

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

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Aug 12 2020 02:26 p.m.  
Elizabeth A. Brown  
Supreme Court Case No. 80834  
Clerk of Supreme Court

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ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

FEB 09 2015

BY Linda Skinner  
LINDA SKINNER, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DAVID BURNS,  
13 #2757610

14 Defendant.

CASE NO: C-10-267882-2  
DEPT NO: 20

STIPULATION AND ORDER WAIVING SEPARATE  
PENALTY HEARING

16 THIS MATTER being tried before a jury and pursuant thereto on 20th day of  
17 January, 2015; the Defendant being represented by counsel, Christopher Oram and Anthony  
18 Sgro, the State being represented by Deputies MARC DIGIACOMO and PAMELA  
19 WECKERLY, and pursuant to the provisions of NRS 175.552, the parties hereby

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 stipulate and agree to waive the separate penalty hearing in the event of a finding of guilt on  
2 Murder In the First Degree and pursuant to said Stipulation and Waiver agree to have the  
3 sentence of LIFE WITHOUT THE POSSIBILITY OF PAROLE imposed by the Honorable  
4 Charles Thompson, presiding trial judge.

5 FURTHER, in exchange for the State withdrawing the Notice of Intent to Seek the  
6 Death Penalty, Defendant agrees to waive all appellate rights stemming from the guilt phase  
7 of the trial.

8  
9  
10 DATED this 9 day of \_ February \_, 2015.

  
DAVID BURNS

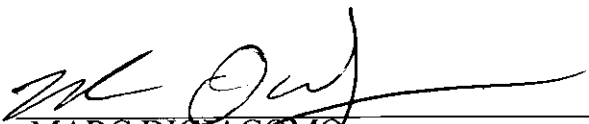
11  
12 DATED this 9 day of \_ February \_, 2015.

  
CHRISTOPHER ORAM  
Nevada Bar #4349

13  
14  
15 DATED this 9 day of \_ February \_, 2015.

  
ANTHONY SGRO  
Nevada Bar #3811

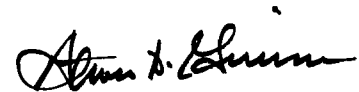
16  
17  
18 DATED this 9<sup>th</sup> day of \_ February \_, 2015.

  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #6955

19  
20  
21  
22  
23 IT IS SO ORDERED

24 DATED this 9 day of \_ February \_, 2015.

25  
26  
27  
28  
  
DISTRICT JUDGE



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., | ) | <b>TRANSCRIPT OF</b>   |
| AKA G-DOGG,                | ) | <b>PROCEEDING</b>      |
| DAVID JAMES BURNS, AKA     | ) |                        |
| D-SHOT,                    | ) |                        |
|                            | ) |                        |
| Defendants.                | ) |                        |

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

**JURY TRIAL - DAY 13**

TUESDAY, FEBRUARY 10, 2015

APPEARANCES:

|                      |  |
|----------------------|--|
| For the State:       | MARC P. DIGIACOMO, ESQ.<br>PAMELA C. WECKERLY, ESQ.<br>Chief Deputy District Attorneys |
| For Defendant Mason: | ROBERT L. LANGFORD, ESQ.   |
| For Defendant Burns: | CHRISTOPHER R. ORAM, ESQ.<br>ANTHONY P. SGRO, ESQ.                                     |

RECORDED BY SUSAN DOLORFINO, COURT RECORDER  
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**AA 2822**

## **I N D E X**

### **WITNESSES FOR THE STATE:**

CHRISTOPHER BUNTING

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Cross-Examination By Mr. Sgro 80

## **E X H I B I T S**

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1           **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 10, 2015, 9:40 A.M.**

2                           **\* \* \* \* \***

3                           (Outside the presence of the jury.)

4           THE COURT: All right. Now, State of Nevada vs.  
5 Burns and Mason. The record reflect the presence of counsel  
6 only.

7           And I was advised you had something out of the  
8 presence of the jury?

9           MR. ORAM: Yes, Your Honor. Exhibit 309, State's  
10 Exhibit 309 were text messages that were introduced by the  
11 State. You may recall, because we approached the bench, we  
12 had to read them as quickly as possible.

13           As I look through them, there are some messages  
14 between Tyler Mitchell and West, at least it's -- which is  
15 Donovan.

16           THE COURT: Tyler Mitchell.

17           MR. ORAM: Tyler Mitchell, that's Monica Martinez's  
18 daughter.

19           THE COURT: That's Monica Martinez's father. Okay.

20           MR. ORAM: Daughter.

21           MR. DiGIACOMO: Daughter.

22           MR. ORAM: Daughter.

23           THE COURT: Daughter?

24           MR. ORAM: Yeah.

25           MR. DiGIACOMO: She testified.



1 THE COURT: Oh, she testified? Yes, you're right.

2 MR. ORAM: If you want a [indiscernible] wrongfully,  
3 I need to -- okay. And Donovan Rowland --

4 MR. LANGFORD: Wrongfully, I did my guy.

5 MR. ORAM: -- text messages between Donovan Rowland,  
6 the embalming fluid band, okay. And -- and Tyler Mitchell.

7 And the text that they -- the text that they put in  
8 on 309 are relative -- relevant. And they go up to a period  
9 of 8/06, so right before the crime. Then there is this large  
10 gap of six weeks. And in this large gap of six weeks,  
11 starting on 9/25, so a month and a half after the -- the  
12 crime, then there are these messages between Donovan Rowland  
13 and Tyler Mitchell, which I would think are just irrelevant.  
14 I've asked the State just to remove the first two pages,  
15 because I can't see the relevance of Tyler Mitchell and  
16 Donovan Rowland.

17 THE COURT: Do they have anything to do with the gun?

18 MR. ORAM: I've asked Mr. DiGiacomo what is the  
19 relevance or what -- what is the --

20 THE COURT: Because that's -- he was primarily in --  
21 because he disposed of the gun.

22 MR. ORAM: Right.

23 MR. DiGIACOMO: That's correct, Judge. I mean, I  
24 offered them to establish Tyler Mitchell said she knew Donovan  
25 Rowland as West, and she said she had contact with him in the

1 time period afterwards. There's contact between the two of  
2 them. They want to now take out the contact. There's nothing  
3 relevant in any of the actual text messages back and forth.  
4 It's just like, Hey, how you doing, can I come talk to you?  
5 You know, those type of things.

6 THE COURT: Well, there's no issue that --

7 MR. DiGIACOMO: Well, the --

8 THE COURT: -- they weren't associated somewhat.

9 MR. ORAM: No, we're not going to even argue that.  
10 We'd even stipulate with them that they --

11 MR. DiGIACOMO: But, I mean, it's an admitted piece  
12 of -- of evidence that wasn't redacted in front of the jury  
13 that they're now asking me to redact that has nothing  
14 prejudicial in it.

15 MR. ORAM: Well, Judge --

16 MR. DiGIACOMO: And so my response to them was no.

17 THE COURT: Was there something prejudicial in it?

18 MR. ORAM: Well, it -- do I see anything prejudicial?  
19 I -- I don't necessarily. I just think that it's not  
20 relevant. And when they say redact, that redacts it right  
21 there. Now --

22 MR. DiGIACOMO: No. Because then we don't establish  
23 contact between her and -- and West in -- in September, which  
24 is relevant.

25 MR. ORAM: On September 25th?

1 MR. DiGIACOMO: Yes.

2 MR. ORAM: See, then, Judge, then it --

3 THE COURT: What -- I don't know when the gun was --

4 MR. ORAM: The next day -- or that night. They --  
5 and then they found the gun within a few days. So I'm not  
6 sure why the State is --

7 THE COURT: What's relevant in September?

8 MR. DiGIACOMO: To establish that Donovan Rowland is  
9 still in town having contact with her. There's no suggestion  
10 in there which the -- which the defense sort of suggested.

11 And you just -- did you just really -- really rip my  
12 exhibit apart?

13 MR. ORAM: No, no. That's my exhibit.

14 MR. DiGIACOMO: Okay. And we asked her that. Like,  
15 did you have -- did you -- do you know Donovan Rowland? Did  
16 you -- did you have contact with him? Did you continue to  
17 have contact? Yes.

18 We offered those, they looked at them, they didn't  
19 object, and now they want to rip the exhibit apart.

20 THE COURT: Well, if it's not -- if it's not  
21 relevant, we'll remove them.

22 MR. ORAM: Thank you, Judge.

23 THE COURT: All right. We'll remove those two pages.  
24 I'll agree with that.

25 MR. ORAM: Thank you.

1 THE COURT: And you'll have to talk to the clerk  
2 about physically doing that.

3 MR. ORAM: Okay. It -- it would just be the first  
4 two pages, Linda.

5 THE COURT: She can do that with a staple remover  
6 rather than tearing it the way you do it.

7 MR. ORAM: You didn't see the way I did it? You just  
8 -- just --

9 THE COURT: She's -- she's much better than you are.

10 MR. ORAM: I thought it was pretty good.

11 THE COURT: All right. Anything further on the  
12 record?

13 MR. LANGFORD: Nothing from Mr. Mason.

14 THE COURT: Off the record.

15 (Court recessed at 9:44 a.m., until 10:00 a.m.)

16 (In the presence of the jury.)

17 THE COURT: All right. State vs. Burns and Mason.  
18 The record reflect the presence of the defendants, their  
19 counsel, the district attorneys, and all members of the jury.

20 Good morning, ladies and gentlemen. Sorry for the  
21 delay this morning. And I can tell you it was not the fault  
22 of any of these lawyers.

23 All right. We are still in the State's case in  
24 chief, and the State can call their next witness.

25 MS. WECKERLY: The next witness, Your Honor, is

1 Detective Bunting.

2 CHRISTOPHER BUNTING, STATE'S WITNESS, SWORN

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

5 THE WITNESS: Christopher Sean Bunting,  
6 C-H-R-I-S-T-O-P-H-E-R B-U-N-T-I-N-G.

7 DIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q How are you employed, sir?

10 A With the Las Vegas Metropolitan Police  
11 Department.

12 Q How long are -- or how are you currently  
13 assigned?

14 A I'm currently in search and rescue.

15 Q Ad how were you assigned in 2010?

16 A With the homicide section.

17 Q Where did you work before homicide?

18 A I worked in major crimes and violent crimes for  
19 four years, and then previous to that, Problem-Solving Unit  
20 and Patrol.

21 Q And so how long in total have you worked for  
22 Metro?

23 A Little over 15 years.

24 Q And you were in homicide, obviously, in August  
25 of 2010, then?

1           A     Yes, ma'am.

2           Q     On August the -- the 7th, did you respond to a  
3 crime scene on Meikle Lane?

4           A     Yes, ma'am.

5           Q     And can you explain to the members of the jury  
6 how it is that homicide is notified to respond to a particular  
7 scene?

8           A     Yes. Essentially, we receive a call from our  
9 sergeant notifying us that there's a -- a homicide. And then  
10 we respond as a squad, or sometimes multiple squads, depending  
11 on the type of homicide. And we respond to the scene. And at  
12 the scene we receive kind of a general idea of what took place  
13 from the patrol officers that responded to that scene  
14 originally.

15          Q     And so you wouldn't have been the only homicide  
16 detective that responded to that scene?

17          A     No, ma'am.

18          Q     We -- Detective Jensen responded?

19          A     Yes, ma'am.

20          Q     And also Detective Wildemann?

21          A     Correct.

22          Q     When -- when you get to the scene, I think you  
23 kind of implied this in your answer, patrol has already been  
24 at the scene and the residence is taped off; is that fair?

25          A     Yes, ma'am. It's -- the scenes are almost

1 always secure by the time we get there.

2 Q Okay. And then when homicide gets there, how  
3 are the investigative duties divided amongst the detectives?

4 A There's usually one detective that will be the  
5 primary at the scene or that will handle the scene itself and  
6 work along with the crime scene analyst. There's detectives  
7 that are also assigned to conduct interviews with witnesses.  
8 If there's videos and things of that nature, then they'll also  
9 be instructed to -- to do those, or obtain those, as well.

10 Q What was your initial responsibility?

11 A Mine was the scene.

12 Q And so obviously you did a walkthrough of the  
13 scene yourself?

14 A Correct.

15 Q Can you describe for the members of the jury  
16 just generally what the scene was?

17 A Well, the scene consisted of a quadriplex, kind  
18 of a four-apartment building structure. The lower -- which  
19 was a two-story building -- the lower left side, or on the  
20 west side downstairs was Apartment A, which was the location  
21 of the scene in this case. Inside of the front door there was  
22 an open living room, dining room, and a kitchen that was kind  
23 of all open in one general area.

24 It also consisted of a -- a hallway that ran north  
25 from that area to two bedrooms, one being on the northwest

1 side, which was the children's bedroom. The master bedroom  
2 was on the northeast corner of the apartment, which had an  
3 adjoining bathroom attached to it.

4 In the hallway on the left-hand side or the west side  
5 was also a second bathroom. And on the right-hand side there  
6 was a laundry room, as well.

7 Q Now, we're going to put on the screen what's  
8 been admitted as State's 14. What are we looking at in  
9 State's 14?

10 A This would be the south side of 5662 Meikle.

11 Q And would that be how the scene appeared on the  
12 morning that you arrived?

13 A Correct. Probably a little darker.

14 Q Little darker. Now, can you -- you can actually  
15 write on the screen with your finger. Can you indicate for  
16 the jury what apartment was the one at issue?

17 A Right here on the lower left-hand side.

18 Q And you described the interior of the scene.  
19 I'm going to put up State's 13, please. What are we looking  
20 at in State's 13?

21 A This would be a diagram of Apartment A.

22 Q Okay. And can you orient the jury just a little  
23 bit where the front door would be on this exhibit?

24 A So the front door is right there.

25 Q Okay. And when you did -- did your initial



1 walkthrough of the scene, where -- I mean, what would you take  
2 note of as a detective as to what areas of the scene might be  
3 important or might contain relevant evidence?

4           A     Well, we -- I mean, we definitely reviewed the  
5 -- looked through the entire apartment. Obviously, initially  
6 the front room was pretty significant, because Ms. Derecia  
7 Newman was positioned on the couch. She had obviously  
8 sustained a -- a gunshot wound to the left side of her face.  
9 There were also bullet fragments on floor in the living room.  
10 In her possession in her hand she had -- she was gripping a  
11 \$20 bill.

12                There were also a number of bullet strikes throughout  
13 the apartment. Initially in the -- the kitchen -- is it okay  
14 if I --

15           Q     Yep. You can write on there.

16           A     Right there is the refrigerator in the kitchen  
17 area. And the -- the right side of that -- well, right there  
18 on the right side of that refrigerator was an apparent bullet  
19 strike there to the rear. So it had gone through the right  
20 side of the refrigerator, exited out the -- the rear of the  
21 refrigerator, and then hit right around there on the left or  
22 west side of the hall, where there was another impact. There  
23 was also an impact on the -- on the north wall, as well.

24                On the inside, or the opposite side of that wall is  
25 the -- the children's closet. And this -- this structure

1 right here is a dresser. The -- it appeared that the bullet  
2 had gone through that wall, struck that dresser, fragmented,  
3 and then fell to --

4 MR. SGRO: Objection, Your Honor. Foundation. He's  
5 talking about travel paths of bullets, fragment potentials. I  
6 don't know this man has any sort of experience in ballistics.

7 THE COURT: I think you can cross-examine on it.  
8 Overruled.

9 BY MS. WECKERLY:

10 Q You've been to shooting scenes before?

11 A Hundreds.

12 Q Okay. And I would imagine in these hundreds of  
13 scenes, you've seen bullets and bullet fragments?

14 A A number of times.

15 Q So when you looked at this scene, it was -- it  
16 was apparent to you what you saw was trajectory of bullets and  
17 various bullet fragments and other forensic evidence  
18 associated with a shooting?

19 A Yes, ma'am.

20 Q Okay. So you -- when you go into the scene, you  
21 see, as I understand it, a -- a pathway that kind of starts at  
22 the refrigerator and goes down that wall on the left side of  
23 our diagram?

24 A Correct.

25 Q Okay. And then there's a pathway to -- to

1 another wall, but on the other side of that wall is the  
2 closet?

3 A Yes, ma'am.

4 Q Okay. And what other -- what other observations  
5 did you make about the -- the trajectory of bullets at this  
6 scene?

7 A There was a vacuum. Actually, it's on here,  
8 right there, or alongside that. The handle of that vacuum had  
9 an apparent bullet strike, as well, through the handle. Both  
10 an entrance and an exit through that handle. There was --  
11 later there was also two holes on this wall to the right of  
12 the other ones on the north end of the -- the hallways. The  
13 -- the little square that's just above that would be where the  
14 TV was located. And there was also holes in the TV, as well,  
15 on the south side of that TV.

16 The foot end of the bed, right about there, was also  
17 in another apparent bullet strike. And then there was, on the  
18 window --

19 I'm not sure what happened there. I'll try that  
20 again.

21 Okay. Right above the X -- that keeps popping up,  
22 that's actually a window. And there was two pieces of fabric  
23 that were over that window. There was a hole in the front, or  
24 the closest part of that fabric. And a bullet was sitting on  
25 a crate beneath that. So it appeared that it had struck the

1 -- the foot end of the bed, ricocheted up into the first  
2 fabric, caught by the second fabric, then the bullet dropped  
3 and was located on a crate just below that window.

4 Q And can I interrupt you one second. Did -- did  
5 that seem unusual to you at all that, like, a bullet, wouldn't  
6 it be able to penetrate fabric or, you know, have ricocheted  
7 up or anything like that?

8 A Well, bullets -- bullets definitely do strange  
9 things, things you wouldn't think they would. And having --  
10 having lost its momentum by going or hitting other objects  
11 will typically slow it down. And so it's -- it's interesting,  
12 but it's not uncommon for -- for things like that to happen.

13 Q Was there any other bullet hole or trajectory  
14 that you noticed in the residence?

15 A There was also a hole in the bathroom door. And  
16 then alongside the bathroom wall, which appeared that a shot  
17 had been fired through the bathroom door, penetrated the door,  
18 and then entered into the -- the bathroom wall.

19 Q Okay. And so in your assessment of the scene,  
20 how many independent, I guess, shots did you assess from the  
21 scene?

22 A Well, it appeared to me that there had been six  
23 shots that were fired, when you include the -- the shot that  
24 was -- or the injury that was sustained by both Devonian and  
25 Derecia Newman.

1           Q     Okay. And obviously the -- the projectile was  
2 recovered from Derecia Newman at autopsy, that would be one?

3           A     Correct.

4           Q     And then there was one recovered from Devonia  
5 from the hospital, so that's two?

6           A     Correct.

7           Q     And then on our diagram, could you explain the  
8 other ones?

9           A     So the -- the first one would be, as she stated,  
10 Derecia Newman would have sustained the first gunshot. The  
11 second one penetrated the refrigerator, exited the  
12 refrigerator, kind of skimmed down the wall. It didn't  
13 actually penetrate the wall, but it caused a divot and it --  
14 and then traveled north through the north hall wall into the  
15 dresser, and that would be No. 2.

16          Q     3.

17          A     I'm -- I'm sorry, No. 3. Excuse me. The --  
18 well, counting in 1, 2, going down the hall, so Derecia's No.  
19 1; the refrigerator down the hall would be No. 2; the one at  
20 the end of the -- to the right side of the hall would be No.  
21 3; 4 would be off the bed and into the -- towards the window;  
22 5 would be through the door into the wall; and then 6 would be  
23 the shot that was sustained by Devonia.

24          Q     Okay. And in your experience with the -- the  
25 hundreds of shootings that you've been to and investigated at

1 crime scenes, when you went into this scene and you saw the  
2 damage that had been done to both Derecia Newman and the walls  
3 of the apartment, did you look for casings or anything like  
4 that in the apartment for additional firearms evidence?

5 A We did. There were no cartridge cases that were  
6 found inside of the residence, which obviously indicated to us  
7 that it was a revolver that was used.

8 Q And can you explain to the members of the jury  
9 why no casings would indicate a revolver?

10 A A -- a semiautomatic firearm, when you shoot it,  
11 the cartridge of the bullet exits the cartridge case, and the  
12 cartridge case gets ejected out the side of the firearm. So  
13 typically in a number of those shootings, you'll have  
14 cartridge cases lying on the ground, which also indicate where  
15 the individual was when they shot and things of that nature.

