2/5/15 Jury Trial (Day 10) (continued)	11	2163-2381
Transcript: 2/5/15 Jury Trial (Day 10) (continued)	12	2382-2412

Transcript: 2/6/15 Jury Trial (Day 11)	12	2413-2599
Transcript: 2/6/15 Jury Trial (Day 11) (continued)	13	2600-2622
Transcript: 2/9/15 Jury Trial (Day 12)	13	2623-2819
Transcript: 2/10/15 Jury Trial (Day 13)	14	2822-2996
Transcript: 2/11/15 Jury Trial (Day 14)	14	2997-3032
Transcript: 2/11/15 Jury Trial (Day 14) (continued)	15	3033-3198
Transcript: 2/12/15 Jury Trial (Day 15)	15	3199-3248
Transcript: 2/12/15 Jury Trial (Day 15) (continued)	16	3249-3295
Transcript: 2/17/15 Jury Trial (Day 16)	16	3358-3369
Transcript: 4/23/15 Sentencing	16	3370-3376
Verdict: 2/17/15	16	3354-3357

1 A [No audible response.]

2 Q I mean, you watched the video yesterday. You're
3 saying that you heard that you at some point are saying to the
4 ladies and gentlemen of the jury that -- when they watched the
5 video over the last two days, that you say that he was wiping
6 it down and then he gave it to Donovan Rowland? You're
7 telling the jury that that's what you said?

8 A I don't remember. You've got me all confused.
9 I don't remember.

10 Q These -- in this statement, Monica, these aren't
11 your words, correct?

12 A Yes.

13 Q They're not my words, correct?

14 A Right.

15 Q When you told the police you were in love with
16 Job, was that true?

17 A Yes.

18 Q Do you remember towards the end of the statement
19 the detective says to you words to the effect of you told me
20 20 times you're lying, we can't even tell what the truth is?
21 Do you remember that?

22 A Yes, I do.

23 Q Do you -- would you agree with me that when
24 somebody lies so many times it becomes hard to tell what the
25 truth is?

1 A Yes.

2 Q And would you agree with me that's exactly what
3 you've done in this case?

4 MR. DiGIACOMO: Objection. Argumentative.

5 MR. ORAM: No, that she's lied so many times it's
6 hard to tell what the truth is.

7 MR. DiGIACOMO: Then I'm going to object on
8 relevance.

9 THE COURT: No. It's overruled. She can -- if she
10 can answer if she wants to answer.

11 THE WITNESS: I would agree.

12 BY MR. ORAM:

13 Q Do you recall these conversations you were
14 having with the police about your work, and right before the
15 police showed up you were giving instructions to a co-worker
16 to like call certain people if --

17 A Yes, I do.

18 Q Do you recall if a person named Anthony called
19 for you at work?

20 A I don't remember.

21 Q Do you know an Anthony Lasseter?

22 A I don't remember.

23 Q If this would be a guy with sort of bushy hair
24 and really striking blue eyes, does that refresh your memory,
25 or no?

1 A No.

2 Q You talked about a man named Shawn. I guess --
3 do you recall that?

4 A In the interview?

5 Q Yes.

6 A Yes.

7 Q And who is Shawn to you?

8 A A guy I used to see. He's an ex.

9 Q He was the person that Job-Loc stole you away
10 from?

11 A Yes.

12 Q I don't believe I've seen a picture or we've
13 seen a picture, so I'd like to approach, and I'm not sure if
14 these are him, and to have you tell me if one of these is him.

15 A Okay.

16 Q Do that. Does he have a nickname?

17 A S-Loc.

18 Q He's an S-Loc.

19 A Or Callie [phonetic].

20 Q S-Loc or Callie.

21 MR. ORAM: Permission to approach.

22 MR. DiGIACOMO: May I see them, Judge?

23 MR. ORAM: Sure.

24 THE COURT: If you're asking her to identify
25 somebody, I guess you have to mark the picture.

1 MR. ORAM: Judge, I'm just -- there's quite a few and
2 I'm --

3 THE COURT: Well, if she identifies it, then you'd
4 better mark it.

5 MR. ORAM: That's fine. Because I just do not --

6 MR. DiGIACOMO: Well, I mean, maybe we should --

7 THE COURT: Are these a whole bunch of pictures?

8 MR. DiGIACOMO: There's at least, I think -- I mean,
9 I'd be happy to mark it as a packet. I have no objection to
10 all -- the admission of all the documents.

11 MR. ORAM: Oh, no. I'm not going to -- I'll show you
12 the ones I'm going to ask her.

13 MR. DiGIACOMO: Okay. So why don't you pick the ones
14 you're actually going to show her, we'll mark them, because we
15 need to keep a record of them.

16 MR. ORAM: Judge, what I want to do is once I get
17 one, then I may want it --

18 MR. DiGIACOMO: I'd like to know what he's showing
19 the witness as part of the record.

20 THE COURT: It may be that for a record we should
21 have all of them marked, and if there's a particular one that
22 she identifies -- where did you get all this?

23 MR. ORAM: Discovery.

24 (Pause in proceedings)

25 MR. ORAM: Permission to approach the clerk.

1 THE COURT: Sure.

2 (Pause in proceeding.)

3 BY MR. ORAM:

4 Q By the way, do you know Anthony -- or do you
5 know a person named Cricket?

6 A Yes.

7 Q Does Cricket have sort of bushy hair with
8 striking blue eyes?

9 A No.

10 Q What does Cricket look like?

11 A He's Mexican.

12 MR. ORAM: Okay. May I approach?

13 THE COURT: Sure.

14 BY MR. ORAM:

15 Q Are any of these S-Loc or Shawn? If you'll just
16 flip through them. Is that S-Loc?

17 A Yes.

18 Q That's S-Loc?

19 A Yes.

20 MR. DiGIACOMO: For the record, I'm sorry, what
21 defense exhibit is that?

22 MR. ORAM: N. N as in Nancy.

23 MR. DiGIACOMO: Okay.

24 MR. ORAM: Okay. That's S-Loc.

25 THE WITNESS: It's too dark.

1 MR. ORAM: Okay.

2 THE WITNESS: That's Shawn.

3 BY MR. ORAM:

4 Q That's Shawn?

5 A Yes. And also right here.

6 Q That's Shawn?

7 A Yes.

8 Q Who is that, do you know, on the left?

9 A It's too dark to tell.

10 Q Okay.

11 A That might be him.

12 Q That's Shawn?

13 A Might be him, yes.

14 Q Okay. Next one, please.

15 A I can't tell.

16 Q Can't tell?

17 A No. It's messed up there.

18 MR. ORAM: Judge, the one of them she can't tell,

19 should I just rip that off? Do you want me to do that, Judge?

20 THE COURT: I don't care.

21 MR. ORAM: Okay. Can I publish?

22 MR. DiGIACOMO: Well --

23 MR. ORAM: Can I publish?

24 THE COURT: Sure.

25 (Pause in proceeding.)

1 BY MR. ORAM:

2 Q That's S-Loc?

3 A Yes.

4 Q That's Shawn?

5 A Yes.

6 Q That's the person you were with, your boyfriend
7 before Job-Loc?

8 A Correct.

9 Q You just said you thought that was him, or was
10 that too dark?

11 A That's too dark.

12 Q That's definitely Shawn?

13 A Yes.

14 Q Shawn on the right-hand side?

15 A In the blue, yes.

16 Q Shawn pointing a gun at us?

17 A Possibly, yes.

18 Q Shawn?

19 A Yes.

20 MR. ORAM: Move for the admission of Defense Proposed
21 Exhibit N.

22 MR. DiGIACOMO: No objection.

23 THE COURT: It will be received.

24 (Defendant's Exhibit N admitted.)

25

1 BY MR. ORAM:

2 Q Do you recall telling the police that you were
3 unsure whether Shawn had any involvement in this?

4 A Yes.

5 Q They hadn't asked you about Shawn, right? You
6 just sort of brought up Shawn?

7 A Yes.

8 Q And so out of the blue you bring up your concern
9 that maybe he had involvement, you weren't sure if he had
10 involvement?

11 A I wasn't sure.

12 Q Is that true or is that a lie?

13 A He didn't have any involvement.

14 Q And you knew that at the time?

15 A Yes.

16 Q So it was a lie?

17 A Yes.

18 Q And you did that because you thought maybe the
19 police will start to go in that direction, right?

20 A Yes.

21 Q It was the hope to put a murder and send the
22 police out in a direction of a completely innocent man, right?

23 A Yes.

24 Q So it's fair to say that at the time you were
25 being interviewed by the police that you didn't mind trying to

1 imply that an innocent man was guilty, right?

2 A Yes.

3 Q You told the ladies and gentlemen of the jury
4 that Job-Loc lived off you?

5 A Yes.

6 Q He sold dope, right?

7 A I'm sorry?

8 Q He sold narcotics?

9 A Yes.

10 Q But he was still living off you?

11 A Yes.

12 Q How often would Job-Loc stay at your house?

13 A Whenever he felt like it.

14 Q I understand that answer. But if you could give
15 us a description of twice a week on average, five times a
16 week, once a week, something more like that.

17 A I don't -- I can't give a time. He was just
18 there when I begged him to come over or when he wanted to,
19 when he wanted to get away.

20 Q Was that quite frequently, would you say?

21 A Frequently.

22 Q Now, you've told the jury that the two
23 defendants, Mr. Burns and Mr. Mason, were staying at your
24 house for a couple weeks before the crime. Do you remember
25 that?

1 A No.

2 Q You don't remember saying that?

3 A No.

4 Q Where were they staying?

5 A You said a couple of weeks before the crime. I
6 didn't say that they were staying at my house --

7 Q Maybe I've asked a poor question.

8 A Yes.

9 Q Where were Mr. Burns and Mr. Mason staying the
10 day before the crime, the day before that, the day -- where
11 were they staying in that time period according to you?

12 A With Job.

13 Q Not at your house?

14 A They had been to my house a few times.

15 Q Monica, didn't you tell us on Wednesday that
16 they had stayed at your house for the preceding two weeks?

17 A No. They weren't there continuously for two
18 weeks.

19 Q Okay. And I'm not saying there, you know,
20 continuously like they never left the house. But were they
21 sort of sleeping on the sofas?

22 A Yes. They did spend the night there a few
23 nights, yes.

24 Q Okay. So I want to get specific about that.

25 Okay.

1 A Okay.

2 Q The night before the murder, the 5th, do you
3 know where they were staying?

4 A No, I don't remember.

5 Q The 4th?

6 A Don't remember.

7 Q You're not going to remember any of it, are you?
8 Third, 2nd, if I keep asking, will you remember?

9 A No.

10 Q So you don't know if they're at your house, you
11 don't know if they're at Job's house?

12 A It's 4 1/2 years ago. I don't remember exactly
13 what nights they were there.

14 Q You were selling narcotics at the time, right?

15 A Yes.

16 Q And what were those narcotics?

17 A Marijuana.

18 Q And what else?

19 A Ecstasy.

20 Q And what else?

21 A I don't remember anything else.

22 Q The night of the 6th, so late night 6th going
23 into the 7th, where do you first see the person you've said is
24 Mr. Burns and Mr. Mason? Where did you first see them?

25 A At Job's apartment.

1 Q Okay. Now, do you remember in the video you
2 specifically talk about how you meet them down at Fremont
3 Street?

4 A Yes.

5 Q So you neglected to tell the police that you'd
6 actually picked them up at Job-Loc's beforehand?

7 A Initially, I did.

8 Q So that was a lie?

9 A Yes.

10 Q And you have changed your testimony because of
11 cellphone records, haven't you?

12 MR. DiGIACOMO: Objection, as to changed your
13 testimony.

14 THE COURT: Saying she changed her testimony or --

15 MR. DiGIACOMO: She hasn't changed her -- at all.

16 THE COURT: -- changed from her statement? The
17 testimony isn't her statement.

18 MR. DiGIACOMO: And I apologize, but if he's going to
19 ask her did she change in her statement to where she picked
20 them up, I think that would be the foundational question
21 before he can ask is her testimony different.

22 THE COURT: Well, the statement is a statement,
23 testimony is testimony, so.

24 BY MR. ORAM:

25 Q When did you decide to change -- okay.

1 Originally you say that you meet them down at Fremont Street,
2 right?

3 A Yes.

4 Q When did you decide to change that?

5 A To say that I picked them up at the apartment?

6 Q Yes.

7 A I believe it's toward the end of the statement.

8 Q You heard this description how you went to Job's
9 and picked them up in your statement, you heard that on the
10 video?

11 A Yes, I believe so.

12 Q Well, I'm sure that the prosecutor will be able
13 to show you that portion when he questions you.

14 A Okay.

15 Q You didn't change that for your testimony here,
16 did you?

17 A What do you mean?

18 Q That wasn't something you decided to say for the
19 first time here in this courtroom; you're saying you said it
20 in your statement, right?

21 A Yes.

22 Q You're confident of that?

23 A Yes.

24 Q You have seen cellphone records with the police,
25 right?

1 A Yes.

2 Q And you realize that you were telling them --
3 they were asking you about your phone, right?

4 A Yes.

5 Q And you knew that these cellphones ping off
6 towers, right?

7 A I know that now.

8 Q And Fremont Street's a long way from the
9 Brittnae Pines apartments.

10 A Yes.

11 Q Do you remember telling the jury yesterday that
12 when you went to Jerry's Nugget the defendants wanted to rob a
13 security man for his gun?

14 A Yes.

15 Q And you never mentioned that in your statement,
16 did you?

17 A No.

18 Q That was something that you've remembered since?

19 A Yes.

20 Q But Monica, in your statement you tell the
21 police that they go someplace to rob a drug dealer, do you
22 remember?

23 A Yes.

24 Q And that they look through the window and they
25 see a gun.

1 A Yes.

2 Q And that they don't want to rob somebody who has
3 a gun.

4 A Yes.

5 Q But they wanted to rob a security guard at a
6 casino with a gun?

7 A Yes.

8 Q And that's something -- when did you remember
9 that fact?

10 A I don't remember.

11 Q When was the first time you told anybody that
12 fact?

13 A I don't remember.

14 Q Do you recall telling the ladies and gentlemen
15 of the jury that after you pick up Stephanie you don't
16 remember where Mr. Burns, the person you're describing as Mr.
17 Burns went, that he was out of your sight for some period of
18 time?

19 A No, I don't remember that.

20 Q Do you remember saying that you left Stephanie's
21 apartment and then came back?

22 A Before the incident?

23 Q Yes.

24 A Yes.

25 Q Okay. So let me -- let me run through this. We

1 know -- we're going to know what time you leave the Opera
2 House, fair, because we've seen the video?

3 A Right.

4 Q You see there's a timer at the bottom. I just
5 want to run through this quickly to see all the different
6 things that happen. Okay.

7 A Okay.

8 Q After the Opera House, where do you go to next?
9 Where's the first place you drive your vehicle?

10 A To Stephanie's.

11 Q And then you leave Stephanie's and where do you
12 drive your vehicle to next?

13 A The apartment where they said that the guy had a
14 gun.

15 Q And then you drive back to Stephanie's?

16 A No.

17 Q When do you drive back to Stephanie's before the
18 incident?

19 A We don't go back to Stephanie's.

20 Q I thought I just asked you if you went back
21 to --

22 A It's in my statement.

23 Q So that's a lie?

24 A Well, I mean, I don't remember how everything
25 happened.

1 Q Okay. Really what I want to ask is I just want
2 you to do it this way, okay. Just like the police were
3 saying, don't make me pull this out of you. I just want you
4 to tell us --

5 MR. DiGIACOMO: Objection to the commentary, Judge.

6 MR. ORAM: Judge, I'll make this quick.

7 THE COURT: Sustained.

8 BY MR. ORAM:

9 Q From the time you leave the Opera House until
10 the time you arrive at the scene of the murder, just tell the
11 jury, just, you know, just quick like this, just say, okay, we
12 went to Stephanie's, we went to this place, we went to this
13 place. Just tell us that.

14 A We left the Opera House, went to Stephanie's.

15 Q Okay.

16 A We went to the apartment where they said the guy
17 had the gun.

18 Q Okay.

19 A And then we went to the crime scene.

20 Q Well, weren't you going to -- weren't you guys
21 going to rob a white guy in Stephanie's apartment complex?

22 A There was a discussion.

23 Q You didn't actually go anywhere there?

24 A No. That was in Stephanie's apartment complex,
25 in her own --

1 Q So your testimony is you went to Stephanie's,
2 you go to the apartment to rob the guy, the drug dealer with
3 the gun that doesn't happen, and then straight to the crime
4 scene?

5 A Yes.

6 Q You told the ladies and gentlemen of the jury
7 that before you talked to the police about this incident you
8 didn't talk to anybody else.

9 A Yes.

10 Q Is that true?

11 A Yes.

12 Q Okay. So let me make sure I understand it.

13 Okay. The murder occurs, you're over at Job's. Besides
14 talking to Job-Loc about this, you talked to nobody else. The
15 police pick you up and now you're being questioned. Is that
16 how that happened?

17 A Right.

18 Q And in the meantime you don't tell anybody about
19 the crime?

20 A Right.

21 Q You told your grandmother something about this
22 crime, right?

23 A I didn't tell her anything about the crime. I
24 just told her something bad happened. I didn't tell her
25 anything about the crime.

1 Q So you do talk to your grandmother about what
2 happened that night?

3 A Yeah. No, not about what happened, just that
4 something bad happened, and I let her watch the news.

5 Q And that there are people in the car and that
6 you heard screaming, and you didn't tell her those things?

7 A No.

8 Q She gave a recorded statement, Monica. You know
9 that, don't you?

10 A No, I didn't.

11 Q You didn't see that in your discovery, your
12 grandmother's statement?

13 A Yeah. I saw her statement.

14 Q Do you remember that at one point, we've gone
15 over it, Marty Wildemann leaves the room, then at some point
16 Detective Bunting, he's the one you held hands with, he gets
17 up, he's a little bit cross with you, he leaves the room? Do
18 you remember? On the video you saw this, right?

19 A Will you say that again.

20 Q Monica, do you remember a third detective comes
21 in, a Detective Hardy, and he decides to ask you some
22 questions?

23 A Yes.

24 Q And you ask him, are you going to hit me; do you
25 remember that?

1 A Yes.

2 Q Monica, did you really believe that Detective
3 Hardy was going to hit you?

4 A I have never been arrested before. The way they
5 were so aggressive off and on I didn't know -- from seeing TV,
6 I didn't know what was going to happen.

7 Q So when we watched that video, it's your
8 testimony those detectives were aggressive with you?

9 A Yeah.

10 Q To the point where you thought it -- you were
11 worried one of them may hit you?

12 A Mm-hmm. It was a question.

13 Q Or was that a form of trying to manipulate them?

14 A No.

15 Q You've told the ladies and gentlemen of the
16 jury, when the prosecutor asked you questions, that even at
17 the end of that very lengthy video you still hadn't come
18 clean, right?

19 A I'm sorry. Repeat the question.

20 Q When the prosecutor asked you questions on
21 Wednesday, he asked you during that entire video had you ever
22 come clean and told the truth, the whole truth to the police.
23 Do you remember when the prosecutor asked you a question like
24 that?

25 A Yes.

1 Q And you told the ladies and gentlemen of the
2 jury that even at the end of the video you had not come clean,
3 right?

4 A Yes.

5 Q And now you've told the ladies and gentlemen of
6 the jury in your first meeting with the district attorneys
7 that you had withheld at least one piece of information,
8 correct?

9 A Yes.

10 Q And in the last meeting a couple months ago, did
11 you still withhold information from them?

12 A I don't remember.

13 Q But today you have told the truth, right?

14 A Yes.

15 Q You don't remember in the third meeting or the
16 second meeting with the DA's whether you withheld evidence?
17 You don't remember --

18 A I don't remember if I said anything to them or
19 not.

20 Q Say that again. I didn't hear you.

21 A Okay. What did you say?

22 Q At the second meeting with the district
23 attorney's office, okay, with Pam and Marc --

24 A You mean at the -- with the two weeks within the
25 last month?

1 Q Yes. Did you withhold evidence from them, or
2 are you not sure?

3 A I'm not sure.

4 Q So it's fair to say that within the last couple
5 of months you're still not sure if you've told the whole
6 truth, right?

7 A No. There's just the one piece.

8 Q You're just dying to tell us, so tell us. What
9 is this one piece of evidence that you have that you haven't
10 told anybody? Wait. Have you told the jury?

11 A No.

12 Q Oh. You mean you've withheld something from
13 this jury?

14 A It wasn't in my statement. It hasn't been
15 brought up.

16 Q That wasn't my question. Have you withheld
17 something from this jury?

18 A It wasn't asked.

19 Q So Mr. DiGiacomo has not asked the question?

20 A Not that I remember, no.

21 Q I have not asked the question?

22 A I haven't told you, so how would you know to
23 ask?

24 (Pause in proceeding.)

25

1 BY MR. ORAM:

2 Q Do you remember the detectives asked you if you
3 ever got out of the car at the scene of the crime? Do you
4 remember that?

5 A Yes.

6 Q And there was a big long pause, Monica. Do you
7 recall that?

8 A Yes.

9 Q I mean, that seems like a very simple question,
10 right --

11 A Yes.

12 Q -- did you get out of the car?

13 I mean, that must have been a horrific few moments,
14 right, Monica?

15 A Yes.

16 Q And you would think that somebody would know
17 whether they got out of the car or not, right? I mean, it
18 seems like no or yes, right?

19 A Yes.

20 Q What were you thinking about when you had that
21 big long pause?

22 A I don't remember what I was thinking.

23 Q You asked the detectives, did I hurt anybody; do
24 you remember that?

25 A Yes.

1 Q Well, did you?

2 A No.

3 Q Why would you ask them that?

4 A Because there was -- when I watched the news,
5 there was a DUI incident, and I was still pretending to be
6 under the influence. So I was talking about the DUI incident.

7 Q Okay. I'm -- I'm sorry, but could you -- I'm
8 kind of lost. What do you -- what are you talking about, a
9 DUI incident? They're investigating a murder, right? I mean,
10 we're there for a murder, right?

11 A Yeah. And when they asked me what did I see on
12 the news, I told them about the shooting and also a DUI
13 incident.

14 Q And so you were referring did I hurt anybody to
15 a DUI incident?

16 A Yes.

17 Q Okay. Monica, you know they weren't asking
18 about a DUI incident, right?

19 A Right.

20 Q So that was just a made-up fantasy lie, right?

21 A Yes.

22 Q Something to throw the detectives off?

23 A Yes.

24 Q At one point the detective says to you, okay,
25 there's at least three of you in the car, do you recall that?

1 Page 42. Do you remember that?

2 A No, I don't remember.

3 Q If I showed that to you, would it refresh your
4 memory?

5 A Yes.

6 MR. ORAM: Page 42, Counsel.

7 Permission to approach.

8 THE COURT: Do any of the jurors need a mid-morning
9 recess? Okay. Let's take a recess now.

10 Ladies and gentlemen, it's again your duty not to
11 converse among yourselves or with anyone else on any subject
12 connected with this trial, or to read, watch or listen to any
13 report of or commentary on the trial from any medium of
14 information, including newspapers, television or radio, and
15 you may not form or express an opinion on any subject
16 connected with this case until it is finally submitted to you.

17 Be in recess for about ten minutes.

18 (Jurors recessed at 11:02 a.m.)

19 THE COURT: The record will reflect that the jurors
20 have left the courtroom.

21 MR. SGRO: We do need a second on the record. Do you
22 want to do it at the end of the break, Your Honor?

23 THE COURT: We can do it right now.

24 MR. SGRO: Two quick things. First of all, one just
25 has to do with the decorum in the courtroom. During

1 cross-examination, and Mr. Oram can't see this, Mr. DiGiacomo,
2 in a loud -- loud enough for me to hear, turns to Ms. Weckerly
3 but looks at the jury panel and makes comments, giggles,
4 laughs, points to things. And effectively he's trying to
5 communicate to the jury, well, wait until I show them this.
6 And those are my words.

7 The decorum has to be one way or another. And we
8 have not done that. Now, if we want to start engaging in that
9 battle, Your Honor, where I'm going to throw up --

10 THE COURT: I don't want anybody to do that.

11 MR. SGRO: Okay. Thank you.

12 THE COURT: And Mr. DiGiacomo, to the extent that you
13 may have done it, let's not do it --

14 MR. DiGIACOMO: Yeah. I'd like the Court to make a
15 record that he had seen me do that. Mr. Sgro has accused
16 Ms. Murray and Ms. Luem of unethical behavior. Mr. Oram
17 yesterday almost committed an unethical act as the jury's
18 walking out of the room.

19 THE COURT: Everybody's going to behave themselves
20 and act civil, and we will have a clean trial to the end of
21 it.

22 MR. DiGIACOMO: Well, make a record that the Court
23 did not notice that. Mr. Sgro just makes stuff up and I know
24 that that's what he does in the courtroom.

25 THE COURT: I haven't noticed anything, but Mr. -- if

1 it's true, then you're not going to do it anymore and Mr. Sgro
2 isn't going to do it anymore.

3 MR. SGRO: And I didn't say anything, by the way,
4 about Ms. Murray or Ms. Luem. I was told that certain conduct
5 was occurring and all I did was --

6 THE COURT: I haven't seen anything that they did.

7 MR. SGRO: Right. And all I did was ask the Court to
8 observe it. And I get why Mr. DiGiacomo's upset. His witness
9 is imploding in front of his eyes. I get the emotional
10 response instead of the professional one. I totally
11 understand it.

12 Relative to the jail letters, I see a number of jail
13 letters being fanned out across Mr. DiGiacomo's desk. Before
14 we -- before we get into anything relative to the jail
15 letters, we're going to have to have some sort of hearing,
16 because I don't know what he intends to show.

17 Now, I understand we admitted a letter today. We
18 have a letter, Your Honor, because we tried to get from the
19 jail all the letters that were written amongst all the parties
20 in the case. Right. We sent a subpoena. Well, what we
21 learned is that they don't copy all the letters. What we
22 learned is that the DA basically turns on and off the switch
23 of when to copy letters. Right. They will -- and this, I'm
24 being garbage in, garbage out.

25 I'm not sure, but this is what we're told. The DA,

1 we're told, can say start copying letters amongst these people
2 starting today, and then they make a decision as to when those
3 letters stop getting copied. So under some cases about duty
4 to turn over evidence and that sort of thing, without knowing
5 in advance what the letters are that he intends to use, we
6 don't know how to best make the record relative to --

7 THE COURT: He can only use things that have been
8 discoverable and offered to you.

9 MR. SGRO: But that's -- but -- yes, sir. But here's
10 the problem. If there is a letter that is sent, and I'm just
11 picking dates out of the air, January 1, 2012, and then the
12 State says stop copying letters on January 2, 2012, we would
13 have no way to respond to those letters because of the
14 unilateral -- in other words, we can't call down there and say
15 start making copies.