16 With a revolver, there is no ejection of the  
17 cartridge or the cartridge case after that bullet's been  
18 fired. And that cartridge case remains in the cylinder or the  
19 wheel of that type of a handgun. So it stays with the handgun  
20 unless it's -- it's actually empty.

21 Q And you account for six shots in this scene?

22 A Correct.

23 Q Six -- six fired shots. Now, when you went  
24 through the scene, did you look in the -- like, on our diagram  
25 there's a kitchen area and there's also sort of a -- it looks

1     like a couch behind where the victim, Derecia Newman, was?

2             A     Correct.

3             Q     Did those seem disturbed or at issue, or did you  
4     make any notation about how those areas of the residence  
5     appeared?

6             A     Well, we documented those areas, but there was  
7     -- the -- there was no necessary evidence that was in those --  
8     in those areas, the kitchen or the -- the dining room area.  
9     So the most -- all the evidence that -- that we determined was  
10    in the front living room where Ms. Derecia was -- Ms. Derecia  
11    Newman, in that hallway, in the kitchen, just the  
12    refrigerator. So. And in the -- into the hallway and the two  
13    bedrooms and the master bathroom.

14            Q     Okay. And in terms of the bedrooms where the  
15    two bunk beds are, which are in the upper left-hand corner,  
16    aside from the ballistic evidence and the -- the projectile or  
17    fragment recovered in the closet, was there anything else of  
18    note in that room?

19            A     No.

20            Q     Okay. And so -- and how about that bathroom  
21    that's on the, I guess, left-hand side of the diagram;  
22    anything of note in there?

23            A     There were some -- some ashes in the -- in the  
24    bathtub that indicated that somebody was in the -- smoking,  
25    obviously, in the -- in the bathtub or next to it. And then

1 obviously the -- the hole in the door and the wall.

2 Q Okay. I think we miscommunicated. In the other  
3 bathroom, though, was there anything --

4 A Oh, I'm sorry, in the hallway bathroom.

5 Q Yes.

6 A No, ma'am, there was nothing in there.

7 Q Okay. So we'll get to the other bathroom in one  
8 second. In the -- in the master bedroom, what were your  
9 observations at the scene with regard to the master bedroom,  
10 just generally?

11 A Well, other than the -- the strikes, which I had  
12 mentioned before, there was drug paraphernalia inside of the  
13 master bedroom, including I believe it was a pipe, a scale.  
14 There was also some marijuana in -- in that -- in that room,  
15 as well as some small white rock, which is consistent with  
16 crack cocaine.

17 Q And the master bathroom, I think you just  
18 described it, but just so we're clear, what was in the master  
19 bathroom?

20 A There were some ashes in the -- in the tub, in  
21 the master bathroom. And once again, there was the strikes to  
22 the doorway in the master bathroom, as well as the wall.

23 Q Now, at the time you arrived, had Devonian Newman  
24 been transported to the hospital?

25 A She had.



1 Q So you did not see her at the scene?

2 A No, ma'am.

3 Q Obviously, Derecia Newman was present when you  
4 arrived?

5 A Correct.

6 Q When you arrive and you're the scene detective,  
7 are you the primary detective on the case?

8 A Yes, ma'am.

9 Q Okay. Was Cornelius Mayo present when you were  
10 there?

11 A He was.

12 Q Did you have any direct contact with him?

13 A I know I remember seeing him there, but I was  
14 not one of the detectives that conducted an interview with him  
15 at that time.

16 Q At that -- that morning?

17 A Right.

18 Q Do you know whether a gunshot residue kit was  
19 taken from Mr. Mayo that morning?

20 A It was.

21 Q Was that done at your direction?

22 A No.

23 Q Is it typical for a gunshot residue kit to be  
24 administered to someone at -- at a homicide scene?

25 A Yes, ma'am.

1 Q Okay. Would you have been the one that decided  
2 whether or not to submit that for later testing?

3 A For testing, yes, ma'am.

4 Q And did you submit it?

5 A No.

6 Q Why not?

7 A Well, gunshot residue is typically used when  
8 somebody denies being in an area that -- that a firearm has --  
9 has been shot. So we already knew that Mr. --

10 MR. SGRO: Objection to what we knew. He can testify  
11 to what he believed or what he thought. Calls for hearsay.

12 THE COURT: Well, if -- if you're referring to we,  
13 yes, what he did.

14 MS. WECKERLY: Okay.

15 BY MS. WECKERLY:

16 Q Based on what you knew that -- well, that  
17 morning, and I guess in the ensuing investigation, why didn't  
18 you submit for the gunshot residue test?

19 A Well, I knew --

20 Q You could have done it, right? Any year?

21 A Absolutely. Yeah. I could have submitted to  
22 have it tested, but I already knew that he was inside the  
23 residence. And you don't necessarily have to be firing a -- a  
24 weapon or a firearm in order to get gunshot residue. So if I  
25 were to shoot in this room right now and you're present and in

1 this room, there's a high likelihood that you're going to get  
2 gunshot residue on your person. So proving that he was inside  
3 the residence was already done, because he admitted to being  
4 inside the residence. So.

5 Q Okay. Is it because --

6 A And in the room.

7 Q I mean, the test is not particularly sensitive  
8 as to who was firing a gun versus who was around when a gun  
9 was fired?

10 A Correct.

11 Q At the time you arrived at the scene, did you  
12 have an opportunity to listen to the 911 call made by Mr.  
13 Mayo?

14 A At the scene?

15 Q Yes.

16 A I don't recall if we had it played at the scene.  
17 We do have that capability. I -- I can't remember if I  
18 listened to it specifically myself that day or not.

19 Q You've since, and likely in preparation for your  
20 testimony, you've heard the 911 call that he made?

21 A Yes, I have listened to the 911 call on more  
22 than one occasion.

23 Q When you -- when you hear the call, can you hear  
24 whistling in the call?

25 A Yes, ma'am.

1           Q     And is there whistling at the same time Mr.  
2 Mayo's talking?

3           A     There is.

4           Q     How long after Mr. Mayo made that 11 -- 911 call  
5 did the first patrol officer arrive?

6           A     I believe it was approximately three minutes.

7           Q     Based on your observations of the scene, did it  
8 appear that the drug paraphernalia had been moved out of it  
9 prior to the police arriving?

10          A     There -- it had definitely been disturbed, for  
11 sure. I mean, there was -- you could see it on the ground  
12 next to the -- the right side of the bed, the nightstand.

13          Q     But there -- it was still present, right? I  
14 mean, there was rock crack?

15          A     They -- there was obviously -- obviously drugs  
16 inside of the residence in that room. Yes, ma'am.

17          Q     And the level of disturbance in the master  
18 bedroom, how would you -- how would you describe it? Like,  
19 you said there was crack cocaine in there. Where would that  
20 have been just generally on our diagram?

21          A     So on the -- on the right side of the bed or the  
22 head of the bed, right there, is a -- is a nightstand. On the  
23 floor right at the base of that nightstand, and actually  
24 there's -- looks like there's a green mark to the side of the  
25 bed, there is -- on that floor area right there, there was a

1 plate that appeared to have been pushed off that nightstand,  
2 as well as some of those -- basically, it turned out being  
3 crack cocaine on the floor in that area.

4 Q After -- let me ask you this. How soon after  
5 your arrival do you become aware of the name Stephanie  
6 Cousins?

7 A I believe we received that during our initial  
8 briefing. So pretty much right away.

9 Q Okay. So right away when homicide gets there,  
10 the name Stephanie Cousins is involved in the investigation;  
11 is that fair?

12 A Yes -- yes, ma'am.

13 Q Did you speak to Ms. Cousins that morning?

14 A Not that morning, no.

15 Q Okay. Other officers went and spoke to Ms.  
16 Cousins?

17 A Correct.

18 Q Based on that investigation, did you later apply  
19 for a pen register?

20 A Yes, ma'am.

21 Q And what number was that on; do you remember?

22 A Whose -- whose number it was?

23 Q Yes.

24 A Willie Mason's.

25 Q And that's with the 909 area code?

1           A     Correct.

2           Q     Can you explain to the members of the jury what  
3 a pen register is?

4           A     Essentially, that's a request to obtain cell  
5 information, which covers what calls were made, who they were  
6 made to. So it provides us with other numbers that they  
7 contacted. It also provides us with cell tower data, which  
8 can give us the location of individuals at different times  
9 that they either text or make phone calls, or when people call  
10 or text them, as well as incoming and receiving, and can give  
11 us real-time information of where individuals with that phone  
12 are.

13          Q     So you can see numbers dialed in or out and you  
14 can see location based on cell towers?

15          A     Yes, ma'am.

16          Q     You can't hear conversations, obviously?

17          A     No. No.

18          Q     And is that pen register something that's signed  
19 by a court and then I guess given to a phone company to  
20 produce the information?

21          A     Correct.

22          Q     When you -- you did that initial pen register  
23 for Willie Mason's phone, did you also do a subsequent one?

24          A     We -- we did obtain further cell information  
25 data from other phone numbers. Yes, ma'am.

1           Q     Was one of the phones that you got further data  
2 on one that you eventually identified to Jerome Thomas or  
3 Job-Loc?

4           A     Yes, ma'am.

5           Q     Based -- based on those pens, did an address at  
6 the Brittnae Pines Apartment become relevant in the  
7 investigation?

8           A     Yes, ma'am.

9           THE COURT: Hold on just a second. We're going to  
10 give one of the jurors some water.

11          MS. WECKERLY: I'll hold on. Do you want me to keep  
12 going?

13          THE COURT: Hold on.

14          MS. WECKERLY: Okay.

15                   (Pause in proceedings)

16 BY MS. WECKERLY:

17          Q     Can you explain to us how that -- or the phone  
18 data that you got, how that address came to be important in  
19 the investigation?

20          A     Well, eventually we determined that -- that all  
21 the -- well, that Willie Mason, Mr. Burns, Mr. Thomas, and Mr.  
22 Martinez had all been inside of that residence.

23          Q     And in your investigation initially, were you  
24 aware of whose apartment it was?

25          A     I'm sorry, say that one more time?

1           Q     Initially, when you identified that apartment as  
2 being important in -- in the investigation, did you know whose  
3 apartment it was or who it belonged to or who it was  
4 associated with?

5           A     Mr. Thomas.

6           Q     Okay. Based on the investigation regarding Ms.  
7 Cousins and the information you got from the two pen  
8 registers, is that how you all come onto the name Monica  
9 Martinez as someone who might be involved in this crime?

10          A     Yes, ma'am.

11          Q     Prior to your contact with Ms. Martinez, did you  
12 speak with the surviving victim, Devonian Newman?

13          A     Yes, ma'am.

14          Q     Can you explain to the members of the jury when  
15 that interview took place; when would that have been?

16          A     It was the day after the murder.

17          Q     And where was she?

18          A     She was at the hospital, UMC.

19          Q     And did you go by yourself or did you go with  
20 another detective?

21          A     By myself.

22          Q     And when you went up to talk to her, was there  
23 any hospital staff who told you you can or can't talk to her,  
24 or was there any issue with you speaking with her?

25          A     There was no issue with me speaking with her.



1 Typically, anytime that we go into a hospital setting, we  
2 inform them, Hey, we're going to be in this room conducting an  
3 -- an interview, is -- is that okay? And, you know.

4 Q When you -- when you spoke to Devonian, how --  
5 how would you have -- how would you have described her  
6 physically in terms of medical apparatus? Was she intubated  
7 or was she not or --

8 A No. Well, she definitely wasn't intubated,  
9 because she wouldn't be able to speak. But she had obviously  
10 received medical care and was currently under medical care.  
11 She was obviously in pain and uncomfortable.

12 Q And I'll put on the overhead State's 250. Is  
13 that just a photograph of Devonian at the hospital?

14 A Yes, ma'am.

15 Q When you -- when you went to speak with her, did  
16 -- did you bring a recording device?

17 A I did.

18 Q And where did you place it in order to pick up  
19 her voice?

20 A Well, as close as I could. Anytime you do an  
21 interview in a hospital, it's a little difficult just because  
22 of the noise with all the machines and things of that nature.  
23 So in this case, I put it as close as possible. Especially in  
24 her case, because I knew it was going to be difficult for that  
25 to get onto the recorder, because of the noise and the

1 condition that she was in.

2 Q And the fact that she was a child, I mean, she's  
3 probably not the youngest person that you've interviewed, but  
4 given her age were there extra steps that you tried to take in  
5 conducting the interview?

6 A Well, yeah. You try and -- I mean, in this  
7 case, try and -- because it's -- once again, that recorder, I  
8 was concerned that it wasn't going to pick up what she was  
9 saying. So in an effort to ensure that I kind of knew what  
10 she was saying and that it was going to be on the recorder, is  
11 every time that she would say something, I would repeat that  
12 back and -- and to confirm it, essentially. And sometimes she  
13 didn't -- she would say yes, and other times if I misspoke she  
14 would correct me.

15 Q And we'll play that interview which --  
16 [indiscernible.]

17 MR. DiGIACOMO: 291.

18 BY MS. WECKERLY:

19 Q 291.

20 (Audio/Video played.)

21 BY MS. WECKERLY:

22 Q Okay. Why is it important to you to interview  
23 her right away?

24 A I was concerned that she was going to pass away.

25 Q Were you concerned about her -- her memory at

1 all, her ability to recall events?

2 A Well, we want to talk to anybody as soon as  
3 possible, the longer time goes by, the -- you know, the harder  
4 it is for people to remember the account of what takes place.

5 Q Now, obviously, in the background we can hear  
6 medical equipment. Is that the -- there's certain, like,  
7 tones and sounds?

8 A Yes, ma'am.

9 Q Okay. And her -- there was points where you  
10 were telling her to breathe. Can you describe why you were  
11 doing that or to calm down or?

12 A Yeah. So there -- when you're in a hospital, a  
13 lot of times they put up pole socks, which measures the amount  
14 of oxygen in your blood. And as that decreases, the alarm  
15 goes off to alert medical staff. I actually have history with  
16 those, so I knew what it was doing. So I asked her to breathe  
17 to increase that -- that oxygen in her blood, so that it would  
18 stop that -- that alarm.

19 Q At the time you interviewed her, did you have  
20 any of your pen register information yet showing the  
21 information you later learned of -- from phone calls amongst  
22 various individuals?

23 A By the time of Devonia's? No.

24 Q Did you have any video recovered from the Opera  
25 House or Greyhound?

1           A     No.

2           Q     Anywhere in that interview did you hear Devonian  
3 or take what she was saying to mean that Cornelius Mayo had  
4 shot her?

5           A     No. She says that she was in the bathroom with  
6 him as she was struggling with a burn. So, no.

7           Q     Okay. And at the -- can you describe her, I  
8 guess her physical state at the end of the interview?

9           A     Well, she was definitely fatigued. She was wore  
10 out.

11          Q     After -- after that interview, or sometime after  
12 that interview, you made contact with Monica Martinez?

13          A     Correct.

14          Q     And sort of in the -- we'll talk about that in a  
15 minute, but in the ensuing investigation, you -- you go back  
16 to Devonian one more time later in the investigation; is that  
17 fair?

18          A     Yes, ma'am.

19          Q     Can you describe approximately how much later  
20 that was?

21          A     I believe it was about three or, no, it would  
22 have been about five -- about five weeks later, I believe.

23          Q     How many times in this investigation did you  
24 talk to her?

25          A     Twice.

1           Q     And when you went back the second time, we'll  
2 get to it, but was that to show her a photographic lineup?

3           A     Yes, ma'am.

4           Q     Sir, I'm showing you what's been marked as  
5 State's 277; do you recognize what that is?

6           A     I do.

7           Q     What is that?

8           A     That's a drawing that Devonian drew for me.

9           Q     And was that drawn in the hospital?

10          A     It was.

11          Q     And were you -- you were, I guess, you  
12 witnessed, personally, her draw that?

13          A     I did.

14          Q     Would you have asked her to make that drawing or  
15 do the drawing?

16          A     Yes.

17          Q     And what -- what were you asking her to draw?

18          A     When she mentioned -- I just wanted to clarify  
19 that we were talking about the same thing, when she mentioned  
20 overalls, that I -- I just wanted her to describe those to me.

21          Q     And did you provide her the piece of paper?

22          A     I did.

23          Q     And is this the actual piece of paper she drew  
24 on?

25          A     It is.

1 MS. WECKERLY: State moves to admit 277.

2 MR. LANGFORD: No objection, Your Honor.

3 MR. SGRO: No objection.

4 THE COURT: It'll be received.

5 (State's Exhibit 277 admitted.)

6 MS. WECKERLY: And may I have that switched over to  
7 the overhead, please.

8 BY MS. WECKERLY:

9 Q So State's 277 is her drawing years and years  
10 ago, I mean, back in August, September 2010 of the -- of the  
11 overalls?

12 A Correct.

13 Q Now, after --

14 MR. SGRO: I'm sorry, exhibit number?

15 MS. WECKERLY: 277.

16 MR. SGRO: Thank you.

17 BY MS. WECKERLY:

18 Q After you make contact with Devonian, you later  
19 talk to Monica Martinez; it's not the same day, but I guess a  
20 few days later?

21 A Yes, ma'am.

22 Q Explain to us where you made contact with Ms.  
23 Martinez?

24 A At her place of employment.

25 Q And was that, like, Novum Pharmaceuticals?

1           A     Pharmaceutical, yes, ma'am.

2           Q     When you got to that location, did you  
3 immediately make contact with Ms. Martinez, or did you -- did  
4 she have to be called up to the front and that sort of thing?

5           A     She had to be called up to the front. We went  
6 to the front desk and basically requested to speak with her.

7           Q     Were -- and then you're saying we, so you were  
8 with someone else?

9           A     Detective Wildemann.

10          Q     And were you dressed like you are today, or how  
11 were you dressed?

12          A     Similar. Probably without the jacket. A dress  
13 shirt and slacks. Something along those lines.

14          Q     Not as nice? When you made contact with Ms.  
15 Martinez, did you ask her to come and speak with you and  
16 Detective Wildemann?

17          A     Yes, ma'am.

18          Q     She agreed?

19          A     She did.

20          Q     How -- where did you go -- where did you take  
21 her to talk to you all?

22          A     We asked her to come back to our office to an  
23 interview to -- to conduct the interview.

24          Q     And did she drive her own car there?

25          A     No. She drove with us.

1           Q     Okay.  When you got to the -- I guess it would  
2 be the homicide offices?

3           A     Correct.

4           Q     And was she put in the interview room?

5           A     She was.

6           Q     Was she handcuffed?

7           A     No.

8           Q     When you -- when you first encountered Ms.  
9 Martinez, I guess on the ride from her place of employment to  
10 homicide, how would you describe her -- her demeanor?

11          A     She was definitely nervous.  She was a little  
12 agitated, I would say, is a good word.

13          Q     Is agitated like aggressive?  Or is agitated --  
14 I mean, what do you mean by that?

15          A     Well, you know, she was in a bad situation,  
16 because she knew what she did and she --

17          MR. SGRO:  Objection, Your Honor.  The question is  
18 what was her --

19          THE COURT:  Sustained.

20 BY MS. WECKERLY:

21          Q     How would you describe -- like, was she  
22 physically, I guess, moving around, or was she saying things?

23          A     Defensive.

24          Q     Defensive?

25          A     Defensive.



1           Q     When she gets to the homicide offices, is her  
2 demeanor -- does it change at all initially?

3           A     No.

4           Q     Once you get -- once you get her in the  
5 interview room, it's you and Detective Wildemann who conduct  
6 an interview with her?

7           A     Correct.

8           Q     And we've actually seen that interview played.  
9 In total, how much time was she there?

10          A     I believe it was close to -- like, total time at  
11 the office, maybe 11 hours.

12          Q     Okay. And so it's --

13          A     12 hours.

14          Q     -- it started during business hours and ends  
15 later in the evening?

16          A     Correct.

17          Q     Is that an unusually long interview?

18          A     That's pretty long.

19          Q     During the interview, does she initially deny  
20 having any knowledge about the events?

21          A     She does.

22          Q     And some time after that, she gives you I guess  
23 what I would call varying accounts of what happened?

24          A     Yeah. She -- she went through what I would  
25 consider to be the typical process of an interview of any

1 suspect, for sure.

2 Q During the interview, we've seen the -- the  
3 videotape of it, at -- later in the interview, you and  
4 Detective Wildemann are showing her photographs of various  
5 individuals; do you recall that?

6 A I do.

7 Q And who -- who were you showing her pictures of?

8 A There was a lot of people. I believe Mr. Mason,  
9 Jerome Thomas, Albert Davis, I believe Ms. Cousins, as well.  
10 I think Mr. Clinkscale. And I can't recall if there was  
11 others in there.

12 Q And when you say Albert Davis, we now know --  
13 like, you were showing the real Albert Davis, not who -- not  
14 Jerome Thomas, right?

15 A Correct. Yes, ma'am.

16 Q Okay. And you also showed her a picture of  
17 Jerome Thomas?

18 A I believe so. Yes, ma'am.

19 Q At that time did you have a picture of -- at all  
20 of David Burns?

21 A Not during that interview, no.

22 Q At the conclusion of that interview, was she  
23 arrested?

24 A She was.

25 Q And so she -- then she was booked into CCDC?

1           A     Yes, ma'am.

2           Q     Detention Center? Sometime after I guess that  
3 she was booked in and she was appointed lawyers. Did you meet  
4 with her again and myself and Mr. DiGiacomo and her attorneys?

5           A     Yes, ma'am.

6           Q     And what was the purpose of that meeting?

7           A     Well, wanted more information on Jerome Thomas's  
8 involvement in the incident.

9           Q     Did you want to charge him with murder in this  
10 case?

11          A     I did.

12          Q     And were you successful in doing that?

13          A     Not for the murder charge. No, ma'am.

14          Q     The murder. When you were speaking with her in  
15 the first interview, the 12-hour -- the 12-hour one, did she  
16 give any information about the location of the gun?

17          A     No.

18          Q     Did she give information about other locations  
19 that weren't known to you yet in terms of the investigation?

20          A     The Brittnae Pines Apartment, she had brought  
21 that location up, saying that Mr. Thomas resided there and  
22 that she believed that Burns and Mason would be there.

23          Q     Did you know at the time you spoke to her that  
24 there would be videotape at the Opera House?

25          A     Did I know at the time I was initially speaking

1 to her?

2 Q Correct.

3 A No.

4 Q Okay. And that -- so that was something that  
5 you didn't have in terms of your investigation?

6 A No. I had no idea about the video yet.

7 Q And did she tell you other locations that she,  
8 Mr. Burns, and Mr. Mason went to shortly before the incident?

9 MR. SGRO: I'm sorry, we in her first one or the  
10 second one?

11 MS. WECKERLY: I'm sorry.

12 BY MS. WECKERLY:

13 Q In her first interview --

14 A Right.

15 Q -- did -- did she give you various locations  
16 that she said she went to with Mr. Burns and Mr. Mason?

17 A Yes, ma'am.

18 Q And were those known to you prior to that first  
19 interview with her?

20 A Well, she -- during that interview, yes. Prior  
21 to speaking with her, no.

22 Q Okay.

23 A No idea.

24 Q After she gives that interview and she's booked  
25 into the detention center, did you make any effort as a

1 detective to try to verify what she had said?

2 A Pretty much everything that she said, yes,  
3 ma'am.

4 Q Okay. So videotape was pulled, phone records  
5 were requested, that sort of thing?

6 A Yes, ma'am. Essentially everything that she --  
7 she stated, we were trying to confirm what she said. Whether  
8 that was through video or cell tower or cell information.

9 Q Okay. And did she also -- did she also explain  
10 that Mr. Thomas had changed his phone number?

11 A Yes, ma'am.

12 Q And did you go to her work and speak to a  
13 colleague of hers?

14 A I did. I believe her name was Ms. Knight.

15 Q And that was to get the subsequent phone number  
16 or verify that she had given it to her?

17 A Yes, ma'am.

18 Q Did you also get videotape from I guess the  
19 Greyhound bus station based on what she had said?

20 A Yes.

21 Q At the point that you conclude the -- the  
22 interview with -- the first interview with Ms. Martinez, who  
23 was identified in the investigation?

24 A She did identify --

25 MR. SGRO: Objection. Your Honor, may we approach

1 briefly?

2 THE COURT: Sure.

3 (Bench conference.)

4 MR. SGRO: Your Honor, I don't necessarily want to  
5 interrupt the flow. I'm assuming -- I had assumed until now  
6 that these were simply foundational to go somewhere else. We  
7 listened to -- painfully, by the way -- hours and hours of  
8 this tape. To now go over again what we did in the --

9 THE COURT: The tape is the best evidence and that's  
10 in evidence.

11 MR. SGRO: Exactly. But this is --

12 THE COURT: That's in evidence.

13 MR. SGRO: So it's --

14 THE COURT: You could ask him what he did next.

15 MS. WECKERLY: They're attacking her credibility, so  
16 what she says that later turns out to be verified is relevant.

17 THE COURT: Then he can testify. It's easier if you  
18 ask nonleading questions about, you know, based upon what she  
19 told you, what did you do?

20 MR. SGRO: Exactly. So, I -- I --

21 MR. DiGIACOMO: As it relates to the [indiscernible].

22 MR. SGRO: I thought this was Ms. Weckerly's witness.

23 MR. DiGIACOMO: Sorry. That's just on video. He has  
24 to say who [indiscernible].

25 THE COURT: I -- he's got to -- he's got to say where

1 -- where he went, what he did, and so on.

2 MR. SGRO: Our objection is that at this point it's  
3 cumulative, it's violative of the best evidence rule.

4 MS. WECKERLY: I think it is, Judge.

5 MR. DiGIACOMO: The one thing that's not on the  
6 videotape is when they're showing the pictures, who those  
7 pictures are.

8 THE COURT: And that's fine. You can do that.

9 MR. DiGIACOMO: So that's what he's --

10 THE COURT: That isn't what you're doing.

11 MR. DiGIACOMO: -- testifying to right now, is who  
12 does she identify to be in those pictures that you're putting  
13 in front of her.

14 THE COURT: Okay. You can do that.

15 MR. DiGIACOMO: Who does she --

16 THE COURT: You can do that.

17 MS. WECKERLY: And if he can't tell who they are, he  
18 can't tell who they are.

19 THE COURT: All right. Well, let's go.

20 MR. DiGIACOMO: Okay.

21 (End of bench conference.)

22 BY MS. WECKERLY:

23 Q So at the conclusion, after you've interviewed  
24 Monica Martinez the first time, who are the suspects that  
25 you've identified in this investigation, not based on her

1 interview, but in terms of your own investigation?

2 A Well, Cousins-- Ms. Cousins, Mr. Mason, and --  
3 well, she confirms Jerome Thomas, so.

4 Q So you have his -- you have Mason's name, you  
5 have Jerome Thomas's name, and you have Monica Martinez's  
6 name?

7 A Correct.

8 Q And at that point in the investigation, had you  
9 heard the nickname D-Shot?

10 A Yes.

11 Q And had you heard it from various witnesses in  
12 different forms?

13 A Yes. There were various D-Shock, D-Shot, there  
14 were -- yes.

15 Q Okay. Were efforts -- I mean, with that type of  
16 nickname, or with that nickname, were you able to initially or  
17 early on in the investigation associate that nickname with an  
18 individual?

19 A Not initially, no.

20 Q And so what efforts were made to associate  
21 D-Shot with an actual name?

22 A Well, we sent still photographs of the video.  
23 We knew that the suspect --

24 MR. SGRO: Objection to what we knew, Your Honor.

25 THE COURT: Well, he's testifying what he on behalf



1 of his office did. So that's okay. Overruled.

2 Go ahead.

3 THE WITNESS: We sent those -- I sent those  
4 photographs to the police department, members of the police  
5 department in San Bernardino, where we knew -- I knew that --  
6 that the suspects had come from in an effort for them to  
7 locate associates of theirs in that area to see if we could  
8 identify who was in that photo. We did a number of photo  
9 lineups, as well. Some of which, a number -- a number were  
10 negative that we did, and then ultimately were positive. And  
11 that's how we identified him.

12 BY MS. WECKERLY:

13 Q Now, at -- okay. At some point you get a  
14 photograph sent to you from San Bernardino essentially that  
15 you put in a photographic lineup to show Monica Martinez,  
16 Devonia, and Tyler Mitchell --

17 A Correct.

18 Q -- Monica's daughter. And -- and that was in an  
19 -- that was an effort, I guess, to associate D-Shot with a  
20 picture?

21 A Correct.

22 Q And showing you what's been admitted as State's  
23 279. And then that one's 283, and State's Proposed 280.

24 With regard to 280, do you recognize what that is?

25 A I do.

1 Q And what is that?

2 A That's the photo lineup that was conducted with  
3 Ms. Devonian Newman.

4 Q Okay. And there appears to be a signature on  
5 the front of 280. Who -- who signed that?

6 A Devonian.

7 Q And there's other writing on the -- on the front  
8 of it. Who wrote that?

9 A I wrote that.

10 Q On the second page, there is the photographic  
11 lineup and then a circle and a name; who wrote that?

12 A Devonian.

13 MS. WECKERLY: State moves to admit 280.

14 MR. SGRO: No objection.

15 MR. LANGFORD: No objection.

16 THE COURT: Be received.

17 (State's Exhibit 280 admitted.)

18 BY MS. WECKERLY:

19 Q Now, I'm putting on the overhead, this would be  
20 the photographic lineup, obviously, of Monica Martinez?

21 A Correct.

22 Q And there are instructions at the top of State's  
23 283. Are those --

24 MR. SGRO: Your Honor, this is cumulative. Ms.  
25 Martinez testified at length about this. Exhibit's already

1     been admitted.

2             THE COURT:   It's an exhibit in -- in evidence.  She  
3     can testify -- he can testify to it.  He took this  
4     photographic lineup, I believe.

5             MS. WECKERLY:  He did.

6     BY MS. WECKERLY:

7             Q     Looking at 283, there are instructions that are  
8     printed, I guess, on the actual -- the photographic lineup  
9     document.  Do you remember if Ms. Martinez read those or if  
10    you read them to her?

11            A     I don't recall which one of us read them.

12            Q     Okay.  And then there's a statement part of the  
13    lineup where there's comments that says, "The picture I  
14    circled and initialed by the person I know as D-Shot.  I'm 100  
15    percent sure."

16            A     Correct.

17            Q     Who wrote that?

18            A     Ms. Martinez.

19            Q     And then I'm going to flip to page 2 of that  
20    document and there appears to be a circle and initials?

21            A     Yes, ma'am.

22            Q     Who would have written that?

23            A     Ms. Martinez.

24            Q     And so that's who she -- she circled as D-Shot?

25            A     Correct.

1 Q And that was -- I'll just show you the date --  
2 that was administered to her on the 16th of September --

3 A Yes, ma'am.

4 Q -- 2010? You also showed a photographic lineup  
5 to Tyler Mitchell, her daughter?

6 A Correct.

7 Q And it looks like Tyler's was administered on  
8 the 17th, so the next day?

9 A Yes, ma'am.

10 Q And then she would have -- we've gone over her  
11 comments. But she -- she would have written the -- the  
12 comments that are under the statement portion?

13 A Yes, ma'am.

14 Q Flipping to page 2 of State's 279; are those --  
15 there's a circle and initials. Who wrote that?

16 A Ms. Mitchell -- Tyler.

17 Q Now, when you went to show Devonia the lineup,  
18 were you by yourself or with another detective?

19 A Detective Kyger.

20 Q The top of Devonia's lineup has writing up here.  
21 Would you have completed that?

22 A Yes, ma'am.

23 Q And it looks like it was shown to her on the  
24 29th at 12:41, which is 10 --

25 A 12:41.

1 Q It's 12:41?

2 A On that one, yes, ma'am.

3 Q Okay. And then there's a statement that says  
4 what?

5 A It says, "I believe it's Picture No. 5 because  
6 of his eyes. I'm 10 percent sure he's the one who shot my  
7 mom. I'm not sure."

8 Q Okay. And that -- and then it says that  
9 "Statement written by Detective Bunting in Devonia Newman's  
10 words, witnessed by Detective Kyger."

11 A Correct.

12 Q So did she say those actual words when she was  
13 looking at the lineup?

14 A Yeah. Whenever we -- whenever we write somebody  
15 else's statement on their behalf, we write it verbatim of  
16 whatever it is that they say.

17 Q Okay. And when -- did she use the words "10  
18 percent"?

19 A She did.

20 Q Okay. And did you ask her or have any further  
21 conversation with her about what 10 percent meant?

22 A I did.

23 Q And what did she say?

24 A Well, she kind of struggled with what percent  
25 was, which was -- honestly, was my mistake for asking her

1 percentage. That's just a habit we have with adults. So I  
2 did that with her. And I could tell she really wasn't  
3 grasping it. So I got into, well, that would be like an F in  
4 grades. And -- and then she -- I believe she -- during the  
5 course of this conversation, I think she said, Well, then 20  
6 percent. I said, you don't have to change it. You know, just  
7 kind of explained to her that, you know, you don't have to  
8 change what you're saying. I just want to understand that you  
9 understand. It was basically apparent to me that she didn't.  
10 So we kind of stopped the whole percentage and grades issue.

11 Q Okay. But you wrote her comments about being 10  
12 percent?

13 A I did.

14 Q At least initially?

15 A Yes.

16 Q And flipping to the second page of what's been  
17 admitted as 280, that's -- is that her writing, the circle and  
18 then the -- the name Devonia?

19 A It is.

20 Q Now, at some point you -- well, let me ask it  
21 this way. Early on in the investigation, did you have any  
22 possible murder weapon located?

23 A Early on? No.

24 Q There wasn't one at Monica's house?

25 A No.

1 Q Or at Job-Loc's Brittinae Pines apartment?

2 A No, ma'am.

3 Q And how did you go about locating the weapon?

4 A Well, we received a phone call, we being the  
5 homicide office, received a phone call from I believe her name  
6 is Ulonda Cooper. And she stated that Donovan Rowland had  
7 come to her house, he was an acquaintance of her son, and had  
8 attempted to sell them a firearm.

9 Q Based on that phone call, did you do any  
10 investigative followup?

11 A I did.

12 Q What was that?

13 A Well, we identified Donovan Rowland.

14 Q And -- and up till that point in the  
15 investigation, was Donovan Rowland a name that you had known?

16 A No, I don't believe so at that point.

17 Q Okay. Did you do any investigation, I guess,  
18 prior to coming in contact with him to see if -- if you could  
19 find out more about him?

20 A Well, we attempted to meet with Ms. Cooper.

21 Q Was that successful?

22 A No. No, it wasn't.

23 Q Okay. Did you eventually find a possible  
24 residence for Mr. Rowland?

25 A We did.

1 Q Okay.

2 A Fountain Falls.

3 Q And was that where his -- a relative of his  
4 lived?

5 A Yes. It was his grandmother and I believe his  
6 father lived there, as well.

7 Q Okay.

8 A Definitely his grandmother.

9 Q Was the grandmother present when you went to  
10 that location?

11 A She was.

12 Q Was Mr. Donovan Rowland present?

13 A He was not.

14 Q Later, do you get contacted about Mr. Rowland  
15 being present, like, by his father?

16 A Correct. I believe his name is Terence, called  
17 and notified us. We left -- we left our information there to  
18 contact us in the event that Donovan returned to the  
19 residence.

20 Q So eventually you get in contact with Mr.  
21 Rowland?

22 A Yes, ma'am.

23 Q You interview him? Yes?

24 A Yes. Sorry.

25 Q Okay. Based on his interview, do you look



1 somewhere else for the -- for the gun?

2 A We did. He informed us that Anthony Lasseter  
3 had possession of the gun, that -- that he had given it to  
4 Lasseter.

5 Q And based on that information, did you try to  
6 find an address for Anthony Lasseter?

7 A Yes, we did.

8 Q And once you had -- had that, did you -- did you  
9 prepare a search warrant or did he give you consent to search?

10 A I think both his mother and he both gave us  
11 consent --

12 Q And you were --

13 A -- to search the residence.

14 Q Then you searched the residence; does he tell  
15 you where the gun is?

16 A Yes. He directs us to it. We didn't have to  
17 search the whole residence. He directed us to his closet in  
18 his room.

19 Q So he was cooperative in -- in some sense in  
20 giving the gun?

21 A Yes, ma'am.

22 Q I mean, he didn't call initially, but...

23 A Right.

24 Q Detective, I'm showing you what's been marked as  
25 State's 163 to 169. Could you just look through those and let

1 me know when you're done, please.

2 A Okay.

3 Q Do those photographs fairly and accurately  
4 depict the gun itself and also its location at Mr. Lasseter's?

5 A Yes, ma'am.

6 MS. WECKERLY: The State moves to admit 163 to 169 --  
7 169.

8 MR. SGRO: No objection.

9 MR. LANGFORD: No objection.

10 THE COURT: They'll be received.

11 (State's Exhibit 163 through 169 admitted.)

12 MS. WECKERLY: May I have this switched back over?  
13 Thank you.

14 BY MS. WECKERLY:

15 Q I'm putting on the overhead 163. And can you  
16 describe for the members of the jury what they're looking at  
17 in that photograph?

18 A We're in -- inside Mr. Lasseter's residence  
19 taking a photo of the room, the outside of the room where the  
20 firearm's located.

21 Q And we'll put on 164 next.

22 A Just a closer --

23 Q We'll rotate it. Hold on one second.

24 A Sorry.

25 Q Now what are we looking at?

1           A     Basically, the same thing, just a little bit  
2 closer.

3           Q     And where -- I think this will show it a little  
4 better. This is 165. Does that show where the gun is? Can  
5 you see it?

6           A     Yes.

7           Q     Can you circle for the members of the jury where  
8 it was -- or where it is in that photograph?

9                 And now we'll put on the overhead 167. That's the  
10 gun once it was recovered?

11          A     Yes, ma'am.

12          MS. WECKERLY: Would you put on 168, please.

13          Q     And what type of gun is that?

14          A     It's a .44 Ruger.

15          Q     A revolver or automatic?

16          A     Revolver. Sorry. It's a revolver.

17          Q     During your investigation, did you have contact  
18 with Mr. Mayo after the -- after the 7th, I guess?

19          A     Yes.

20          Q     And can you describe for the members of the jury  
21 your contact with him I guess in relation to fragments or  
22 firearms evidence?

23          A     With Mr. Mayo?

24          Q     With Mr. Mayo.

25          A     I'm sorry, can you just ask that question --

1 Q Sure.

2 A -- one more time, please?

3 Q Did Mr. Mayo contact you about stuff found in  
4 his TV?

5 A Correct. Yes, ma'am.

6 Q Can you describe how that went?

7 A He notified us and let us know that while he was  
8 moving outside of the -- the Meikle address, that he had  
9 located two holes in the wall, as well as two holes in the TV  
10 that were in his master bedroom, which is the same ones in  
11 reference to what I was speaking of earlier. But those were  
12 -- we were notified of a later date.

13 Q Did you also see Mr. Mayo later on in family  
14 court?

15 A I did.

16 Q And that -- the purpose of that was a proceeding  
17 having to do with his parental rights?

18 A Correct.

19 Q Did Mr. Mayo contact you about text messages  
20 that he had received, as well?

21 A He did.

22 Q And do you recall just approximately how long  
23 after the August 7th, 2010, incident that would have been?

24 A On the text message? I'm not sure, ma'am --

25 Q Okay. Do you have that --

1 A -- of actual time.

2 Q -- in your report?

3 A Yes.

4 Q Could you refresh your recollection with that  
5 and then if you could just tell us the page for counsel.

6 A Sorry. It's a big report. Bear with me,  
7 please.

8 Q I -- yeah.

9 A Okay. It looks like 9/14/10.

10 Q Okay. So I guess maybe five or six week --  
11 well, actually, really a month.

12 A Five?

13 Q Yeah.

14 A Five?

15 Q And he shows you messages on his phone that --

16 A Actually, I'm -- that's for the -- the TV.

17 Q Oh, okay.

18 A I apologize.

19 Q That's okay. I think it's on page 28.

20 A That second paragraph on 10 -- 10/1.

21 Q 10/1 of '10?

22 A Yes, ma'am. Do you want me to read that?

23 Q No. But that's when you have contact with him  
24 where he shows you his phone, correct?

25 A Correct. Yes, ma'am.

1 Q And he shows you text messages from a 512  
2 number?

3 A Which is identified as Jerome Thomas, yes,  
4 ma'am.

5 Q Okay. And do you take any steps to memorialize  
6 those messages?

7 A We do. We take the phone. We ask his  
8 permission to have the phone. And -- and then we take it to  
9 our electronic crimes unit so that they can document the  
10 information in those text messages.