16 THE COURT: Let's worry about it when we get there.
17 I don't know what he's going to offer.

18 MR. SGRO: I just wanted to --

19 MR. DiGIACOMO: Just so that the record is clear, the
20 homicide book is what I have in front of me, the book that's
21 been reviewed on at least six occasions during this case.
22 There is no letter that we have. We don't decide when to turn
23 on the mail and not to turn on the mail.

24 The homicide detective collects the items that are
25 used in this case. They have every piece of paper that I

1 have, and I intend to use those pieces of paper that I have
2 previously turned over.

3 THE COURT: If it's part of the discovery he can
4 use it. We'll be in recess.

5 (Court recessed at 11:06 a.m. until 11:19 a.m.)

6 (Jury entering at 11:22 a.m.)

7 THE MARSHAL: All rise for entering jury, please.
8 Jurors, please.

9 THE COURT: All right. State of Nevada vs. Burns and
10 Mason. The record will reflect the presence of the
11 Defendants, their Counsel, the district attorneys, and all
12 members of the jury.

13 Ladies and gentlemen, the -- a couple scheduling
14 issues. First of all, Judge Togliatti is the Judge in the
15 department next to us, she has a jury too. There's only one
16 jury room in this court -- on this floor -- and so her jury,
17 they tell me, is going to go out about 1:30 this afternoon.
18 So when we recess for lunch, we think we'll be recessing about
19 a quarter after twelve, you're going to have an hour and
20 fifteen minutes for lunch -- you're going to have an hour and
21 fifteen minutes rather than an hour because the marshal has to
22 get you downstairs to pay you or something -- something to do
23 with paying you. I don't know the details, but they said an
24 hour and fifteen minutes today they wanted me to give you. So
25 that's fine.

1 When you get back, you're going to have to take all
2 of your things with you and put them in the break room because
3 we -- the jury next door is going to be using the jury room
4 where you've been while they're deliberating. But you're
5 going to get the break room instead of the jury room and we
6 won't let the staff have the break room. How is that? That's
7 the best I can do.

8 A couple of other scheduling things. Next week --
9 there are other things going on in the world besides this
10 case. I know that you don't think so and I don't think so,
11 but the lawyers have other commitments, and they have some
12 other things going on Monday, Tuesday, and Wednesday. And so
13 next week you're going to have Monday, Tuesday, and Wednesday
14 off. You're going to come back Thursday morning at 9:30 and
15 we're going to resume the trial then.

16 So you're going to be -- we're going to be dark for
17 three days. And -- so you've got Monday, Tuesday, and
18 Wednesday off, but you're for sure coming back Thursday at
19 9:30 and we're going to resume the trial then. Any questions
20 or problems with that?

21 All right. If any of you have a problem tell a
22 marshal and we'll -- we'll work it out.

23 We are on cross-examination by Mr. Oram.

24 MR. ORAM: Thank you, Your Honor.

25 BY MR. ORAM:

1 Q Yesterday the prosecutor showed you a couple
2 letters from Mr. Burns --

3 A Yes.

4 Q -- do you remember that?

5 A Yes.

6 Q And at one point when you were reading it he
7 refers -- Mr. Burns -- refers to intel; do you remember that?

8 A Yes.

9 Q Now, having been in the jail for a while, you
10 recognize that "intel" means, Intelligence within the jail?

11 A Yes.

12 Q And that there's a division and he's referring
13 to that that they confiscate letters and then they distribute
14 them to the appropriate authorities?

15 A Well, I'm not sure what their job title is -- I
16 don't -- I mean, their description is, I don't know what they
17 do.

18 Q Do you recall in the letter Mr. Burns says, I
19 know the DA uses this as bedtime reading?

20 A Yes.

21 Q So it seems, from what you read, that there's at
22 least statements to you that the District Attorney is reading
23 these letters at bedtime reading?

24 A Yes.

25 Q Are you telling the ladies and gentlemen of the

1 jury that Mr. Burns was threatening through those vents?

2 A Yes.

3 Q And those letters prove it?

4 A There wasn't any threats in the letter.

5 Q So in order for us to believe that you've been
6 threatened we have to believe you? In other words, there's no
7 audio recording of anything like that, right?

8 A Correct.

9 Q So we should -- so we have to believe that
10 through the vent that he is threatening you, right?

11 A Yes.

12 MR. ORAM: May I approach the clerk?

13 THE COURT: I guess.

14 MR. ORAM: I just need --

15 THE COURT: But kind of what you're doing? Oh, okay.

16 MR. ORAM: Counsel?

17 Court's indulgence.

18 MR. DIGIACOMO: Can we -- can we just approach and
19 pull 286?

20 THE COURT: I don't know what you're doing?

21 MR. LANGFORD: All counsel?

22 MR. ORAM: No.

23 MR. DIGIACOMO: No, I just -- he's got an unfiled
24 version of what is a filed version. I just want to make sure
25 it's the same one.

1 THE COURT: I think I know what it is. Use the filed
2 version. It should be an exhibit. Isn't it an exhibit, Mr.
3 DiGiacomo?

4 MS. WECKERLY: It is.

5 THE COURT: But it's a -- its been marked? I suspect
6 I can take judicial notice of it. I suspect I can take
7 judicial notice of it and it should be admitted, right?

8 MR. DIGIACOMO: No, I was making sure that I have the
9 -- I have the file stamped copy, he had a nonfile stamped
10 copy. I was just making sure that he uses the file stamped
11 copy for the courtroom.

12 MR. ORAM: And, Judge, I have so many papers over
13 here, I'm bound to keep this. So, you know...okay.

14 BY MR. ORAM:

15 Q Monica, you remember when you were originally
16 charged they charged you by way of information. That's a
17 technical term. Do you know what I'm talking about?

18 A No.

19 Q Okay. You -- there's a thing called a "charging
20 document," maybe if I showed it to you that would refresh your
21 memory?

22 A Okay.

23 Q Okay?

24 MR. ORAM: Can I approach?

25 THE COURT: Sure.

1 BY MR. ORAM:

2 Q Does that appear to have your name on the top?

3 A Yes.

4 Q It -- does that appear to be your charges?

5 A Yes.

6 Q Okay.

7 MR. ORAM: Move for the admission of Defendant's
8 Proposed Exhibit Q?

9 MR. DIGIACOMO: No objection, Your Honor.

10 THE COURT: Received.

11 (Defendant's Exhibit Q admitted.)

12 BY MR. ORAM:

13 Q So those were the original charges that you were
14 facing, Monica, okay?

15 A Okay.

16 Q And then on October 15, 2014, I have -- or a
17 guilty plea agreement that you reached with the State of
18 Nevada was filed in court. I could show it to you for the
19 date. Do you want me to do that?

20 A I -- I remember.

21 Q Okay. And part of that agreement is that you
22 plead to the murder and conspiracy to commit murder and
23 robbery, right?

24 A No. You said, "Conspiracy to commit murder"?

25 Q I'm sorry. Conspiracy to commit robbery,

1 robbery, and second-degree murder?

2 A Correct.

3 Q And that's what you've agreed to plead to?

4 A Yes.

5 Q And as I understand it, at some later date the
6 Judge can make a determination whether you get up to 18 years
7 to life?

8 A Correct.

9 Q And you're hoping for the 10 to 25 years?

10 A For the minimum, yes.

11 Q Okay. And as part of this agreement with the
12 State you also signed an agreement to testify?

13 A Yes.

14 Q And in this agreement, it's signed by you, and
15 it talks about your obligation to tell the truth, right?

16 A Yes.

17 Q And that that's the one thing that you've really
18 got to do in this case is tell the truth, right? That's
19 your --

20 A Yes.

21 Q And if you don't tell the truth, then the State,
22 those two prosecutors could withdraw the plea, right?

23 A I don't know.

24 Q Did you -- did you read it before you signed it?

25 A Yeah, but I -- I don't understand what you're

1 asking me, though.

2 Q You made this deal with the State, an agreement
3 to testify, right?

4 A Yes.

5 Q If I showed it, would that maybe refresh your
6 memory?

7 A Yes, please.

8 Q Okay.

9 A Thank you.

10 MR. ORAM: Permission to approach?

11 THE COURT: Yes.

12 BY MR. ORAM:

13 Q Do you recognize that document?

14 A Yes.

15 Q Do you see that "obligation to be truthful"?

16 A Yes.

17 Q And the one the State has filed does not appear
18 to have your name signed on it, but do you recall signing it?

19 A Yes.

20 Q And there appears to be a signature from Ms.
21 Weckerly?

22 A Yes.

23 Q And the obligation to tell the truth is it says
24 -- it starts with, Overriding all else, it is understood that
25 this agreement requires from you an obligation to do nothing

1 other than to tell the truth, right?

2 A Yes.

3 Q Now, you know somebody is going to make that --
4 strike that.

5 MR. ORAM: Move for its admission?

6 MR. DIGIACOMO: No objection.

7 THE COURT: It will be received.

8 THE CLERK: For the record, that was --

9 MR. DIGIACOMO: 286.

10 THE CLERK: -- 286, States.

11 (State's Exhibit 2286 admitted.)

12 BY MR. ORAM:

13 Q Do you know who makes a determination whether
14 you've told the truth or not?

15 A No.

16 Q But you don't think it's me, do you?

17 A No.

18 Q Oh, it's not. Right.

19 A I don't know if it's you or not.

20 Q It's going to be those two individuals, right?

21 MR. DIGIACOMO: I object, Judge.

22 THE COURT: Sustained.

23 MR. DIGIACOMO: Thank you.

24 THE COURT: It isn't going to be those two.

25 BY MR. ORAM:

1 Q At some point in the future, the Court is going
2 to make a determination with the State's recommendation; is
3 that right? What's your understanding of your obligation to
4 tell the truth?

5 A That I have to come up here and tell the truth.

6 Q When you were at the Texas Station that night,
7 was that before or after you went to Job-Loc's?

8 A After the incident? It was before.

9 Q Do you remember when you were talking to the
10 detectives you talked about going to your cousins?

11 A Yes.

12 Q After -- after the incident?

13 A Yes.

14 Q And that was the point -- did you go to your
15 cousins?

16 A I did.

17 Q Did you walk to your cousins?

18 A I did.

19 Q When we saw you picking at your -- both of your
20 feet on the video, did you really have blisters?

21 A I did.

22 Q Where did you leave your car?

23 A Across the apartment from Brittinae Pines
24 Apartments.

25 Q Okay. Where's the first place you go after the

1 murder?

2 A To drop Stephanie off.

3 Q And then where?

4 A To the Rebel by Job-Loc's apartment.

5 Q And then where?

6 A To the Texas.

7 Q And then where?

8 A Back to Job's.

9 Q And then where?

10 A Later that afternoon I walked to my cousins.

11 Q Well, you told the police, didn't you, that

12 you'd gone with the Defendant to your cousins?

13 A Yes.

14 Q Is that true or is that a lie?

15 A It was a lie.

16 Q You told the police about going to a park. Do

17 you remember that?

18 A Yes.

19 Q Did you go to a park?

20 A No.

21 Q So that was a lie?

22 A Yes.

23 Q At the Texas Station, who were you there with?

24 A By myself.

25 Q Was Job-Loc with you?

1 A No, I was by myself.

2 Q I'd like to play a portion of a video from the
3 Texas Station. And I specifically am going to ask you to look
4 at an individual going out of a doorway, okay?

5 A Okay.

6 Q I'm going to ask you if you recognize that
7 person.

8 MR. ORAM: Can we do this?

9 MR. DIGIACOMO: You got to split it over on her --

10 MR. ORAM: Switching it over. Okay.

11 BY MR. ORAM:

12 Q Now, Monica, I'm going to point -- look where
13 I'm pointing at in -- on the jury's link. I'm looking at a
14 door up here in the left-hand corner. And I'm going to --

15 A And I -- I can't see what you're pointing at.

16 Q Okay. This is different. I --

17 MR. DIGIACOMO: Just do smaller.

18 BY MR. ORAM:

19 Q I'm going to ask you to look right up here,
20 okay? And I'll let you know when, Monica.

21 MR. ORAM: Is it playing?

22 BY MR. ORAM:

23 Q It may take a minute or two.

24 Now, what I'm looking for, Monica, is an individual
25 going out that door. Now, you're going to be seen in this,

1 and so I want you to identify yourself, if you can?

2

3 A Okay.

4 Q Can you see the timer on your screen, Monica?

5 A Up -- in the upper left?

6 Q Yes.

7 A Yes.

8 Q Okay. It's going to be a few minutes, I --
9 specifically, when we get to 4:43 and 38 seconds, and I'll
10 remind you when we're about 20 seconds away, okay?

11 A I'll be looking at the door or for myself?

12 Q First, we're going to look at that door where I
13 pointed --

14 A Okay.

15 Q -- okay? But while we're waiting, did you call
16 Job-Loc while you were at the Texas Station?

17 A I don't remember.

18 Q Talk to security there?

19 A I did.

20 Q And you were concerned about the woman throwing
21 up in there?

22 A Yes.

23 Q Was that a true statement? Were you
24 legitimately concerned about her?

25 A Yes.

1 Q At the time were you concerned about the people
2 laying in the department -- shop --

3 A Yes.

4 MR. DIGIACOMO: Objection. Argumentative.

5 THE COURT: No, it's not.

6 MR. ORAM: Your Honor, it's just going to be a couple
7 more minutes while the video is playing, I just don't think we
8 can speed it up any quicker.

9 BY MR. ORAM:

10 Q We have about three more minutes, and I think --
11 Monica, you see we're at 4:40 and 36 seconds and we've got to
12 wait until 4:43. We have two more minutes. I'm going to ask
13 you a question in between.

14 While you're talking to the detectives, you told
15 them at the end of your statement, page 274, 10 minutes -- 10
16 pages before they were done talking to you, Am I still --
17 excuse my language -- fucking up?

18 Do you remember asking the detectives that?

19 A Yes.

20 Q What did you mean?

21 A Because they wanted me to keep flowing, so I
22 didn't know if I was messing up my statement.

23 Q You weren't sure if the detectives were
24 satisfied with what you had to say?

25 A Correct.

1 Q You were looking to give them a story that would
2 satisfy them?

3 A Yes.

4 Q And in doing so you recognized that you were
5 failing to tell the whole truth?

6 A Yes.

7 (Pause in the proceedings.)

8 BY MR. ORAM:

9 Q Okay. Monica, we're now -- you see we're at
10 4:43, and I'm specifically now going to ask you to look into
11 this upper where it appears to be a doorway, right at --

12 A Right here?

13 Q -- yes.

14 A Okay.

15 Q 38 seconds. I want you to look to see if you
16 recognize that individual? Do you see what appears to be a
17 man on crutches?

18 A It looks like an arm brace.

19 Q But did it look like a man on crutches?

20 A It didn't look like crutches, no.

21 Q No. And now if you could wait until 4:45 and 38
22 seconds -- or 33 seconds and see if you see yourself on that
23 video?

24 And we have a minute and a half, so I'll ask you one
25 of my last questions.

1 That agreement to testify, do you feel you have
2 violated that agreement to tell the truth by admitting to the
3 ladies and gentlemen of the jury that you have withheld
4 evidence from the District Attorney's Office and the police
5 department? Do you feel you violated that agreement?

6 A No.

7 Q You felt you had a right as part of that
8 agreement to withhold evidence?

9 A It was something that was said later. I didn't
10 withhold it if I told them.

11 Q It's coming in about 30 seconds, Monica.

12 And, Monica, I'm going to be asking you to look
13 towards the middle of the screen area, okay? And see if you
14 recognize a female walking through?

15 A Over in here?

16 Q A little farther down, right at the middle,
17 you'll -- you'll see it. It's coming in about 13 seconds.

18 Is that you, Monica?

19 A Yes.

20 MR. ORAM: Your Honor, at that time -- at this time,
21 that concludes cross-examination.

22 THE COURT: All right. Do you want to turn off that
23 video? Are you controlling the video?

24 MS. WECKERLY: Unfortunately, yes.

25 THE COURT: That's okay. You did fine. I didn't

1 know that you knew how to do that, since I don't.

2 MR. ORAM: Well, you have a minute.

3 THE COURT: All right.

4 Mr. Langford?

5 CROSS-EXAMINATION

6 BY MR. LANGFORD:

7 Q Good morning, Ms. Martinez.

8 A Good morning.

9 Q How long have you lived in Las Vegas?

10 A Off and on since I was 2.

11 Q A long time. What part of town did you grow up
12 in?

13 A Pretty much all over. It wasn't just one area.

14 Q How many kids do you have?

15 A Three.

16 Q What are their names?

17 A Tyler, Willie, and D'Angelo.

18 Q How old are they?

19 A 23, 19, and 16.

20 Q Are they all from the same father?

21 A No.

22 Q Okay. How many fathers?

23 A Two.

24 Q Do they reside locally?

25 A One does.

1 Q Is your family here?

2 A Yes.

3 Q How many?

4 A I have cousins, aunt, uncle, sister.

5 Q What do your kids do?

6 A My youngest one is still in school. My oldest
7 son is in the military. And my daughter is in between jobs.

8 Q How many times do you recall asking to go home
9 when you were giving a statement to the police officers?

10 A I don't remember.

11 Q More than once?

12 A Yes.

13 Q More than five times?

14 A I -- I can't say. I don't know.

15 Q Definitely more than once?

16 A Yes.

17 Q You were pleading with them weren't you?

18 A I just kept saying, I want to go home, yeah.

19 Q You wanted to go home to be with your children?

20 A Yes.

21 Q And you told lies to try to convince them to let
22 you go; is that right?

23 A Yes.

24 Q To get out as quickly as possible, get out of
25 that situation as quickly as you could to be with your

1 children, you told lies, didn't you?

2 A I had to tell lies.

3 Q A lot of lies?

4 A Yes.

5 Q Five and a half hours worth of lies, right?

6 A I was in -- I was in there longer.

7 Q Yeah, okay. 12 hours. Whatever total time you
8 were there. But actually talking five and a half hours?

9 A Okay.

10 Q Of lies? With the sole desire to get home to
11 your kids; is that right?

12 A Yes, I wanted to go home.

13 MR. LANGFORD: Nothing further, Judge.

14 THE COURT: Redirect, Mr. DiGiacomo?

15 MR. DIGIACOMO: Just very briefly.

16 REDIRECT EXAMINATION

17 BY MR. DIGIACOMO:

18 Q Ma'am, there was a discussion from Mr. Oram on
19 cross-examination and I think you said -- on cross-examination
20 there was something that you didn't tell in the first time you
21 ever met me and -- Ms. Weckerly and I; do you remember that?

22 A Yes.

23 Q Okay. And I think you said that you don't
24 recall if you told Ms. Weckerly and I in the second time we've
25 met, correct?

1 A Correct.

2 Q Has anybody asked you yet what it is that you
3 haven't -- that you don't know if you've told us?

4 A No.

5 Q Okay. Nobody's asked you that in this
6 courtroom?

7 A No.

8 Q Okay. You recognize that your obligation is to
9 answer questions asked of you in this courtroom truthfully; is
10 that correct?

11 A Yes.

12 Q And if you do that, do you think that you've
13 conformed to your agreement?

14 A Yes.

15 Q Let me ask you -- other than meeting Ms.
16 Weckerly and I, are there a number of occasions that the
17 detectives came and saw you between the time period of your
18 arrest and ultimately the time period that you -- you
19 identified Mr. Burns in the photo lineups?

20 A Yeah, there was a number of times they came.

21 Q And on a number of those occasions they were
22 asking you various questions; would that be fair?

23 A Yes.

24 Q And I imagine you've had a number of
25 conversations with your attorneys and I don't want to talk

1 about that, but you've had a number of conversations with the
2 attorneys --

3 A Yes.

4 Q -- correct? You've been asked thousands of
5 questions over the last four and a half years?

6 A Yes.

7 Q Can you remember whether or not you answered --
8 or what your answer were to every one of those questions?

9 A No.

10 Q So since you don't know if you've ever told me
11 since the time Mr. Oram has crossed you has anybody asked you
12 what it is that you don't know if you've ever disclosed
13 before?

14 A No.

15 Q Okay. So neither myself, Ms. Weckerly, your
16 attorneys, Mr. Oram, Mr. Sgro, Mr. Langford, anybody's asked
17 this question?

18 A No.

19 Q Let me ask it then. What is it that you think
20 that you may not have told us before?

21 A That David had left the hat in the back of my
22 seat and I got rid of it.

23 Q And you don't recall whether or not you told us
24 that, correct?

25 A Right.

1 Q Okay. And I certainly didn't ask you about it,
2 correct?

3 A No, you didn't.

4 MR. ORAM: Objection. Leading. Correct?

5 THE COURT: That's true. Sustained.

6 BY MR. DIGIACOMO:

7 Q I don't want to give you the answer, so tell the
8 ladies and gentlemen of the jury where the hat that was in the
9 back of your car, where did you get rid of it?

10 A At the Texas.

11 Q Now, how did that hat wind up in the back of
12 your car?

13 A He left it there.

14 Q Who left it there?

15 A David.

16 Q So it was the hat that Mr. Burns was wearing
17 during the time period of this evening?

18 A Yes.

19 Q Okay. And you left that at -- or you threw that
20 out at the Texas Station?

21 A Yes.

22 Q There's some mention in your statements about,
23 Yes, he was wearing a hat, no, he wasn't wearing a hat, it
24 goes back and forth. At any point in time does anybody tell
25 Mr. Burns to take the hat off?

1 A I don't remember.

2 Q Do you know how the hat wound up in the back of
3 your car?

4 A Well, he left it in there.

5 Q Do you know if he took it off or it fell off?
6 That's what I'm asking you. Or do you just not know?

7 A I don't know. I didn't see.

8 Q How is it that you learned that the hat's in the
9 car?

10 A When I got to the Texas, I -- I checked the car
11 -- or I was looking in the back seat, you know, I didn't know
12 because he had mentioned that there was blood on him, and so I
13 was checking my car and I saw the hat there and I grabbed it
14 and threw it in one of the trash bins.

15 Q And as you sit here today, you don't recall if
16 you've ever told anybody from law enforcement, either myself
17 or the detectives, that particular fact?

18 A I remember telling you recently.

19 Q Let me ask just a couple other questions. There
20 were some questions about there not being blood in the car.
21 Do you remember Mr. Oram asking you those questions?

22 A Yes.

23 Q For a second assume Mr. Burns, Mr. Mason --
24 assume I'm not talking about them at all -- you're
25 acknowledging to this jury you drove your car to the scene of

1 this homicide; is that fair?

2 A Yes.

3 Q And whoever did the shooting got back into your
4 car, correct?

5 A Yes.

6 Q So whether or not it's Mr. Burns or not, whoever
7 that shooter is, if he had blood on him, if he would have
8 gotten in your car it would have been the victim's blood in
9 your car; would that be fair?

10 A Yes.

11 Q There's one other area that Mr. Oram kind of
12 asked you questions about. Did you say in your statement --
13 at the end of your statement that you actually picked Mr.
14 Mason and Mr. Burns up at Job-Loc's apartment. Do you
15 remember those questions?

16 A Yes, before the incident?

17 Q Yes.

18 A Yes.

19 Q Okay. And do you remember there being a
20 discussion back and forth between you and Mr. Oram as to
21 whether or not you told the police, eventually, that you
22 picked them up at Job's apartment?

23 A Yeah, I remember this.

24 Q As you sit here today, what's your recollection?
25 Did you tell the police that?

1 A I don't know.

2 Q Well, you sat through the interview yesterday,
3 do you remember what it said in the interview?

4 A I mean, we were here for so long, it's hard to
5 remember everything the last two days. There's just so much
6 information.

7 Q Would it refresh your recollection to look at
8 page 236 through 238 of your statement?

9 A Yes.

10 Q I want you to start -- just reading to yourself,
11 just start at Marty Wildemann, tell us how the conversation
12 went?

13 A Okay.

14 Q Okay? Just read to yourself and then read all
15 the way page 237, and then all the way through the answer that
16 I'm pointing to on line 238, it's about halfway down.

17 A Okay.

18 Q And just read that all to yourself.

19 A (Witness complied.) Okay.

20 Q After reading that, does that refresh your
21 recollection as to whether or not you told the police, towards
22 the end of your statement, after you finally disclosed that
23 you know who Job is, you told the police that you picked him
24 up from Job's apartment?

25 A Yes.

1 Q And did you?

2 A Yes, I did.

3 Q Mr. Oram asked you some questions about Defense
4 Exhibit M, which is -- let me just show you -- the letter
5 between -- from Mr. Thomas to you, correct?

6 A Yes.

7 Q Okay. And just so that we're clear, Mr. Thomas
8 is -- has a return address on this letter M and it's WVC --
9 WVDC 6404 9500 Etiwanda Ave. Rancho Cucamonga, California,
10 91739, and there -- it looks like there's an Inmate No.
11 associated with that?

12 A Yes.

13 Q Okay. And to your knowledge, when Mr. Thomas
14 wrote this letter to you was he incarcerated in the State of
15 California?

16 A Yes.

17 Q Okay. And there was a number of letters that
18 you wrote back and forth to Mr. Thomas?

19 A Yes.

20 Q Mr. Oram asked you to read the highlighted
21 portion of -- for this jury, I want you just to read from the
22 beginning of the letter and I want you to finish with -- "Pick
23 up a thang [sic]," you see where that "Thang" is kind of
24 written in there?

25 A Yes.

1 Q Read that whole -- up to, "Pick up a thang."

2 A To myself?

3 Q No. No, read it out loud to the jury.

4 A Oh. First of all, Ma, let me tell you I love
5 you and on my son, the bitch ain't pregnant. I stopped
6 fucking with her on the streets. You don't have to believe me
7 if you don't want to, but I'm giving you my word on my
8 grandfather. And for the record, I write you these letters
9 because I love you. You or the smoker bitch can't say nothing
10 about me. Ma, I'm going to always love you, even if the
11 smoker bitch told them I was there, she can't pick me out of
12 no lineup and even if she did, it's document saying my leg is
13 broke. I couldn't even walk or run.

14 From what you told me, Ma, it took -- I'm sorry --
15 From what you told me, Ma, it looked like the police played
16 you for information. You never been through this before, so
17 you don't know the games they play. As far as Wess go, he can
18 run off at the mouth and say what he want to say. He already
19 told me he gon [sic] tell the truth and that's that. G-Dogg
20 called him to come pick up a thang.

21 Q So let me just ask you a couple questions.

22 Mr. Thomas is telling you, You or the smoker kit --
23 bitch can't say nothing about me, right?

24 A Yes.

25 Q He tells you that his leg is broke and he

1 couldn't even walk or run?