11 Q And is there -- was the documentation of this  
12 phone unique because of the -- the age of the phone?

13 A I'm not -- I'm sorry. I'm not sure I follow  
14 you.

15 Q The -- how -- how did the -- how did the images  
16 or the text messages get documented by Metro?

17 A They're -- they're video'd, videotaped on -- at  
18 the crime unit that --

19 Q And why were they videotaped and -- instead of,  
20 like, documenting in another way?

21 A Well, I think it's by the mechanism of which  
22 they do it. But I don't -- I don't have the technical answer  
23 for you on that.

24 Q Okay. We'll play those, which has been admitted  
25 as State's 294.

1           And looking at 294, are those the messages that he  
2 showed you? And you can actually see the number that they're  
3 from, that 512 number.

4           A     Okay.

5                     (Audio/Video played.)

6           Q     Okay. They're all from that 512-629 --

7           A     Yes. Yes, ma'am. Sorry, it just popped  
8 through. So it was scrolling. So 512, yes, ma'am.

9           Q     Okay.

10          MS. WECKERLY: Your Honor, may we approach?

11          THE COURT: Yes. You want a recess this morning,  
12 ladies and -- yes, they do.

13                 During the recess it's again your duty not to  
14 converse among yourselves or with anyone else on any subject  
15 connected with this trial, or to read, watch, or listen to any  
16 report of or commentary on the trial from any medium of  
17 information including newspapers, television, or radio. You  
18 may not form or express an opinion on any subject connected  
19 with this case until it's finally submitted to you.

20                 We'll be in recess for about 10 minutes. Court will  
21 be at ease while the jury leaves.

22                     (Jury recessed at 11:25 a.m.)

23          THE COURT: The record will reflect that the jury has  
24 left the courtroom.

25          MS. WECKERLY: Your Honor, all I have left is playing

1 his statement with the detective. So I'll just ask him, like,  
2 when he had contact and then we'll play the statement. That's  
3 when the Court will have to give the jury the advisement that  
4 it -- it's been edited.

5 THE COURT: Okay.

6 MS. WECKERLY: And then the statement is about --

7 MR. DiGIACOMO: 53 minutes.

8 MS. WECKERLY: So I don't know if you want us to  
9 break in the middle of it or how you prefer to do that.

10 THE COURT: Well, let's see. What time it is here?

11 MS. WECKERLY: It's 11:30.

12 THE COURT: It's 11:30. Well, we could go till  
13 12:30, I guess.

14 MS. WECKERLY: Okay.

15 THE COURT: If -- if that -- would that be  
16 acceptable?

17 MS. WECKERLY: That's fine. I know the defense wants  
18 to look at -- or argue about the letters when we come back  
19 from the lunch break. And I -- that's the last thing I have  
20 to do with the detective, so that timing will probably work.

21 THE COURT: Okay. Take a few minutes right now, then  
22 we'll do the video, then we'll have lunch, and then we'll  
23 argue about letters.

24 MR. DiGIACOMO: It's actually audio. But, yes.

25 THE COURT: Whatever.



1 (Court recessed at 11:27 a.m., until 11:44 a.m.)

2 (In the presence of the jury.)

3 THE COURT: All right. You may be seated. State of  
4 Nevada vs. Burns and Mason. The record reflect the presence  
5 of the defendants, their counsel, the district attorneys, and  
6 all members of the jury.

7 Ladies and gentlemen, I'm -- I'm advised that the  
8 State is going to play the interview now of -- with Mr. Burns.  
9 Actually, the good news -- the interview that you're going to  
10 hear is about an hour, they tell me. That's good news,  
11 because the actual interview is much longer than that. They  
12 have cut down a lot of the irrelevant parts that aren't  
13 necessary for you to listen to, so it won't be as long. But  
14 it's only about an hour this way.

15 So anyway, we're going to do that, then we're going  
16 to have our luncheon. Okay.

17 BY MS. WECKERLY:

18 Q Detective Bunting, you mentioned earlier in  
19 direct examination that you get the photograph of David Burns  
20 from officers in San Bernardino?

21 A Correct.

22 Q And sometime after that a warrant is issued, and  
23 you go down to San Bernardino and meet with Mr. Burns?

24 A Yes, ma'am.

25 Q And was Detective Wildemann with you?

1 A He was.

2 Q He was in custody at that point?

3 A Yes, ma'am.

4 Q And he was informed of his Miranda rights?

5 A Yes, ma'am.

6 Q After that, did he speak with you and Detective  
7 Wildemann?

8 A He did.

9 Q And was that interview memorialized or recorded  
10 in any way?

11 A Yes, ma'am. It was recorded.

12 MS. WECKERLY: And, Your Honor, now with the Court's  
13 permission, we will publish 332, which is the recording.

14 THE COURT: Okay. Which is the edited portion of the  
15 video. So don't be concerned that they're edits.

16 MS. WECKERLY: Audio.

17 (State's Exhibit No. 332 played.)

18 THE COURT: That concludes that exhibit?

19 MS. WECKERLY: Yes, Your Honor.

20 THE COURT: Okay. Let's take our recess now, ladies  
21 and gentlemen.

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

1 information including newspapers, television, or radio. You  
2 may not form or express an opinion on any subject connected  
3 with this case until it's finally submitted to you.

4 It's about 12:40. Let's make it 2:00, because I've  
5 got to work with counsel on a couple of things. So you can  
6 leave at this time. We'll see you at 2:00.

7 (Jury recessed at 12:40 p.m.)

8 THE COURT: All right. Record reflect that the jury  
9 has exited the courtroom. You want to argue about letters  
10 now?

11 MR. DiGIACOMO: Judge, there's two more letters that  
12 we're going to grab at lunchtime. So I guess we'll be back at  
13 1:40.

14 THE COURT: So you come back about 1:40. That'll  
15 give us 20 minutes to --

16 MR. DiGIACOMO: We should have it all done by 2:00.

17 MR. SGRO: We're also thinking, Your Honor, because  
18 this'll be close to the end of the day, that'll give us -- Mr.  
19 Oram and I -- time to regroup tonight. So if we do have  
20 anything, it'll be very brief, and we'll just come back  
21 tomorrow at 9:30 prepared to either put people on or not, do  
22 the jury instructions, and then start our --

23 MR. DiGIACOMO: We'll be able to argue about Mr.  
24 Shoemaker and whether or not he'll be allowed to testify --

25 MR. SGRO: Right.

1 MR. DiGIACOMO: -- to what they want him to testify  
2 to.

3 MR. SGRO: We can do all that at the end of the day.

4 MR. DiGIACOMO: Because if -- we have to take a break  
5 between ours and --

6 THE COURT: Okay. And can we settle jury  
7 instructions at the end of the day?

8 MR. SGRO: Yeah. We can do all --

9 MR. DiGIACOMO: I think we can do that, too.

10 MR. SGRO: -- all the logistics.

11 THE COURT: All right.

12 MR. SGRO: Thanks, Judge.

13 THE COURT: See you at 1:40.

14 (Court recessed at 12:42 p.m. until 1:59 p.m.)

15 (Outside the presence of the jury.)

16 THE COURT: All right. Back on the record. With  
17 regard to the exhibits, and I had the numbers in front of me  
18 and now counsel has them.

19 MR. DiGIACOMO: Yes, I will -- Judge, 337 is a  
20 letter from Job-Loc to Monica Martinez.

21 MR. SGRO: So that's out.

22 MR. DiGIACOMO: 338 is a letter from Job-Loc to  
23 Willie Mason.

24 MR. SGRO: Out.

25 MR. DiGIACOMO: 340 is a letter from Job-Loc to

1 Willie Mason.

2 THE COURT: I agree that the statements that each of  
3 the defendants wrote would be admissible as to them.

4 MR. DiGIACOMO: The rest of these are -- I guess I  
5 can put them in order for now. But 336, 339, 341, 342, 343,  
6 344, and 345 are all letters either written by Mr. Mason or by  
7 Mr. Burns.

8 THE COURT: Okay. I would agree that those are  
9 admissible as against the person that wrote them.

10 MR. SGRO: Thank you, Your Honor. Just very  
11 briefly, Your Honor. I know we had a colloquy before we got  
12 on the record to try and get to the point of what we mean.

13 THE COURT: Well, I agreed with you as to Job-Loc.

14 MR. SGRO: Yes, sir.

15 THE COURT: And we're excluding those.

16 MR. SGRO: Yes, sir. And I think there were three  
17 or four that Mr. DiGiacomo just rattled off, and those have  
18 been excluded. The issue with Mr. Burns's letters, Your  
19 Honor, is we don't believe them to be of anything beyond  
20 marginal relevance. They are far more prejudicial than they  
21 are probative. A proffer was made at the break that these  
22 letters would go to impeach the statements that were made to  
23 the detective by Mr. Burns about not being able to remember  
24 anything. The letters --

25 THE COURT: Well, they do.

1 MR. SGRO: Well, the letters, though, according to  
2 the proffer made by the State, reference activities that  
3 occurred in the context of reviewing discovery. It -- it does  
4 not begin with I snowed the police, this is what I actually  
5 know. They're all written from the context of the discovery.  
6 So given the marginal relevancy, we feel that they're far more  
7 prejudicial than they are probative.

8 And I understand because of the nature of this case,  
9 certain things have been discussed, but now -- relative to  
10 custody status. But now we're clearly going to have a  
11 continuum of time through which the jurors are going to  
12 continue to be advised of Mr. Burns's custody status. And I  
13 have a letter here of September of 2011, which is 336.

14 MR. DiGIACOMO: I think that's the only 2011.  
15 Everything else is 2010. October 27, 2010.

16 MR. SGRO: 339 is 2010.

17 MR. DiGIACOMO: Sometimes the individual defendants  
18 date them. Oh, this is the piggyback letter.

19 THE COURT: If you want it on the record, you're  
20 going to have to speak up. They can't hear you.

21 MR. SGRO: Yes, sir. I'm just looking for the date.

22 THE COURT: And that goes to Mr. DiGiacomo, too.

23 MR. DiGIACOMO: I don't know if you can read the  
24 time stamp. The time stamp --

25 MR. SGRO: Oh, there it is.

1 MR. DiGIACOMO: -- is November 17, 2010.

2 MR. SGRO: That's from Mason. There's another one  
3 in December of 2010, and that one is 343. And that's --  
4 that's the total of the ones of Mr. Burns. So we would object  
5 to the 2011 letter, Your Honor, which is 336 on the basis of  
6 more prejudicial than probative for the revelation of the  
7 custody status as well as the marginal relevance the actual  
8 statements he even possess because --

9 THE COURT: What's the objection to that -- what's  
10 the purpose of that letter?

11 MS. WECKERLY: In the -- at the very bottom of the  
12 letter on the first page he's writing to Willie Mason and he's  
13 saying you have me wondering about you, like are you going to  
14 take probation and go against me. I'm not questioning you,  
15 certainly, I'm just lost without a curtain. And then he's --

16 THE COURT: I think we can exclude that letter, too.

17 MR. DiGIACOMO: And just for the record, Judge --

18 THE COURT: We can exclude that letter.

19 MR. DiGIACOMO: -- they put -- but they put in --

20 THE COURT: That's of no real --

21 MR. DiGIACOMO: -- David Burns's letters to Monica  
22 Martinez during this time period and the jury is already aware  
23 of Mr. Burns's custody status during this time period.

24 THE COURT: We'll just -- we'll use the other  
25 letters, the 2010 letters.

1 MR. SGRO: Okay.

2 THE COURT: Okay.

3 MR. SGRO: And then as to -- may I borrow this. And  
4 as to 334, 345, and 342, those three letters, Your Honor, are  
5 from Willie Mason to David Burns. And it is --

6 MR. DiGIACOMO: No, they're all to David Burns,  
7 aren't they?

8 MR. SGRO: Oh, I'm sorry.

9 MR. DiGIACOMO: Oh, there's one to Job-Loc.

10 MR. SGRO: Oh, then 345 -- 345 clearly, on behalf of  
11 David Burns, has no relevancy to us. If we're here at a  
12 separate trial, a letter from Willie Mason to Jerome Thomas  
13 would be excluded.

14 THE COURT: I'll explain to the jurors that the  
15 letters by Mason are only admissible as to the case against  
16 Mason, and the letters by Burns are only admissible as to the  
17 case against Burns.

18 MR. SGRO: Okay. So I appreciate the --

19 THE COURT: Okay.

20 MR. SGRO: -- the limiting instruction.

21 THE COURT: Is that agreeable?

22 MR. SGRO: Well, our -- obviously our position is  
23 that they should be excluded because --

24 THE COURT: You want me to so instruct the jury?

25 MR. SGRO: Oh, yeah, assuming that my motion to



1 exclude them is denied, then, yes, as a fallback position.

2 THE COURT: Well, I've excluded all Job-Loc's. I've  
3 excluded the 2011 letter from Burns.

4 MR. SGRO: Yes, sir.

5 THE COURT: All right. I think that that's -- the  
6 rest of them, I think, are certainly admissible. They're  
7 statements by the defendants.

8 MR. LANGFORD: And I have a 2011 letter, as well,  
9 September 23, 2011.

10 THE COURT: What's the -- what's the relevancy of  
11 that one?

12 MS. WECKERLY: Let me see it.

13 MR. LANGFORD: It's Mason to Burns, Your Honor.

14 MS. WECKERLY: It's Mason to Burns explaining to him  
15 that he's not going to essentially testify against him.

16 MR. LANGFORD: So, I mean --

17 THE COURT: I'd like to exclude -- I don't like  
18 that.

19 THE CLERK: What number is that?

20 MS. WECKERLY: That's 344.

21 THE COURT: Let's -- let's leave 344 out. I like --  
22 I like leaving that out. I don't like that.

23 All right. Are we ready to bring the jury back?

24 MR. DiGIACOMO: We are.

25 MR. LANGFORD: Mr. Mason would also like a limiting

1 instruction, Your Honor.

2 THE COURT: Okay.

3 MR. LANGFORD: Just for the record.

4 THE COURT: When we get to the letters. Who's going  
5 to put the letters in?

6 MS. WECKERLY: We're going to have the detective  
7 read them.

8 THE COURT: Okay. He can read them?

9 MR. DiGIACOMO: We've just got to redate them for  
10 just a second here.

11 THE COURT: Do you have to read them all? I mean,  
12 can't you just read the portions that are relevant?

13 MR. DiGIACOMO: We are only reading the portions  
14 that are relevant.

15 THE COURT: Okay.

16 MR. SGRO: I'll be back in two minutes, Your Honor,  
17 literally. Maybe less.

18 MR. ORAM: Where are you going?

19 (Pause in the proceedings.)

20 (In the presence of the jury.)

21 THE COURT: All right. State versus Burns and  
22 Mason. The record will reflect the presence of the  
23 defendants, their counsel, the District Attorneys and all  
24 members of the jury.

25 I think we need the detective back on the stand.

1 THE MARSHAL: Yes, sir.

2 THE COURT: Detective, you may be seated. And  
3 you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. We're still on direct  
6 examination, Ms. Weckerly.

7 MS. WECKERLY: Thank you.

8 BY MS. WECKERLY:

9 Q Detective, in the -- in the recording that we  
10 just heard of the interview between yourself and Mr. Burns and  
11 Detective Wildemann, Detective Wildemann mentions that -- or  
12 tells Mr. Burns that Willie Mason had essentially blamed the  
13 whole thing on him. Was that true?

14 A No.

15 Q Is that sort of an interviewing technique that  
16 detectives use sometimes?

17 A It is.

18 Q During the interview there is a discussion  
19 about a lick. What is a lick?

20 A A robbery.

21 Q And there's other points during the interview  
22 where you or -- you or Detective Wildemann are telling Mr.  
23 Burns to -- to sort of sit up or pay attention. Could you  
24 describe what he was physically doing at the time?

25 A Well, he was slouching far into his chair.

1 And as you heard was -- was humming while we were asking him  
2 questions. And then just kind of looking off or away. Just  
3 disinterested for the most part, I guess.

4 Q And after your interview with Mr. Burns, did  
5 you make a request that correspondence between the defendants  
6 in this case be kept?

7 A I did.

8 Q And was that copied and given to you?

9 A Yes, ma'am.

10 MS. WECKERLY: Counsel, I think you saw these.

11 MR. SGRO: Yes.

12 BY MS. WECKERLY:

13 Q Detective, I'm going to show you what's been  
14 marked as State's 345, 339, 341, 343, and 342. Do you  
15 recognize those items?

16 A I do.

17 Q Are those correspondence between the  
18 defendants in this case?

19 A It is.

20 Q And are they copies that you received based on  
21 your request?

22 A Yes, ma'am.

23 MS. WECKERLY: State moves to admit those exhibits,  
24 Your Honor.

25 THE COURT: All right.

1 MR. SGRO: Just what we previously discussed, Your  
2 Honor.

3 MR. LANGFORD: Same.

4 THE COURT: All right. They'll be received.

5 (State's Exhibit 339, 341 - 343, and 345 admitted.)

6 THE COURT: Ladies and gentlemen, these are, as I  
7 understand it, letters written by either Mr. Burns or Mr.  
8 Mason. To the extent that the officer reads portions of it,  
9 they're not going to read them all, but there are portions of  
10 the letters they're going to read into evidence that may be  
11 relevant. To the extent that they do anything that Mr. Burns  
12 has said is admissible against Mr. Burns in the case against  
13 him. Anything Mr. Mason has said is admissible in the case  
14 against Mr. Mason. Okay.

15 BY MS. WECKERLY:

16 Q And the first one is -- appears to be a letter  
17 from Mr. Mason to Jerome Thomas.

18 A Correct.

19 Q So Mr. Mason is the writer?

20 A Yes, ma'am.

21 Q And if you look on the second page of the  
22 exhibit, is there a postmark on there?

23 A There is.

24 Q And what is that?

25 A It looks like possibly the 20th of October.

1           Q       Okay. And just for -- it's a pretty light  
2 copy.

3           MS. WECKERLY: For counsel's benefit, I'm going to  
4 just concentrate on the first paragraph.

5 BY MS. WECKERLY:

6           Q       And can you read that into the record? Or if  
7 my copy is darker, you can use mine.

8           A       I'll see if I can --

9           MR. DiGIACOMO: Counsel, do you want me to put what  
10 we have up on the overhead?

11          MS. WECKERLY: Yes, and that's 345.

12          MR. DiGIACOMO: Page 3?

13          MS. WECKERLY: Page 1.

14          MR. DiGIACOMO: First page of the writing, but third  
15 page of the exhibit?

16          MS. WECKERLY: Yes.

17          MR. DiGIACOMO: Okay.

18          THE WITNESS: Just here to here?

19 BY MS. WECKERLY:

20          Q       Here to there.

21          A       Okay. That's crazy. Despite the obstacles I  
22 face, I continue to keep head high. I hope -- I hope this  
23 either finds you in good health due to your unfortunate  
24 situation with your leg and all. Let's get down to it now. I  
25 was always told what don't come out in the wash, will in the

1   rinse. And what the washing machine can't catch, the lint  
2   trap on the dryer will. It ain't about thinking at this  
3   point, it's knowing and what's in black and white. Now I just  
4   got my motion of the discovery and both chicks turned into  
5   Mariah Carey. I always told you -- let's go to right there.

6           Q       If you can't read the word, you can just skip  
7   it.

8           A       It hit the fan. It wouldn't remey (phonetic).  
9   And once you get your motion of discovery -- and in  
10   parentheses -- (in black and white) you will then know.