2 A Yes.

3 Q Let me start with that. Was his leg broke?

4 A Yes, it was.

5 Q Could he walk or run?

6 A No.

7 Q And then he indicates something about, As -- as
8 for Wess, he can go run off at the mouth and say what he want
9 to say, right?

10 A Yes.

11 Q And Wess is -- is -- W-E-S-S is the way you knew
12 him as -- as the individual that -- is the person who showed
13 up at the apartment and took the gun from -- from Job-Loc?

14 A Yes.

15 Q And then he makes a statement in there about
16 what Wess is going to actually testify to, correct?

17 A Yes.

18 Q Now, that's the beginning of the letter. Let me
19 show you page 2, now. Read the highlighted portion that Mr.
20 Oram asked you to read previously to this jury.

21 A Again, out loud?

22 Q Yeah, out loud to the jury.

23 A Since you got your discovery -- since you got
24 your discovery, write me something brief on everybody that
25 said something.

1 Q So I -- I'm -- let me see if I got this
2 correctly. He's asking you for your discovery? Is that
3 the -- what you took this as?

4 A Yes.

5 Q Okay. Had you sent him any discovery or
6 information yet?

7 A No.

8 Q So the statements that he makes in the beginning
9 of this letter had to come from a different source than you?

10 A Yes.

11 Q All right. Lastly, Mr. Oram showed you a number
12 of pictures from --

13 MR. LANGFORD: Your Honor, can I see that picture?

14 THE COURT: Sure.

15 MR. LANGFORD: May we approach?

16 THE COURT: Certainly.

17 (Bench conference.)

18 MR. LANGFORD: Why is it relevant?

19 MR. DIGIACOMO: It's going to be very relevant.

20 THE COURT: I guess we'll find out.

21 MR. LANGFORD: [Inaudible.]

22 MS. WECKERLY: Well, what's the objection?

23 THE COURT: What's the objection?

24 MR. LANGFORD: What the objection is, is that it's
25 [inaudible] offer --

1 THE COURT: Was it in part of the discovery?

2 MR. LANGFORD: It's part of the discovery, yes. And
3 it's beyond the scope of [inaudible] --

4 THE COURT: No. No.

5 MR. DIGIACOMO: I didn't show her anything.

6 THE COURT: That's okay. That's okay.

7 MR. ORAM: I don't normally object for co-Defendant
8 and I haven't showed these photos to her, and from what I saw,
9 Mr. Langford asked her two questions. This has nothing to do
10 with my --

11 THE COURT: Well, I didn't read but we're going to do
12 it. Come on.

13 (End of bench conference.)

14 THE COURT: All right.

15 MR. DIGIACOMO: Thank you.

16 BY MR. DIGIACOMO:

17 Q Ma'am, I'm going to show you what's been
18 admitted -- or sorry, what's been marked as State's Proposed
19 Exhibit No. 288. These are one of the photos that's in the
20 package of the MySpace photos for Cali, right?

21 A Yes.

22 Q Okay. Who is Cali?

23 A Shawn.

24 Q Shawn who?

25 A Clinkscale.

1 Q Okay. Shawn have any brothers?

2 A Yes.

3 Q Okay. How many?

4 A I only remember one.

5 Q Okay. Do you know where that brother is
6 currently?

7 A I had received a letter from him, he was
8 incarcerated.

9 Q Okay. In the state of?

10 A California.

11 Q Okay. And do you know what his first name is?

12 A I don't remember.

13 Q What did they call -- what did they call Shawn's
14 brother; do you know? Do you remember?

15 A No, I don't remember.

16 Q Okay. But Shawn Clinkscale is -- he's in this
17 photograph; is that fair?

18 A Yes.

19 Q And he also goes by S-Loc?

20 A Yes.

21 Q In fact, one of the photographs Mr. Oram showed
22 you is the one that you start writing down names on that
23 videotape we watched --

24 A Yes.

25 Q -- correct? They showed you this photograph as

1 well during your interview, do you remember that?

2 A They showed me a lot of photos.

3 Q Okay. Do you recognize the individual who's
4 next to S-Loc in this photograph?

5 A Yes.

6 Q And who is that?

7 A Willie Mason.

8 Q Okay.

9 A G-Dogg.

10 Q And the title of --

11 MR. DIGIACOMO: -- well, I move to admit 288?

12 MR. LANGFORD: May I see it again, Your Honor.

13 Objection. Relevance.

14 THE COURT: Overruled. It will be received.

15 (State's Exhibit 288 admitted.)

16 MR. DIGIACOMO: May I publish, Your Honor?

17 THE COURT: Yes.

18 MR. DIGIACOMO: Can you put it on the overhead,
19 please?

20 THE CLERK: Okay. [Inaudible.]

21 MR. DIGIACOMO: Thank you, Judge. I pass the
22 witness.

23 MR. ORAM: Very briefly.

24 Was this admitted? Mr. DiGiacomo, was this --

25 MR. DIGIACOMO: It's your -- it's your exhibit that

1 you admitted.

2 MR. ORAM: No, but it's this.

3 MR. DIGIACOMO: You offered it. It was admitted.

4 MR. ORAM: [Inaudible.]

5 MR. DIGIACOMO: Oh, okay.

6 RECROSS-EXAMINATION

7 BY MR. ORAM:

8 Q That story about the hat, remember that?

9 A Yes.

10 Q If I understood you correctly, you told the
11 jury, right now when Mr. DiGiacomo was asking questions, that
12 you had told him that story just a few weeks ago?

13 A I don't know if it was a few weeks ago. I said
14 recently.

15 Q So recently -- well, there were only two
16 meetings with the District Attorney's Office, I think you
17 said?

18 A Yes. Recently in the last month or so, yes.

19 Q So it was the second meeting?

20 A I don't remember which one it was.

21 Q And Mr. DiGiacomo got up here and asked you
22 questions on direct examination on Wednesday; do you recall
23 that?

24 A Yes.

25 Q And that was never asked of you by Mr.

1 DiGiacomo?

2 A No.

3 Q And it's your testimony you had told him that,
4 right?

5 A About the hat?

6 Q Yes.

7 A Yes.

8 Q And you had never told the police this?

9 A No.

10 Q And you told it to him sometime, but he never
11 asked you on direct examination?

12 A On Wednesday, no.

13 MR. ORAM: Nothing further.

14 THE COURT: Mr. Langford?

15 MR. LANGFORD: Nothing, Your Honor.

16 THE COURT: All right. That will conclude the
17 examination of this witness. We have the jury room until 1:30
18 as I understand it; is that right?

19 THE MARSHAL: Yes, sir.

20 THE COURT: All right. We'll take a recess until
21 1:30.

22 During the recess you're again admonished that it's
23 your duty not to converse among yourselves or with anyone else
24 on any subject connected with this trial, or to read, watch,
25 or listen to any report of or commentary on the trial from any

1 medium of information including newspapers, television, or
2 radio, and you may not form or express an opinion on any
3 subject connected with this case until it is finally submitted
4 to you.

5 We'll be in recess until 1:30 this afternoon.

6 (Jury recessed at 12:06 p.m.)

7 (Outside the presence of the jury.)

8 THE COURT: All right. I'd like you back a few
9 minutes before 1:30, please.

10 MR. ORAM: Yes, thank you, Judge.

11 MR. DIGIACOMO: Are we going to go 1:30? I thought
12 you said 1:15.

13 THE COURT: The jurors got until 1:30, but I want
14 everybody back, ready to go because that other jury is going
15 to use -- going to kick them out, and I don't want it delayed.

16 MR. DIGIACOMO: Sure. We'll be ready.

17 THE COURT: All right.

18 MR. DIGIACOMO: Judge, we have just two witnesses
19 left for the day, so whenever we're done with them we're done
20 for the day. Because we didn't know how long --

21 THE COURT: That's fine.

22 MR. DIGIACOMO: -- they were going to take --

23 THE COURT: That's fine.

24 MR. DIGIACOMO: -- on Ms. Martinez. I know, you
25 would never admit to be unhappy but --

1 THE COURT: I'm not unhappy. I --

2 MR. DIGIACOMO: -- no, I know you'll be happy to
3 [inaudible].

4 THE COURT: -- I know, a little early on Friday
5 afternoon, that's all right by me.

6 Are we still looking to finish next Thursday for --
7 next Friday?

8 MS. WECKERLY: Your Honor, I think we'll go into
9 Monday, but not longer than that, and maybe only a half a day
10 Monday.

11 THE COURT: Do they know that?

12 MS. WECKERLY: The Defense?

13 THE COURT: Yeah.

14 MS. WECKERLY: I've told them --

15 THE COURT: They know --

16 MS. WECKERLY: -- that.

17 THE COURT: -- to be ready to start --

18 MS. WECKERLY: Yes. And I'll remind them after the
19 break.

20 MR. DIGIACOMO: I let Mr. Langford know that too
21 because he wanted me to let the jury know that we're -- we're
22 still -- we're still on schedule, despite our breaks.

23 (Court recessed at 12:07 p.m. until 1:23 p.m.)

24 (Outside the presence of the jury.)

25 THE COURT: Okay. On the record. Mr. Oram, you

1 said you wanted to say something on the record.

2 MR. ORAM: Yes, Your Honor. I believe that when
3 they call Donovan Rowland that they may elicit something
4 similar to what they elicited in front of the grand jury,
5 which I think is completely inadmissible pursuant to Crawford.
6 And that is the State and the defense have been given some
7 latitude with respect to co-conspirator hearsay statements
8 from Job-Loc.

9 But at one point Donovan Rowland, his -- they're
10 very close, Donovan Rowland and Job-Loc are very close. They
11 elicited that -- from Donovan Rowland at the grand jury that
12 while talking to Job-Loc, Job-Loc said that the two defendants
13 must have gone inside and gone crazy and then the shooting
14 occurred. That, to me, is a -- that's not a co-conspirator
15 statement. That's this man, Job-Loc, directly implicating
16 these two defendants without our right to confront.

17 Now, I do understand the prior statements that have
18 been made as to they're going over there, I'm involved, but
19 this seems like somebody saying I didn't do it, they did it,
20 or they're responsible, they're the shooters. And without the
21 right to confront him, he becomes the main accuser under the
22 Sixth Amendment to The United States Constitution.

23 I brought Crawford, and so that is the one limited
24 area as I have read in this entire case where I thought that
25 is a direct allegation that these two are guilty, they're

1 responsible, and Donovan and Job-Loc are eliminating
2 themselves and I don't get to cross-examination Job-Loc over
3 it.

4 MR. DiGIACOMO: I'll be very brief about this,
5 Judge. So you know the fact pattern here, the morning of the
6 homicide, Donovan Rowland, as you've heard, goes over to Job's
7 apartment. Job gives him the gun, tells him to hold onto
8 this, and then he takes it.

9 And what his testimony -- well, at least what his
10 statement to the police is, his statement to the police is
11 that later on that morning or the next morning, and it's not
12 real clear, he gets a phone call from Job. Job tells him
13 watch the news and call me back. He watches the news. He
14 sees the homicide. He calls Job back.

15 Job says to him basically it was a dope rip gone
16 bad, the crack whore set it up, Monica was driving, either
17 D-Shot or G-Dogg, he's not sure which one, went crazy. I need
18 you to get rid of that gun for me. You can sell it, you can
19 bury it, you can keep the money you get from it, but you need
20 to get rid of that gun. Clearly that's a statement of
21 co-conspirator in the course or in furtherance of the
22 conspiracy because he's trying to get rid of the murder
23 weapon.

24 And so to the extent that there's no Crawford
25 problem because, one, Crawford requires there to be

1 testimonial, which means the person speaking expects it to be
2 utilized in a courtroom. He's telling -- and the reason it's
3 outside of Crawford and why the Supreme Court says it's
4 outside of Crawford is because he's making these statements not for
5 a testimonial purpose. He's making the statements for what?
6 To get rid of the weapon to conceal the murder and, therefore,
7 they're clearly outside of Crawford and they're also
8 co-conspirator statements and thus admissible.

9 MR. ORAM: Your Honor, that -- that's a very nice
10 rendition of it, but there is something huge that Mr.
11 DiGiacomo is not telling us, or he's saying, but it's a big
12 point that's being missed. And that is if he's trying to
13 bring up that Donovan is supposed to get rid of the gun, fine,
14 I have no problem with that. If they want to elicit that
15 information, fine. The problem I'm saying is that very
16 limited statement that these two defendants, one of them went
17 crazy.

18 THE COURT: That's why he wants to get rid of the
19 gun. No, I agree with the State on this. I'm going to
20 overrule the objection.

21 MR. ORAM: Yes, Your Honor.

22 THE COURT: All right. Off the record until the
23 jury comes in.

24 (Pause in the proceedings.)

25 THE COURT: All right. Now we're back on the

1 record.

2 MR. LANGFORD: Your Honor, I need to move for a
3 severance. I was just informed by counsel for Mr. Burns that
4 Donovan Rowland who is about to testify, and you've heard a
5 bit about what he's going to testify to about getting rid of
6 the gun, that that's what he was instructed.

7 He is now going to say because he told this to Mr.
8 Sgro's investigator two days ago that, in fact, that the
9 shooter was G-Dogg, my client, Mr. Mason, and not Mr. Burns,
10 and that he went crazy and he's actually the one who is now
11 the shooter. And that's going to be Mr. Sgro's position to
12 say that based on Donovan Rowland's testimony that his client
13 is not the shooter, my client is.

14 THE COURT: Well, how would this gentleman know
15 because he wasn't there?

16 MR. SGRO: Job-Loc. So --

17 THE COURT: How -- Job-Loc wasn't there.

18 MR. SGRO: Well, now, to be fair, Your Honor, I came
19 in at the tail end of the argument, so I'm trying to put
20 together what happened in my absence.

21 THE COURT: I can't let him testify to that.

22 MR. SGRO: Well, Your Honor, it's --

23 MR. DiGIACOMO: Well, he can testify to -- as long
24 as what he testifies to is the portion, which we've already
25 discussed where he's being told to get away from the gun,

1 there's a statement where he says I don't know if it's G-Dogg
2 or D-Shot. If he has other information as it relates to he's
3 had subsequent conversations and G-Dogg is the shooter, if
4 there's a foundation for that, this is a trial about the
5 truth.

6 If there's some evidence that G-Dogg is the shooter
7 and D-Shot is the shooter, it doesn't matter. But he won't be
8 testifying at least on our direct as it relates to that, so
9 I'm not really sure what the foundational predicate would be
10 for --

11 THE COURT: Well --

12 MR. DiGIACOMO: -- what he's going to now testify.

13 THE COURT: -- it's got to be something within his
14 personal knowledge. Percipient --

15 MR. ORAM: Judge, my understanding as what he's just
16 telling us out here is the State's going to elicit what the --
17 what we've just argued about, what did Job-Loc tell you, and
18 he's going to say Job-Loc told me it's G-Dogg and not D-Shot.
19 So what was just found to be admissible --

20 THE COURT: It's inconsistent with what the State
21 tells me that he's going to say.

22 MR. SGRO: That's right. That's right.

23 MR. DiGIACOMO: Well, it's inconsistent with his
24 statement where he says I don't know if it's G-Dogg or D-Shot,
25 heck, it could even be Monica.

1 THE COURT: He wouldn't know. He wasn't there.

2 MS. WECKERLY: Right.

3 MR. DiGIACOMO: Correct.

4 MR. SGRO: But the -- but the ruling has got to be
5 whether or not it's admissible what Job-Loc told him. If
6 they're --

7 THE COURT: I don't want to get in what he thinks
8 happened because --

9 MR. SGRO: No. No --

10 MR. DiGIACOMO: No, just merely the statements that
11 Job-Loc made to him when he told him to get rid of the gun.

12 MR. SGRO: Here's --

13 MR. DiGIACOMO: That comes in. If they want to
14 cross him on you're changing your story now and you're saying
15 Job-Loc said to you to get rid of the gun, hey, G-Dogg fired
16 the gun, get rid of it, that would be admissible as far as I'm
17 concerned. If they're going to ask him that, that's
18 cross-examination that they're entitled to do. The statement
19 he gave --

20 THE COURT: We'll worry about it when we get there,
21 but I -- you be careful about this because I don't want --
22 that would be inadmissible because it has nothing to do with
23 the conspiracy.

24 MR. SGRO: It -- Your Honor, if this -- if the
25 ruling is what did Job-Loc tell you and the preface is we're

1 letting in what Job-Loc said or did because of the fact that
2 he's a co-conspirator, if the ruling -- I didn't --

3 THE COURT: Job-Loc's the co-conspirator.

4 MR. SGRO: Right. So in its simplest form --

5 THE COURT: And so was what's his name in this?

6 MR. SGRO: Donovan Rowland.

7 THE COURT: Mr. Rowland?

8 MR. SGRO: Yes, sir.

9 THE COURT: Is a -- is a co-conspirator if he was
10 getting rid of the gun for them.

11 MR. SGRO: Of course. Of course.

12 THE COURT: So, I mean, and he's -- apparently
13 Job-Loc, Mr. Thomas, is telling Mr. Rowland to get rid of the
14 gun.

15 MR. SGRO: Right.

16 THE COURT: So that statement is going to come in.

17 MR. SGRO: Right. Now, if we're going to -- so
18 here's what -- here's, I guess, what -- and maybe we're just
19 talking past each other. What we need guidance on is this.
20 Is the ruling -- is the ruling that whatever Job-Loc told him
21 in conjunction with get rid of the gun, whether it's I don't
22 know if it was one shooter or another, or what he told us,
23 which is G-Dogg did it, okay.

24 If any of those statements are coming in, we had to
25 alert Mr. Langford that based on our interview he's going to

1 say G-Dogg did it and -- and David Burns had nothing to do
2 with it at all. So, again, because I came in late, my under
3 -- what I heard was the State's going to get into -- and
4 correct me if I'm wrong, the State is going to get into what
5 Job-Loc said to Donovan Rowland. If that's the case --

6 THE COURT: He's getting it in because it was part
7 of a sentence that says get rid of the gun. Now, maybe if we
8 can exclude the part about who did what, which may not be as
9 important as just --

10 MR. SGRO: Exactly.

11 THE COURT: -- get rid of the gun.

12 MR. DiGIACOMO: Well, but he says they did it, and
13 he says I don't know if it's G-Dogg, but he says the crack
14 whore set it up, Monica drove these two individuals, and
15 someone went crazy, I don't remember if it's G-Dogg or it's
16 D-Shot or Monica, somebody went crazy, you need to get rid of
17 the gun. The -- the -- that --

18 THE COURT: Well, why they --

19 MR. DiGIACOMO: -- statement --

20 THE COURT: -- why they needed to get rid of the gun
21 is important.

22 MR. DiGIACOMO: -- is important to me.

23 MR. SGRO: Right. So here is the difficulty, Your
24 Honor. Your Honor is -- is making rulings based on what we're
25 telling you is going to come from the witness stand and I --

1 and the difficulty, Your Honor, is that these witnesses that
2 we have gone through, one a couple days and now the next one,
3 have changed their stories several times. And so there is no
4 uniformity for us to be able to tell you what they're going to
5 say.

6 The only proviso is this. If the State elicits
7 Job-Loc told me one of these two defendants here to my left
8 did it, right, we get up on cross and say we just interviewed
9 you and you just told us that D-Shot had nothing to do with it
10 and G-Dogg did it. And by the way, I walked Mr. Langford and
11 Mr. Oram outside and in the presence not only of them but of
12 the DA investigator who is outside he said, yeah, that's --
13 that's my recollection. So -- so that's the recollection.

14 Now, in the next ten minutes, Your Honor, having
15 dealt with these folks for awhile, in the next ten minutes he
16 might change his mind again.

17 THE COURT: I --

18 MR. SGRO: All I'm telling you is --

19 THE COURT: I can't help what he's --

20 MR. SGRO: Right.

21 THE COURT: -- going to testify to.

22 MR. SGRO: But that -- that's going to create --

23 THE COURT: You can cross him on that.

24 MR. SGRO: That's -- once I cross him, which we
25 would be entitled to do, the State concedes --

1 THE COURT: You're entitled to do that.

2 MR. SGRO: -- the State concedes we're entitled to
3 do that. Then we kind of punt over to Mr. Langford who's got
4 a severance problem because --

5 MR. DiGIACOMO: Why does he have a severance
6 problem?

7 MR. SGRO: Well, I don't want to speak for a very
8 competent and capable attorney, but I would say he wouldn't
9 elicit that on cross and he's fine with the shooter was one or
10 the other. In other words, I'm the one that's going to sort
11 of sharpen the focus. And without me here, without me here,
12 the State doesn't know about that statement and it never comes
13 into evidence. And I would think it's pretty prejudicial to
14 Mr. Mason. So --

15 MR. DiGIACOMO: But it comes in at both trials.

16 THE COURT: You're doing --

17 MR. DiGIACOMO: Even in a separate trial --

18 THE COURT: You're doing an awful lot of argument on
19 a motion that has nothing to do with you.

20 MR. ORAM: Judge, let -- Judge, can I say something?
21 I think the Court has ruled, as I understood it, that there's
22 going to be testimony, Donovan is going to say I had this
23 conversation with Job-Loc about get rid of the gun. The State
24 is saying we want to know why. Are my -- okay. And now we're
25 going to hear what this guy has to say. I think the Court's

1 ruling, let's hear what he has to say.

2 THE COURT: Well, I've got to hear what he has to
3 say.

4 MR. SGRO: Okay.

5 THE COURT: We'll worry --

6 MR. ORAM: Submit it.

7 THE COURT: -- about it then.

8 MR. SGRO: Thank you, sir.

9 MR. DiGIACOMO: Thank you.

10 THE COURT: At least at this point, the motion to
11 sever is denied.

12 MR. DiGIACOMO: Thank you, Judge.

13 THE COURT: Are we ready to bring the jury in?

14 MR. DiGIACOMO: We are.

15 (In the presence of the jury.)

16 THE COURT: All right. State versus Burns and
17 Mason. The record will reflect the presence of the
18 defendants, their counsel, the District Attorneys, and all
19 members of the jury.

20 All right. You can call your next witness.

21 MR. DiGIACOMO: Donovan Rowland.

22 DONOVON ROWLAND, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state your
24 name and spell your first and last name for the record.

25 THE WITNESS: Donovan Rowland; D-O-N-O-V-O-N

1 R-O-W-L-A-N-D.

2 MR. DiGIACOMO: May I inquire, Judge?

3 THE COURT: Yes.

4 DIRECT EXAMINATION

5 BY MR. DiGIACOMO:

6 Q Mr. Rowland, you don't have to tell us what
7 state, but do you currently live in the state of Nevada?

8 A No.

9 Q When did you move?

10 A A couple months ago.

11 Q And as you sit here today, in the last ten
12 years have you, and I apologize I have to ask this, have you
13 picked up a felony conviction?

14 A No.

15 Q You're not --

16 A Yes. Actually, yes. Yes.

17 Q Aren't you convicted of carrying a concealed
18 weapon in --

19 A Yes.

20 Q -- 2011?

21 A Yes.

22 Q And you're currently on probation for that?

23 A No.

24 Q You're off probation now?

25 A Yes.

1 Q Okay. I want to direct your attention back to
2 -- well, let me ask you this. How old are you?

3 A 23.

4 Q 23. So I want to direct your attention back
5 to when you were about 18, 19 years old. Sometime in the
6 spring or summer of 2010, did you meet an individual that
7 identified themselves to you as Slick?

8 A Yes.

9 Q How did you meet Slick?

10 A From a friend. From a friend.

11 Q From a friend?

12 A Yeah.

13 Q And where did you meet Slick?

14 A Like Jones area.

15 Q Jones area?

16 A Uh-huh.

17 Q And eventually did you form a friendship with
18 Slick?

19 A Yes.

20 Q Okay. Have you ever heard Slick go by the
21 name Job?

22 A No.

23 Q At some point in time did the police show you
24 a photograph of Slick when you were interviewed in 2010?

25 A Yes.

1 Q And do you identify that person as the person
2 you know as Slick?

3 A Yes.

4 Q At the time -- at some point in time in 2010
5 does Slick wind up getting an injury?

6 A Yes.

7 Q What happened?

8 A We were at Walmart --

9 Q And --

10 A -- and --

11 Q -- how did he hurt himself?

12 A I think jumping a wall.

13 Q Okay. And what happened? What part of his
14 body was injured?

15 A His leg.

16 Q And did he have to have some medical attention
17 as it relates to that?

18 A Yes.

19 Q The ambulance come that day?

20 A Yes.

21 Q Okay. And he was taken by ambulance?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes. Correct.

25 Q I'm sorry. She's going to type down

1 everything we say, so uh-huhs and huh-uhs are a problem for
2 her, okay?

3 A All right.

4 Q So if I -- were you present when Job hurt his
5 leg?

6 A Yes.

7 Q Okay.

8 A Well, no, not actually. I was already
9 stopped, so I wasn't in the actual spot where he did.

10 Q Were you part of the situation that --

11 A Yes.

12 Q -- caused Slick to run and ultimately --

13 A Yes.

14 Q -- hurt himself?

15 A Yes.

16 Q All right. Let me -- well, after he hurt
17 himself, where would -- what would Job -- I'm sorry, Slick
18 normally do?

19 A I have no idea, to be honest.

20 Q How often would you see Slick after he hurt
21 himself?

22 A A couple of times, probably a week or so
23 later.

24 Q And then does there come a point in time when
25 you start seeing him pretty much on a daily basis?

1 A Yes.

2 Q And where would you see him at?

3 A The apartment off of Torrey Pines.

4 Q Do you remember the name of the apartment
5 complex?

6 A No.

7 Q If you've previously said the Brittany Pines
8 Apartments, does that sound right to you?

9 A Yeah, that's about right.

10 Q Okay. Did he have an upstairs or a downstairs
11 apartment?

12 A Up.

13 Q And what kind of -- did he have any sort of
14 medical device that he needed for his leg?

15 A I don't recall.

16 Q Well, how did he get around?

17 A Crutches.

18 Q Crutches? Okay. When you would see him on
19 the day to day basis, what was the purpose of you and him
20 having contact back then?