11          Q       Okay. And now let's look at 339 is a letter  
12   to Jerome Thomas from David Burns.

13          A       From Burns to Thomas.

14          Q       Yeah.

15          A       Correct.

16          Q       So David Burns is the writer of 339?

17          A       Correct.

18          Q       And we'll flip to page 2 of the letter.

19          MS. WECKERLY: Are you with me there, Marc?

20          MR. DiGIACOMO: So is it page 3 of the exhibit or  
21   page 2 of the exhibit?

22          MS. WECKERLY: 2.

23          MR. DiGIACOMO: Page 2 of the exhibit?

24          MS. WECKERLY: 2.

25          MR. DiGIACOMO: Okay.

1 MS. WECKERLY: Yes.

2 BY MS. WECKERLY:

3 Q Can you read that, Detective, please?

4 A How far?

5 Q The whole way through.

6 A The whole letter?

7 Q Well, until the -- until the very top of page  
8 2.

9 A Right here?

10 Q Yes. Thank you.

11 A The dog is solid. 34 of them things. What it  
12 do, my Loc? I got my paperwork. Go mouth is not the culprit  
13 and it is actually the black fucking ho -- or hope. We went  
14 to court today. The Loc brought all his paperwork. The fuck  
15 boy West put your name all through the shit and I seen it with  
16 my own eyes. They added battery with a deadly weapon  
17 resulting in substantial bodily harm. That is the eighth  
18 count.

19 The stupid pinche heina, somehow her daughter taking  
20 the stand along with that black piece of shit who's putting  
21 you in the bullshit. They have something about some T-Mobile  
22 shit and Metro PCS. I don't know all details. I'm just  
23 keeping you updated. Donovan Rowland is the bitch ass nigga  
24 name. He got in detail, which is all a lie. But bitch boy  
25 got himself out of a firearm charge, so-called cooperating



1 with the alpha bitch boys.

2 Greyhound pictures of us which really don't mean  
3 shit, but our weekend was over in Vegas. I got a new copy of  
4 charges with you all through the shit. You can beat the punk  
5 shit. After all, you didn't know and still don't got nothing  
6 to do with it. Dogg got some good news with his shit. The  
7 survivor is not IDing him, which is good. He didn't have shit  
8 to do with it neither. The Mexico ho saying he get in  
9 counting money, but that's the only thing against him.

10 He good and the nigga is smart. He gave me some  
11 motions to file and shit to look up. I'm on the top of this,  
12 bitch, on the ninth floor. So if you know someone with a  
13 chopper, the one with propellers, tell them to come. Get you  
14 a blitzer and bring some awa (phonetic), thoop, thoop, thoop.  
15 Oh, yeah, they told Brody that he isn't eligible for the death  
16 penalty. I think because he ain't got not front teeth.

17 Q Okay. Now we'll move to 341, which is written  
18 by who?

19 A It's from David Burns to Willie Mason.

20 Q Okay. And it'll be page 3 at the bottom. And  
21 if I could have you read starting here.

22 MR. DiGIACOMO: Is that the right one?

23 THE WITNESS: And how far?

24 BY MS. WECKERLY:

25 Q So to one of us on the second page.

1           A       To right here?

2           Q       Yes.

3           A       I'm sorry, one more time. Right there?

4           Q       And you start at they told me.

5           A       They told me they just got pictures and DVDs  
6 of us walking through casinos and on the strip. Damn, it's  
7 true what they say. Conspiracy will railroad the clique.  
8 That only shows what I was wearing, though, basically, and  
9 that us three were together on the strip. They also got  
10 pictures of you walking onto the Greyhound in L.A. which don't  
11 mean shit. But they trying to say you basically was hoping to  
12 get away of some sort. That -- that just means we were done  
13 with our visit to LV.

14                 So I don't go further, where again to stop?

15           Q       Okay. And then I'll direct you to stop at --

16           A       One of those?

17           Q       Yes.

18           A       The smoker got a gang of different stories  
19 which all point me as El Capitan that had on blue overalls and  
20 curly hair. The Dogg said it's possible to get her statement  
21 ruled out -- to get her statement ruled out because she got  
22 five of them. Little mama, the victim, says I had on blue  
23 overalls, orange hat, white shirt under with curly hair. Some  
24 way somehow I have a law book and it gives examples about  
25 IDing witnesses, how stress levels can somehow differ what a

1 person sees or how she could have seen me before it happened  
2 and thought it me somehow. Shit, I don't know. It's going to  
3 have to play out some way, whether in my favor or not. Dogg  
4 got news last time we went to court that he was not IDed,  
5 which is good for at least one of us.

6 Q And on the next page of that letter, is there  
7 a page he wrote that says at the top pertain to me?

8 A Correct.

9 Q And just read -- can you read what the top  
10 line of that section is, or what -- what he wrote?

11 A Section 2: the psychology of eyewitness  
12 identification. 5, what factors tend to cause eyewitnesses to  
13 identify the wrong person.

14 Q Thank you. Let's look at Exhibit 343. And  
15 who is the writer of that letter?

16 A David Burns.

17 Q And who is the letter directed to?

18 A Willie Mason.

19 Q And I'd like you to start on page 2. Starting  
20 with he says -- or, yes, are you there?

21 A I am.

22 Q And ending with enough.

23 A He says so, for momo and moker are the only  
24 things I got to worry about. And I nor he knows where that  
25 bitch at. He asked me where she -- and there's a hole through

1 it, I can see that. I'm going to send her a Christmas card.  
2 Ha ha. He says someone says that they seen my at her house  
3 afterward, which is a lie. He probably gonna pay her daughter  
4 or take some shit off her mom. If that bitch lie for these  
5 mother fuckers, she's saying she only seen me once, which is  
6 good and bad. I don't know what moker mommy going to do, but  
7 if she was smart she would see that she's incriminating  
8 herself enough on the bullshit.

9 Q Okay. And then lastly I'd like you to look at  
10 342, which is written by who?

11 A From -- it says W. Mason to David Burns.

12 Q Okay. And looking at the next page, if you  
13 could just read the -- the sentence where it says my --  
14 starting with my personal experience.

15 A And to where?

16 Q Just to, I guess, the end of the paragraph.

17 A My personal experience has taught me that you  
18 don't get bit by the snakes in the grass. You get bit by the  
19 one you allow into your house. Sometimes the biggest snake in  
20 the grass is the woman you're laying next to.

21 Q Thank you. Now, Detective, do you see David  
22 Burns in the courtroom today?

23 A Yes, ma'am.

24 Q Could you point to him and describe what he's  
25 wearing, please.

1           A       He's the third gentleman over on the defense  
2 side, black male adult with his hair pulled back in a ponytail  
3 wearing a blue short.

4           Q       And is there anything about his appearance  
5 that's different than when you saw him in 2010?

6           A       His hair is definitely longer.

7           MS. WECKERLY: Your Honor, may the record reflect  
8 identification of Defendant Burns?

9           THE COURT: The record will so reflect.  
10 BY MS. WECKERLY:

11          Q       And, sir, do you see Willie Mason in the  
12 courtroom?

13          A       I do.

14          Q       Could you point to him and describe what he's  
15 wearing, please?

16          A       He's the last gentleman to the right wearing a  
17 plaid shirt, collared shirt, black male, and his hair is  
18 short.

19          MS. WECKERLY: Your Honor, may the record reflect  
20 identification of Defendant Mason?

21          THE COURT: The record will so reflect.

22          MS. WECKERLY: I'll pass the witness, Your Honor.

23          MR. SGRO: Thank you, sir.

24                   CROSS-EXAMINATION

25 BY MR. SGRO:

1 Q Good afternoon, Detective.

2 A Good afternoon.

3 Q Just a couple preliminary things, first of  
4 all, I know you may not understand why it's relevant, but how  
5 tall are you, sir?

6 A 5'8 and a half.

7 Q 5'8 and a half. So if someone had described  
8 you as 6'4, would that person be off?

9 A Slightly.

10 Q Yeah. Now, you were asked a number of  
11 questions. And before we get into the specifics, you have  
12 written reports in this case; correct?

13 A Correct.

14 Q You have testified in front of the grand jury  
15 in this case twice?

16 A I recall testifying in front of the grand  
17 jury. Yes, sir.

18 Q You remember two different days?

19 A Not off the top of my head, no.

20 Q May I approach, Your Honor?

21 A Sure.

22 Q You have a transcript on Tuesday, September  
23 28, 2010. Does this look like that was you?

24 A Yes, sir.

25 Q And then we have a transcript on October 12,

1 2010.

2 A Yes, sir.

3 Q Okay. So you testified two times in front of  
4 the grand jury; right?

5 A Yes, sir.

6 Q Now, we've had some description in this case  
7 of the grand jury. You understand it's a proceeding something  
8 like this where you testify, the DA asks you questions; right?

9 A Correct. Yes, sir.

10 Q There is no defense attorneys, though, that  
11 are allowed to ask you questions; right?

12 A That is correct.

13 Q You also filled out a number of search  
14 warrants in this case; is that right?

15 A I don't recall how many I -- I personally did  
16 versus other detectives, no.

17 Q Each -- well, was it -- was it more than one  
18 or two?

19 A Well, I know that the sergeant did the first  
20 one. I don't know. I don't know how many of the four I did,  
21 sir, off the top of my head.

22 Q The search warrant affidavits are all done  
23 under oath; right?

24 A Correct.

25 Q Okay.

1           A       If my name is on there, then I did them.

2           Q       And you also did what you described as a very  
3 lengthy officer report --

4           A       Yes, sir.

5           Q       -- right? Now, in addition to that you kept  
6 what you call your case file or what's called a homicide  
7 notebook?

8           A       Yes, sir.

9           Q       One of the questions I had for your is can you  
10 point to me in all the paperwork that you've done or at any  
11 time under oath prior to today ever discussing why you did not  
12 do the gunshot residue, why you didn't pursue it relative to  
13 Mr. Mayo. Can you show me anywhere?

14          A       Probably not.

15          Q       Now, you told the jury today that -- tell me  
16 if I got this right. If you fired a weapon in this courtroom  
17 you would expect all of us to have some gunshot residue on us?

18          A       Well, maybe not a room this big but there's a  
19 potential for that. But in a crime scene, in that particular  
20 space, in that residence, absolutely. And throughout the  
21 different areas that that gun was fired, it would not surprise  
22 me that everybody in that residence would potentially have  
23 residue.

24          Q       What do you base that on?

25          A       I'm sorry?



1           Q       What -- what treatise, text, scientific  
2 manual, what do you base that opinion on?

3           A       Well, I base it on my own experience and what  
4 I've been taught. But a specific text, I can't reference one.

5           Q       Okay. What you've been taught. You get  
6 taught things -- Metro receives FBI -- what they call the FBI  
7 law enforcement bulletin; right?

8           A       They might.

9           Q       Metro police officers attend seminars relative  
10 to gunshot residue testing from time to time, fair?

11          A       Some might.

12          Q       Have you?

13          A       A gunshot residue in and of itself, no.

14          Q       You've never gone to a seminar on it?

15          A       I have been to many homicide seminars, yes,  
16 sir.

17          Q       That's not my question. My question is you  
18 came in here and you -- you advance this opinion that gunshot  
19 residue testing was not necessary because of the likelihood  
20 that he probably has some on him due to the shots that were  
21 fired in the residence.

22          A       Not exactly. The likelihood that I already  
23 knew that he was inside of the residence. So to test for  
24 gunshot residue would prove that he was inside the residence  
25 or around a firearm when it was being discharged.

1           Q       It had nothing to do with the desire to test  
2 whether or not he had fired a weapon. That's your testimony.

3           A       That he was inside of the residence at the  
4 time of the shooting was what I said.

5           Q       Sir, would the administration of a gunshot  
6 residue test have anything to do with law enforcement desire  
7 to determine with some scientific resource whether or not a  
8 specific individual fired a weapon?

9           A       Yes, it helps. Yes.

10          Q       It helps.

11          A       Absolutely.

12          Q       All right. And you elected to not pursue that  
13 particular avenue of investigation; correct?

14          A       That is correct.

15          Q       Now, are you aware, sir, that once a gunshot  
16 travels more than three feet from the site of the shooter,  
17 that the effective gunshot residue evaporates, dissipates?  
18 Have you ever heard that before?

19          A       I'm not a gunshot residue expert, so --

20          Q       Well, you know, that's funny because you  
21 didn't say you weren't a gunshot residue expert when you told  
22 the jury about, you know, powder that would explode in the  
23 air; right? You didn't -- you didn't qualify your answer  
24 then, did you?

25          A       No.

1           Q     No. Would you defer to someone else on why --  
2 or strike that. Would you defer to someone that is an expert  
3 as to the impact of gunshot residue, how the powder works,  
4 where it goes, and the time it takes for it to evaporate,  
5 etcetera? Would you defer to someone that's an expert?

6           A     Sure.

7           Q     You were asked --

8           MR. SGRO: Court's indulgence, Your Honor.

9 BY MR. SGRO:

10          Q     -- some questions about bullet strikes.

11          A     Yes, sir.

12          Q     Now, you've already said you're not a gunshot  
13 residue expert. Are you a ballistics expert?

14          A     I wouldn't say that I'm an expert in anything.

15          Q     Would you defer to crime scene analysts that  
16 purport to have expertise in that field?

17          A     Well, I work with crime scene analysts. I  
18 would say that with them, along with the detectives that are  
19 at the scene, whether they're primary or other detectives that  
20 are there from homicide, collectively we would come to that  
21 conclusion.

22          Q     So you wouldn't defer to them. You'd work  
23 with them to come to a conclusion?

24          A     Yeah, I believe so.

25          Q     Okay. So if they came in here and testified

1 as to certain things based on their own opinion and their own  
2 expertise --

3 A Right.

4 Q -- you would take issue with that?

5 A Well, it would depend on what they said.

6 Q So if they agree with you, you don't take  
7 issue with it. If they disagree with you, you take issue with  
8 it?

9 A No, I wouldn't put it that way. I mean,  
10 anytime that we go to a scene, when you have a group of crime  
11 scene analysts along with detectives, you collectively work as  
12 a team to come to the conclusion of what the evidence says at  
13 the scene.

14 Q Okay.

15 A So no one individual at any homicide scene  
16 that I've ever been to would ever be the definitive sole  
17 answer as to what took place there.

18 Q Okay. So crime scene analysts come in.

19 A Correct.

20 Q They get proffered as experts. They testified  
21 about bullet trajectories. Do you quarrel with what their  
22 findings are?

23 A Well, I guess it would just depend on what the  
24 situation was.

25 Q Let's start with this. There was a piece of

1 furniture in the hallway as you -- as you travel down the  
2 hallway of the Meikle residence; correct?

3 A Which are you referring to? The one at the  
4 north end of the hallway? The bookshelf?

5 Q The one that had a couple doors on the bottom  
6 and it looked like an entertainment maybe, a wooden shelf.

7 A I believe I know which one you're referring  
8 to. Yes, sir.

9 Q Okay. As you are traveling down the hallway  
10 it's mounted against the wall, then on the other side of that  
11 wall is the television.

12 A Correct.

13 Q All right. What -- what would you call that  
14 piece of furniture so we can be on the same page?

15 A Well, I'd -- I'd have to see it. I believe  
16 it's something similar to a bookshelf or something along those  
17 lines.

18 Q All right. Let's call it a bookshelf. You  
19 testified before the jury that the bookshelf at some point was  
20 moved; correct?

21 A When he moved, yes. When Mr. Mayo moved.

22 Q At -- at some point law enforcement was  
23 contacted to go reexamine that wall.

24 A Correct.

25 Q So while you were there performing your

1 evaluation of bullet paths, trajectories and that sort of  
2 thing, you missed the bookshelf.

3 A The initial -- absolutely, yes.

4 Q Okay.

5 A We -- well, what do you mean we missed the  
6 bookshelf?

7 Q Well, if the holes came at the time of the  
8 homicide, that bookshelf should have had holes in it; right?

9 A Correct.

10 Q Bullets would have had to have gone through  
11 the bookshelf to get to the wall; correct?

12 A That is correct.

13 Q All right. And so you missed two holes in the  
14 bookshelf.

15 A That is correct.

16 Q Now, when you testified in front of the grand  
17 jury --

18 MR. SGRO: May I approach the clerk briefly, Your  
19 Honor.

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q Okay. Now, Defense Exhibit S, like Sam, is in  
23 evidence and I want to get us orientated the same way.

24 MR. SGRO: Oh, can I have the Elmo, please?

25 THE MARSHAL: It's on.

1 MR. SGRO: Thank you.

2 BY MR. SGRO:

3 Q Now, this is what the crime scene analyst  
4 testified to. See these holes marked A and B?

5 A Correct.

6 Q And you're familiar that trajectories of  
7 different bullets each get allocated a different letter of the  
8 alphabet; correct?

9 A Correct.

10 Q And on the first go around at the crime scene  
11 there was an A1 through 6, B1 through 4, etcetera; right?

12 A Correct.

13 Q There was an A, B, and a C; right?

14 A I'll agree with that.

15 Q Well, do you know?

16 A I believe they were lettered that, yes.

17 Q Okay. And in addition to the A, B, and C,  
18 there was a bullet that killed Derecia; right?

19 A Correct.

20 Q And there was a bullet that killed -- I'm  
21 sorry, that was in the stomach of Devonia?

22 A Correct.

23 Q So that's five; right?

24 A Without -- you're talking about regardless of  
25 these?

1 Q Regardless of these we have five; right?

2 A I believe so, yes.

3 Q At the time you left the scene -- well, strike  
4 that. If a crime scene analyst would have testified under  
5 oath that when -- when she had left the scene she had counted  
6 for five shots, would you agree with that?

7 A If that's what she said, then, yeah,  
8 absolutely.

9 Q And afterwards we have these two holes;  
10 correct?

11 A Correct.

12 Q Now, did you go back and -- and take these  
13 pictures?

14 A I believe I was there. I didn't take those  
15 pictures, no.

16 Q Were you there?

17 A I believe so, yeah. During this, yes.

18 Q Okay. This is the second page of Exhibit S.  
19 Did you put these poles in the wall?

20 A No.

21 Q Did you draft a report that said that -- well,  
22 strike that. That attributed these travel paths to two  
23 separate bullets?

24 A The crime scene analyst would have done that.

25 Q Okay. You didn't review that crime scene



1 analyst report and take issue with it; correct?

2 A Well, I don't recall what it says, so I didn't  
3 take issue with it, I guess.

4 Q Well, let me ask you generally. Was there a  
5 crime scene analyst report that you're aware of that  
6 attributed two different bullets to A and B that you took  
7 issue with?

8 A No.

9 Q And when you testified in front of the grand  
10 jury about this particular section of this wall behind the  
11 hallway, you told the grand jury under oath that there was  
12 another bullet strike, another singular bullet strike;  
13 correct?

14 A Well, I don't know if those were my exact  
15 words, but I agree that that is a bullet strike. Yes, sir.

16 Q Well, let's start --

17 MR. SGRO: May I approach, Your Honor?

18 THE COURT: Yes.

19 MR. SGRO: This is page 41, counsel.

20 BY MR. SGRO:

21 Q Page 41, can you read line 12?

22 A Right. Period --

23 Q No, I'm sorry. Sorry. To yourself.

24 A Okay.

25 Q Have you done that?

1           A       Yes.

2           Q       You told the grand jury, did you not, that it  
3 was, quote, another bullet strike.

4           A       Correct.

5           Q       You didn't explain to the grand jury that  
6 there were two holes that you had attributed to one bullet;  
7 right?

8           A       That there were two holes that contributed to  
9 one bullet?

10          Q       Attributed to --

11          A       Right. That did I say that?

12          Q       You didn't say that, did you?

13          A       Okay. No.

14          Q       And did you show the grand jurors the photo of  
15 this A and B with these two separate poles?

16          A       Well, I wasn't in a position to show them  
17 anything. That wouldn't have been me.

18          Q       Now, at the time you testified before the  
19 grand jury, testing was being done -- or strike that. The  
20 time you testified before the grand jury in September of 2010  
21 you had submitted requests for certain testing to be done on  
22 the bullets that were recovered from the scene correct?

23          A       Yes, sir.

24          Q       And you had submitted comparison requests,  
25 bullet to bullet, bullet to gun, remember those?

1           A       Yes, sir.

2           Q       And at the time you testified, you had not  
3 received those results; correct?

4           A       Probably not based on the dates that you gave  
5 me, no.

6           Q       Yet you told the grand jury --

7           A       I'd have to see that, though. I don't know  
8 whether -- I don't know what the dates were that I received  
9 it, but I would assume not just based on the time that it  
10 takes to get them.

11          Q       You told the grand jurors in September of 2010  
12 when asked by them, do you remember? Do you remember being  
13 asked a question what was the caliber of the bullets that was  
14 found and you answered, well, all of the testing on the  
15 evidence that was found is still being conducted. Does that  
16 ring a bell?

17          A       If that's -- I agree. You don't have to show  
18 me. If that's what I said, then that's what I said, sir.

19          Q       Okay. And then the -- the grand juror -- a  
20 juror says, well, were there six shots fired from the same  
21 weapon; right?

22          A       Right.

23          Q       Have you determined that; right? And you say  
24 due to the fact --

25          MR. SGRO: I'm sorry, counsel. 47.

1 BY MR. SGRO:

2 Q Due to the fact that there were no casings and  
3 from witnesses and from witness statements, yes.

4 A That is my belief, absolutely.

5 Q The grand jury, though, they asked you about  
6 testing that was done; right?

7 A Yes.

8 Q And you answered not relative to testing, but  
9 based on witness statements, whatever you thinking of at that  
10 time; right?

11 A And evidence at the scene.

12 Q Sir --

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

14 THE COURT: Yes.

15 BY MR. SGRO:

16 Q Showing you 47. I want to make sure.  
17 Question, were you there six shots fired from the same weapon?  
18 Have you determined that?

19 A Right.

20 Q This is in reference to testing; correct?

21 A Yes, sir.

22 Q That's the context. And what you answer --  
23 let me ask it this way. You don't say, you know what, the  
24 testing isn't finished yet. That's not what it says; right?

25 A I said exactly what I believe to be true.

1 Q Sir.

2 A Due to the fact that --

3 Q Sir, hold on.

4 A -- there were no casings --

5 Q The way this works, I ask the question, you  
6 give me the answer, okay?

7 A Okay.

8 Q After the question relative to testing, were  
9 there six shots fired from the same weapon, do you say the  
10 testing isn't back yet?

11 A No.

12 Q Do you instead say due to the fact that there  
13 were no casings and from witness statements, yes, sir.

14 A We believe --

15 Q Right.

16 A -- it was one single weapon that was used. I  
17 absolutely said that.

18 Q Nobody in this case has ever told you that  
19 whoever the assailant was walked into Meikle lane with all the  
20 ammunition loaded in a single revolver, fair?

21 A That is fair.

22 Q At the time that you're at the scene, how long  
23 had you been on homicide?

24 A I think it was -- well, it was 2010, August, a  
25 little over -- around a year. Somewhere around a year.

1           Q     It was actually a little bit less than a year,  
2 wasn't it?

3           A     It was around a year. I don't know if it was  
4 a little less or a little more.

5           Q     And now you're on search and rescue?

6           A     That is correct.

7           Q     When did you start search and rescue?

8           A     In December.

9           Q     Of?

10          A     Last year.

11          Q     Okay. You were in homicide for about four  
12 years?

13          A     Five years.

14          Q     Five years. When you interact with people,  
15 with witnesses, you turn on a tape recorder sometimes, all the  
16 time, or most of the time? Which one of it would it be?

17          A     Well, when you say interact, in what context  
18 are you referring to?

19          Q     When you're interviewing the witness, do you  
20 turn the tape recorder on?

21          A     Like a formal interview, yes.

22          Q     Okay. If -- if it's not a formal interview,  
23 if you're going to see Cornelius Mayo because he has a bullet  
24 to give you --

25          A     Right.

1           Q       -- is that something that's where notes are  
2 taken?

3           A       Well, a CSA is going to do that, so probably  
4 not. It just depends on the circumstance.

5           Q       All right. Now, would you engage in tactical  
6 decisions as to when you're going to take notes and when  
7 you're not going to take notes?

8           A       I don't understand your -- the phrase tactical  
9 means something different to me, so --

10          Q       In order to -- in order to ascertain a  
11 conviction in a criminal case, would that ever be a driving  
12 factor as to whether or not to take notes during an interview?

13          A       It just depends on the circumstance.

14          Q       So there's no yes or no to that?

15          A       Well, there's no specific circumstances.  
16 There's -- the context of the question which you're asking,  
17 there's lots of variables in that. I don't always take notes,  
18 lots of times I do take notes. It just depends on the  
19 circumstance. In the case in which you're referring to, like  
20 if somebody is providing like in the bullet situation, I may,  
21 I may not. I mean, the CSA is going to do a crime scene  
22 report, so there's not always a necessary need to do so.

23          Q       What about in a case where you have  
24 interviewed a woman for 10 or 15 hours, the time span is  
25 varied in the case. So somewhere --

1           A       It certainly seemed that long.

2           Q       -- somewhere between 10 to 15 hours you  
3 interview a woman; right?

4           A       Yes.

5           Q       You interviewed Monica Martinez in this case?

6           A       Correct.

7           Q       Monica Martinez sometime later would choose to  
8 enter into a plea and cooperate with the State; right?

9           A       Okay.

10          Q       At that time that she chooses to cooperate and  
11 -- and enter a plea she's debriefed; right?

12          A       By who?

13          Q       Well, I'm asking. Were you there?

14          A       During the proffer?

15          Q       Yes.

16          A       Yes.

17          Q       Did you take notes?

18          A       I don't -- I don't know because I don't have  
19 notes on it, so I'm assuming I did not.

20          Q       You don't remember if you -- this only  
21 happened in October of 2014. This is 90 days ago.

22          A       Oh, wait. I'm sorry. Which one are you  
23 talking about? I thought you were talking about years ago.  
24 Which -- can you ask the question one more time?

25          Q       Do you understand the word proffer to mean



1 when someone has agreed to work as a cooperating witness?

2 A Correct.

3 Q They come in, there's an interview; right?

4 A Correct.

5 Q Okay. At Monica Martinez's proffer, were you  
6 present in October of 2014?

7 MS. WECKERLY: I'm going to object. There wasn't a  
8 proffer then.

9 THE WITNESS: Yeah, I don't know what you're talking  
10 about.

11 MS. WECKERLY: There was one in --

12 THE COURT: Well, there was some evidence --

13 MS. WECKERLY: October of '10.

14 THE COURT: -- that there was an interview with the  
15 District Attorneys.

16 MR. SGRO: Yes, sir.

17 MS. WECKERLY: In December.

18 THE COURT: I don't remember the evidence that the  
19 Metropolitan Police Department was present.

20 MR. SGRO: Well, that's why --

21 THE COURT: They may or may not have been.

22 MR. SGRO: That's why I'm asking, Your Honor.

23 MS. WECKERLY: That was --

24 THE COURT: Well, you need to ask him -- you need to  
25 tell him that there was such an interview and ask him if he

1 was there.

2 MS. WECKERLY: And that was December, not October.

3 MR. SGRO: Okay.

4 THE COURT: It was December.

5 BY MR. SGRO:

6 Q So I apologize if I got the date wrong. In  
7 December.

8 A This last December?

9 Q Yes, sir.

10 A No.

11 Q You weren't present?

12 A No, I was not.

13 Q Was Detective Wildemann present?

14 A Not that I'm aware of.

15 Q Were you asked to not attend, or is it just  
16 you had a conflict?

17 A I don't -- I don't even know. I wasn't aware  
18 that there -- I mean if they brought it up, it wasn't  
19 important to me if I didn't need to be there, so --

20 Q Okay. So that was a meeting that occurred in  
21 the absence of you knowing that it occurred?

22 A If they mentioned it, it was off the cuff that  
23 they were doing it. I don't recall knowing that there was a  
24 proffer. I don't -- I don't know. I don't know on that one.

25 Q You don't know?

1           A       No.

2           MR. SGRO: Court's indulgence, Your Honor. I just  
3 need to locate a photo.

4           MS. WECKERLY: I -- Mr. Sgro, I have a bunch of  
5 photos here. I don't know if I --

6           MR. SGRO: Oh, okay.

7           MS. WECKERLY: Sorry.

8           THE COURT: She has some of the evidence over there?

9           THE CLERK: She has some of the pictures.

10          MR. SGRO: Yeah, she -- the State had them, Your  
11 Honor.

12 BY MR. SGRO:

13          Q       I want to show you a picture of inside of the  
14 Meikle residence, okay?

15          A       Okay.

16          Q       This is Exhibit No. 87. And it's not the only  
17 picture, but is this a picture of white rocks which would be  
18 later determined to be crack cocaine that were located in the  
19 residence?

20          A       Yes, sir.

21          Q       And are there photos of this same rock-like  
22 crack cocaine substance in the residence?

23          A       This -- say it one more time?

24          Q       There's -- there's a number of photos from  
25 different perspectives of the rock cocaine.

1           A       Yes, sir.

2           Q       And are you aware that when Mr. Mayo was given  
3 his shoes there was some rock cocaine in his shoe?

4           A       I am.

5           Q       And was there any -- any suggestion or are you  
6 aware of any police officer putting that cocaine in his  
7 apartment prior to those photographs being taken?

8           A       Of an officer putting cocaine in his  
9 apartment?

10          Q       Yes, sir. Was the cocaine planted, sir?

11          A       No.

12          Q       Okay. Did you have a conversation with Mr.  
13 Mayo about him selling drugs from his residence?

14          A       I didn't interview Mr. Mayo that day.

15          Q       I didn't ask you if you interviewed him that  
16 day.

17          A       In just out of all of my interactions with  
18 Mayo? Yes.

19          Q       And he admitted to you that he did?

20          A       Well, I don't know whether he admitted it. I  
21 knew that he did. I believe that he did.

22          Q       You were asked about some interactions you had  
23 with Mr. Mayo and attended proceedings in family court;  
24 correct?

25          A       Yes, sir.

1           Q     And you actually testified as a witness in  
2 that case; correct?

3           A     Yes, sir, I did.

4           Q     And one of the issues that you testified about  
5 was what you just told me, your belief that Mr. Mayo sold  
6 drugs.

7           A     Yes, for CPS for family court.

8           Q     For CPS. Because all the way through those  
9 CPS proceedings Mr. Mayo maintained that he did not sell  
10 drugs.

11          A     Okay.

12          Q     Correct?

13          A     I don't know what he did because I didn't  
14 listen to his testimony.

15          Q     Were you made privy to some bet that he had  
16 met, a basketball bet, a large wager where he had won \$2,500?

17          A     I don't recall that.

18          Q     So do you recall the purpose of your testimony  
19 in the family court proceeding to be to suggest that Mr.  
20 Mayo's credibility was lacking?

21          A     Well, I recall testifying in the court. And  
22 obviously they wanted to know whether he sold drugs or not. I  
23 don't know about his credibility. So are you referring as to  
24 being a good parent or not because he's --

25          Q     No, sir.

1           A       -- selling drugs or --

2           Q       No, sir. I'm saying Cornelius Mayo testified  
3 and he said this story here.

4           A       Right.

5           Q       And you were called to testify and give a  
6 story over here that contradicted what he had said. Do you  
7 understand that to be the general nature of why you were  
8 called as a witness?

9           A       I know that they asked me to testify as to  
10 what I located at the scene and the scenario of the case.  
11 Yes, sir.

12          Q       Did you participate in -- in the decision  
13 making process to charge Mr. Mayo with the criminal charges he  
14 faces as a result of that day's activities relative to drugs?

15          A       Different agency. No.

16          Q       Okay. So you didn't have anything to do with  
17 charging him with putting kids in danger while drug  
18 trafficking activity was going on?

19          A       No, I think that was -- no, I don't believe  
20 so.

21          Q       How about the child abuse and neglect charges?

22          A       I don't recall myself submitting those  
23 charges, no.

24          Q       As this case unfolds, do you do what are  
25 called briefings about this case, like status checks amongst

1 law enforcement officers?

2 A You mean within our own unit?

3 Q Yes, sir.

4 A Sometimes, Yes, sir.

5 Q And do you know who Detective Shoemaker is?

6 A I do.

7 Q And who is he?

8 A At the time he was a sergeant in homicide.

9 Q And he would have been one of the persons in  
10 those briefings that discussed the evolution of the case, how  
11 things were going?

12 A He may have. He may not have been. It would  
13 depend, but he would probably be informed of what was going on  
14 in the case.

15 Q Do you recall him having a specific role in  
16 the case relative to being a liaison between law enforcement  
17 and what was going on in that case and CPS? Do you remember  
18 him having that specific job role?

19 A I'm aware that he did, but I'm not aware of  
20 his total involvement in that because it's a separate issue  
21 from my investigation.

22 Q But at least relative to CPS, you do have that  
23 recollection?

24 A I know that he spoke with CPS. Yes, sir.

25 Q Now, I asked you before -- well, before I get

1 there, he spoke to CPS over the course of time, not just on a  
2 single day; right?

3 MS. WECKERLY: Objection. Foundation.

4 MR. SGRO: Well, I'm asking him --

5 THE COURT: If he knows.

6 MR. SGRO: -- if he knows. If he knows.

7 THE COURT: If he knows.

8 MR. SGRO: Yes.

9 THE WITNESS: I have no idea how many times he had  
10 interaction with our agency.

11 BY MR. SGRO:

12 Q You wouldn't be surprised, though, that  
13 because he did it once he continued to do it over the course  
14 of the case that you were involved in as a witness in family  
15 court?

16 A No, I think that's fair to say.

17 Q And as a person from that trial, from that  
18 briefing group typically assigned a task like that, you're the  
19 one that stays in touch with CPS, does that sound right to  
20 you?

21 A Well, they would have contact with -- I mean,  
22 obviously they had contact with me because they requested me  
23 to testify. But my -- my -- the purpose of my investigation  
24 was to -- was the murder. If CPS called and asked and had a  
25 question, then I would be more than willing to give that



1 answer. But I -- I don't know that I would put it in the  
2 context that you're saying it in.

3 Q You told the jury during direct examination  
4 that you really wanted to charge Job-Loc with murder.

5 A Yeah, I believe -- I believe that he was  
6 involved.

7 Q There was testimony adduced at the grand jury  
8 that through the analysis --

9 MR. SGRO: And this is page 160, counsel.

10 BY MR. SGRO:

11 Q -- through the analysis of phone records that  
12 it was learned that Job-Loc couldn't have been at the scene.

13 A Well, along with everything else --

14 Q Sir.

15 A -- with State's --

16 Q Sir, we're going to do a lot better if we just  
17 stick with my questions, okay?

18 A Okay.

19 Q Was a question --

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

21 THE COURT: Yes.

22 BY MR. SGRO:

23 Q Just the question and the answer to yourself,  
24 please.

25 A No. 2 and 5? 2, 3, and 4 and 5?

1 Q 2 through 5, yeah. To yourself, please.

2 A Okay.

3 Q Do you have it?

4 A I do.

5 Q So the question specifically was posed through  
6 the analysis of phone records did you learn that Job-Loc  
7 couldn't have been at the scene; right?

8 A Yes, that's what it says.

9 MR. SGRO: Exhibit 304, please, Miss Clerk. Thank  
10 you very much.

11 BY MR. SGRO:

12 Q Do you agree that an analysis of phone records  
13 reveals that Job-Loc couldn't have been at the scene. Do you  
14 agree with that?

15 A Well, there was a gap in the time for the --  
16 the records, for sure.

17 Q No one said that to the grand jury, did they?

18 A Well, once again, the context of everything  
19 else that's involved, so --

20 Q Sir.

21 A Okay. No.

22 Q Thank you.

23 A Sure.

24 Q You're aware as you sit here today there's a  
25 gap in those records; right?

1           A       There's not a gap -- let me rephrase that.  
2       There's not a gap in the records.

3           Q       There is a time from about 2:00 a.m., and I  
4       think it's like 2:03, 2:06, but roughly 2:00 a.m. until 4:25  
5       or 4:35 a.m. that Job-Loc's phone is not being used; right?

6           A       Correct.

7           Q       Now, what was adduced before the grand jury  
8       was that Job-Loc's phone was hitting off the same tower,  
9       quote, unquote, all night long; right?

10          A       That is true.

11          Q       And in a vacuum you'd agree with me that  
12       that's true?

13          A       I believe that it's true.

14          Q       Okay. But that doesn't mean, as was adduced  
15       before the grand jury, that an analysis of phone records  
16       reveals that Job-Loc couldn't have been at the scene; right?

17          A       In the context of that, absolutely, you're  
18       correct.

19          Q       All right. Brittnae Pines to Meikle at 3:45  
20       in the morning is what, a ten minute drive?

21          A       Well, it's on the northwest side of town.

22          Q       Have you driven it?

23          A       Meikle is on the northeast side of town.

24          Q       Have you driven it?

25          A       Yeah.

1 Q What did it take you to drive it?

2 A You're asking if I've driven between those  
3 distance, yes, I have.

4 Q No, no, no. I'm asking you if you got in your  
5 car as part of this case, you got in your car --

6 A No. No, I did not.

7 Q Okay. So you can only give us a ballpark of  
8 what you think it might take to drive it.

9 A Fair.

10 Q Right? Would you be surprised if you could do  
11 it in 10, 15 minutes at 3:30 in the morning?

12 A I don't know what it would take.

13 Q Focusing on Job-Loc for a minute, the same one  
14 you wanted to charge with murder, you were involved in a  
15 search warrant that was executed at the residence attributed  
16 to him; correct?

17 A Say that one more time?

18 Q Were you involved in the execution of a search  
19 warrant that was attributed to where Jerome Thomas lived?

20 A Well, I did not serve that search warrant.

21 Q I didn't ask you if you served it. Were you  
22 there?

23 A I showed up at the tail end of it, yes, sir.

24 Q All right. Showing you Defense Exhibit Z.  
25 This photograph shows three cell phones by an orange cone;

1 right?

2 A Correct.

3 Q Those three cell phones, do you remember  
4 seizing them?

5 A No.

6 Q Did you seize them?

7 A I don't believe so.

8 Q Can you tell us anything about the SIM cards  
9 in these phones, if they're transferable or not?

10 A In those phones themselves, I don't know.

11 Q This was a cell phone case in the sense that  
12 cell phone records were going to be important in the  
13 prosecution of this case; correct?

14 A Yes, sir.

15 Q And these phones in Job-Loc's apartment  
16 remained untouched; right?

17 A Yes, sir.

18 Q But you took that disposable camera to the  
19 left of those phones; right?

20 A I believe the camera was taken, yes, sir.

21 Q You were asked some questions about the  
22 interview that you had with Devonian Newman. Do you remember  
23 -- and do you remember listening to the tape?

24 A Yes, sir.

25 Q You are taught interview techniques as a

1 police officer, are you not?

2 A That's correct.

3 Q We talked for example, you are allowed to lie  
4 to someone you're interviewing; right?

5 A That is correct.

6 Q You are trained how to be deceptive.

7 A I wouldn't say that we're trained to be  
8 deceptive.

9 Q Not generally all day every day, but you are  
10 trained how to interview someone, how to advance to -- like I  
11 found your fingerprint on the murder weapon. You could say  
12 that.

13 A But I have never been trained to be deceptive  
14 in any training class I have ever taken.

15 Q You could say to a suspect hypothetically, I  
16 found your fingerprint on the gun and you full well know it's  
17 not true; right?

18 A Yes, we can do that. That's correct.

19 Q All right. That's fair game; correct?

20 A Correct.

21 Q And the objective of that, you're trying to  
22 communicate that it's true to someone you're sitting across  
23 the table from; right?

24 A Yes.

25 Q And you have success with that ability;

1 correct?

2 A Sometimes.

3 Q So someone that you've never met before can  
4 sit across the table from you and believe that what you are  
5 making up is actually true; right?

6 A Correct.

7 Q Now, let's talk about an interview style  
8 called a cognitive interview. Do you know what that is?

9 A I've heard the term before.

10 Q Is the cognitive interview the type of  
11 interview that is preferred with children in that it's tell me  
12 what happened, they tell you the whole story before you ask  
13 any questions? Does that make -- does that ring a bell?

14 A That sounds familiar, but I'm -- yes.

15 Q There are precautions to be taken when  
16 interviewing children because of how impressionable they can  
17 be, especially when they see a police officer; right?

18 A Yes, sir.

19 Q They can have a higher level of suggestibility  
20 than an adult; right?

21 A Yes, sir.

22 Q You're going to treat a 10 year old boy  
23 different than a 30 year old man?

24 A Yes, sir.

25 Q In this particular case, do you know the types

1 of medication that Devonia Newman had been administered prior  
2 to your interview?

3 A I don't know what they were at this time, no.

4 Q Do you think it would have been prudent to  
5 understand the types of medication that she was administered  
6 so that you could gauge the ability of her to interact with  
7 you and respond lucidly to questions?