21 A He was just cool. I met him. He was all
22 right. We smoked something.

23 Q What did you smoke?

24 A Embalming fluid.

25 Q You smoked embalming fluid?

1 A Yeah.

2 Q How about marijuana?

3 A Yeah, that too.

4 Q That too?

5 A Yeah.

6 Q What does smoking embalming fluid do for you?

7 A A whole lot.

8 Q Okay.

9 MR. SGRO: What did he say? I missed it.

10 MR. DiGIACOMO: Not a whole lot.

11 THE COURT: I've tried a lot of cases in my life.

12 I've never had an embalming fluid case.

13 BY MR. DiGIACOMO:

14 Q Okay. Did Job have a girlfriend?

15 A Yes. Yes.

16 Q You sure?

17 A Yeah.

18 Q Okay.

19 A If you would --

20 Q What was --

21 A -- consider it that.

22 Q Do you know what her name was?

23 A No.

24 Q Do you remember -- well, had you ever been to
25 her house before?

1 A Yes.

2 Q Did you meet her children?

3 A Yes.

4 Q Did you -- did you text with some of her kids
5 at some point in time?

6 A Yeah.

7 Q Which one?

8 A Tyler.

9 Q The daughter?

10 A Yeah.

11 Q Okay. Can you describe his girlfriend for me
12 if you don't remember her name?

13 A Mexican lady, probably like 5'6, 5'7.

14 Q You've previously described her as Monica.
15 Does that sound right to you?

16 A Yeah, that's about right.

17 Q At some point in time do you meet some of
18 Job's friends over at Monica's house?

19 A Yes.

20 Q Okay. Who do you meet?

21 A G-Dogg and someone else. I can't remember the
22 name.

23 Q Okay. So you meet G-Dogg. How many times do
24 you think you've seen G-Dogg in your life?

25 A Probably about like ten.

1 Q Ten times?

2 A Yeah.

3 Q Okay. And in relation -- do you know what
4 you're here to testify about, the incident you're here to
5 testify about?

6 A Yes.

7 Q Okay. How long prior to the incident you're
8 here to testify about did you first meet G-Dogg?

9 A Probably like a week or two.

10 Q A week or two?

11 A Yeah.

12 Q And where did you -- where did you first meet
13 him at?

14 A I don't recall. I don't recall where I first
15 met him.

16 Q Did there come a point in time when you were
17 over at Monica's house and G-Dogg was there with Job?

18 A Yes.

19 Q Or, sorry, Slick.

20 A Yes.

21 Q Do you now know that Slick is also Job-Loc now
22 that we're four and a half years later?

23 A Yes.

24 Q Okay. So do you know that his true name is
25 Jerome Thomas now?

1 A Yes.

2 Q Okay. So if I use the term Jerome Thomas with
3 you or Job-Loc, you know who I'm talking about?

4 A Yes.

5 Q Okay. You said that there was somebody else
6 over at the -- at the house when you meet G-Dogg. Did you
7 actually see him at that time you saw him in the -- that you
8 were over at the house?

9 A Yes.

10 Q Okay. And do you remember anything about him,
11 his nickname, anything else like that?

12 A No.

13 Q Does there come a point in time when you go
14 over to Job's house early in the morning, or Job's apartment
15 early in the morning, and you get a weapon from him?

16 A Yes.

17 Q Okay. So I want to talk about that morning.
18 Where were you the night before, do you recall?

19 A No, I don't recall.

20 Q How about do you recall what time it is that
21 you wound up going over to Job's place?

22 A Probably about 3:00 in the morning, 4:00 in
23 the morning.

24 Q Was it light or dark outside?

25 A Dark.

1 Q And when you get over to Job's apartment, how
2 do you get in the apartment?

3 A Knock on the door.

4 Q Was there something unusual about the way the
5 door was set up on that occasion?

6 A I don't remember.

7 Q Who opened the door?

8 A Monica.

9 Q All right. And when Monica opened the door,
10 who else was present inside the apartment?

11 A Job and G-Dogg and someone else. I really
12 couldn't tell.

13 Q The one person that you really couldn't tell
14 who that was, where was he in the apartment when you were
15 there?

16 A The kitchen.

17 Q Okay. And do you remember whether or not he
18 had a shirt on or not?

19 A I don't remember.

20 Q When you first come inside the apartment, what
21 are you -- well, what happens?

22 A I talk for a little bit, and then I get the
23 firearm and then I leave.

24 Q Who do you talk to?

25 A Job.

1 Q When you -- when you first come in you said
2 that -- well, you get the firearm and then you leave. When
3 you first come in, is Job doing anything with that firearm?

4 A No.

5 Q How is it that you wound up getting the
6 firearm?

7 A I don't remember, actually, to be honest.

8 Q Okay. But you wind up leaving that apartment
9 with that firearm?

10 A Yes.

11 Q Do you remember anything about the firearm?

12 A No.

13 Q Do you remember if it was a semi-automatic or
14 a revolver?

15 A Revolver, yes.

16 Q Okay. Do you remember the caliber?

17 A No.

18 Q Was the gun loaded or unloaded when you
19 received it?

20 A Unloaded?

21 Q You ask me like that's a question. Do you
22 remember or not remember?

23 A Unloaded, if I recall. Unloaded.

24 Q And what do you do with the gun?

25 A I take it with me, and that was it.

1 Q Does there come a point in time when Job calls
2 you about that weapon?

3 A Yes.

4 Q Okay. And does he ask you to do something
5 with the weapon?

6 A Yes, but never got a chance to.

7 Q What is it that he asked you to do?

8 A To something -- something. I can't remember
9 what he said to do with it, but he told me to do something
10 with it.

11 Q Okay. Well, what do you mean like do
12 something with it?

13 A I don't recall.

14 Q Okay. Do you recall what it is that he told
15 you was the reason you had to do something with it?

16 A Because it was used to shoot some mother and
17 her daughter.

18 Q Okay. Do you remember anything else that he
19 told you about that situation when he was asking you to do
20 something with the gun?

21 A No.

22 Q Now, eventually the police find you in -- I
23 think it's August 19th of 2010. Do you remember coming into
24 contact with the police?

25 A Yes.

1 Q And you were -- well, were you present with
2 your father when you get contacted?

3 A Yes.

4 Q And eventually do you, after having a
5 conversation with the police, do you agree to go down to the
6 police station and give a tape recorded interview?

7 A Yes.

8 Q Since August 19th of 2010, have you seen that
9 interview?

10 A Yes.

11 Q When did you see it?

12 A About a month ago.

13 Q About a month ago?

14 A Yeah.

15 Q Who showed it to you?

16 A No one. It was e-mailed to me.

17 Q From who?

18 A From the District Attorney's office.

19 MR. DiGIACOMO: May I approach, Judge?

20 THE COURT: Yes. What is that?

21 MR. DiGIACOMO: It's a copy of his statement.

22 THE COURT: Okay.

23 BY MR. DiGIACOMO:

24 Q Sir, I want you to look at that and tell me if
25 that appears to be a copy of the statement that you read.

1 A Yes.

2 Q Now, let me ask a couple questions about that.
3 Were -- at the time that the police contact you, you would
4 agree with me that's much closer in time than it is today?

5 A Yes.

6 Q And were you trying to be as truthful as
7 possible to the police when you gave that statement?

8 A Yes.

9 Q Okay. I've asked you a bunch of questions
10 where you said you don't remember. If you do remember in that
11 statement, can we take that as being truthful?

12 A Yes.

13 Q Okay. So if it's in the statement, it's
14 likely to be true, is that fair?

15 A Yes.

16 Q Okay. Let me ask you -- I'm going to ask you
17 to turn to a couple pages. Well, let me ask you this, first
18 of all. Did you ever play with the gun after Job gave it to
19 you?

20 A I don't recall.

21 Q Okay. Turn to page 8 and 9 in that statement.
22 Turn to page 8. And just read it to yourself.

23 A Yes, I recall off of this. Yes.

24 Q Okay. After reading that, does that refresh
25 your recollection?

1 A Yes.

2 Q Okay. So did you play with that gun after you
3 received it?

4 A Yes.

5 Q And does it also refresh your recollection
6 that the gun was empty when you received it?

7 A Yes.

8 MR. ORAM: Judge, he testified it was empty. It's
9 not inconsistent.

10 THE COURT: He said it was -- he said it was empty.

11 MR. ORAM: Right. Well, it's not inconsistent. In
12 other words, you refresh with --

13 THE COURT: Well, he said he didn't remember if he
14 had played with it. Okay. I see what you're saying.

15 MR. DiGIACOMO: May I proceed?

16 THE COURT: Technically it didn't refresh his
17 recollection as to whether the gun was empty.

18 MR. DiGIACOMO: Okay.

19 THE COURT: Let's go on.

20 MR. DiGIACOMO: Thank you.

21 BY MR. DiGIACOMO:

22 Q Do you remember what Job's phone number was
23 back on that time period?

24 A No.

25 Q I can't imagine you do. Why don't you turn to

1 page 18.

2 A It's on here, but I don't remember. I really
3 don't remember.

4 Q Why don't you just read to the ladies and
5 gentlemen of the jury what that number is.

6 A 510 -- well, 512-629-0041.

7 Q Let me ask you this question. Does it --
8 well, before I go to the next portion of the statement, do you
9 recall whether or not Job could physically do anything like
10 walk or run or do anything else like that?

11 A No.

12 Q You don't recall or --

13 A He couldn't.

14 Q -- or he couldn't?

15 A He couldn't.

16 Q He couldn't. Let me -- did you like Monica,
17 Job's girlfriend?

18 A As far as I could remember, yes.

19 Q Let me put it the other way. Did you have an
20 impression as to whether or not she liked you?

21 A I don't remember. I -- I doubt it.

22 Q You doubt it?

23 A I doubt it.

24 Q Did -- did Job have a car?

25 A No.

1 Q All right. Who would drive Job when he had to
2 go somewhere?

3 A Monica.

4 Q You indicated that you saw G-Dogg at the
5 apartment and that -- or, sorry, at Monica's and that there's
6 a second individual you don't know that you saw at the
7 apartment that morning. Do you remember --

8 A Yes.

9 Q -- saying that? Okay. Do you recall at all
10 what that guy's name or nickname was?

11 A No.

12 Q Okay. Turn to page 28.

13 MR. ORAM: What was the question, Counsel?

14 MR. DiGIACOMO: Does he recall the nickname of the
15 other individual who he didn't -- who he doesn't remember what
16 his name is.

17 MR. ORAM: That he -- the individual that he did not
18 see there?

19 THE COURT: No.

20 MR. ORAM: Is that what you're asking

21 MR. DiGIACOMO: No, he said he --

22 THE COURT: There was another individual --

23 MR. DiGIACOMO: -- saw him at the apartment.

24 THE COURT: -- that he said he saw there, but he
25 didn't remember his name.

1 MR. ORAM: Well, if he's referring to page 28, he
2 says he didn't see this individual.

3 MR. DiGIACOMO: He didn't see him at the house. He
4 saw him at the apartment, Counsel.

5 MR. ORAM: Judge.

6 THE WITNESS: Yeah, I don't remember this. I don't
7 remember.

8 BY MR. DiGIACOMO:

9 Q Do you remember at least telling the police
10 the nickname for the individual who --

11 A Yes.

12 Q -- who was with G-Dogg?

13 A Yes.

14 Q And what nickname did you give?

15 A D-Shot or D-Shock.

16 Q Okay. Do you remember telling the police what
17 your phone number was back then?

18 A Oh, no.

19 Q Do you remember what it was back then?

20 A No.

21 Q Okay. Turn to page 35.

22 A I don't remember that number.

23 Q Okay. Is that number -- do you reference your
24 phone number back then?

25 A Possibility. I've had a lot of numbers, so

1 it's possible, yes.

2 Q Did you have more than one number back then?

3 A No.

4 Q Okay. What number do you tell the police is
5 your number back then?

6 A 788-4584.

7 Q And I'm assuming since you were in Las Vegas
8 that's a 702 number?

9 A Yes.

10 Q Okay. Do you remember the number 788-4513?

11 A No.

12 Q Okay. You indicated that you don't remember
13 there being anything unusual about the door when you arrive
14 that morning at the apartment. Do you remember --

15 A Yes.

16 Q -- testifying to that? Okay. Why don't you
17 turn to page 37 and read that to yourself.

18 A I don't remember, but --

19 Q Does that refresh your recollection at all, or
20 is that --

21 A A little, but it's --

22 Q -- you don't have a memory?

23 A Yeah, a little, but it's been a long time.

24 Q But you already said that you -- you tried to
25 tell the police the truth, so if it's in here that that --

1 A Yes.

2 Q -- would be an accurate statement?

3 A Yes.

4 Q Okay. Why don't you go ahead and read -- I'll
5 read the questions, you read the answers. Well, it starts
6 with an okay, so read your answer.

7 MR. DiGIACOMO: Middle of the page, counsel.

8 BY MR. DiGIACOMO:

9 Q At answer.

10 A And then so I get out the car, walk through
11 front gate, go past the pool, go up the stairs, knock on the
12 door. G-Dogg answers. And it's a chair and like a box
13 blocking the door like it was barricaded. And then I come in,
14 there he Slick was cleaning the gun, and then we sit there. I
15 sat there for a minute, we smoking, and he's telling me what's
16 going on.

17 Q And the detective says, okay, hold on a
18 second. And you say?

19 A What, what happened?

20 Q And then they confirm with you, so G-Dogg
21 opens the door and there's some box and a chair. And you
22 answer yeah.

23 A Yes.

24 Q And then you answer?

25 A And it -- like it was barricaded, actually.

1 Q And they ask you, so you had to move it to
2 open the door all the way, and your answer is?

3 A Yes.

4 Q You even describe the box four -- four answers
5 down. What did you describe the box as?

6 A It's like a red, white, and black box.

7 Q Okay. And then they said, the question, a big
8 long one? And your was?

9 A It looked like speakers.

10 Q If you turn -- I think I just turned to page
11 38; right? Are you on page 38 right now?

12 A Yes.

13 Q Okay. I want you to read the rest of 38 to
14 yourself briefly, and then I'm going to turn to page 39.

15 MR. ORAM: Judge, is that a -- that's not refreshing
16 his memory. If there's a question --

17 THE COURT: It doesn't sound like he's got something
18 that he has forgotten about that he's about to have his memory
19 refreshed on.

20 MR. DiGIACOMO: Well, he already said that he
21 doesn't remember Slick cleaning the gun, and so I was going to
22 have him finish this for context, and then I was going to ask
23 him a question so I can turn him to page 39, Judge.

24 THE COURT: It is true that he didn't remember Slick
25 cleaning the gun.

1 MR. DiGIACOMO: Correct.

2 THE COURT: Is this --

3 MR. DiGIACOMO: That's where I'm --

4 THE COURT: -- about that?

5 MR. DiGIACOMO: Yes, it is.

6 THE COURT: Okay. Then I'll let him read it.

7 BY MR. DiGIACOMO:

8 Q Have you finished page 38?

9 A Yes.

10 Q Okay. Now, I want you to turn to page 39. Do
11 you remember testifying that you didn't remember Slick
12 cleaning the gun?

13 A Yes.

14 Q Okay. Do you remember what Monica was doing
15 when you arrived at the apartment?

16 MR. ORAM: I thought he was --

17 THE WITNESS: No.

18 MR. ORAM: -- refreshing his memory for cleaning of
19 the gun and that that's what he's reading. But that's not
20 what's on page 39 that I --

21 THE COURT: I understand.

22 BY MR. DiGIACOMO:

23 Q Do you remember Monica sleeping when you
24 arrived?

25 A No.

1 Q Okay. Do you remember where D-Shot was in the
2 house, or in the apartment?

3 A The kitchen.

4 Q Read page 39 to yourself for a second.

5 A Yeah.

6 Q Are you finished?

7 A Yes.

8 Q Okay. Now, does that refresh your
9 recollection that Monica was laying on the floor?

10 A No.

11 Q Okay. But that's what it says, is that fair?

12 A Yes.

13 Q Okay. So you told the police, anyway, that
14 Monica is laying on the floor and that D-Shot or D-Shock or
15 whatever his name is is in the kitchen?

16 A Yes.

17 MR. ORAM: Judge, he's leaving out the next part
18 where he says I can't see it. So I don't know how he leaves
19 that out and says that implies that he's --

20 THE COURT: He's entitled to have parts that are
21 consistent.

22 MR. DiGIACOMO: I can -- it says is in the kitchen
23 doing something. Question, what's he doing in the kitchen?
24 Answer, I don't know. I can't see and it's a little thing and
25 it wasn't really paying attention to him.

1 MR. ORAM: Correct.

2 THE COURT: Okay.

3 MR. DiGIACOMO: So he sees him. He just doesn't
4 know what he's doing.

5 THE COURT: Okay.

6 BY MR. DiGIACOMO:

7 Q Now, the bottom of page 39 they ask you -- you
8 mentioned a gun. And now I want you to read to yourself, see
9 if that refreshes your recollection as it relates to the gun.

10 A No, I don't recall.

11 Q Would you agree with me that you tell the
12 police that when you come through the door, Slick is cleaning
13 the gun with some short of sheet?

14 A Yes.

15 Q Okay. Do you remember the detailed
16 description you gave of the interior of the apartment?

17 A No.

18 Q Okay. So I want you to read from the
19 answer --

20 MR. DiGIACOMO: In the middle of page 41, counsel.

21 BY MR. DiGIACOMO:

22 Q -- to -- well, just read until you finish the
23 description, which I think is about a page and a half. So
24 start there and just read to yourself.

25 A [Witness complied].

1 Q Did you finish your -- the description of the
2 apartment?

3 A Yes.

4 Q Now, did that refresh your recollection of
5 exactly what the apartment looked like inside?

6 A No.

7 Q No, okay. That's what I thought. So here's
8 what I'm going to do. It starts off Marty Wildemann --

9 MR. DiGIACOMO: Counsel, third Marty Wildemann.
10 BY MR. DiGIACOMO:

11 Q I'll read you the questions. Right in the
12 living room? Answer --

13 MR. ORAM: Judge --

14 THE WITNESS: Right in the living room.

15 MR. ORAM: -- I just want the record to reflect I
16 don't mind that he does it because it sounds like it's
17 foundational, but this is improper normally and I want the
18 record to reflect that I recognize that. I'll let him do it.

19 THE COURT: Well, if you're objecting, I'll sustain
20 it.

21 MR. DiGIACOMO: Well, it's past recollection
22 recorded. He can read the statement. He says it's true. He
23 doesn't remember it. It's a past recollection recorded.

24 MR. ORAM: He -- he --

25 MR. DiGIACOMO: And he can read in the statement --

1 THE COURT: I don't know --

2 MR. DiGIACOMO: -- to the record.

3 THE COURT: -- that qualifies as past recollection
4 recorded.

5 MR. DiGIACOMO: It does. That's the -- as long as
6 he says what he told the police was true, it was closer in
7 time to when the time occurred and he has no memory of it now,
8 then it's past recollection recorded.

9 MR. ORAM: No, I -- I disagree. I think he's asked
10 him to refresh his memory, he can't be refreshed, and so I
11 leave it to the Court's discretion.

12 THE COURT: Well, this -- this part I don't care
13 about. Go ahead and do it.

14 MR. DiGIACOMO: Okay.

15 BY MR. DiGIACOMO:

16 Q I think you -- your answer was right in the
17 living room. So the next question. Was there -- was there --
18 sorry. Sleeping bag in there, too? Did you see? And what's
19 your answer?

20 A All right. The setup from the last time I was
21 there when I come in it's the boxes, the chair. When you look
22 to the right it's like a long chair that you can lay on, lay
23 like one of those outside chairs that you could lay back.

24 Q And then the detective says, the gravity
25 chairs; right? And then your answer?

1 A Yes, one of those. And then Monica is on the
2 floor, and then it's like another chair that Slick is sitting
3 on. It's like a metal -- it's like a metal -- the -- it's
4 just like that you can lean back like this and just sit there
5 regular.

6 Q The detective says, right. And then you go on
7 to say?

8 A And then there was like a bag or something
9 like a sleeping bag right here.

10 Q The detective says, okay. And you say?

11 A Towards where you turn on the air and right
12 here is the kitchen. And it was like the sheets and there was
13 a pair of pants or something on that -- on that gravity chair.
14 And then it was a pair of shorts, clothes by the -- clothes by
15 the window and the door, the patio door.

16 Q The detective says, you've got a good memory,
17 Donovan. Good job. And then the question being you remember
18 seeing any cigarettes or -- and then your answer?

19 A Yeah, cigarettes.

20 Q And then condoms or anything like that? And
21 the detective jumps in, who -- who smokes? Answer?

22 A Everybody.

23 Q Detective, everybody? And your answer?

24 A I smoke cigarettes, too.

25 Q And then he says, okay. And then what's your

1 answer as the description?

2 A It was a pack -- it was a pack of two
3 cigarettes right by the door by where -- the door.

4 Q It was a pack of -- it's two packs of
5 cigarettes --

6 A Yeah.

7 Q -- right by the door?

8 A Yes.

9 Q And then they say which door, the rear door or
10 the patio door? And you say --

11 A The patio door.

12 Q -- the patio door.

13 A Yeah, right there by the shorts, if I
14 remember. And then it was an ashtray by the gravity chair.

15 Q The detective says which is the gravity chair
16 is over here to the rear of the door? Answer, yeah, coming in
17 the apartment. Your answer?

18 A Then you turn right.

19 Q And then just read to yourself there. Do you
20 remember telling the detectives that you were sitting smoking
21 next to that ashtray that's by the gravity chair?

22 A No, I don't remember that.

23 Q Okay. Does your statement say you smoking --

24 A Yes.

25 Q -- by that ashtray by the gravity chair?

1 A Yes.

2 Q Do you remember Job and Monica having any sort
3 of argument while you were in the apartment?

4 A No.

5 Q Turn to page 44. Did you read that and does
6 that refresh your recollection?

7 A A little, but not really.

8 Q Okay. Would you agree with me that you told
9 the police everybody is really quiet, though. Monica then
10 when I first came in they were arguing. He was like, bitch,
11 shut up, I don't want to talk to you. And they asked you who
12 said that and you said Slick. Do you remember? Does that --
13 did I read that accurately?

14 A Yes.

15 Q Okay. Now, you indicated previously that Job
16 gave you the gun. Do you remember specifically what Slick or
17 Job said to you when he gave you the gun?

18 A No.

19 Q Okay. Did you just read that on page 44 as to
20 what you said at the time he said specifically to you?

21 MR. DiGIACOMO: Right at the second answer, counsel.

22 THE WITNESS: No, I don't. Sort of, but not too
23 much.

24 BY MR. DiGIACOMO:

25 Q Is that generally what you remember him

1 saying?

2 A Yes.

3 Q Okay. Does your statement reflect he said
4 something happened and I got to leave, so pretty soon I'm
5 going to be gone, I want you to hold this for me?

6 A Yes.

7 Q Okay. That's what your statement says?

8 A Yes.

9 Q And then you leave the apartment; correct?

10 A Yes.

11 Q With the gun?

12 A Yes.

13 Q And you have the gun with you?

14 A Yes.

15 Q You indicated that at some point Job called
16 you and asked you to do something with the gun, do you
17 remember that?

18 A Yes.

19 Q Okay. I want you to read the second answer on
20 page 50 to yourself first.

21 A [Witness complied].

22 Q Okay. After reading that do you remember Job
23 calling you and telling you to watch the news and asking to
24 call him back?

25 A Yes.

1 Q And do you watch the news?

2 A No.

3 Q Okay. Do you call him back?

4 A Yes.

5 Q Okay. When you call him back, is that when he
6 asks you to do something with the gun?

7 A Yes.

8 Q Okay. And do you remember exactly what he
9 told you to do with the gun?

10 A No.

11 Q Did you -- do you remember exactly why it is
12 -- well, what he told you the reason why you had to do
13 something with the gun?

14 A Yes.

15 Q Okay. Why is it that you needed to something
16 with the gun?

17 A That it was used in a murder.

18 Q Okay. Do you remember any of the -- anything
19 else that he told you during that conversation?

20 A That G-Dogg had shot someone and that was
21 pretty much it.

22 Q Okay. I want you to look at page 55, middle
23 answer. Do you recall telling the police the specific thing
24 he said was that Monica, G-Dogg, and I -- and I guess D-Shock
25 or whatever his name is went to go do a drug deal, I guess, or

1 whatever to -- at the apartment or whatever on Lake Mead and
2 Nellis, whatever it is, and that when I guess Monica met up
3 with the lady, something like didn't seem right --

4 MR. ORAM: Judge. Judge.

5 BY MR. DiGIACOMO:

6 Q -- and everything turned out --

7 MR. ORAM: Judge, what's causing me concern here is
8 there is a witness on the stand. They way this works is he
9 asks --

10 THE COURT: I think you've got to have him read it.

11 MR. DiGIACOMO: Good.

12 MR. ORAM: Yeah, he --

13 BY MR. DiGIACOMO:

14 Q Read your whole answer.

15 THE COURT: I think he ought to read his own
16 statement.

17 BY MR. DiGIACOMO:

18 Q All right. Read the answer that you gave to
19 the police.

20 A The specific thing he said was that Monica,
21 G-Dogg, and I guess D-Shock or whatever his name is went to go
22 to do a drug deal, I guess, or whatever to -- at the apartment
23 or whatever on Lake Mead and Nellis, whatever it is, and that
24 when I guess Monica met up with the lady something like didn't
25 seem right and everything turned out -- and one of either

1 G-Dogg, or he didn't tell me specifically, but he said either
2 G-Dogg or D-Shot shot or one of them flipped out and
3 everything went bad from there. And he never said that he was
4 there, none of that.

5 Q They ask you a couple of questions.

6 MR. DiGIACOMO: And then, counsel, page 56.

7 BY MR. DiGIACOMO:

8 Q Just read to yourself first the middle answer.

9 A That crack head lady set the whole meeting up
10 for Monica and them meeting the drug dealer.

11 Q I want to ask you some questions about your
12 perceptions of the relationship between Monica and Job or
13 Slick. Do you -- do you remember, first of all, how you
14 characterized that relationship to the police?

15 A No.

16 Q As you sit here today, how would you describe
17 the relationship between Monica and Job?

18 A Four years ago, I really couldn't tell you.
19 Four -- four years later now I couldn't.

20 Q Turn to page 91. Read that to yourself.

21 A Okay. I'm done reading it.

22 Q After reading it does that refresh your
23 recollection as to the nature of their relationship?

24 A No.

25 Q Okay. We're going to do this, I guess, by

1 question and answer here. Let me go back. They're asking you
2 about whether or not Slick -- what about hoeing girls. We
3 talked about that earlier. What's your answer?

4 A Yeah, I don't really know. He never had a
5 hoe. Monica was just like a girl that would give him money
6 and shit that I know of, just give him.

7 Q Question, so he's just basically using her?
8 Answer.

9 A Yes, pretty much.

10 Q Question, I mean -- answer.

11 A And she thought he loved her, but no.

12 Q Question, all right. So he's just playing her
13 because she's a source of income for him basically?

14 A Yes.

15 Q And you say, actually, uh-huh, yeah.

16 A Uh-huh. Yes.

17 Q Okay.

18 MR. DiGIACOMO: May I approach [inaudible] for just
19 a moment.

20 THE COURT: Yes.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 CROSS-EXAMINATION

24 BY MR. ORAM:

25 Q Good afternoon.

1 A Good afternoon.

2 Q Mr. Rowland, you were out in the hallway and
3 there was a DA investigator with you. Do you remember that?

4 A Yes.

5 Q And the prosecutor just asked you a question
6 about what Job-Loc had said when getting rid of the gun.

7 A Yes.

8 Q Do you remember that? Do you remember Mr.
9 Sgro and myself and Mr. Langford came out and asked you a
10 similar question?

11 A Yes.

12 Q Did Job-Loc say that D-Shock was not involved
13 in the crime?

14 A Correct.

15 Q And the DA investigator was sitting right
16 there when you said it?

17 A Yes.

18 Q And you're aware that these prosecutors had
19 heard that?

20 A Yes.

21 Q That that man is innocent?

22 A Yes.

23 Q I need to go through quite a few questions
24 with you, Mr. Rowland. At the time it's fair to say that you
25 were hustling to make a living?

1 A Correct.

2 Q Fair to say when the police asked you about a
3 cell phone you had indicated that a few days before the police
4 conversation with you you dropped it in a hot tub and it had
5 been destroyed?

6 A I don't recall.

7 Q You don't recall. If I showed you a copy of
8 your statement, would that refresh your memory?

9 A Possibly.

10 MR. ORAM: Page 12, counsel.

11 Permission to approach.

12 BY MR. ORAM:

13 Q The police asked you on page 12 how come your
14 cell phone got turned off, did you turn it off? And you said,
15 no, I dropped it in the water in the hot tub. Is that what
16 you say?

17 A That's -- that's what I said on there, yes.

18 Q And then what do you say underneath?

19 A Then it messed up. The phone was just too
20 damaged. Yeah, I just got a phone like two days ago.

21 Q Okay. And you see this is a Metropolitan
22 Police Department statement. And it appears to say that the
23 date of it is August 19, 2010?

24 A Yes.

25 Q You're real close with Job-Loc?

1 A Correct.

2 Q He was a real good friend of yours?

3 A Yes.

4 Q You almost loved him, would you agree with
5 that?

6 A Yes.

7 Q You were meeting with him on a daily basis?

8 A Correct.

9 Q You'd go over to his girlfriend's house every
10 other day?

11 A Correct.

12 Q And you'd see her there quite often, Monica?

13 A Yes.

14 Q Anywhere you guys went -- excuse me, anywhere
15 Job went, often Monica was the driver?

16 A Correct.

17 Q Do you remember being asked to look at a
18 lineup to see if you could identify D-Shock?

19 A Yes.

20 Q And you couldn't?

21 A No.

22 Q I think you told -- the prosecutor had you
23 read something about D-Shock being in the kitchen. And when
24 he read it, there was a portion where you say he's in the
25 kitchen, but I couldn't see him. Do you remember reading

1 that?

2 A Yes.

3 Q Is that true?

4 A Yes.

5 Q Did you take the gun to a person named

6 Anthony's house?

7 A Yes.

8 Q Has he got a nickname Cricket?

9 A I have no idea.

10 Q Okay. Fair enough. Is his last name

11 Lassiter?

12 A Yes.

13 Q How long did you hold that gun before you took

14 it to Anthony's?

15 A I don't recall.

16 Q Had you touched that gun before?

17 A Yes.

18 Q Had you shot that gun before?

19 A No.

20 Q Never shot that gun?

21 A No.

22 Q When the police asked you about the person in

23 the kitchen, do you remember calling -- saying he was stocky,

24 he had meat on him?

25 A I don't recall.

1 Q Page 74.

2 MR. ORAM: Permission to approach.

3 THE COURT: Okay.

4 BY MR. ORAM:

5 Q 74, second answer. You said about kind of
6 stocky a little bit, had a little bit of meat on him.

7 A Yes.

8 Q Okay.

9 MR. DiGIACOMO: Well, is that in relationship to the
10 guy in the kitchen, Mr. Oram?

11 MR. ORAM: If you -- you have to read that in
12 conjunction --

13 MR. DiGIACOMO: Oh, 73. You're right. I apologize,
14 Counsel.

15 MR. ORAM: No, it's okay. You had to read it in
16 conjunction with the two pages.

17 BY MR. ORAM:

18 Q You had been to California with Monica, the
19 girlfriend?

20 A Yes.

21 Q Okay. Do you remember the police asked you on
22 August 6th, slash, August 7th that you had talked to Job-Loc
23 about 17 times?

24 A I don't recall.

25 MR. ORAM: Court's indulgence.

1 Now I'm looking at grand jury, counsel, page 98.

2 BY MR. ORAM:

3 Q If I showed you a copy of your -- not only did
4 you give a statement to the police, do you remember you
5 actually came into a, what kind of looks like a courtroom and
6 there were probably people like this sitting there?

7 A Yes.

8 Q So you remember that, you took an oath?

9 A Yes.

10 Q Okay.

11 MR. ORAM: Permission to approach.

12 THE COURT: Yes.

13 BY MR. ORAM:

14 Q Do you remember --

15 THE COURT: What is this? This is not his
16 statement?

17 MR. ORAM: It's his grand jury statement.

18 THE COURT: Oh, okay.

19 MR. ORAM: Yeah.

20 BY MR. ORAM:

21 Q Do you recall Mr. DiGiacomo asking you if I
22 told you on the day you talked to him 17 times, would that
23 seem unusual to you? And you said, no, sir.

24 A I don't recall.

25 Q If I showed it to you, would that refresh your

1 memory?

2 A Possibly.

3 Q Did Job-Loc tell you to bury the gun or sell
4 it?

5 A Yes.

6 Q Do you remember at the grand jury Mr.
7 DiGiacomo asking you if you had made threats to anyone in this
8 case?

9 A No, I don't recall.

10 Q If I showed you, would that refresh your
11 memory of being asked the question?

12 A Possibly. I couldn't tell you, to be honest.

13 MR. ORAM: Page 121.

14 Permission to approach, Your Honor.

15 MR. DiGIACOMO: Page 1 what?

16 MR. ORAM: 121, lines -- you actually have to start
17 on 120, line 25, to 121, lines 1 through 4.

18 May I approach?

19 THE COURT: All right.

20 BY MR. ORAM:

21 Q Sir, I'm going to ask you if you -- I'm going
22 to read the question, you give us the answer, okay? Mr.
23 DiGiacomo asked you, and you're telling the ladies and
24 gentlemen of the grand jury you never made any threats to
25 anyone? And you say?

1 A No, I never made no threats to nobody.

2 Q And then the prosecutor asks you, you never
3 said to anybody, hey, Monica, she might be talking, I'll do
4 something to the kids?

5 A No.

6 Q But that's what it says and that's your
7 answer, no, sir; right?

8 A Yeah.

9 Q When Job-Loc was in jail, you would write to
10 him, do you recall that?

11 A No, I don't recall.

12 MR. ORAM: Do you know which letter it is?

13 MR. DiGIACOMO: Can I see it?

14 (Pause in the proceedings.)

15 MR. SGRO: Your Honor, is that a question or
16 stretch?

17 THE COURT: Have you got a question?

18 JUROR: No, I just need another book.

19 THE COURT: You need another book?

20 JUROR: Yes, sir.

21 MR. ORAM: May I approach the witness, Your Honor?

22 THE COURT: Yes. I've forgotten what we were doing.

23 MR. ORAM: We are looking at a letter. We are
24 looking at a letter, Judge.

25 THE COURT: All right. We're looking at a letter.

1 BY MR. ORAM:

2 Q Does that look like your handwriting, sir?

3 A Yeah.

4 Q Do you see at the top it's Wyatt Earth? Does
5 it say that?

6 A Yeah, that's what it says.

7 Q Is Wyatt Earth Job-Loc?

8 A Huh?

9 Q Is that Job-Loc, Wyatt Earth?

10 THE COURT: I think he knows him as --

11 MR. ORAM: Slick.

12 THE COURT: -- Slick.

13 BY MR. ORAM:

14 Q But this says -- who is Wyatt Earth?

15 A I have no idea.

16 MR. ORAM: It doesn't sound real relevant, does it?

17 THE WITNESS: No.

18 MR. ORAM: But the letter is.

19 THE COURT: The letter.

20 BY MR. ORAM:

21 Q Do you -- is that your signature?

22 A Yes.

23 Q Do you sign it Baby Job-Loc?

24 A No, I don't -- I don't remember putting
25 nothing like that.

1 Q Is that your handwriting?

2 A It looks like it.

3 MR. SGRO: Your Honor, I'm sorry. If we could ask
4 Mr. Rowland to keep his voice up a little bit.

5 THE COURT: Yeah, you need to speak up --

6 THE WITNESS: Yeah.

7 THE COURT: -- sir.

8 THE WITNESS: Yeah, it looks like it, but I don't
9 remember.

10 BY MR. ORAM:

11 Q Here's what I want you to do. I want you to
12 read that letter to yourself, okay. And then I'm going to ask
13 you if you're -- if you're writing that letter to Job-Loc.
14 Okay. You read it to yourself.

15 A [Witness complied].

16 Q Have you had a chance to read that?

17 A Yes.

18 Q Is that a letter you wrote to Job-Loc?

19 A I don't recall at all.

20 Q Let me ask you this way. Does the substance
21 of it sound like you're talking to Job-Loc?

22 A Sort of, but not really.

23 Q Was -- do you see the part where you talk
24 about becoming a correctional officer to break someone out?

25 A Yeah, I seen that.

1 Q Who do you know in jail that you could have
2 been talking to?

3 A To be honest, I'm not sure. I've got a couple
4 of friends, but I don't recall saying nothing like that.

5 Q Do you see the envelope on there? See it's
6 addressed to Jerome Thomas?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yeah.

10 Q When you took that firearm -- before I go
11 there, when was the last time you were in Monica's car?

12 A I don't know. I can't -- I don't recall at
13 all.

14 Q Do you know a Loyanda -- Yolanda Cooper?

15 A No.

16 Q Did you -- when you were going to -- you were
17 trying to sell the gun, do you recall that?

18 A Yeah. Yeah.

19 Q Did you tell anyone that you were present at
20 the time of the homicide?

21 A No.

22 Q Did you tell anyone that you received \$1,000
23 as a result of this homicide?

24 A No.

25 Q Did you tell anyone that the woman was shot

1 because she was going for some type of weapon?

2 A I don't recall.

3 Q Okay.

4 MR. ORAM: Court's indulgence.

5 Your Honor, that concludes cross-examination.

6 THE COURT: Mr. Langford.

7 CROSS-EXAMINATION

8 BY MR. LANGFORD:

9 Q Mr. Rowland, we talked briefly outside the
10 courtroom; is that right?

11 A Yes.

12 Q And that's the first time you ever told myself
13 at least that -- that D-Shot, David Burns, was not the
14 shooter.

15 A Correct.

16 Q And you had not told the DA that ever; right?

17 A Correct.

18 Q And, in fact, when you first talked to the
19 police, isn't it true that you told the police you didn't know
20 who the shooter was?

21 A I don't recall.

22 Q Do you recall testifying in front of a grand
23 jury?

24 A Yes.

25 Q Mr. Oram asked you about that earlier;

1 correct?

2 A Yes.

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

4 THE COURT: Yes.

5 BY MR. LANGFORD:

6 Q Do you remember testifying -- let me ask you
7 this. Do you remember testifying that in fact that when
8 talking with Job-Loc he didn't tell you who the shooter was?

9 A I don't recall.

10 Q Okay. Mr. DiGiacomo is asking you questions;
11 right? See his name there?

12 A Yes.

13 Q Okay. And you had read -- you had seen
14 something on the news about this case; is that right?

15 A Yes.

16 Q Okay. And what's -- what did you do after you
17 saw something on the news?

18 A I don't recall.

19 Q All right.

20 A I called him back.

21 Q That -- does that refresh your recollection?

22 A No.

23 Q Okay. So what did you tell the grand jury?

24 A I called him back.

25 Q Under oath that's what you told the grand

1 jury; right?

2 A Yes.

3 Q Who are you talking about, called him back?

4 A Slick.

5 Q Slick, Job-Loc?

6 A Yes.

7 Q Okay. Why did you call him back?

8 A I don't recall.

9 Q Okay. Mr. DiGiacomo asked you another

10 question; right? Do you remember what the question was?

11 A No.

12 Q Okay. You want to read that question? Does

13 that refresh your recollection?

14 A And describe the --

15 Q No, read it to yourself.

16 A Okay.

17 Q Does that refresh your recollection?

18 A No.

19 Q Okay. So what's the question?

20 A Read it out loud?

21 Q Now you can.

22 A And describe the conversation that you had

23 with Slick at this point.

24 Q Do you remember what you answered?

25 A No.

1 Q Well, why don't you read that out loud.

2 A That G-Dogg, Monica, and I guess D-Shot or
3 whatever his name had did something, that it was them or
4 whatever.

5 Q Okay. Question, it was them that did what?
6 What did you say?

7 A The shooting, I guess. I don't know who did
8 it. Like it was never said who did it, but they were all
9 there, I guess.

10 Q Okay. So Job-Loc, then, didn't tell you that
11 conversation. He didn't tell you who the shooter was, did he?

12 A I don't recall.

13 Q Well, that's what you testified under oath;
14 correct?

15 A Correct, that's what's --

16 Q In 2010 --

17 A -- on there. Yes.

18 Q -- correct?

19 A Yes.

20 Q Okay. So now you're coming in and saying that
21 you think the shooter now is not D-Shot; is that right?

22 A Yes.

23 Q Okay. It's not David Burns.

24 A No.

25 Q And now you think it's Willie Mason; is that

1 right?

2 A Yes.

3 Q Well, why is that?

4 A Because that's what was said.

5 Q When was that said?

6 A I don't recall. To be honest, it's been so
7 long. Like this is damn near like five years later, so --

8 Q Okay. So in spite of the fact that you
9 testified under oath to the grand jury --

10 A Uh-huh.

11 Q -- that you were never told who the shooter
12 was or how the shooting happened, now all of the sudden you
13 think something different; is that right? Is that right?

14 A Yes.

15 Q But you don't know why you think that
16 something different; is that correct?

17 A No.

18 Q That's not correct? You do know why you think
19 something different?

20 A Well, I don't -- I don't recall, to be honest,
21 so I really can't -- I don't know.

22 Q So you sat out there and just out of thin air,
23 the thought comes into your head, oh, you know what, David
24 Burns had nothing to do with it. It was Willie Mason. Is
25 that what you're saying?

1 A No.

2 Q Okay. But under oath in 2010 you said you --
3 you were never told who the shooter was; is that right?

4 A Yes, that's what the grand jury thing says --

5 Q And you --

6 A -- right there. Yes.

7 Q And today you can't tell us why it is you
8 think something different?

9 A No.

10 MR. LANGFORD: No further questions, Judge.

11 THE COURT: Any redirect?

12 MR. DiGIACOMO: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. DiGIACOMO:

15 Q Mr. Langford sort of summed it up for me, but
16 let me just get this straight. Outside today you told the
17 lawyers for the defense that your memory today is that Job
18 said that G-Dogg was the shooter?

19 A Correct.

20 Q Okay. I think we talked about this. You said
21 that you told the truth to the police when you talked to them
22 in -- in 2010; correct?

23 A Yes.

24 Q And so would you rely upon what you told the
25 police in 2010 or your memory outside in the hall today?

1 A Today.

2 Q Okay.

3 MR. DiGIACOMO: Judge, I offer 287 which is the
4 videotape recording of Donovan Rowland's statement.

5 MR. ORAM: Objection.

6 MR. DiGIACOMO: It's a prior inconsistent statement
7 admissible under statute.

8 MR. ORAM: If he wants to -- if he wants to impeach
9 him with a portion of it, that's fine. But that's not the way
10 it --

11 THE COURT: The portion that would --

12 MR. ORAM: Yes.

13 THE COURT: -- be inconsistent would be
14 inappropriate, and I'm sure you can do that on your -- you're
15 so technically advanced, I'm sure you can do that.

16 MR. DiGIACOMO: I believe that there is a number of
17 different times, so I'll get with counsel, but I want to make
18 sure that the video is admitted for --

19 THE COURT: I'll admit it for purposes of
20 inconsistent statements. All right.

21 (State's Exhibit 287 admitted.)

22 BY MR. DiGIACOMO:

23 Q Now, you also testified in front of a grand
24 jury; correct?

25 A Yes.

1 Q You didn't want to be there, would you agree
2 with me?

3 A Correct.

4 Q Back in 2010?

5 A Yes.

6 Q You didn't want to be here today, either, did
7 you?

8 A No.

9 Q Okay. And it was much -- the procedure we
10 went through in the grand jury was similar to this one except
11 for I played you the little video portions of your statements,
12 do you remember that?

13 A I don't recall.

14 Q You would agree with me you weren't real happy
15 to be there when you were answering questions; correct?

16 MR. ORAM: Judge, objection to the leading nature.
17 Correct, correct.

18 MR. DiGIACOMO: Judge, he's obviously --

19 THE COURT: He can lead.

20 MR. DiGIACOMO: -- adverse at this point. Thank
21 you.

22 THE WITNESS: Correct.

23 BY MR. DiGIACOMO:

24 Q All right. You took an oath when you went
25 into that room; correct?

1 A Correct.

2 Q You took an oath to tell the truth, the whole
3 truth, and nothing but the truth; right?

4 A Correct.

5 Q And did you do that at that time?

6 A I don't remember to be honest, so if anything,
7 yes.

8 MR. DiGIACOMO: Judge, I have marked 289, the grand
9 jury transcript of Donovan Rowland. Under the Statute 51.035
10 it's prior testimony at a proceeding. In this case it's
11 admissible. I'd offer it.

12 THE COURT: Any objection?

13 MR. ORAM: Yes, Your Honor.

14 THE COURT: What?

15 MR. ORAM: He's on the witness stand. I'd ask
16 before it be --

17 THE COURT: If it's in -- to the extent that it's
18 inconsistent it's --

19 MR. ORAM: And just the portion.

20 MR. DiGIACOMO: Judge, the entire transcript is
21 admissible under 51.035 as prior testimony of a witness in the
22 proceeding.

23 MR. ORAM: Your Honor, we were unable to
24 cross-examination the defendant or this particular witness at
25 that time. And I don't think under Funches that's correct.

1 You know, and, Your Honor, I don't really have much
2 disagreement with it. However, what I'd like to do is at
3 least do what you're doing right now and research it because I
4 just haven't seen a prosecutor do that.

5 MR. DiGIACOMO: I've done it with a number of
6 witnesses, but I believe it's (2)(b), 51.035(2)(b).

7 THE COURT: (2)(b). I think it's admissible.
8 Objection is overruled. It'll be received.

9 (State's Exhibit 289 admitted.)

10 BY MR. DiGIACOMO:

11 Q Now, Mr. Oram also showed you a copy --

12 MR. DiGIACOMO: And I apologize, Linda. I forgot to
13 have this marked.

14 BY MR. DiGIACOMO:

15 Q This is another copy of the letter Mr. Oram
16 showed you. It's State's Proposed Exhibit No. 290. Did you
17 have a chance to read the whole letter before?

18 A When he just brung it up, yes.

19 Q Okay. How would you describe the nature of
20 this letter between you and Job-Loc?

21 MR. ORAM: Judge, objection. He said that he didn't
22 know.

23 THE COURT: How would you describe the nature of it?
24 I don't understand what that means.

25 MR. DiGIACOMO: I'll rephrase.

1 THE COURT: Okay.

2 MR. ORAM: And, Judge, he -- at least when I asked
3 him questions, I thought he was saying he didn't know if it
4 was to Job-Loc. So just for that purpose I would object
5 because I think he said he didn't know if it was to him.

6 MR. DiGIACOMO: I don't think he said that.

7 BY MR. DiGIACOMO:

8 Q You know Job-Loc to be Jerome Thomas to be
9 Slick; right?

10 A Yeah, now after everything, yes.

11 Q All right. You've maintained some contact
12 with Job-Loc at least for some period of time after --

13 A I don't recall.

14 Q -- 2010?

15 A I don't recall.

16 Q You haven't had any contact with --

17 THE COURT: You don't recall that you've maintained
18 contact?

19 THE WITNESS: Yeah, I don't remember if I maintained
20 contact or not.

21 BY MR. DiGIACOMO:

22 Q You -- did he write -- you don't remember
23 getting letters back from him from jail or prison in
24 California?

25 A No.

1 Q Let me ask you this. Did you take a .44
2 caliber magnum and execute a woman in her living room at 5662
3 Meikle --

4 A No.

5 Q -- on August 7th of 2010?

6 A No.

7 Q Okay. Did you then chase her daughter down
8 the hall and shoot her in the stomach?

9 A No.

10 Q Were you there that night at the murder?

11 A No.

12 Q Okay. Do you recall telling the police that
13 Job couldn't be there because he couldn't walk or run or do
14 anything else?

15 A Yes.

16 Q Okay. And that was true; right?

17 A Yes.

18 Q So as far as you know Job wasn't at this
19 murder scene; correct?

20 A Correct.

21 Q Now, I saw Mr. Oram point over to his client
22 and say this man is innocent. Do you know this man?

23 A No, sir.

24 Q Had you seen him before?

25 A No, sir.

1 Q Okay.

2 MR. ORAM: No, he did because, Judge, apparently the
3 prosecutor said that he had seen him at the -- at the kitchen,
4 I think; right? And you said that he was there at the
5 kitchen.

6 MR. DiGIACOMO: Well, that's my question.

7 MR. ORAM: Now it seems -- it seems like you're
8 inconsistent, Counsel.

9 MR. DiGIACOMO: That's -- that's my question. I
10 didn't ask him to identify him because he says he couldn't
11 identify him. Now he's saying this man is innocent and he
12 doesn't even know who this man is. That's the whole purpose
13 of the question. He's never been able to identify D-Shot
14 before, now apparently everybody is agreeing this is D-Shot.
15 I just want to make sure that's clear that he doesn't know who
16 this guy is.

17 THE COURT: I'm not sure he knows which one is
18 which.

19 MR. DiGIACOMO: That's a great question. It was
20 going to be my next one.

21 THE COURT: Okay.

22 BY MR. DiGIACOMO:

23 Q Do you know the other guy over here?

24 A Yes.

25 Q Okay. Who is that?

1 A G-Dogg.

2 Q So you know G-Dogg?

3 A Correct.

4 Q Okay. So we can get this straight, at least a
5 couple weeks ago you would agree with me that you had a
6 conversation with --

7 MR. ORAM: Objection as to leading, Judge.

8 MR. DiGIACOMO: No, I'm allowed to --

9 MR. ORAM: You would agree with me.

10 THE COURT: He can lead --

11 MR. DiGIACOMO: -- cross-examination him --

12 THE COURT: -- a witness --

13 MR. DiGIACOMO: -- at this point.

14 THE COURT: -- like this. He's obviously identified
15 with the defendants, not with the plaintiff. Strange
16 identification, I must admit, but --

17 MR. DiGIACOMO: Thank you.

18 BY MR. DiGIACOMO:

19 Q You had a conversation with Ms. Weckerly a
20 couple weeks ago; correct?

21 A Correct.

22 Q Okay. And basically what you told her is I
23 don't really remember anything and I don't want to come back
24 to Las Vegas --

25 A Yes.

1 Q -- right? Eventually you agreed to show up;
2 correct?

3 A Yes.

4 Q And now in the last four and a half years the
5 first time you ever said I know for sure D-Shot had nothing to
6 do with this is when you were sitting outside this --

7 MR. ORAM: Objection.

8 BY MR. DiGIACOMO:

9 Q -- courtroom; correct?

10 MR. SGRO: Counsel was here --

11 THE WITNESS: Correct.

12 MR. SGRO: -- when we made the record, Your Honor.

13 MR. ORAM: Judge, he knows that's not accurate. But
14 I guess I'll get up after him, but that's an inaccurate
15 statement and he knows it.

16 MR. DiGIACOMO: How do I know that? Didn't Mr. Oram
17 walk in this courtroom and say right before we started --

18 THE COURT: I thought it was right --

19 MR. DiGIACOMO: -- Donovan Rowland just told us?

20 THE COURT: I thought it was right out there.

21 MR. SGRO: No, it was --

22 MR. ORAM: Judge -- Judge, I'll tell you what. I'll
23 get up on cross.

24 THE COURT: Okay. That's what I understood.

25 MR. ORAM: Go ahead.

1 MR. DiGIACOMO: Yeah.

2 BY MR. DiGIACOMO:

3 Q Did you tell anybody prior to that?

4 A Someone from their office, yes, before I got
5 here.

6 Q When did you tell --

7 A A couple days ago.

8 Q A couple days ago?

9 A Yeah.

10 Q Okay. So whether it was 20 minutes ago or two
11 hours -- or two days ago, other than that have you ever told
12 anybody that before?

13 A No.

14 Q Okay. Well, so, you're not present at the
15 crime scene; correct?

16 A Correct.

17 Q What you know is based upon what Job has told
18 you; correct?

19 A Correct.

20 Q Or what you saw when you got the murder weapon
21 and took it from Job; correct?

22 A Correct.

23 Q So I guess my question is if you don't know
24 this man, how were you able to answer the question for Mr.
25 Oram this is an innocent guy sitting here?

1 A I can't.

2 Q All right. You don't know that question, do
3 you?

4 A Correct.

5 Q You just know what people have told you or
6 what you've seen; correct?

7 A Correct, but I have never seen him.

8 Q Okay. And you, so we're clear, you describe
9 the individual that you saw in the kitchen as 5'11; correct?

10 A Correct.

11 Q A little bit lighter skin than you are?

12 A Correct.

13 Q Curly hair?

14 MR. ORAM: Page counsel. A little lighter.

15 THE WITNESS: Correct.

16 MR. DiGIACOMO: 73.

17 MR. ORAM: Of grand jury or his statement?

18 MR. DiGIACOMO: No, it's his -- his statement right
19 before you get to 74 where you ask the stocky question.

20 MR. ORAM: 73?

21 MR. DiGIACOMO: Yeah, the rest of the description.

22 BY MR. DiGIACOMO:

23 Q A little bit lighter than you with curly hair.

24 A Correct.

25 Q You remember that?

1 A Yeah.

2 MR. DiGIACOMO: I have nothing further. Thank you,
3 Judge.

4 THE COURT: Mr. Oram.

5 RECROSS-EXAMINATION

6 BY MR. ORAM:

7 Q Mr. Rowland, you've never met me before, have
8 you?

9 A No.

10 Q You've never seen my face?

11 A No.

12 Q You've never talked to me?

13 A No.

14 Q Apparently you had a conversation with an
15 investigator, okay?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q One appointed by the Court to help and assist
20 Mr. Burns. You don't know him; right? You don't know Mr.
21 Burns sitting over there; right?