8 A Well, I know, obviously, that she's on  
9 medication because she's been shot in the stomach. But  
10 there's many cases which I've talked to individuals that are  
11 in the hospital. And as you can tell from listening to her  
12 statement and the corrections that she even made to me that  
13 she was able to have that conversation.

14 Q Not my question. Would it have been prudent  
15 for you to understand the kinds of medication she had been  
16 administered?

17 A It can be helpful, sure. Absolutely.

18 Q Do you know what Fentanyl is?

19 A No.

20 Q Do you know what the side effects of Fentanyl  
21 are?

22 A No, sir.

23 Q Do you know what Versed is?

24 A I've heard of it. No, I don't know.

25 Q Do you know what the side effects of Versed



1 are?

2 A No.

3 Q At the time you conducted the interview with  
4 Devonian Newman, that occurred on August 8th. This would be  
5 about 36 hours after the events; right? Roughly? A day and a  
6 half?

7 A Sure.

8 Q There came a time when Devonian was released  
9 from the hospital; right?

10 A Yes, sir.

11 Q There came a time when she was no longer being  
12 administered a Fentanyl drip and a Versed drip; right?

13 A I'm sure that's true. Yes, sir.

14 Q Did you ever go back and approach her again  
15 with the a tape recorder and say, hey, you were heavily  
16 medicated at the time, can we confirm or reaffirm what you  
17 told me previously? Did you ever do that in this case?

18 A No, I did not.

19 Q You also, in speaking to Devonian, I want to  
20 talk to you about the information that you had. You had  
21 already spoken to Stephanie Cousins, or someone from law  
22 enforcement had already spoken to Stephanie Cousins; right?

23 A Correct.

24 Q The -- do you know who Officer Houghton is?

25 A I don't know him personally, no.

1           Q       But do you know him to be an officer in law  
2 enforcement who happened to be present at the scene watching  
3 over Cornelius Mayo as -- as detectives --

4           A       I believe that was the officer. Yes, sir.

5           Q       Okay. Officer Houghton spent several hours  
6 with Mr. Mayo until you guys got there.

7           A       Correct.

8           Q       And you are aware that Officer Houghton was  
9 overhearing threats to Stephanie Cousins, getting descriptive  
10 information back and forth. Are you aware of that?

11          A       Yes, sir.

12          Q       And that became part of your large officer's  
13 report that you referred to earlier; right?

14          A       Yes, sir.

15          Q       The interaction between and the -- the  
16 information gleaned; correct?

17          A       Yes, sir.

18          Q       Before you got there, were you aware that  
19 Cornelius Mayo had gone to the hospital to speak with Devonian?

20          A       Before that -- that morning that an officer  
21 was there?

22          Q       Let me rephrase it. You went on August 8th at  
23 4:15 in the afternoon. Are you aware that from August 7th at  
24 4:00 roughly when Devonian gets transported up until the time  
25 that you arrive, that in that intervening window of time

1 Cornelius Mayo had spoken to Devonia?

2 A I am aware of that.

3 Q And you had learned information by speaking to  
4 other witnesses about possible descriptors of an assailant  
5 that you believed you were looking for; correct?

6 A Yes.

7 Q And when you get to the hospital, you don't  
8 turn the tape recorder on right away before you begin speaking  
9 to Devonia; is that correct?

10 A Well, I introduced myself first and what I'm  
11 there for.

12 Q Well, and you also talk a little bit about  
13 what happened; right?

14 A I don't know what you're referring to.

15 Q Well, do you talk a little bit about what  
16 happened to justify why there is a police officer there before  
17 you turn on the tape?

18 A I explain who I am and why I am there, that  
19 I'm there to conduct an interview with her.

20 Q Did you speak at all about the happenings that  
21 occurred at the Meikle residence?

22 A I don't understand the text of what you're --  
23 what you're asking.

24 Q Well, do you remember -- I mean, we just heard  
25 the -- the taped statement. Do you remember saying in the

1 statement we've talked a little bit about what happened?

2 A Okay.

3 Q Does that ring a bell?

4 A Like as far as that her mother was shot?

5 Q Well, sir you said it. I didn't say it.

6 A Right. Well, at the beginning I'm explaining  
7 while I'm there.

8 Q Right.

9 A So this is why I'm here. If you're asking me  
10 if I laid out what took place, no, absolutely not.

11 Q Here's what I'm asking. The conversation that  
12 occurs before you turn the tape recorder on --

13 A Right.

14 Q -- exists nowhere other than in your memory;  
15 right?

16 A That's correct.

17 Q Okay. In Monica Martinez's situation you  
18 picked her up from work, you drove her to the station, and  
19 there's a blurb about that conversation in your report;  
20 correct?

21 A Correct.

22 Q And you did talk to Monica Martinez about the  
23 facts of the case on the way to the interview; right?

24 A There were general things that we spoke of,  
25 yeah.

1 Q About the facts of the case; right?

2 A Why we're there to talk to her.

3 Q Pardon me?

4 A Well, when you say the facts of the case, I  
5 mean --

6 Q You were asking her who Albert Davis is;  
7 right? She says Albert Davis is my boyfriend. She's talking  
8 about things that happened. And I think in your officer's  
9 report was by the time you got to the police station, I think  
10 the quote is we realized that she might be more involved than  
11 we originally thought; right?

12 A Well, I'd have to read it, but that sounds --  
13 but, yeah, she was -- she was definitely -- we knew that she  
14 was being somewhat deceptive and kind of --

15 Q That all happens before you turn on the tape  
16 recorder.

17 A We drove her to the -- yes, sir.

18 Q Okay. Now, I want to talk to you --

19 A That's why I put it in the report.

20 Q Sir, there's no question. Right. You put it  
21 in the report.

22 A Right.

23 Q Where's the report that talks about what you  
24 spoke with Devonina about prior to turning the tape recorder  
25 on?

1                   A       Well, I didn't talk to her about the incident,  
2 so --

3                   Q       I understand that's what your position is.

4                   A       -- that's why it's not in there.

5                   Q       But there's no note, there's no report,  
6 there's no recording. We have your memory; correct?

7                   A       Absolutely.

8                   Q       Now, you start -- if I understand correctly,  
9 you told the jury, you know, I just told her why I was there.  
10 You start with on the night that this happened you were with  
11 your mom; right?

12                  A       I'm sorry. Which are we referring to?

13                  Q       I'm -- I'm -- Devonia's statement. I  
14 apologize. Page 2. The night that this happened you were  
15 with your mom. You call her Ree. Remember asking that?

16                  A       Right.

17                  Q       Okay. And then you say does she go by Ree?  
18 Answer, yes. You and your mom were in the living room area.  
19 Do you remember saying that?

20                  A       Yes.

21                  Q       Okay. So would it be fair to say that at  
22 least in the beginning of the interview it looks like you had  
23 talked about where she was located when things happened?

24                  A       Well, you're suggesting that I said that. But  
25 oftentimes when we, and in this case, if she starts telling me

1 a story, I say hold on a minute, we're going to put this on  
2 tape. So --

3 MR. SGRO: May I approach?

4 THE COURT: Sure.

5 BY MR. SGRO:

6 Q The interview starts, it says I'm going to be  
7 speaking with Devonian; right? Date, time, location; correct?

8 A Correct.

9 Q Devonian informed me it's Devonian. You're  
10 saying that she's already told you how to pronounce her name;  
11 correct?

12 A Okay.

13 Q Right?

14 A Correct.

15 Q I -- we're going to -- we've talked a little  
16 bit about what happened, okay. Did I read that right?

17 A Correct.

18 Q And you want to take a couple deep breathes.  
19 We'll wait for a second. Right?

20 A Right.

21 Q There you go. Doing a great job. I'm going  
22 to ask you a couple questions. So far you're with me; right?

23 A Yes, sir.

24 Q On the night that this happened, you were with  
25 your mom; right?

1 A Correct.

2 Q Now, according to the tape, there is no  
3 predicate there. That's how you start. You were with your  
4 mom; right?

5 A Correct.

6 Q Then she says, yeah, but -- right, Derecia  
7 Newman. Are you still with me?

8 A Uh-huh.

9 Q Yes.

10 A Yes.

11 Q Unintelligible, unintelligible. Right. Now,  
12 you and your mom were in the living room area. That's what  
13 you say; right?

14 A Correct.

15 Q Okay. And I guess my point is this. You  
16 don't say to her, hey, what's your mom's name?

17 A Right.

18 Q You don't say to her, hey, where were you?

19 A Correct.

20 Q Which is all --

21 A In the beginning I do not. Correct.

22 Q Which is all indicia of some factual banter  
23 back and forth before the tape turns on. It may have lasted a  
24 few seconds or a few minutes; right?

25 A Well, banter is different than her just saying



1 those things and my saying, well, hold on, we'll -- we'll put  
2 it on tape. So in the context --

3 Q Just stick with --

4 A -- of what you're --

5 Q -- my question.

6 A Well, but I disagree with your context in what  
7 you're saying.

8 Q Okay. So you disagree. You disagree.

9 A Correct.

10 Q All right. Now --

11 A Well, I disagree with -- like I said, yes,  
12 that is what I said. But the context of what you're asking me  
13 I disagree with.

14 Q Are you aware of Devonia Newman's complaint  
15 after this tape recorded statement was taken that police  
16 officers, quote, put words in her mouth. Are you aware of  
17 that complaint?

18 A No.

19 Q Are you aware that after she reviewed this  
20 taped statement she complained to someone in law enforcement  
21 that it didn't sound like her?

22 A To who in law enforcement?

23 Q Well, let's start with you. Did she complain  
24 to you?

25 A No.

1           Q     You said you had visited with her once or  
2 twice after this tape recorded statement?

3           A     Well, we did the photo lineup.

4           Q     And then is that the only time.

5           A     I believe that's the only time.

6           Q     Now, even in the -- even in the photo lineup,  
7 she initially wrote down 10 percent; right?

8           A     Correct.

9           Q     By the way, there's only six people in that  
10 photo lineup; right?

11          A     Correct.

12          MR. SGRO: Can I have the photo lineup?

13          MS. WECKERLY: Yes.

14 BY MR. SGRO:

15          Q     Now, if I have six pictures on a dart board  
16 and I just throw a dart, I got a one in six chance of hitting  
17 somebody; right?

18          A     If we're going off the page.

19          Q     Let's assume I hit one out of 6. That's a 16  
20 percent chance of being right, one in six.

21          A     Okay.

22          Q     Agree?

23          A     Sure.

24          Q     She initially told you she is 10 percent sure;  
25 correct?

1           A       Correct.

2           Q       Now, then after you have a conversation with  
3 her she changes the 10 to a 20; right?

4           A       Correct.

5           Q       And -- and the conversation was ostensibly you  
6 perceiving she may not understand percentages; right?

7           A       Correct.

8           Q       Now, would you agree that her movement, when  
9 you -- when you confront her with, hey, you may not understand  
10 percentages, let me tell you what an F means. Remember that  
11 conversation?

12          A       Right.

13          Q       Would you agree that Devonian's change from 10  
14 to 20 after you ask her are you sure you understand  
15 percentages, that could be an example of a child trying to  
16 please and authority figure, fair?

17          A       Sure. Absolutely.

18          Q       And if we look at this lineup, when you --  
19 this is called a six pack; right?

20          A       Correct.

21          Q       And it's just a law enforcement term so  
22 everyone knows what we're talking about; right?

23          A       Correct.

24          Q       We try and put people that look similar to one  
25 another in a six pack?

1           A       Similar.

2           Q       In other words --

3           A       You can't have -- obviously you can't have,  
4 you know, somebody that looks completely different on the six  
5 pack. So yes, in that context, yes, I agree with you.

6           Q       If you're trying to identify David Burns, you  
7 wouldn't put his picture and then five women; right?

8           A       Correct.

9           Q       That would be an extreme example, but you get  
10 the point.

11          A       Yes, sir.

12          Q       All right. Now, in this case you do things in  
13 order to allow the viewer of this six pack to believe that he  
14 or she is in control of their own choice; right?

15          A       I don't understand the way --

16          Q       Well, you read that blurb, you know, I'm not  
17 telling you the person is here or not, but, you know, you're  
18 free to select one of these if someone looks familiar?

19          A       Yeah, we give them instructions in the photo  
20 lineup process to understand the variations and -- and, I  
21 mean, I can certainly read it. In the texture --

22          Q       Right.

23          A       -- face or hair changes, stuff like that.  
24 Correct.

25          Q       You have had classes on six packs, training on

1 six packs, how to assemble them?

2 A I guess that would depend on your definition  
3 on training. I haven't been to a formal seminar on it. But,  
4 yes, I -- I know how to put together a six pack. Yes, sir.

5 Q Are you aware of studies that show that when  
6 people look at six packs their attention is drawn towards the  
7 middle of the six pack?

8 MS. WECKERLY: Objection. Assumes facts not in  
9 evidence.

10 MR. SGRO: I'm asking if he's aware.

11 THE COURT: If he's aware of it.

12 BY MR. SGRO:

13 Q Are you aware of that kind of study?

14 A Well, these computers put the picture where it  
15 goes. That's why we don't make --

16 Q Sir, that's --

17 A -- the decision.

18 Q -- not my question.

19 A Okay.

20 Q Are you aware of studies that suggest --

21 A No. No, I'm not.

22 Q Okay. In this particular six pack you've got  
23 four close headshots around the exterior all in blue; right?

24 A Correct.

25 Q And then you have two in the middle that have

1 kind of a, I don't know, black or charcoal gray background.  
2 Would that be fair?

3 A Yes, sir.

4 Q And of the two that are in the gray, only one  
5 we could characterize as big bushy hair, fair?

6 A I don't know that I agree with that.

7 Q You would call the gentleman in slot No. 2,  
8 you would describe him as having --

9 A I think there's --

10 Q -- big bushy hair?

11 A -- a couple in there that have similar  
12 hairstyles to --

13 Q That's not my question. Does No. 2 have big  
14 bushy hair in your opinion?

15 A Maybe on the sides. Not so much on the top.

16 Q All right. You -- did you participate in  
17 Donovan Rowland's witness interview

18 A I did.

19 Q You never asked Donovan Rowland in his taped  
20 statement if Jerome Thomas had any injury to his leg, did you?

21 A I don't recall if I did. I know that I did,  
22 but I don't know that I asked him that.

23 Q You know that he did. So you must have, then,  
24 gone to the hospital where he had treatment.

25 A Well, we have photos in our Metro computer

1 system --

2 Q Sir, did you go --

3 A -- with him with an injured leg, so --

4 Q Did you go -- what hospital did Jerome Thomas  
5 treat at?

6 A I don't know.

7 Q What was the treatment for?

8 A We have the documents that are in the photos,  
9 but I don't -- there was a fractured leg, or a bone in the leg  
10 that was fractured.

11 Q What you have are photographs of treatment for  
12 a fracture. That's what you have; right?

13 A Correct.

14 Q You didn't speak to a doctor that gave him or  
15 administered him treatment; correct?

16 A No, I did not.

17 Q You didn't bother to go to the hospital to get  
18 the full set of records ever, did you?

19 A I believe that we do have records. I don't --

20 Q You think you have them?

21 A Well, I don't know if I have them, but I know  
22 the record -- I believe records were obtained.

23 Q Who -- who would have gotten them?

24 A I'm not sure if the DA's office has them, but  
25 I think they might.

1 Q So you think that --

2 A I don't -- I do not have them. To answer your  
3 question, no, I do not.

4 Q Okay. You don't have them. What was his --  
5 what was the date of his injury?

6 A It was -- I believe it was in July.

7 Q Of?

8 A The same year.

9 Q 2010; right?

10 A Correct.

11 Q What was his prognosis? How much time did the  
12 doctor say that it would take for Jerome Thomas to recover  
13 from his injury?

14 A I would have no way --

15 MS. WECKERLY: Objection. Calls for hearsay.

16 BY MR. SGRO:

17 Q Did you investigate --

18 A I already told you I did not speak to his  
19 doctor.

20 Q Did you do anything to investigate the amount  
21 of time it would take Jerome Thomas to recover from his  
22 injury?

23 A No.

24 THE COURT: I'll tell you what. I've got one  
25 question on behalf of a juror that I was going to ask you.



1 Since Devonia was a minor when you interviewed her in the  
2 hospital, was -- is there some reason that someone else such  
3 as a nurse or a CPS worker wasn't present, as well?

4 THE WITNESS: Well, the nursing staff or the medical  
5 staff come in consistently. I did not specifically ask for  
6 one of them to sit in on the interview. It did not happen,  
7 no. And I've never done that, whether it was an adult or a  
8 child. That's not something we typically do for a couple  
9 reasons. One is that they're not investigators, and the  
10 second is they are performing their own duties as nursing  
11 staff or, you know, whatever their role is in the hospital.  
12 So that's not something that we would typically do.

13 THE COURT: All right. Let's take a brief recess,  
14 ladies and gentlemen. During the recess it's again your duty  
15 not to converse among yourselves or with anyone else on any  
16 subject connected with this trial or to read, watch, or listen  
17 to any commentary on the trial, from any medium of  
18 information, including newspapers, television, and radio. And  
19 you may not form or express an opinion on any subject  
20 connected with this case until it is finally submitted to you.

21 We'll be in recess for about ten minutes. The court  
22 will be at ease while the jury leaves.

23 (Jury recessed at 3:22 p.m.)

24 THE COURT: The record will reflect that the jury  
25 has left the courtroom. Before you leave, I have three

1 additional questions from jurors. Two of them are from Juror  
2 No. 6 and one is from Juror No. 12. They all pertain to the  
3 same subject. They all want to know because there was a  
4 mention in the interview about Burns being mentally ill or  
5 having a problem, they want to know what evaluation was done  
6 and what the results were of Mr. Burns' mental evaluation.

7 Now, I know I can't answer the question. I don't  
8 know how you want to treat it. Do you want to look at the  
9 questions? You're welcome to look at them.

10 MR. ORAM: Judge, we have had Mr. Burns analyzed,  
11 and that is confidential and I --

12 THE COURT: I understand it is, but I don't know how  
13 to answer the questions.

14 MR. SGRO: If the question comes from -- of this  
15 detective to anything, the answer is going to be no, but I  
16 think that's the best we can do.

17 THE COURT: You want me to ask the question of the  
18 detective if he did anything?

19 MR. SGRO: Yeah, and I think he's just going to say  
20 no. And then at least we get their question answered and we  
21 keep the confidentiality of what we did.

22 THE COURT: Well, it also says did the State conduct  
23 a mental evaluation.

24 MR. SGRO: That one I don't think you can answer  
25 because I'm not sure they -- the jury --

1 THE COURT: Did you conduct -- did you do a mental?

2 MS. WECKERLY: We can't.

3 MR. SGRO: They can't.

4 THE COURT: Was he --

5 MS. WECKERLY: We can't. We're not allowed to.

6 MR. DiGIACOMO: We're not allowed to.

7 THE COURT: I know. Did -- did he go to competency  
8 court?

9 MR. DiGIACOMO: No. We never had anything related  
10 to the district court entering an order. The only thing is  
11 defense activity, so--

12 THE COURT: You want me to indicate that he was --  
13 he didn't go to competency court?

14 MR. SGRO: No.

15 MR. DiGIACOMO: No, I think you should just ignore  
16 the questions you can't ask him. And I wouldn't ask Detective  
17 Bunting that question unless the defense wants him asked that  
18 question.

19 MR. ORAM: No.

20 THE COURT: Do you want me to ask anything?

21 MR. SGRO: No.

22 MR. DiGIACOMO: Because, I mean, the response from  
23 Detective Bunting is going to be I don't have that ability --

24 THE COURT: I mean, the jurors are going to --

25 MR. ORAM: Judge, what can we do? They've asked a

1 question that's --

2 THE COURT: You tell me what you want me to do.

3 MR. ORAM: It's inadmissible.

4 MR. LANGFORD: Generally other judges in my  
5 experience, Your Honor, have said that that question would  
6 lead to inadmissible evidence.

7 THE COURT: I agree.

8 MR. LANGFORD: And that we can't answer that  
9 question and they are to disregard it.

10 THE COURT: Can I tell them that I can't ask the  
11 question?

12 MS. WECKERLY: Yes.

13 MR. DiGIACOMO: Yes.

14 MR. SGRO: Yes.

15 THE COURT: All right.

16 MS. WECKERLY: You say just like question from juror  
17 whatever, we can't ask it.

18 THE COURT: Those won't be asked. All right. Five  
19 minutes.

20 (Court recessed at 3:25 p.m. until 3:35 p.m.)