22 A No.

23 Q And in -- when does this conversation with
24 this court appointed investigator take place?

25 A A couple days ago.

1 Q Can you be more accurate just so we can --

2 A I can't tell you exactly.

3 Q And in that conversation did you reveal what
4 Job-Loc had told you?

5 A Yes.

6 Q And do you think today as you're testifying
7 that your memory of what Job-Loc told you is accurate?

8 A Yes.

9 Q And did he say that the other guy, D-Shock or
10 D-Shot, was not guilty?

11 A Correct.

12 Q Innocent. And outside, when we were outside
13 and came out there, that's the first time you had seen me,
14 isn't it?

15 A Correct.

16 Q And who was with you, sitting right next to
17 you?

18 A The DA investigator.

19 Q And has he been -- did he pick you up from the
20 airport?

21 A Yes.

22 Q So you had been with him; right?

23 A Yes.

24 Q And Mr. Sgro, that man right there, okay, he
25 came out and asked you these questions, didn't he, in front of

1 the DA investigator?

2 A Yes.

3 Q And he asked you what Job-Loc had said, didn't
4 he?

5 A Yes.

6 Q Or words to that effect?

7 A Yes.

8 Q And since you don't know that man Mr. Burns,
9 you have no reason to help him, do you?

10 A Correct.

11 MR. ORAM: Nothing further.

12 RECROSS-EXAMINATION

13 BY MR. LANGFORD:

14 Q The fact is you don't remember anything, do
15 you?

16 A Bits and pieces. Trying to.

17 Q Bits and pieces. But you don't remember when
18 it was that somebody told you that D-Shot wasn't the shooter,
19 do you?

20 A Correct.

21 Q You don't really remember if somebody told you
22 that, do you?

23 A I do.

24 Q You do remember? Okay. Where did the
25 conversation take place?

1 A That I don't remember.

2 Q Who was the conversation with?

3 A Slick.

4 Q Slick. Was it on the phone?

5 A More than anything, most likely, yes.

6 Q Most likely yes. When was it that this

7 conversation took place?

8 A I don't recall.

9 Q You don't recall.

10 A No.

11 Q So the only think you vaguely remember is him

12 saying that D-Shot, David Burns, was not the shooter?

13 A Correct.

14 Q And Willie Mason was the shooter?

15 A Correct.

16 Q Did Job-Loc go around telling you things about

17 people who committed crimes?

18 A No.

19 Q Is he one of those kind of people that does

20 that a lot?

21 A I'm not sure.

22 Q Well, he hasn't ever told you anything like

23 that before, has he?

24 A No.

25 Q In fact, you testified to the grand jury that

1 he did not tell you that when you called him back after you
2 had seen something on the news; isn't that right?

3 A I don't recall.

4 Q Well, I just showed you your testimony. You
5 don't recall that now? That was like five minutes ago.

6 A You didn't say that. You just said do I
7 recall, and I told you no, so --

8 Q But that's what you testified to, or do I need
9 to show you that again?

10 A I seen it on there, yes, but you didn't --

11 Q Okay.

12 A That's not what you said.

13 Q Is that what you testified to?

14 A Yes, that's what I testified to.

15 Q That he didn't tell you anything about who the
16 shooter was; right?

17 A Yes, that's what the testimony said, yeah.

18 Q And he didn't tell you why they were there to
19 do the shooting or what -- how the shooting happened; right?

20 A Correct.

21 Q But now you come in today four years later,
22 and it's Willie Mason that's the shooter, but you don't
23 remember why; correct?

24 A Correct.

25 Q You just kind of remember Job-Loc told you?

1 A Correct.

2 Q Job-Loc, your good friend; correct?

3 A Correct.

4 Q Job-Loc, the person you're going to become a
5 corrections officer so you can bust him out of jail; right?

6 A I don't recall that I said that, so --

7 Q Still think you can become a corrections
8 officer?

9 A I don't never remember saying nothing like
10 that, so, no.

11 MR. LANGFORD: No further questions.

12 THE COURT: Ladies and gentlemen, we're going to
13 take a brief recess. During the recess it's again your duty
14 not to converse amongst yourselves or with anyone else on any
15 subject connected with this trial, or to read, watch, or
16 listen to any report of or commentary on the trial by any
17 medium of information, including newspapers, television, and
18 radio. You may not form or express an opinion on any subject
19 connected with this case until it is finally submitted to you.
20 We'll be in recess for about ten minutes.

21 (Jury recessed at 3:00 p.m.)

22 MR. SGRO: We have something very quick.

23 THE COURT: The record will reflect that the jury
24 has left the courtroom.

25 MR. SGRO: Your Honor, just very briefly, under NRS

1 51.325, the prior testimony, one of the prerequisites under
2 that statute is the unavailability of the declarant. And --

3 MR. DiGIACOMO: I'm sorry. But is Mr. Rowland free
4 to go, Judge? I apologize.

5 MR. ORAM: Yes.

6 MR. DiGIACOMO: He's still sitting there.

7 MR. ORAM: Yeah.

8 MR. DiGIACOMO: We're done with --

9 THE COURT: 035?

10 MR. DiGIACOMO: Judge, I apologize, but Mr. Rowland
11 I don't think --

12 THE COURT: You want Mr. Rowland in here no longer?

13 MR. ORAM: We don't.

14 MR. DiGIACOMO: No, he's free to go. We --

15 MR. SGRO: Right.

16 MR. DiGIACOMO: We've finished; right?

17 THE COURT: All right.

18 (Donovon Rowland exits the courtroom at 3:01 p.m.)

19 THE COURT: I must tell you that the testimony from
20 that witness is probably -- lacks more credibility than I've
21 ever had a witness in 40 years.

22 MS. WECKERLY: He'd be a good one to give a gun to.

23 THE COURT: You know, I just -- I don't think he was
24 telling the truth from the moment he started. I don't think
25 he -- I think he remembers a lot and has decided he doesn't

1 want to remember anything.

2 MR. DiGIACOMO: Correct. That's why there's a case
3 and that's why I wanted to discuss the -- his statement to the
4 police. The case is called Crowley --

5 THE COURT: I'm curious of whether he has been
6 threatened or instructed by somebody to testify a certain way.

7 MR. DiGIACOMO: I'm curious by that too. But
8 there's a case that says Crowley, C-R-O-W-L-E-Y, when a person
9 denies knowledge of a particular fact that's the same as -- as
10 denying it for inconsistent statement purposes. He had no
11 memory of anything whatsoever and thus there is everything in
12 his statement is inconsistent.

13 THE COURT: He obviously denied a recollection of a
14 lot of things that I am sure he recalled. I mean, it would be
15 almost impossible not to recall it.

16 MR. DiGIACOMO: Correct. So what I'm saying to the
17 Court is that I don't know what needs to be redacted from the
18 statement since everything that he says I don't remember is
19 something that is admissible as a prior inconsistent
20 statement. And, thus, I would offer the entire entirety of
21 289 to the extent -- unless there is a specific thing that
22 defense --

23 THE COURT: Well, let's do --

24 MR. DiGIACOMO: -- wants to redact.

25 THE COURT: -- let's do the points that were related

1 to the --

2 MR. SGRO: So here's -- here's the difficulty. If
3 you start with 51.035, which is what the State suggested was
4 the appropriate statute, and they said under -- under letter
5 (d). Letter (d) is --

6 MR. DiGIACOMO: (b), (2)(b).

7 MR. SGRO: (b), the --

8 THE COURT: Consistent --

9 MR. DiGIACOMO: No, (2).

10 THE COURT: (2)(b), as in boy. The declarant
11 testifies at the trial --

12 MR. SGRO: Right. And is --

13 THE COURT: -- subject to --

14 MR. SGRO: -- subject to --

15 THE COURT: -- cross-examination --

16 MR. SGRO: -- cross-examination and the --

17 THE COURT: -- and the statement --

18 MR. SGRO: -- statement is --

19 THE COURT: -- is consistent with his testimony --

20 MR. DiGIACOMO: No, that's not the right one. It's
21 the one that says prior testimony in the proceeding. Mr. Sgro
22 has it up on his.

23 MR. SGRO: That's (d).

24 MR. DiGIACOMO: Oh, sorry.

25 THE COURT: Transcript of a testimony given under

1 oath at a trial before a grand jury.

2 MR. DiGIACOMO: Correct, so that's (2)(d). I
3 apologize. That was not (b), (d).

4 THE COURT: Well, he testified at the trial, he was
5 subject to cross-examination, and it is a transcript of
6 testimony given under oath before a grand jury.

7 MR. SGRO: Yeah, the -- the difficulty is, Your
8 Honor, if you look at 51.235, which also governs former
9 testimony, and I can't imagine the --

10 THE COURT: That's under the witness and
11 unavailability section of the statute.

12 MR. SGRO: If I could just make a record we'll go a
13 lot quicker. The -- the former testimony of a witness --

14 THE COURT: I'm sorry. 51.235 is statements of
15 ancient documents.

16 MR. SGRO: I'm sorry, Your Honor, if I misspoke.
17 51.325.

18 THE COURT: Former testimony.

19 MR. SGRO: Yes, sir. Testimony given as a witness
20 at another hearing of the same or different proceedings or in
21 a deposition taken in compliance with the law is not
22 inadmissible under the hearsay rule if (1) the declarant is
23 unavailable.

24 Now, there are two -- clearly there are two statutes
25 which govern prior recorded testimony. Clearly in a criminal

1 proceeding Mr. Rowland or any grand jury witness would not
2 have been subject to cross-examination. I'm not certain --
3 and perhaps the Court can tell me and I'm happy to sit down,
4 but I'm not certain how you can read one statute to the
5 exclusion of the other when they both govern former testimony.

6 It strikes me that two things need to occur if you
7 look at them both at the same time. One is either subject to
8 cross-examination at the time the prior recorded statement
9 needs to be -- was given, which we do not have, or choice (b)
10 unavailability of the declarant, which clearly we don't have.
11 So I think for purposes of the record, Your Honor, we would
12 object to it because it strikes me that the two statutes need
13 to be read in conjunction with one another, not to the
14 exclusion of each other.

15 In other words, neither one of the has an annotation
16 that this Statute No. 51 et seq. only applies in these
17 situations. Chapter 50 only applies in these situations. I
18 think the Court knows where I'm going. There seems to be an
19 inherent conflict, and so the only thing we can do, then, is
20 read them in conjunction. And that's the basis for the
21 objection, Your Honor, and I'll submit it to the Court.

22 MR. DiGIACOMO: Judge, it's very simple. 51.035 is
23 the definition of hearsay, and those items which are listed in
24 there are not hearsay. It's much like the co-conspirator
25 statements are not hearsay. All the statutes after that are

1 exceptions to the hearsay rule, some of which require -- the
2 exception requires, and it's under the unavailability of a
3 witness.

4 If you have an unavailable witness and you have
5 prior testimony in the same proceeding, it's an exception to
6 the hearsay rule. You don't need an exception to the hearsay
7 rule if the witness is on the stand and their testimony is
8 from the same proceeding, it's just not hearsay. It is
9 admissible under 51.035.

10 THE COURT: I agree it's not hearsay.

11 MR. DiGIACOMO: It's not hearsay, so there doesn't
12 need to be an exception. There is an exception for an
13 unavailable declarant, which would make it hearsay.

14 THE COURT: I agree with that. I'm -- no, I think
15 it's admissible. Let's take a five minute recess.

16 MR. DiGIACOMO: Thank you.

17 MR. SGRO: Thank you, Your Honor.

18 THE COURT: Do we have one more witness?

19 MS. WECKERLY: Yeah.

20 MR. DiGIACOMO: Yeah, one --

21 MS. WECKERLY: She's like --

22 MR. DiGIACOMO: -- five-minute witness.

23 MS. WECKERLY: -- five minutes.

24 THE COURT: Five. Good.

25 MR. DiGIACOMO: So we get one short witness and

1 we're done.

2 THE COURT: Very good. I'm sure the jury will
3 appreciate that.

4 (Court recessed at 3:07 p.m., until 3:15 p.m.)

5 (In the presence of the jury.)

6 THE COURT: All right. State versus Burns and
7 Mason. The record will reflect the presence of the
8 defendants, their counsel, that District Attorneys and all
9 members of the jury.

10 You can call your next witness.

11 MS. WECKERLY: Thank you, Your Honor. Samantha
12 Knight. Do you want me to get her? Oh, are you going to get
13 her?

14 SAMANTHA KNIGHT, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated. Please state your
16 name, and spell your first and last name for the record.

17 THE WITNESS: Samantha Knight; S-A-M-A-N-T-H-A
18 K-N-I-G-H-T.

19 DIRECT EXAMINATION

20 BY MS. WECKERLY:

21 Q Ms. Knight, do you know someone by the name of
22 Monica Martinez?

23 A Yes, ma'am.

24 Q How did you meet her?

25 A She worked with me.

1 Q And where was it that you two worked?

2 A At Novum Pharmaceutical Research.

3 Q Was that back in 2010?

4 A Yes, ma'am.

5 Q And what -- were you coworkers or what was
6 your position in the --

7 A I was actually her supervisor, but like we
8 became best friends.

9 Q Okay. And as best friends, would you
10 socialize outside of work together?

11 A Yes, ma'am.

12 Q Pretty often, not too often?

13 A I was very close with her, but I spent a
14 majority of the time with her children. Like they would come
15 to my house and play with my children, and like every once in
16 awhile I'd go with her, but --

17 Q Okay. Do you remember any -- any of the
18 people she was dating towards the end of the summer of 2010?

19 A Yes, ma'am.

20 Q And do you know what that person's name was?

21 A I only knew him by Job.

22 Q As Job?

23 A Job.

24 Q Did you ever see him?

25 A I saw him one time.

1 Q And approximately when was that?

2 A I can't remember the exact time, but it was
3 not too long before whatever happened. He actually showed up
4 at work with her daughter, she was driving, her daughter was
5 driving. He was in the car in the passenger side.

6 Q And do you remember anything about him sitting
7 in the car with her daughter?

8 A I remember that he had a broken leg.

9 Q Okay. And you know there was a day where
10 detectives came and came to work and Monica left with them;
11 correct?

12 A Yes, ma'am.

13 Q Using that as your -- as your marker, if you
14 could, how much before that do you think you saw him in the
15 car with her daughter?

16 A That was the only time I had ever seen him.
17 I've heard of him a lot, but I had never seen him before.

18 Q Okay. But like still, how much before did you
19 see him in the car?

20 A I was walking to go clock out so maybe like
21 five or ten minutes because I stopped --

22 Q Oh, the same --

23 A -- to say high to her daughter.

24 Q Oh, okay. And it was the same day the
25 detectives came there?

1 A Oh, no, no, no. I'm sorry. Like maybe two or
2 three weeks before --

3 Q Okay.

4 A -- the incident. I'm sorry.

5 Q Okay. I'm sorry. We miscommunicated. So you
6 see him with her daughter, her daughter is driving the car.

7 A Yes, ma'am.

8 Q And you see that he's got a broken leg or
9 something?

10 A Yes, ma'am.

11 Q Did he actually get out of the car?

12 A No.

13 Q And then two weeks or so after that is when
14 the detectives show up?

15 A Yes, ma'am.

16 Q Okay. And do you know what her daughter's
17 name is?

18 A Tyler.

19 Q Tyler. Okay. Tyler was driving?

20 A Yes, ma'am.

21 Q Now, on the day the detectives come to see
22 Monica, do you remember if she was at work the previous day or
23 if that was her day off or --

24 A She was off on Mondays.

25 Q She was off on Mondays. So the detectives

1 came on a Tuesday?

2 A Yes, ma'am.

3 Q Do you know how it was that Monica got to work
4 that day?

5 A She actually called me the night before and
6 told me that she needed a ride to work.

7 Q And when you -- did you drive her to work that
8 Tuesday?

9 A I had actually just gotten out of a really bad
10 relationship, so my brother was taking me. So my brother took
11 both of us to work.

12 Q And where did you pick Monica up from?

13 A At her grandmother's house.

14 Q So not at her regular house?

15 A No, ma'am.

16 Q And you picked her up -- or your brother was
17 actually the driver, I assume.

18 A Yes, ma'am.

19 Q And he drives both of you to work?

20 A Yes.

21 Q And it's sometime after that that the
22 detectives show up?

23 A Yes, ma'am.

24 Q Now, prior -- well, actually, when Monica was
25 in the car on the way to work, did you have an opportunity to

1 observe her demeanor or observe her behavior at all?

2 A She was really distracted. Like we're
3 normally really happy people, you know. We talk to a lot of
4 people, we know a lot of people. She knew Vegas a lot better
5 than I. I'm very unfamiliar with that side of town other than
6 getting from Henderson to my house -- or to my work. And when
7 she gave me instructions how to get there, she was very vague.
8 My brother was kind of just driving around in circles. And
9 I'm like if I'm at a school am I too far, if I'm here where am
10 I supposed to be? And she's like I don't know. And I'm like,
11 well, this is your grandmother's house. Like I'm going to be
12 late to work. You have to tell me how to get there or else,
13 you know, I can't take you. And eventually she told me how to
14 get there, we pulled up, picked her up, and we just drove to
15 work.

16 Q When she was in the car did -- did -- was she
17 talkative or --

18 A No, I just kind of busted her about like not
19 telling me how to get there sooner because I was really
20 literally just going in circles.

21 Q Okay. And then you get to work. Do you work
22 next to each other?

23 A My desk as a supervisor was here. Her desk
24 was literally right next to mine.

25 Q Did she -- did she give you anything that day?

1 A Yes.

2 Q What did she give you?

3 A A phone number.

4 Q And describe how that happened.

5 A She was at the front desk working that day
6 because we had screening. And she said that there were
7 detectives next door and she had to go. And she handed me a
8 phone number and told me if anything happened to call the
9 number. And I said who do I ask for or what am I supposed to
10 do. And she's like if anything happens, you call the number.

11 Q Okay.

12 A And that's pretty much it.

13 Q The detectives ultimately talk to you;
14 correct?

15 A Yes.

16 Q And did you give them that piece of paper that
17 she had given you with the phone number on it?

18 A I actually called my boss that night that it
19 happened because I'm pretty sure her husband used to work in
20 the Metropolitan Police Department and I didn't want to really
21 get involved. So I asked her how to handle it, and he kind of
22 helped me out with it to get it to the right people.

23 Q Okay.

24 MS. WECKERLY: Counsel, I'm going to show her.

25 MR. SGRO: Oh, yeah. Yeah.

1 BY MS. WECKERLY:

2 Q Ms. Knight, I'm going to show you what's been
3 marked as State's 281. Do recognize that?

4 A [Nods head yes].

5 Q What is that?

6 A That's the number she gave me.

7 Q That's the number she gave you?

8 A Monica, yes.

9 Q Okay.

10 MS. WECKERLY: State moves to admit 281.

11 MR. SGRO: No objection.

12 THE COURT: It'll be received.

13 (State's Exhibit 281 admitted.)

14 BY MS. WECKERLY:

15 Q And did you actually call this number?

16 A No.

17 Q Okay. Since --

18 THE COURT: That's a no?

19 THE WITNESS: No, ma'am. Or, no, sir. Sorry.

20 THE COURT: Okay.

21 BY MS. WECKERLY:

22 Q Since that time with the police, have you seen
23 or spoken to Monica?

24 A I've received letter from her. I haven't
25 actually gone to see her. I've talked to her children a few

1 times, and I actually -- I'm close friends with her
2 ex-husband, but that's pretty much all I have with her.

3 Q She's written you some letters and then you've
4 talked to her ex-husband?

5 A Uh-huh.

6 Q Is that yes?

7 A Yes, ma'am. Sorry.

8 Q That's okay. Which -- what's his name?

9 A He would be -- I think it's Willie. That's
10 how I know him.

11 Q Okay. And so you've talked to him a couple
12 times, and then maybe you've seen the kids?

13 A I've only seen the kids one time after, but
14 that -- then I talk to them through Facebook and whatnot, but
15 I haven't actually been able to see them see them.

16 Q Okay. Thank you.

17 MS. WECKERLY: Your Honor, I'll pass the witness.

18 CROSS-EXAMINATION

19 BY MR. SGRO:

20 Q Good afternoon.

21 A Good afternoon.

22 Q So I want to start out -- first of all, you
23 gave a statement to the police; right?

24 A Yes, sir.

25 Q And you know it's recorded?

1 A Yes, sir.

2 Q Okay. Relative to the names that the
3 boyfriend had, did she ever say that sometimes he went by
4 Anthony?

5 A I only heard it the day of. She said that I
6 had to screen her calls.

7 Q Okay.

8 A And tell my staff that if anyone called in
9 that she was on vacation and then to give the calls to me. I
10 asked her who I was looking for. She said it was either Job,
11 Mohammed, or Anthony, or Jamar was the names that I heard.

12 Q Okay. And -- and was Anthony Anthony
13 Lassiter, or was Anthony just going to be a pseudonym for some
14 who was calling?

15 A It was just an Anthony. There was no last
16 name.

17 Q And there -- and you said Jamar. That was a
18 conversation that revolved around a tattoo she told you she
19 wanted to --

20 A Yes, sir.

21 Q -- to get; right? And at the time she says I
22 want to get a tattoo of my boyfriend; right?

23 A Yes, sir.

24 Q And you said Job?

25 A Yes, sir.

1 Q And she said, no, well, Jamar.

2 A Yes, sir.

3 Q Okay. So this is sort of a context of all of
4 the names that this individual Job would use; right?

5 A Yes, sir.

6 Q Do you know his real name?

7 A No.

8 Q Now, I think I just heard you describe for the
9 jury you were very close with Monica; right?

10 A Yes, sir.

11 Q You were best friends?

12 A Yes, sir.

13 Q And you even told the police the same kind of
14 thing; right?

15 A Yes, sir.

16 Q She told you everything?

17 A Pretty much, yes, sir.

18 Q Okay. And you knew her for how long?

19 A Probably two and a half years --

20 Q So for --

21 A -- at or about.

22 Q -- two and a half years -- and I didn't mean
23 to interrupt you. But over two and a half years you developed
24 a relationship where you believed you were close.

25 A Yes, sir.

1 Q Let me ask you this. Did you help her ever
2 commit crime?

3 A No, sir.

4 Q Were you aware that when she worked at your
5 pharmaceutical company that she was committing identity theft?

6 A No, sir.

7 Q Were you aware that she was writing down
8 people's names and dates of birth and social security numbers
9 and taking that information home?

10 A No, sir.

11 Q And that wouldn't be something you would have
12 condoned; right?

13 A No, sir.

14 Q Were you aware that she was loaning her car to
15 individuals to commit crimes while she was at work?

16 A No, sir.

17 Q So you would agree that even as -- if what I'm
18 saying is true, and I know you don't know, right, but if what
19 I'm saying is true, you would agree that even knowing someone
20 for as long as you did, as close as you thought that you guys
21 were, she can look at you straight in the eye and keep a lot
22 of things away from you; right?

23 A I understand where you're coming from. As
24 best friends you reveal a lot to your friend about you, but
25 there's certain aspects of your life you don't tell a person

1 about you, you know. I mean, I just had cheated on my
2 boyfriend and broken up and gotten into a terrible domestic
3 abuse where my ex-boyfriend almost killed me. So, I mean, she
4 only knew certain aspects of it, but she didn't know the whole
5 picture. So I understand where you're saying I didn't know
6 everything about her, but I knew enough about her to love her
7 and to know that she was a really good friend of mine.

8 Q I didn't say -- I didn't say you knew
9 everything. You said you knew everything.

10 A Okay. I'm sorry. I didn't know everything,
11 but I knew a lot about her.

12 Q Ma'am, I understand she was your friend. I
13 understand your desire to want to defend her, okay. My
14 question is very simple. Despite the closeness that you have
15 just described for these folks to my right, you agree there is
16 a lot of things, if what I'm saying is true, there is a lot
17 you really don't know about her; right?

18 A Yes, sir.

19 Q And if what I'm saying is true, she was
20 capable of being two-faced, fair?

21 A Yes, sir.

22 MR. SGRO: That's all.

23 MR. LANGFORD: I don't have anything, Judge.

24 THE COURT: Redirect?

25 MS. WECKERLY: No, Your Honor. Thank you.

1 THE COURT: Ms. Knight, you'll be excused. Thank
2 you for being a witness. You can leave.

3 Ladies and gentlemen, I have good news. They --
4 they told me that that would be the last witness today, so
5 that means you get to go home early. I hope you have a very
6 pleasant Super Bowl weekend whatever your choice is. And we
7 will see you next Thursday, that's the 5th of February, here
8 at 9:30 in the morning. Have a good weekend.

9 During the weekend, again, it's your duty not to
10 converse among yourselves or with anyone else on any subject
11 connected with this trial or to read, watch, or listen to any
12 report of or commentary on the trial from any medium of
13 information, including newspapers, television, and radio. And
14 you may not form or express an opinion on any subject
15 connected with this case until it is finally submitted to you.
16 We'll see you next Thursday. Have a good weekend.

17 (Court recessed at 3:29 p.m.)
18
19
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CERTIFICATION

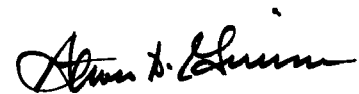
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 10

THURSDAY, FEBRUARY 5, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

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I N D E X

WITNESSES FOR THE STATE:

KENNETH LeCESNE

Direct Examination By Mr. DiGiacomo 17

Cross-Examination By Mr. Sgro 32

Redirect Examination By Mr. DiGiacomo 42

MICHAEL MAINES

Direct Examination By Mr. DiGiacomo 46

ERIN TAYLOR

Direct Examination By Ms. Weckerly 49

Cross-Examination By Mr. Sgro 63

Redirect Examination By Ms. Weckerly 76

Recross Examination By Mr. Sgro 78

TYLER MITCHELL

Direct Examination By Mr. DiGiacomo 83

Cross-Examination By Mr. Oram 101

JAMES KRYLO

Direct Examination By Mr. DiGiacomo 107

Cross-Examination By Mr. Sgro 140

Redirect Examination By Mr. DiGiacomo 195

Recross Examination By Mr. Sgro 202

CORNELIUS MAYO

Direct Examination By Ms. Weckerly 212

Cross-Examination By Mr. Sgro 248

E X H I B I T S

STATE'S EXHIBITS ADMITTED:	PAGE
295 Metro PCS Records	20
297 and 298 Metro PCS Records	24
296 Metro PCS Records	25
170 through 190 Photograph	52
135 through 147 Photographs	59
262A Audio of Erica Newman	82
308 Contacts from Tyler Mitchell's Phone	96
309 Text Messages from Tyler Mitchell's Phone	99
311, 311A, 312, 312A, 315, and 315A	114
148 and 149 Photographs	134
323 9-1-1 Audio	226
294 Text Message	245
 DEFENDANT'S EXHIBITS ADMITTED:	 PAGE
S Photographs	70

1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 5, 2015, 9:44 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: All right. State of Nevada versus Burns
5 and Mason. The record will reflect that we're back on the
6 record with the defendants and all counsel in the absence of
7 the jury.

8 Mr. Sgro.

9 MR. SGRO: Your Honor, two -- two quick matters.
10 One is that today we expect two kids of two of the defendants
11 to testify, Tyler Mitchell and Christine Tamika Pierce. And I
12 did speak with the State.

13 THE COURT: Two of the defendants' kids?

14 MR. SGRO: Monica Martinez has a daughter. Her name
15 is Tyler Mitchell.

16 THE COURT: Yeah, I know it's Monica Martinez's
17 kids. Not the defendants' kids.

18 MR. SGRO: Well, and Stephanie Cousins that you've
19 obviously heard a lot about, she has a kid and -- and her name
20 is Tamika Pierce.

21 THE COURT: But they're not defendants.

22 MR. SGRO: No, it's daughters of defendants. It's
23 the daughters of --

24 MS. WECKERLY: The co-defendants of these two.
25 There's four people charged in this case, so it's Stephanie's

1 daughter and Monica's daughter.

2 THE COURT: Oh, well, right now only Burns and Mason
3 are charged as far as we're concerned.

4 MS. WECKERLY: Well, I mean, the other two are
5 charged. They're just not --

6 THE COURT: They're not charged in -- okay. Anyway,
7 I know what you're talking about now.

8 MR. SGRO: Okay. The bottom line, Your Honor, is
9 our concern was relative to the eliciting of any hearsay
10 statements because we are joined at this trial. And one of
11 the -- one of the individuals, specifically Ms. Cousins'
12 daughter is going to talk about some conversations that she
13 had with Mr. Mason.

14 Now, I am assured, I am assured, that there is no
15 responses that are going to be gleaned from the witness stand
16 where the answer would be Mason told me we did this and we did
17 that, which would be violative of the confrontation clause,
18 violative of the Ducksworth decision, etcetera. So I'm told
19 that there is -- none of that is going to occur, so I want to
20 put that on the record.

21 And relative to Ms. Mitchell, Monica Martinez's
22 daughter, that's Mr. DiGiacomo's witness, he also assures me
23 he is not intending on eliciting any hearsay information.
24 Now, Ms. Mitchell did testify before the grand jury. She did
25 go through a photo lineup and she did some affirmative things

1 which we don't quarrel with.

2 It's -- I want to caution the Court that if anything
3 starts to look like hearsay, we're immediately going to ask
4 for a break to make sure we don't have a problem, a
5 confrontation clause problem. So that's number one is that I
6 want to make those representations that we had those
7 conversations.

8 THE COURT: Statements by the defendants would be
9 admissible.

10 MR. SGRO: Not to the extent Mr. Mason -- a
11 statement by Mr. Mason that inculcates Mr. Burns would not be
12 admissible at a joint trial delivered through another witness.

13 THE COURT: That would pose a problem.

14 MR. SGRO: Yes, sir. And I'm assured that that's
15 not going to happen.

16 THE COURT: Okay. But statements by a defendant as
17 to what they did --

18 MR. SGRO: Of course.

19 THE COURT: -- is admissible.

20 MR. SGRO: Of course. And we're not -- again, our
21 only problem on behalf of Burns was just the hearsay if Mr.
22 Mason --

23 THE COURT: I understand.

24 MR. SGRO: Okay. Secondly, the State has endorsed
25 and has told me they're calling today an individual named

1 James Krylo, K-R-Y-L-O. He is a tool mark examiner that's
2 been at Metro for a long time. And so just -- just to give
3 some context, there has been an attack that has been lodged on
4 forensic science relative to tool mark and firearm
5 examination. And -- and some on an extreme level have equated
6 it to a junk science like bite marks.

7 And I'll tell you why, Your Honor. The attack stems
8 from the subjectivity employed by the individual tool mark
9 examiner as he or she views evidence. In other words, they're
10 use -- they're using their vision and their training and
11 experience. They don't have databases. They don't have
12 quantifying data. It's not like a fingerprint where you need
13 so many points of comparison before you say, yes, I have a
14 match. It's completely subjective as to whether you have a
15 match or not.

16 So here's what happens. In 2005 there begins some
17 litigation and it starts in Boston where attorneys begin to
18 challenge the science of the forensics. A few judges -- a few
19 judges exclude and limit the testimony of forensic scientists.
20 Congress in 2009 commissions a study, and it's by the National
21 Academy of Science.

22 Now, the National Academy of Science is someone
23 that's often relied on by our government to validate certain
24 scientific genres, DNA, fingerprints, etcetera. And
25 essentially it's touching base in, hey, where are we at today

1 in DNA? Because in 1980 it was a lot different than 1990,
2 which is a lot different than 2000.

3 So the Academy of Science goes out and they do a
4 450-page report going through and breaking down the sciences
5 that they were tasked to investigate objectively. Are they --
6 are they good or bad? And obviously they're a lot more artful
7 than how I'm delivering it to you. So in 2009 they came back
8 with this 450-page report. A chapter of this report was
9 dedicated to the pitfalls and unreliability of tool mark
10 examination.

11 Now, this just happened in 2009. The challenge --
12 the challenge becomes now how are different states dealing
13 with these proposed admission of quote, unquote, expert
14 testimony in a science that has so much subjectivity attached
15 to it, okay. So some states have Daubert, some states have
16 Frei, some have a combination. In Nevada -- and admittedly in
17 Nevada we don't adopt the Daubert federal standard.

18 THE COURT: Sort of a modified Daubert.

19 MR. SGRO: Yes, sir. And there is an expert statute
20 and it is left to -- it is left to the discretion of the
21 Court. There are some things, though, that the Court does
22 have to find. Will it aid the jury in its assistance of
23 actual predicate, is it something that's generally relied
24 upon, etcetera.

25 And I guess what I'm suggesting to the Court is the

1 temperature relative to tool mark examination is changing
2 because it has nationally become under attack. So now how
3 does Nevada handle it? And as the Court points out, we have a
4 modified Daubert test. So I only could find -- I only could
5 find one case and it was filed in 2014. And the --

6 MR. DiGIACOMO: Would that be an unpublished order
7 you're talking about?

8 MR. SGRO: Yeah, it's an unpublished order.

9 MR. DiGIACOMO: Okay.

10 MR. SGRO: And this is -- this is the only thing I
11 can find. So if we're going to agree it has no precedence
12 because it's unpublished, that's great, because the Supreme
13 Court came down in favor of the State. So I'll -- I'll
14 stipulate that this has no authority. What I'm telling the
15 Court, though, as an officer of the Court, I wanted you to be
16 fully aware of what's going on in this science because it's
17 evolving every day.

18 So in Nevada, Dan Albregts, a trial lawyer here in
19 our district, has a case. He challenges -- he challenges the
20 science that was admitted relative to tool mark examinations
21 just based on some of the Daubert and the Frei things and he
22 calls it junk science in his brief, etcetera, etcetera. He
23 does not cite -- for whatever reason, he does not cite the
24 report that was established and published in 2009.

25 The Nevada Supreme Court apparently in a

1 non-authoritative opinion issues an order saying we're not
2 going to accept your version of this being junk science. He
3 then does a petition for rehearing, and he now has located the
4 study which I have been telling the Court about.

5 And in May of 2014, the Nevada Supreme Court denies
6 it based on -- based on NRAP 40(c) which says that matters in
7 the briefs and oral argument may not be reargued in the
8 petition for a rehearing. And this is the part they denied it
9 on, no point may be raised for the first time on rehearing.
10 So what he did is he got it denied on procedural grounds.

11 So I give you that long-winded predicate. And I
12 apologize. However, I would ask that Mr. Krylo be precluded
13 from testifying as an expert witness relative to comparisons
14 he made based on the non-scientific nature of the testing --
15 testing mechanisms he employs insofar as they are not
16 scientifically accepted standards.

17 And I'm happy to -- and I would actually like to
18 make it a part of the record, Your Honor. The chapter that I
19 referenced in the study is Chapter 3 of the National Academy
20 of Science. And I don't see your clerk here, but if I may
21 approach the clerk. I just want to give you the Thompson
22 unpublished decision, the thing -- the order that says we
23 can't consider the study because it wasn't raised initially,
24 and then the chapter which is controlling relative to this
25 issue.

1 Now, I do understand we have a little bit of
2 evidence we're going to -- we're going to go through before we
3 get to Mr. Krylo. I just wanted the opportunity to make the
4 record. May I approach?

5 THE COURT: You may approach and give it to me.

6 MR. SGRO: Thank you, sir.

7 THE COURT: Thank you.

8 MR. SGRO: Sure.

9 MR. DiGIACOMO: Would you like to hear from me?

10 THE COURT: Do you want to respond?

11 MR. DiGIACOMO: Just briefly, which is actually Mr.
12 Sgro is wrong. It's the exact same argument that was made
13 about fingerprints. And we've actually had those hearings
14 here in Clark County at least as it relates, I know I've done
15 one, as it relates to fingerprints.

16 And, ultimately, the question under our statute is
17 whether or not the testimony will assist the trier of fact, he
18 has a specialized knowledge skill or other thing that will
19 assist the trier of fact in making a determination as to the
20 -- as a fact in issue.

21 What the argument from everybody is, and it's been
22 going around for ten years now, is that ultimately at the end
23 of the day there is an opinion by the expert as to whether or
24 not there is a conclusive identification. And based upon some
25 of these studies, the experts actually changed their -- their

1 opinion.

2 They used to say this was fired from this gun and no
3 other gun on earth, and now they say, you know, my opinion is
4 it was fired from this gun, I wouldn't expect to find another
5 gun that would leave the same rifling characteristics as -- as
6 this one. And that was in conformance to this study not only
7 on fingerprints, but as well as on all the other ballistic
8 ones.

9 I'm certain that had this been a timely raised
10 motion, the Court would have held very lengthy evidentiary
11 hearings. There's experts from all over the country that fly
12 out and they testify to them. It's being raised the morning
13 we're calling the witness in trial after they've already
14 opened with some of the conclusions that Mr. Krylo is going to
15 testify.

16 And for the record, I would suggest that, you know,
17 if there is some concern after we lay the foundation with Mr.
18 Krylo that he's not qualified to give the opinions that he's
19 not qualified to, the Court won't allow him to issue his
20 opinions. But to suggest that the underlying science is not
21 valid, they're wrong in the fact that there is empirical data
22 that can be checked, which is they fire guns and then they
23 give blind tests to the experts and they have to qualify and
24 go through the certification process. And I'm sure Mr. Krylo
25 is going to testify to all of that.

1 And so ultimately, unless the Court wants to take
2 five, six days and call in experts from all over the country
3 to hear the testimony, most courts that I am aware of,
4 certainly every court in Nevada, has determined this is
5 admissible evidence in trials here in Nevada.

6 THE COURT: Well, I will wait to hear the expert's
7 qualifications, background, and what he did and why he did
8 what he did before I make the decision.

9 All right. The only other thing -- well, we've got
10 two other things on the -- that we have to discuss. I have a
11 motion that was on calendar this morning at 8:30. It was the
12 -- Mr. Burns's motion to prohibit the presentation of a
13 summary regarding the course of the investigation.

14 MR. ORAM: Yes, Your Honor. I raised this several
15 times on appeal, but I've never done it pretrial. I was a
16 little concerned when I saw the grand jury in this case and
17 the prosecution asked the detective, you know, sort of
18 summarize what happened. I think they can ask -- on the
19 witness stand should be able to ask questions, obviously, but
20 to sort of stand back and say why don't you just sort of
21 summarize everything I think is problematic.

22 And here is why, and then I'll just submit it to the
23 Court's discretion. If we were to call our investigator and
24 say tell us, you know, what happened in this case, what have
25 you done, and they just sort of summarize the case up with the

1 conclusion that Mr. Burns and Mr. Mason must be innocent based
2 upon his or her determinations and investigations, I don't
3 think that would be permitted. And it --

4 THE COURT: I don't know what they're doing, but I
5 -- I have heard occasions where the prosecution with their
6 investigator on the stand has said, well, what did you do
7 next? And he explains what next happened, and then after
8 that, what did you do next? Now, if that's what you're
9 talking about, I don't find that offensive.

10 MR. ORAM: No, I think -- I don't -- I don't think
11 that's the problem. I think it's sort of when they just sort
12 of give a -- it's almost like a closing argument. I think if
13 the Court heard it it would recognize it.

14 THE COURT: Well, if it's -- if it's wandering, we
15 won't let them do that. On the other hand, if they try to
16 elicit anything that isn't admissible, you object and I'll
17 sustain the objection.

18 MR. ORAM: Yes, Your Honor.

19 MR. LANGFORD: Here's --

20 THE COURT: Okay.

21 MR. LANGFORD: Here's my problem. I joined in this
22 motion, Your Honor. Here's my problem with this. And that is
23 that what did you do next? Well, we called and talked to --
24 objection, hearsay. The Court is about to sustain it. And
25 they'll say, well, it's not offered for the truth of the

1 matter asserted. So there's no substantive evidence to it at
2 that point. And we run all the way through it, and every time
3 the person says what they did, it's because they're doing that
4 because of hearsay, or, you know, we ordered the finger -- we
5 -- whatever. And then at the --

6 THE COURT: That's okay.

7 MR. LANGFORD: At the very end what they say, and
8 I'd at least ask the Court to preclude them from the
9 following, at the very end they say what did you do next? We
10 arrested them for first degree murder.

11 THE COURT: If that's what he did next, that's okay.

12 MR. LANGFORD: I think it is prejudicial. It's not
13 probative of anything. That's for the jury to decide whether
14 they committed first degree murder.

15 THE COURT: Well, it shows the time and date of
16 arrest.

17 MR. LANGFORD: It's irrelevant --

18 THE COURT: I'm going to overrule the objection and
19 deny the motion.

20 Now, there's one additional thing we need to put on
21 the record. Over the weekend we -- my office received a call
22 from Juror Kelly Rowan, who was Badge No. 93 sitting in Seat
23 No. 1. You'll recall when we did voir dire she explained that
24 her husband was going to have surgery for bladder cancer. And
25 I understand that that surgery did occur, things have not gone

1 well, and the bottom line is she was hysterical on the phone
2 when she talked to staff. And I told staff that she was to be
3 excused and so I am substituting Alternate No. 1 who is Mr.
4 Nunez in place of Juror Kelly Rowan.

5 Anything further on the record before we bring the
6 jurors in?

7 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

8 MR. SGRO: No, sir.

9 MR. DiGIACOMO: No, Your Honor.

10 (In the presence of the jury.)

11 THE COURT: All right. State of Nevada versus Burns
12 and Mason. The record will reflect the presence of the
13 defendants, their counsel, the District Attorneys, and all
14 members of the jury except Juror Ms. Rowan.

15 Good morning, ladies and gentlemen.

16 JURY PANEL: Good morning.

17 THE COURT: First of all, let me apologize for being
18 a little late today. We had some other matters we had to take
19 care of out of your presence. One of the matters had to do
20 with Juror Ms. Rowan. You'll -- I don't know those of you who
21 were here when she was voir dired, she explained that her
22 husband was going in for a surgery. Apparently, that has
23 happened but has not gone real well. And the short story is I
24 have excused her. And so alternate No. 1, Mr. Nunez, has been
25 assigned to replace her. That's why we have the alternates.

1 So, Mr. Nunez, you're now one of the regular jurors
2 and before you continue we have to ask you to stand, raise
3 your right hand, and the clerk will administer the oath for
4 the regular jurors.

5 (Juror Nunez sworn.)

6 THE COURT: Please be seated.

7 All right. We're still in the State's case in chief
8 and the State can call their next witness.

9 MR. DiGIACOMO: It's the custodian of records for
10 Metro PCS.

11 KENNETH LECESNE, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated.

13 THE WITNESS: Thank you, ma'am.

14 THE CLERK: Please state your name and spell your
15 first and last name for the record.

16 THE WITNESS: Kenneth LeCesne; K-E-N-N-E-T-H L-E
17 Capital C-E-S-N-E.

18 MR. DiGIACOMO: May I inquire, Judge?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. DiGIACOMO:

22 Q Sir, how are you employed?

23 A I'm a custodian of records for Metro PCS
24 cellular telephone company in Richardson, Texas.

25 Q In addition to being the custodian of records,

1 do you have an understanding essentially how Metro PCS cell
2 phones work and how the records are generated?

3 A Yes, sir.

4 Q And can you explain to the ladies and
5 gentlemen of the jury -- well, first, how does a cell phone
6 work with Metro PCS?

7 A Well, a cell phone works with -- basically any
8 cell phone works when an individual makes a call, a signal
9 goes out from the phone. It usually goes to the nearest tower
10 with the strongest signal. That information is actually
11 picked up and it's in the call logs, the actual call detail
12 records. When an individual answers a call, you hit the send
13 button, the signal will go out from that phone and it'll go to
14 the nearest tower with the strongest signal.

15 Q And are the information about a particular
16 phone connecting to a particular tower, are those records
17 maintained by Metro PCS in the ordinary course of their
18 business?

19 A Yes, ma'am. Yes, sir. I'm sorry.

20 Q Let me ask you this, at Metro PCS is there a
21 general distance that the phone needs to be in relationship to
22 a tower to connect to a particular tower?

23 A With regards to Metro PCS towers and the Metro
24 PCS phones, the range is not a finite range. It's an
25 estimated range. The phone can be up to a half mile on in to

1 the tower up to a mile and a half on in to the tower.

2 Q So the phone is generally -- can be right at
3 the tower, I guess. You could physically be standing at the
4 tower, but it could be anywhere from a half mile to a mile and
5 a half away from the tower when it connects?

6 A That's correct.

7 Q Were you asked to come and testify and
8 authenticate certain records from Metro PCS in this case?

9 A Yes, sir.

10 Q And this morning did you have a chance to
11 review those records to confirm they are, in fact, Metro PCS
12 records?

13 A Yes, sir.

14 MR. DiGIACOMO: May I approach, Judge?

15 THE COURT: Yes.

16 BY MR. DiGIACOMO:

17 Q Sir, I'm going to start with State's Proposed
18 Exhibit No. 295. Can you explain to the ladies and gentlemen
19 of the jury basically what is 295.

20 A Exhibit 295 is actually subscriber records
21 that were created at the time the individual customer when
22 into a Metro PCS store or went online and actually purchased a
23 cell phone and/or the service.

24 Q And are those records kept in the ordinary
25 course of business of Metro PCS?

1 A Yes, sir.

2 Q And does that appear to be a true, fair, and
3 accurate copy of the records?

4 A Yes, sir.

5 MR. DiGIACOMO: Move to admit 295.

6 MR. SGRO: No objection, Your Honor.

7 MR. LANGFORD: No objection, Judge.

8 THE COURT: It'll be received.

9 (State's Exhibit 295 admitted.)

10 BY MR. DiGIACOMO:

11 Q I want to start with -- is there two different
12 subscriber information on this record?

13 A Yes, sir, there is.

14 Q Okay. And let's start with the top
15 subscriber. What's the phone number for this subscriber?

16 A The phone number is 702-542-4661.

17 Q And the subscriber?

18 A The subscriber name given is a Stephanie
19 Cousins.

20 Q That phone, can you tell from those records
21 whether or not that phone is, the term I would use, prepaid
22 versus somebody who is paying their monthly bill to Metro PCS?

23 A Metro PCS is an advance pay company. When a
24 customer comes in, they pay \$40 for 30 days of service. On
25 the 29th day of that service they will get a text message to

1 their phone telling them pay your bill tomorrow. If they
2 don't pay that bill, they can't use their phone. The do give
3 another 30 days before they cancel your account to pay that
4 bill. If you don't do it then, the account is cancelled,
5 you've got to back in and start all over again or go online
6 and start all over again with your account.

7 Q Based on the fact that it's an advance pay, is
8 there any investigation or a credit check or anything that
9 happens with somebody who comes into a store and wants to
10 utilize Metro PCS cell phone service?

11 A There's no credit check done, so there's no
12 verification of the identity of the person that comes in and
13 purchases a phone and/or service.

14 Q So I could walk in, get a phone in the name of
15 Mickey Mouse, and ultimately there wouldn't be -- there is no
16 check to make sure my license says my legal name is Mickey
17 Mouse?

18 A There is no check of your -- your
19 identification or your social security number.

20 Q What is the second phone subscriber
21 information on this record?

22 A The second phone number is a 909-233-0860.

23 Q And who is the -- what is the name associated
24 with that account?

25 A The name is -- I'll spell the first name,

1 R-I-C-C, and the last name is James.

2 Q So Ricc James. And is that also the same way
3 that the previous phone was, there had been no verification or
4 there would be no verification of the name that was provided
5 for that cell phone?

6 A That's correct.

7 Q Is there an address associated with both of
8 those cell phones? Let's start with the phone in Stephanie
9 Cousins' name. Is there an address?

10 A Yes, they search number ending in 4661, the
11 subscriber address given is a 4640 Vegas Valley Drive,
12 Apartment 1031, Las Vegas, Nevada, and the zip code.

13 Q How about for Ricc James, is there an address
14 that was provided?

15 A For that particular phone number ending 0860,
16 the subscriber address given is 1258 North Riverside Avenue,
17 Rial -- R-I-A-L -- Rialto, California, and the zip code.

18 Q Now I want to move on to the individual
19 records themselves, so let me start with -- actually, I'm
20 going to start with State's Proposed Exhibit No. 298.

21 A Yes, sir.

22 Q Do you recognize what that document is?

23 A Yes, sir.

24 Q And what is it?

25 A These are called detail records or phone logs

1 for the search number 702-542 -- I'm sorry, 702-542-4661. And
2 the specific dates to be searched are -- is 8/1/2010 through
3 8/23/2010.

4 Q And then those records, it's a 52-page record
5 of --

6 A Yes, they're called detail records. They're
7 phone logs for that specific phone number.

8 Q And much like the last record, is this a
9 business record kept in the ordinary course of business of
10 Metro PCS?

11 A Yes, sir, it is.

12 Q And does this appear to be a true, fair, and
13 accurate copy of those records?

14 A Yes, sir, it does.

15 Q Now I'm going to show you State's Proposed
16 Exhibit 297.

17 A Yes, sir. State's Exhibit 297 is 23 pages of
18 call detail records for the phone number 909-233-0860. And
19 the search dates are from 8/1/2010 through 8/23/2010.

20 Q And those -- once again, those appear to be
21 business records kept in the ordinary course of business and a
22 true, fair, and accurate copy of those records?

23 A Yes, sir.

24 MR. DiGIACOMO: Move to admit 297 and 298.

25 MR. SGRO: No objection.

1 MR. LANGFORD: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 297 and 298 admitted.)

4 BY MR. DiGIACOMO:

5 Q Now, lastly I'm going to show you 296 and ask
6 you do you recognize what's depicted in 296.

7 A Yes, sir. This is eight pages of Metro PCS
8 cell sites, specifically Metro PCS cell sites in the greater
9 Las Vegas area.

10 Q And is that record, once again, a record kept
11 in the ordinary course of business of the Las Vegas Metro --
12 sorry, of the Metro PCS company?

13 A Yes, sir.

14 Q And does it appear to be a true, fair, and
15 accurate copy of that record?

16 A Yes, sir, a partial. It's not all of the cell
17 sites because there are a lot more cell sites.

18 Q Right. There's thousands and thousands --

19 A Yeah.

20 Q -- of cell sites --

21 A Yeah.

22 Q -- across the country.

23 A It actually -- it actually says all Metro PCS
24 cell sites, but it's specifically in the Las Vegas area.

25 MR. DiGIACOMO: Move to admit 296.

1 MR. SGRO: I'm sorry. Just to make sure I
2 understand, is the witness saying that the cell site record is
3 complete relative to Las Vegas? Was that the testimony?

4 BY MR. DiGIACOMO:

5 Q Do you have any way of knowing whether or not
6 it's complete as to Las Vegas or are those towers that are in
7 Las Vegas?

8 A These are towers that are in Las Vegas. I'm
9 not sure that it's all of the towers that are in Las Vegas.
10 It's eight pages of -- of towers and it's --

11 MR. SGRO: I mean, I'll submit it, I guess.

12 THE COURT: For what it's -- for what it's worth.

13 MR. SGRO: For what it's worth. Okay. Fair enough.

14 THE COURT: It'll be received.

15 (State's Exhibit 296 admitted.)

16 MR. DiGIACOMO: Thank you.

17 BY MR. DiGIACOMO:

18 Q So let me start with --

19 MR. DiGIACOMO: Actually, Madam Reporter, can we put
20 this on the overhead for just a second?

21 BY MR. DiGIACOMO:

22 Q And I'm going to go to 296. I'm just going to
23 zoom in on one -- each portion of it. I'm going to start off
24 with what information do you receive -- or what information is
25 on 296?

1 A The information on 296, actually over here,
2 the first column it's Broadcast SID. I'm not seeing that
3 particular column on this document. The next is NID. I'm not
4 seeing that on this. What usually comes up is the switch.
5 The switch is the computer that created the call detail
6 records for those specific phone numbers. The next column is
7 the cell. That is the cell tower number of the tower that
8 actually received the signal with the actual phone call when
9 each individual phone call was made.

10 The next column is the sector. The sector is the
11 side of the tower the antenna is on that picked up the signal.
12 And then the next column is the antenna orientation, or it's
13 also commonly referred to as the ASMIT (phonetic). It's in
14 degrees. That sector is 120 degrees. That's going to be the
15 midpoint of that particular sector on that particular tower.

16 The next column is the physical address of Tower
17 701. The next column is the city that Tower 701 on the switch
18 49 is actually located. The next column is the county, the
19 next column is the state, and then the next column is the zip
20 code of that particular address. At the very end you see an
21 abbreviation LAT and LONG. That is the latitude and longitude
22 in decimal form of the exact location of where that tower is
23 located.

24 Q So there is a mailing address back here, but
25 ultimately the exact location is measured in latitude and

1 longitude and put on a record so if, for example, I were to go
2 to a Google map I could stick in the latitude and longitude
3 for Tower 701 and see on the map exactly where in the world
4 this tower is?

5 A It would give you the exact location. Yes,
6 sir.

7 MR. DiGIACOMO: Madam Reporter, can we go back to
8 me?

9 BY MR. DiGIACOMO:

10 Q I just want to ask you a couple of questions
11 about the call detail records, as well, and I'll start with
12 297. This is the first page of 297; is that correct?