21 (In the presence of the jury.)

22 THE COURT: All right. State vs. Burns and Mason.  
23 The record reflect the presence of the Defendants, their  
24 counsel, district attorneys, all members of the jury.

25 Before we get going, Detective -- you're still under

1 oath -- did you ask the -- any questions of the defendant  
2 about his competency? Mr. -- when you were interviewing Mr.  
3 Burns about a mental evaluation?

4 THE WITNESS: During the interview?

5 THE COURT: Yeah.

6 THE WITNESS: Well, Detective Wildemann did, sir. I  
7 think he asked him a couple questions in regards to that.

8 THE COURT: Okay. Did you do any -- did you do any  
9 further inquiry about that?

10 THE WITNESS: No. I'm in no position to do that.  
11 That wouldn't be a role that I would -- that I would --

12 THE COURT: A couple of the jurors asked questions  
13 concerning the competency of the Defendants and any  
14 examination. That's not a subject that I'm permitted to ask  
15 questions about.

16 All right. You can continue your exam of him.

17 MR. SGRO: Thank you.

18 BY MR. SGRO:

19 Q Detective, just before I go further, relative to  
20 Monica Martinez, right before the break did you say that  
21 Monica Martinez was -- was proffered or interviewed once or  
22 twice? Were there one proffer -- was there one proffer or  
23 two?

24 A I don't know how many proffers there were, sir.  
25 I -- the one that you are referring to in December, I don't

1 recollect having any part of that.

2 Q Was there one that you did have a part of?

3 A I believe there was one previously, yes, that --

4 Q When was that?

5 A I don't recall. It was a while ago.

6 Q Do you remember the calendar year?

7 A No.

8 Q Do you have any notes about it?

9 A No.

10 Q So was there a tactical decision that was made  
11 that you were not to take notes?

12 A No.

13 Q How long did you speak with Ms. Martinez?

14 A Well, I didn't really speak with her. I was  
15 there during the proffer.

16 Q Well, who was interviewing her?

17 A I don't recall who all was there. I believe the  
18 -- the DAs were there that were in here.

19 Q Did anyone take notes during that first proffer  
20 -- or during the proffer that you attended?

21 A Anyone? I don't know.

22 Q You didn't see anyone, though?

23 A If they did, I don't -- I don't know whether  
24 people -- other people took notes, sir.

25 Q Was there -- you have participated in an

1 interview where someone has agreed to provide information for  
2 the State, right? This is Monica Martinez, correct?

3 A Correct.

4 Q And you like to take no notes?

5 A Well, I'm not there to --

6 Q Sir, this is yes or no.

7 A No. No, I did not take notes.

8 Q Okay. Was that done to achieve a tactical --

9 A No.

10 Q -- advantage?

11 A No.

12 Q Relative to Devonian's interview, is there a part  
13 in her statement --

14 A You said Monica's?

15 Q Devonian --

16 A Devonian?

17 Q Devonian's, yes, sir.

18 MR. SGRO: Well, I -- I can probably speed it up, if  
19 I approach, Your Honor.

20 BY MR. SGRO:

21 Q At page 4, do you see the transcript here? Now,  
22 what was he wearing? Do you remember what color of shirt he  
23 was wearing?

24 A Correct.

25 Q Okay. And then there's an unintelligible there,

1 right?

2 A Correct.

3 Q Okay. Now, this is -- the jury just saw this  
4 transcript, so I'll put it on the ELMO.

5 Now, the question is, what was he wearing? What  
6 color shirt, right?

7 A Correct.

8 Q Now, the answer is, A blank line, correct?

9 A Correct.

10 Q And are blank lines representative of portions  
11 of the interview that whatever transcriber happened to get  
12 this tape, they couldn't make it out on the first pass?

13 A Correct.

14 Q Now, you then are attributed -- it says, Q, but  
15 you're actually repeating, ostensibly, what she just said,  
16 right?

17 A Correct.

18 Q Now, you see where you say there, A white  
19 T-shirt with blue, do you remember realizing at that moment  
20 that she never told you that they were blue overalls, that her  
21 answer in fact was, Overalls; do you remember that?

22 A Do I remember -- no.

23 Q We just heard the tape. In this particular  
24 passage of the tape, do you remember Devonia's answer being,  
25 Overalls, and then you said, A white T-shirt with blue -- and



1 then you caught yourself -- here's what it sounded like. You  
2 caught yourself and then it's Question: With blue overalls?

3 A Well, I can clearly see that that's what it  
4 says, yes.

5 Q Okay. Do you remember, though, the answer from  
6 Devonia not mentioning what color the overalls were?

7 A No. I don't remember a lot of -- because I  
8 can't --

9 Q You just --

10 A -- see it on there.

11 Q Did you pay attention when the tape was being  
12 played?

13 A Yes.

14 Q Did you follow along with the transcript?

15 A Yes.

16 Q Did you hear words where the lines exist on the  
17 page?

18 A Some words, some not word, yes --

19 Q Okay.

20 A -- both --

21 Q As you sit here today, having just heard the --  
22 though you can't tell the jury if the answer was only overalls  
23 and it was your injection of the word, Blue, fair? The tape  
24 will speak for itself.

25 A Fair enough.

1           Q     All right. And then you go down and you say,  
2 They were rolled up at the pant.

3           You mean, like, down here, down near the shoes?  
4 You're still speaking about the overalls, right? The overalls  
5 were rolled up at the pant, correct? Right?

6           A     Yes.

7           Q     And then she answers: Yeah, and I think they  
8 were white.

9           In other words, she's attributing the color white to  
10 overalls, correct?

11          A     Hold on one second. Can I read it?

12          Q     Sure.

13          A     And then I say, Yeah, and I think they were  
14 white -- or she says, excuse me --

15          Q     Correct.

16          A     -- and I say, What, the shoes?

17          Q     Here's the -- Detective, please just stick with  
18 my question.

19                After you say, A white T-shirt with blue -- blue  
20 overalls, rolled up at the pant, you mean down near the shoes,  
21 you're still referencing the overalls, correct?

22          A     Well, I -- well, I say, You mean, like, down  
23 here, the shoe -- here, the shoes.

24          Q     It says, Down here, but the tape says, Down near  
25 the shoes.

1 A Okay.

2 Q And she answers, Yeah, I think they were white.

3 When she says, I think they were white, she's referring to the  
4 prior question, What color were the overalls, right?

5 A Well, obviously I didn't think --

6 MS. WECKERLY: Objection. Misstates the transcript.  
7 Read the next two lines.

8 THE COURT: I guess the jurors will have to decide.

9 MS. WECKERLY: The --

10 THE COURT: I'll sustain the objection. Let them  
11 decide.

12 BY MR. SGRO:

13 Q And then, after she says, They were white,  
14 that's when you say, What, the shoes? Right?

15 A Right. I'm clarifying --

16 Q Sir, do you then say, What, the shoes?

17 A Yes, I do.

18 Q Okay. So would you agree with me that if you  
19 listen to the tape, the tape speaks for itself, and it's  
20 better than your interpretation of what she's telling you.

21 A Okay. The -- the tape, if --

22 Q Do you agree with that?

23 A If it's clearable, yeah. Clear. Or you can  
24 hear actually what she says.

25 Q How old was David Burns at the time he was

1 arrested?

2 A Well, he said it was his birthday, 19, I  
3 believe. His --

4 Q Okay. So he just turned 19?

5 A Yeah, I believe on that day is what he said.

6 Q So at the time of the offense, he would have  
7 been 18?

8 A Correct.

9 Q So he was not 27 to 30?

10 A No. No, he was not.

11 Q Did you see the videotapes of the Opera House?

12 A I have.

13 Q And the person attributed to be David Burns is  
14 wearing black shoes, right?

15 A I don't recall off the top of my head what he  
16 was wearing.

17 Q You don't remember?

18 A I remember some of what he was wearing. I don't  
19 recall the -- I don't remember what he was -- his shoes were,  
20 though, no.

21 Q You remember overalls, though, don't you?

22 A Yeah.

23 Q Okay.

24 A I do.

25 Q Do you remember whether David Burns had a white

1 T-shirt on?

2 A He did not.

3 Q He had a blue one, right?

4 A Correct.

5 Q Okay. So did he have an orange hat on with a D?

6 A I don't know what the hat said.

7 Q Was it orange?

8 A I don't believe so. It didn't appear orange to  
9 me.

10 Q Okay. Now, at page 5, there's a section in the  
11 tape, this is right after we talk about the color white,  
12 whether they're shoes or they're overalls. We just got past  
13 that. Now we're on the orange hat, right?

14 A Correct.

15 Q Now, do you see where you say, Orange hat with  
16 white writing? Did you see what the writing was?

17 A Yes.

18 Q And the answer says, Yeah, but -- and then  
19 there's a line.

20 A Correct.

21 Q Did you hear at that point in time, on page 5,  
22 his hair was cut?

23 A I didn't repeat that, so I'm assuming not.

24 Q I know you didn't repeat it, but that's not my  
25 question.

1           A     Okay. Well, then the answer is no.

2           Q     All right. You're the one who repeated, His  
3 hair was curly and down to his ear, right?

4           A     Correct.

5           Q     That's what you said, correct?

6           A     Correct.

7           Q     Is there anything that's in writing above where  
8 you say, Curly hair --

9           A     Right.

10          Q     -- that says, Curly hair from Devonian?

11          A     No.

12          Q     And do you have a recollection right now within  
13 those two lines that you cannot see on page 5 that she says  
14 his hair was cut?

15          A     I'm sorry, say that one more time.

16          Q     In the two lines that appear in front of the  
17 jury at page 5 of her statement --

18          A     In the two --

19          Q     -- above --

20          A     -- lines --

21          Q     You can write --

22          MR. SGRO: Can I write on this thing or no?

23 BY MR. SGRO:

24          Q     This right here is where you say, His hair was  
25 curly, right?

1           A     Correct.

2           Q     Up above it in this area here, do you remember  
3 on the tape her saying, Devonian saying, His hair was cut?

4           A     No.

5           Q     All right. And would you again agree that we  
6 should defer to the tape as opposed to your interpretation of  
7 what she said?

8           A     Sure.

9           Q     Devonian made several statements about wrestling  
10 with the assailant, correct?

11          A     That's what it said on there on the statement,  
12 yes, sir.

13          Q     And do you remember a statement she made about  
14 the assailant rifling through her pockets?

15          A     Yes.

16          Q     Now, Cornelius Mayo had told you that he was at  
17 Devonian's side within seconds of her being shot in the  
18 stomach, remember that?

19          A     I know that he was in the bathroom, yes.

20          Q     Sir --

21          A     You said, He told me --

22          Q     -- did he tell --

23          A     -- I didn't -- I didn't do the interview, sir,  
24 with Mayo, so --

25          Q     Did you -- are you aware that Cornelius Mayo

1 maintains that he was by Devonia's side within seconds of her  
2 being shot?

3 A I don't know whether he said that. I know that  
4 that would be true, just based on his location, yes.

5 Q Do you agree if there's wrestling, a shot, and  
6 some rifling through pockets going on, it's going to take a  
7 few seconds for that to occur?

8 A Yes.

9 Q And you found it odd, did you not, that  
10 Cornelius -- that his story didn't match up with Devonia's  
11 relative to how that particular sequence of events went down,  
12 fair?

13 A Well, you're going to have to point out where  
14 that conflict is.

15 Q Did Cornelius Mayo ever tell you that he went to  
16 the drawer to grab money before going to the bathroom?

17 A I don't know if he stated that in his statement  
18 to the other detectives. I don't recall if he did that. I  
19 don't believe so.

20 Q Did he ever tell you that?

21 A No, I don't think so.

22 Q And Devonia in fact says, He grabbed like a  
23 hundred dollars, right?

24 A Right.

25 Q Any idea how --



1           A     On the way to the bathroom, I believe, is what  
2 she -- yeah.

3           Q     Any idea how a 12 year-old little girl, as she  
4 was running down a hallway, looking down into the bedroom, how  
5 she'd have any idea as to the dollar amount that was being  
6 grabbed out of the drawer?

7           A     Not at that time, no, I don't know -- I mean, I  
8 don't know where she was at at the time that she saw it.

9           MR. SGRO: Pam, the overall again?

10          MR. DIGIACOMO: I put it back up there. I believe  
11 Exhibit 273.

12          MR. SGRO: Thank you very much.

13 BY MR. SGRO:

14          Q     I'm showing you 277. What is the date that this  
15 drawing was made by Devonia?

16          A     I'm not positive because I didn't write it on  
17 the paper.

18          Q     Why didn't you write the date of that drawing on  
19 the paper?

20          A     Well, apparently I forgot to do that.

21          Q     Can you show me in your report where you date  
22 the fact that Devonia drew overalls for you?

23          A     No, it's not in there.

24          Q     So we have nothing to verify that this drawing  
25 was done, other than the existence of the drawing, right? In

1 other words, we don't have the --

2 A It's --

3 Q -- date, time, location?

4 A Well, I know the location for sure.

5 Q What was the --

6 A It's at --

7 Q -- location?

8 A It was at the hospital.

9 Q And do we have the date? What we do have --

10 A No.

11 Q Do you have the month?

12 A It was one of the two visits that I did with  
13 her. I believe it was the first, but I can't recall; and  
14 since I didn't date it, I'm not going to say it was one or the  
15 other.

16 Q I thought you just told the jury on direct that  
17 this drawing was done on the second visit when you did the  
18 photo lineup? Did I misunderstand that?

19 A No, I don't believe I said that.

20 Q So it could -- this could have happened on the  
21 first visit or the second?

22 A I believe it was the first, but I didn't date  
23 it, so I'm not going to say for sure which one it was.

24 Q What instrument did you give Devonia to write  
25 this with?

1 A Whatever one I had on my possession.

2 Q Is she left handed or right handed?

3 A I don't recall.

4 Q Did she move her arms at the time of the --

5 A Yeah, absolutely because she actually signed the  
6 photo lineup, so I know that she is --

7 Q Well, the photo lineup --

8 A -- capable of doing --

9 Q -- was visit --

10 A -- it.

11 Q -- two. You just said you think it was visit  
12 one. So let's talk about --

13 A Right.

14 Q -- visit one. Could she move her arms?

15 A Well, I said I believe that it's visit one, but  
16 I'm not going to say which one it is because I do not know for  
17 sure because I did not date it.

18 Q Okay. So let's break it down. Could she move  
19 her arms given her medical condition on visit one?

20 A I believe so.

21 Q Well --

22 A She was not shot in the arm, so I believe that  
23 she had to -- I don't -- I don't know if she wrote it that  
24 day, so I can't tell you.

25 Q I'm not asking --

1           A     But there's nothing physically -- no injuries  
2     that she sustained during the incident that would prevent her  
3     from moving her arms.

4           Q     She has IVs in her arms; she's on powerful  
5     sedatives.

6           A     Sir, I've been on IVs and I've given IVs --

7           Q     I'm not asking you about you --

8           A     -- and many people can write with their arms.

9           Q     Officer, did you see IVs in her arms?

10          A     I'm sure she had them in there based on her  
11     condition.

12          Q     Well, did she appear to be sedated?

13          A     She was -- I'm sure she was medicated.

14          Q     Did she appear to you to be able to ambulate, to  
15     move around?

16          A     Again -- when you say "ambulate," that means  
17     "walk" to me. So was she able to walk? No.

18          Q     Okay.

19          A     Was she able to move, yes.

20          Q     She was?

21          A     I think so, yeah.

22          Q     Well, why are you qualifying it?

23          A     Well, I didn't -- we -- I didn't have her  
24     manipulate and move around, so you're asking me something that  
25     I'm -- just can't be for certain any more than I'm suggesting

1 the date.

2 Q In this case, by the time you got to the Grand  
3 Jury proceedings on September 28, you had conducted a lot of  
4 witness interviews, you had cell-phone records, you had the  
5 statement from Devonian, correct?

6 A That sounds correct.

7 Q Did you have the videotapes already, too, from  
8 the Opera House?

9 A I don't recall the date off the top of my head.  
10 I'd have to look at the report on that.

11 Q Do you remember speaking with folks at the lab  
12 -- the Metro DNA lab about some things that you wanted done  
13 DNA-wise?

14 A In the request?

15 Q Did you -- did you make a request for DNA to be  
16 done?

17 A Yes.

18 Q Did you have a conversation with someone at the  
19 DNA lab about your concerns about putting the suspects in this  
20 case at both residences, Newman and Thomas?

21 A You mean as to why I would want DNA?

22 Q No.

23 A I have to understand the context of the  
24 question, so...

25 Q Did you speak to anyone at the DNA lab and

1 advise them that you wanted to put the suspects in the car and  
2 in both residences?

3 A Right. Like getting DNA -- having DNA performed  
4 so that we can get DNA at both of those locations?

5 Q Right.

6 A Yes.

7 Q You did that?

8 A Absolutely.

9 Q And this is BB, and I'm going to point --

10 A What's the document?

11 Q BD -- or BB, like boy.

12 A No, I'm -- sir -- I mean, the type of document  
13 that we're looking at? Okay.

14 Q I want to point to a specific provision. Do you  
15 see where it says here, I spoke? Where my pen is.

16 A Okay.

17 Q I spoke with Bunting at length about this case,  
18 and they have to put the suspects in the car and in both  
19 residences. Did I read that right?

20 A Yes, you did.

21 Q To corroborate the story. Did I read that  
22 right?

23 A Yes.

24 Q And the date on this is September 30.

25 A Okay.

1           Q     So despite all the evidence you had ascertained  
2 prior to December 30, the Grand Jury testimony, the cell phone  
3 records, Devonian's statement, videos that you had, you're  
4 still calling the Metro Crime Lab saying, I have to put the  
5 suspects in the car in both residences, right?

6           A     Well, what context are we speaking of?

7           Q     Sir, did I just read it to you?

8           A     Yeah, you read it to me, but you're only reading  
9 a sentence, so I don't know what the context -- if --

10          Q     Sir --

11          A     -- in regards to --

12          Q     -- let me ask it --

13          A     -- submitting --

14          Q     -- this way.

15          A     -- DNA?

16          Q     Let me ask it --

17          A     They're going to ask why you require to -- why  
18 do you need all this DNA, so you would express to them why you  
19 would give that, or why you need that DNA.

20          Q     And your answer to that question was, Because I  
21 have to put the suspects in the car in both residences to  
22 corroborate the story, right?

23          A     Because they want justification for all those  
24 things to be processed.

25          Q     Did I read your justification correctly?

1 MS. WECKERLY: I'm going to object. Those weren't  
2 his statements. Those were written by --

3 THE COURT: Well, he can be --

4 MS. WECKERLY: -- someone else.

5 THE COURT: -- asked if those are his statements.

6 MR. SGRO: He just stated that they were.

7 BY MR. SGRO:

8 Q Are those your statements?

9 THE COURT: I don't think he said that they were.

10 THE WITNESS: No, I didn't. That's not what I said.  
11 That's what's --

12 BY MR. SGRO:

13 Q Those aren't your statements?

14 A That's what it says is written. The context --

15 Q So was it written? Was it written?

16 A Well, hold on. Let me finish.

17 Q No, sir.

18 A You asked me a question --

19 Q Are those statements --

20 A -- I'm trying to answer you.

21 Q Hold on a second. Are those statements that I  
22 read an accurate rendition of your conversation or --

23 A Not in the context of what you're speaking, no,  
24 they are not.

25 Q Please -- please let me finish.



1           A     I am letting you finish. They are not.

2           Q     All right.

3           A     That's somebody else's words, their version of  
4 how -- what they're trying to portray.

5           Q     Sir --

6           A     That's not what I'm asking.

7           Q     So that report, then, is inaccurate?

8           A     No, I think it's accurate in the context of  
9 which they are trying to express to their supervisor of why  
10 they're justifying doing DNA on different items.

11          Q     Accurate with an explanation, right?

12          A     There usually needs to be one.

13          Q     Okay. This is -- still trying to -- are we --  
14 are you still wishing you could charge Jerome Thomas with  
15 murder in September of 2011?

16          A     I think that he's part of the conspiracy to do  