13 A That's correct.

14 Q Okay. And so I'm going to zoom in onto each
15 kind of side of this so that the jury can kind of see. And I
16 will do the first half of it here. If you could tell us --

17 A Okay.

18 Q -- what information is on 297.

19 A Again, at the very top you're going to have
20 the search number. In this case it's the search number ending
21 in 0860, and there were specific dates for that number to be
22 searched, 8/1/2010 through 8/23/2010. The first column on the
23 left is the date. That is the date a specific call is made.
24 The second column is the time a specific call is made. The
25 time is listed in the 24-hour clock commonly referred to as

1 military time.

2 The next column is the duration in minutes and
3 seconds, the duration of each individual phone call. The next
4 column is DIR. That is an abbreviation for direction. A
5 phone call with either be outgoing from the target number to
6 another phone, or incoming to the target number or search
7 number from the other phone.

8 The next number is dialed number. The dialed number
9 is the number dialed by the caller. In an instance of an
10 incoming call, if there's a special feature involved, in other
11 words if the phone call was handled by the voicemail platform
12 of the search number, there will be three additional numbers
13 in front of the phone number that's actually dialed. That is
14 dialed by the computer, by the switch, not the caller.

15 The next column is destination number. The
16 destination number is the number reached by the specific
17 caller. The next column is status. The status of a phone
18 call will either be answered or not answered. An answered
19 phone call can be answered by a person, or in an instance
20 where the voicemail platform picked up the phone call from the
21 search number, it could be answered by the voicemail. If you
22 go over a little bit more --

23 Q Now I'm going to jump to the other --

24 A Yeah.

25 Q -- side of the columns.

1 A Okay.

2 Q And I'll just grab it from where we started
3 from and pull over to the other side.

4 A The next column is special features. The
5 special features will show if the call was actually handled by
6 a -- by the voicemail platform on an incoming call to the
7 target number. The next column is called an ID. If there is
8 an incoming call to the target number, the number that called
9 the target number or search number will be listed in the
10 caller ID on the incoming phone call.

11 At the very end you have two larger columns, the
12 beginning cell and ending cell. The switch is the computer
13 that handled a specific phone call that created the call
14 detail records. You will have the tower number of that
15 particular tower that's associated with that particular
16 switch, and you will also have the sector of the side of the
17 tower the antenna was on from that particular tower that
18 handled the beginning of that phone call.

19 At the very end you see ending cell. It will also
20 show the same switch will handle the call at the beginning and
21 at the end. In other words, the same computer will create the
22 call detail records at the beginning and the end of the call.
23 It then will show which tower where the call ended and the
24 sector of that specific tower where each individual call
25 ended.

1 Q So in this case the switch was located in
2 Anaheim, California, and it's Tower 254 with SW1, Anaheim 1
3 switch?

4 A Yes, the -- the Anaheim 1 SW1 is just an
5 abbreviation for that particular switch.

6 Q Okay. And then I'm just going to put up for
7 the ladies and gentlemen of the jury 298. And this is the 702
8 number, and I'm going to just zoom into a portion of this. I
9 don't know how much bigger it's going to get for the screen
10 there. But it's the same similar information that was on 297,
11 as well, they're in the same sort of format?

12 A Same information. The columns are exactly the
13 same on that as they were in the other, the headings of the
14 columns.

15 Q It says on August 1st this phone was hitting
16 off a switch in Las Vegas. I'm going to ask you about Tower
17 811 on August 1st. Could you then take this list of Tower
18 locations and find --

19 A Whenever you get the records with the cell
20 tower information, you will get a list of all of the towers
21 that Metro PCS owns or controls for Metro PCS customers as
22 close to the time as the search time for the number that
23 you're searching. What I'm doing here is I'm going to the
24 specific cell tower 811 on the Las Vegas switch, and there's a
25 physical address of that particular tower. It is at 2425

1 South Nellis in Las Vegas, Clark County, Nevada, and the zip
2 code, and there is also a latitude and longitude in decimal
3 form.

4 Q So if somebody wanted to track either one of
5 these phones' general location in the country, I guess, you
6 could go through each individual call, find the location of
7 that tower, and then plot where that tower is in town in
8 relationship to the call and the phone should be generally
9 within a half mile to a mile and a half of that tower?

10 A That's correct. Nobody can tell you the exact
11 location of the phone. It just tells you which tower handled
12 each individual phone call from the start of the phone call
13 until the end of the phone call, what happened in the middle,
14 the records don't indicate that.

15 Q And if you wanted to get really technical, you
16 could even go to the sector and on the 360 degrees, based upon
17 the sector lists that are on those records, you could even
18 find in which direction from a cell tower a particular phone
19 generally is?

20 A That's correct.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 Do you want this down or up?

24 MR. SGRO: What's that?

25 MR. DiGIACOMO: Do you want this down or up?

1 MR. SGRO: You can leave it up.

2 MR. DiGIACOMO: Okay.

3 MR. SGRO: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SGRO:

6 Q Good morning, sir.

7 A Good morning, sir. How are you?

8 Q Excellent. Thank you. LeCesne, is that how
9 you --

10 A LeCesne.

11 Q LeCesne.

12 A Yes, sir.

13 Q Okay. Mr. LeCesne, you came from Texas to
14 talk about some specific Metro PCS records; correct?

15 A That's correct.

16 Q All right. So I want to ask you a couple
17 questions just on how cell phone records work, okay, relative
18 to accuracy. So first of all, would you expect if you have
19 one Metro PCS record -- and let me give you a hypothetical.
20 You and I have Metro PCS phones. I call you -- I called you
21 this morning at 8:00 a.m. You would expect to see on my bill
22 me calling you at 8:00 a.m., would that be right?

23 A There's no billing with Metro PCS.

24 Q On my record.

25 A On your particular phone records --

1 Q Yes.

2 A -- if your number was searched, it would show
3 where your phone was.

4 Q Right.

5 A Okay.

6 Q And then you'd want to have -- or you would
7 expect to have a corresponding entry on your phone receiving
8 the call at 8:00 a.m.

9 A If the records were actually requested by a
10 search warrant or court order, yes, sir.

11 Q Correct. And what I think I hear you saying
12 is you would expect the records to match. If the records are
13 requested, the records should match; right? My call to you
14 should be on my search and on your search; right?

15 A If both records were searched --

16 Q Right.

17 A -- depending on where you were. If you're in
18 the same location, they may match. If you're in a different
19 location, it'll show where the phone was on one record, where
20 that phone was and the call that was made to on the other
21 person's record. The records only indicate the number that is
22 searched, not the number that is called.

23 Q Right. I understand. I'm looking for clarity
24 whether or not if both of our numbers were searched in my
25 hypothetical, you would expect to see both my -- my outgoing

1 call to you and your incoming call from me; right?

2 A That's correct.

3 Q Okay. The towers certainly could be different
4 if I'm calling you and we're not together; right? The tower
5 information could be different; right?

6 A They could be.

7 Q Okay. And that tower information could be the
8 same; right?

9 A That's correct.

10 Q Okay. So do you -- strike that. Did you
11 examine these records to do any comparisons? And by that I
12 mean did you go through the records to see if an outgoing call
13 from one search record matched the incoming call on the other
14 or vice versa?

15 A No, sir, I did not.

16 Q All right. Do you know what a pen register
17 is?

18 A Of course I do.

19 Q Okay. What's -- can you -- can you tell the
20 ladies and gentlemen what a pen register is?

21 A A pen register is when -- that's the first
22 step when you're doing a Title III or a wiretap on a phone.
23 And what you do is you would get all of the phone calls that
24 are made and you compare those phone calls. And that's
25 basically to get an idea on the locations that the phone is on

1 the pen register that you're looking at.

2 Q Okay. Are you aware of any pen registers
3 being done in this case?

4 A No, sir, I'm not.

5 Q All right. Have you been asked to compare
6 phone bills to pen registers in this case?

7 A No, sir. There is no billing with Metro PCS,
8 and that's not my job to do that.

9 Q I apologize.

10 A Yes, that's -- that's law enforcement's job to
11 do that.

12 Q Were you asked to compare search records that
13 you -- can we call these search records?

14 A Call detail records.

15 Q Call detail records. Were you asked to
16 compare call detail records to a pen register?

17 A No, sir, I wasn't.

18 Q All right. Now, let's talk about this tower
19 for a minute, okay. Cell phone towers, I heard Mr. DiGiacomo
20 just state some of them have a 360 degree ability; is that
21 right?

22 A All of them have a 360 degree.

23 Q All of them do.

24 A All Metro PCS.

25 Q Okay. Metro PCS has 360 degree capability?

1 A On a conventional tower.

2 Q What's a -- what's a conventional tower?

3 A 360 degree coverage.

4 Q Okay. Are there towers that are not
5 conventional towers?

6 A There is something called directional antenna
7 system, which is an individual antenna. Those individual
8 antennas pick up a call. And the difference between the
9 individual antennas on DAS system, the directional antenna
10 systems, is that the phone is actually a quarter mile to a
11 half mile from that antenna.

12 Q So the differences would be reflected
13 differently?

14 A If it's a DAS as opposed to a conventional
15 tower.

16 Q Okay. And relative to the tower you gave a
17 range of one to one and a half miles per tower; is that right?

18 A Half mile to one a half miles, and that is the
19 range that was given to me during training by the engineers
20 who actually set up the towers and work on those towers.

21 Q And you're aware, sir, sometimes towers can
22 have a greater range than that?

23 A Yes, but according to the Metro PCS engineers
24 that set up the Metro PCS towers, the range for the Metro PCS
25 towers are between half mile to a mile and a half.

1 Q Right. I understand what you just said about
2 the training. I'm talking about going from the training to
3 real life. In real life you know that those towers can reach
4 more than a mile and a half; right?

5 A In real life, my training from the Metro PCS
6 engineers who set up the Metro PCS towers, this is what I was
7 trained and told by those individuals during my training
8 process. I don't -- I don't deal in real life. I don't get
9 up and climb on towers. I don't do that.

10 Q Okay. So --

11 A I only do what these records show, what they
12 indicate, and the training that I was given by Metro PCS.

13 Q Okay. Did you just say you don't deal in real
14 life when it comes to this stuff?

15 A I don't follow --

16 Q Is that what you just said, sir?

17 A -- cell phones. Yes, in real life.

18 Q Okay.

19 A Using your term.

20 Q Okay. Now, let me ask you this question. You
21 brought with you a sheet of paper that lists a number of
22 towers in Clark County that Metro PCS had; right?

23 A That's correct.

24 Q All right. How many of those power -- or
25 towers were functioning that day.

1 A I don't have that information. I can only
2 tell you what the records indicated on the specific dates and
3 the specific times of each individual phone call. The records
4 only show what happened. The records do not show something
5 that didn't happen.

6 Q Okay. Sir, just try and bear with me and
7 stick with my questions, okay. The point of the extended
8 range beyond a mile and a half comes into play if you have a
9 series of towers going down a street and one of them doesn't
10 work, one of them is being repaired, whatever the reason is,
11 the towers on both ends of it might extend their range or pick
12 it up sooner than expected, fair?

13 A That could -- that could happen, but that does
14 not indicate -- the records do not indicate that. They only
15 indicate which tower handled which call.

16 Q Okay. Trust me. Everyone gets what the
17 records say, okay.

18 A Well, that's all I'm here to talk about are
19 the records, the business records, the --

20 Q You were asked --

21 A -- Metro PCS business records.

22 Q You were asked a bunch of questions, though,
23 about what the columns mean. You defined some things. I'm
24 not -- you and I aren't fighting right now. You understand
25 that?

1 A Oh, no, sir.

2 THE COURT: Just ask questions, though.

3 BY MR. SGRO:

4 Q Can you tell the jury if when a cell tower is
5 being repaired or down for maintenance if that expands the
6 range of other surrounding towers. Do you know that?

7 A I don't know that.

8 Q All right. Can you -- can you -- do you have
9 Exhibit 296 in front of you still?

10 A Yes, sir.

11 MR. SGRO: May I approach the witness, please, Your
12 Honor.

13 THE COURT: Yes.

14 BY MR. SGRO:

15 Q Exhibit 296 is the one that you said names the
16 towers that were in Las Vegas.

17 A Some of the towers in Las Vegas.

18 Q Okay. So how is it that on Exhibit 296 a
19 document can be generated that lists some, but not all of the
20 towers? How does that happen?

21 A I'm not sure if -- if the prosecution got the
22 full list of towers, or law enforcement did. Usually they get
23 the full list. It can be sometimes 500 pages, 1,000 pages.
24 That's why I don't print them. You'd have to ask the law
25 enforcement person why there's only a portion. Whoever

1 received the document from the search warrant that was issued,
2 why there's only eight pages over here. Probably because it's
3 only the pertinent towers that they were looking for in this
4 records. I don't know. You've got to ask them that.

5 Q So someone before you filtered the information
6 that's in 296; correct?

7 A This is eight pages of the cell towers in Las
8 Vegas. I know there's more than eight pages of cell towers in
9 Las Vegas. That's all I can tell you. What they did with it,
10 they probably got the pertinent towers from there. I don't
11 know. You'll have to ask them that.

12 Q All right. Now, the exhibits 296, when was
13 that document created?

14 A 10/23 of 2009.

15 Q 10/23 or 2009?

16 A That's correct.

17 Q So in our case, we're dealing with some events
18 that happened in August of 2010.

19 A That's correct.

20 Q So just to give you some context, so the cell
21 tower information that you brought with you predates the
22 events we're talking about here by about a year?

23 A 10/23 of 2009.

24 Q So 10 months.

25 A 10/23/2009. You have to do the math.

1 Q Okay. How many towers had been added from
2 October of 2009 until August of 2010?

3 A I can't answer that. I don't know.

4 Q And you were asked some questions about
5 tracking a phone. Do you remember that, those questions just
6 a minute ago?

7 A Not -- refresh my memory, please, about
8 tracking a phone.

9 Q Okay. You were asked if you wanted to track a
10 phone. Do you remember that?

11 A If -- if the investigators wanted to find out
12 where a specific phone call was during a specific phone --
13 during a specific call in a specific date and time, there is a
14 way by looking at the tower information that's on the call
15 detail records and comparing that tower information to the
16 tower listings to figure out where the phone was. Nobody can
17 tell you exactly where the phone was.

18 Q Okay. And that -- and that, I guess, is my
19 point. All the towers in these records can do is -- is give
20 us an educated guess. We can approximate; right?

21 A It tells you which tower handled the call.

22 Q Okay.

23 A I can tell you this. The call detail records
24 will show that this phone on the specific -- some of these
25 specific phone calls was in Las Vegas. It wasn't in New York.

1 It wasn't in Dallas. It was in the Las Vegas area. And on
2 the other phone, some of those phone calls were in the Los
3 Angeles area. It wasn't in New York, it wasn't in Dallas.
4 The records only indicate what happened, not something that
5 didn't happen.

6 Q Okay.

7 MR. SGRO: Nothing else.

8 MR. LANGFORD: Nothing, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q I just to clarify something.

12 A Yes, sir.

13 Q Mr. Sgro kind of gave you a hypothetical if
14 his PCS phone calls your Metro PCS phone, you would expect to
15 see record on both his call detail records and your call
16 detail records; correct?

17 A That -- that's correct.

18 Q Okay.

19 A If I had a Metro PCS phone and he had a Metro
20 PCS phone and both records were actually requested by search
21 warrant or a court order, yes.

22 Q There are some things that Mr. Sgro was
23 assuming from that, like if I call your phone that your phone
24 is on; correct?

25 A Well, you've got to ask Mr. Sgro what he was

1 assuming. I don't know what he was assuming.

2 Q But if your phone is off, it can't connect to
3 a tower, would that be fair?

4 A It shows which phone is being searched. In
5 other words, the records for the phone ending in 0860 shows
6 that happened on a specific phone call for that phone. The
7 records 4661 only show what happened on a specific date and
8 time with the phone records for that phone. By looking at the
9 other records, you can't tell what happened with the other
10 phone. You have to have both.

11 Q You have to have both in order to know --

12 A Yeah.

13 Q -- what happened with both phones?

14 A With both phones. Right.

15 Q Okay. There was some questions asked to you
16 about, I think you called it DAS towers.

17 A DAS system, yes, sir.

18 Q The DAS system. The DAS system -- first of
19 all, are any of these records related to DAS system towers?

20 A On your document on 296 I only see one DAS
21 system, and that was for Tower 830, and I don't know if that's
22 one of your pertinent towers or not that you were asking
23 about.

24 Q Okay. Well, that's my next question.

25 A Right.

1 Q If 830 is the DAS system tower that's in those
2 records, if you don't see 830 on those phone records, and I'm
3 not going to make you go through all 75 pages there, there
4 isn't a DAS system tower associated with this particular
5 event?

6 A These particular --

7 Q Or those particular records.

8 A These particular phone records, that's
9 correct.

10 Q There were some questions asked about -- there
11 were some timing questions asked. Let me ask you this. The
12 date and time of the call on these records, are they tied to
13 any -- well, I mean, is that Pacific Standard time? How do we
14 know what time that is, where in the world it is?

15 A It's Pacific Standard time because Las Vegas
16 is in Pacific Standard time and Los Angeles is in Pacific
17 Standard time.

18 Q Okay. So the location of the switch defines
19 what the time on those records are for?

20 A The location of the tower and the switch
21 defines the time zone.

22 Q Okay. Lastly, Mr. Sgro asked you some
23 questions about the list being from October of 2009. Does
24 Metro PCS periodically update their list as required by
25 federal law to provide lists of towers that are in the

1 country?

2 A That's correct. And -- and when this document
3 is sent out, this huge document is sent out in electronic
4 form, they're going to give you the -- the -- the latest
5 update as close to the time of the call detail records, the
6 search times, as possible.

7 Q Okay. So that is called -- or a list of
8 towers that predates August of 2010; correct?

9 A That's correct.

10 Q There may be other lists that are generated,
11 you know, October of 2010, but that's after the event of those
12 records.

13 A That's correct.

14 Q I have nothing further. Thank you, sir.

15 THE COURT: Anything further, Mr. Sgro?

16 MR. SGRO: No.

17 THE COURT: Mr. Langford?

18 MR. LANGFORD: No, Your Honor.

19 THE COURT: All right. Thank you, Mr. LeCesne, for
20 being here.

21 THE WITNESS: Thank you, sir.

22 THE COURT: You'll be excused, sir.

23 THE WITNESS: Thank you, sir. I'll be back next
24 week.

25 MR. DiGIACOMO: Sergeant Maines. I guess retired

1 sergeant.

2 MR. SGRO: Sergeant who?

3 MR. DiGIACOMO: Maines.

4 MICHAEL MAINES, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. Please state your
6 name and spell your first and last name for the record.

7 THE WITNESS: Michael Maines, Michael,
8 M-I-C-H-A-E-L, Maines, M-A-I-N-E-S.

9 DIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Sir, I want to direct your attention back to
12 2010. How were you employed?

13 A As a detective sergeant with the Las Vegas
14 Metropolitan Police Department.

15 Q What was your assignment back then?

16 A As a major crime sergeant.

17 Q How long were you with the Las Vegas
18 Metropolitan Police Department?

19 A 23.8 years.

20 Q And are you now retired?

21 A Yes.

22 Q In the early morning hours of August 7th of
23 2010, did you respond to a location generally near Nellis and
24 Vegas Valley here in Clark County, Las Vegas, Nevada?

25 A Yes, I did.

1 Q And when you got there, did you come into
2 contact with a woman named Stephanie Cousins, as well as her
3 daughter Christine Pierce?

4 A Yes. Prior to that I responded to a scene of
5 a shooting and then I was alerted to the presence of Ms.
6 Cousins at an address over on, I believe it was Aloha.

7 Q Let me back up. Did you initially respond to
8 the homicide that occurred at 5662 Meikle Lane?

9 A Correct.

10 Q During the time period you were at the
11 homicide, do you receive information that there may be some
12 relevant witnesses or information down in the area of Nellis
13 and Vegas Valley?

14 A That's correct.

15 Q And was that based upon a 911 call made by
16 Christine Pierce?

17 A To the best of my knowledge, yes.

18 Q When you got to the area of Vegas Valley and
19 Nellis, did you come into contact with a woman identified to
20 you as Stephanie Cousins?

21 A Yes, I did.

22 Q And without telling us what she said, did you
23 ultimately look into her phone to identify the phone number
24 associated with a person known as Willie and/or G-Dogg?

25 A That's correct.

1 Q And did you gather the information as to what
2 that cell phone number was and then report it to the homicide
3 detective?

4 A Yes, I did.

5 Q Have you had an opportunity to review the
6 report of Detectives Bunting and Wildemann to familiarize
7 yourself with the phone number for Willie and/or G-Dogg?

8 A Yes, I did.

9 Q Okay. Do you remember it off the top of your
10 head right now?

11 A It was a 909 area code. That's about all I
12 can --

13 Q Would it help you to refresh your recollection
14 to look at page 15 of that officer's report?

15 A Yes.

16 Q Do you have that up there with you?

17 A Yes, I do.

18 Q Okay.

19 MR. DiGIACOMO: Second paragraph, counsel.

20 THE WITNESS: 909-233-0860.

21 BY MR. DiGIACOMO:

22 Q And thank you, sir.

23 MR. DiGIACOMO: I pass the witness.

24 MR. SGRO: Court's indulgence, Your Honor. No
25 questions.

1 MR. LANGFORD: No questions, Your Honor.

2 THE COURT: Thank you for being a witness,
3 Detective. You'll be excused.

4 THE WITNESS: Thank you.

5 MS. WECKERLY: Erin Taylor.

6 ERIN TAYLOR, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated. Please state your
8 name, and spell your first and last name for the record.

9 THE WITNESS: It's Erin Taylor; E-R-I-N T-A-Y-L-O-R.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q How are you employed?

13 A I am a senior crime scene analyst with Las
14 Vegas Metropolitan Police Department.

15 Q And how long have you worked as a crime scene
16 analyst?

17 A I have been employed in that capacity a little
18 over eight years.

19 Q And you said you're a senior crime scene
20 analyst?

21 A Yes, I am.

22 Q And how do you get that qualification?

23 A So when you hire on at Metro as a crime scene
24 analyst, you -- you enter as a crime scene analyst I. And
25 then when you've been there for two years, you become a II.

1 And then at the four year mark you can test to become a
2 senior. So that involves a written portion, a practical
3 examination, and then an oral board. And if you pass that,
4 you promote to become a senior.

5 Q Okay. And you obviously went through that
6 process?

7 A I did.

8 Q You -- when you were first brought on as a
9 crime scene analyst for Metro, what kind of training do you
10 undergo?

11 A Well, I hired one, I had a bachelor of science
12 in forensic science from Baylor University with a minor in
13 criminal justice. And then when I hired on with Metro, we go
14 through a crime scene analyst academy. And then after that
15 we're in a field training program where we train with a senior
16 crime scene analyst and ride along with them for 12 weeks and
17 perform job duties with them. And then from there we get
18 various training after that in different aspects of crime
19 scene processing.

20 Q Now, we're all TV watchers, so what does a
21 crime scene analyst do?

22 A Generally, I respond to crime scenes and then
23 I document those scenes through reports, photographs, latent
24 print processing if necessary, evidence collection, and
25 diagrams.

1 Q And you were obviously working as a crime
2 scene analyst back in 2010.

3 A Yes, I was.

4 Q And you were involved in the homicide
5 investigation with the victim by the name of Derecia Newman?

6 A Yes.

7 Q Now, did you respond to the original scene
8 right after it happened?

9 A No, I did not.

10 Q Okay. So your involvement was after that
11 first call out?

12 A Correct.

13 Q Can you describe for the members of the jury
14 what your first task was with regard to this investigation?

15 A Of course. So on August 10th I was requested
16 to the ISD building, which is like the Investigative Services
17 Division building, where I photographed a female by the name
18 of Monica Martinez. And then -- do you want me to keep going?

19 Q Sure.

20 A Okay. And then after that I responded to a
21 residence to document a vehicle at that residence and the
22 residence itself.

23 Q And was there a search warrant served at that
24 residence?

25 A Thee was.

1 Q And so there were detectives there, along with
2 yourself and other crime scene analysts to document that --
3 that residence, as well as the vehicle that you mentioned?

4 A Correct.

5 Q Was the vehicle at the residence?

6 A It was. It was inside the attached garage.

7 MS. WECKERLY: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. WECKERLY:

10 Q Ms. Taylor, I'm showing you what's been marked
11 as State's 183 to 190.

12 A Okay.

13 Q Could you look through those. And I should
14 have said this in a different order. And then I'm also going
15 to show you 170 to 182.

16 A Okay.

17 MS. WECKERLY: Your Honor, the State moves to admit
18 170 to 190.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection, Your Honor.

21 THE COURT: They'll be received.

22 (State's Exhibit 170 through 190 admitted.)

23 MS. WECKERLY: Thank you.

24 BY MS. WECKERLY:

25 Q If it's okay with you, Ms. Taylor, I'm going

1 to start with the residence, okay?

2 A Okay.

3 Q And I'll put these on the --

4 MS. WECKERLY: Ready?

5 MR. DiGIACOMO: Yeah.

6 BY MS. WECKERLY:

7 Q -- on the overhead. Let's start with what's
8 been admitted as State's 183. What are -- obviously, what are
9 we looking at in that photograph?

10 A This is the residence I responded to.

11 Q And that's where the search warrant was
12 served?

13 A Correct.

14 Q Let me put on the overhead -- this would be
15 State's 190. And what are we looking at in that?

16 A That's a gas bill that was inside the master
17 bedroom of the residence with the -- the name of the people
18 that lived there, and then the address which was the 5824
19 Cinnabar Avenue.

20 Q And, I mean, what's the purpose of impounding
21 or taking the gas bill?

22 A It's to document who is recorded as living
23 there. That's one way they do it is that homicide detectives
24 will find bills with the name of a person and the address to
25 show the residency.

1 Q So who is there and who turned on the power,
2 at least.

3 A Yes, correct.

4 Q And now I'm going to show you 185. And what
5 are we looking at there?

6 A That's inside the -- the open garage door, and
7 that was the vehicle that I photographed and then it was
8 sealed and -- and towed.

9 Q In terms of the residence itself, were there
10 any weapons that you saw or weapons that were impounded?

11 A No.

12 Q What items were impounded or taken, if you
13 recall?

14 A The gas bill that we just saw, a spiral
15 Spiderman notebook with writing in it, there were two condom
16 wrappers and two condoms, and I believe that was everything.

17 Q Okay. But no -- no gun was found?

18 A No, no weapons.

19 Q Now, this vehicle, what happened to that?

20 A That vehicle, after I photographed it in
21 place, I affixed orange seals on it and then it was towed back
22 to the CSI office and it was followed by Detective Sanborn to
23 the office.

24 Q And now I'm going to show you State's 170. Is
25 that the vehicle back at the CSI offices?

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions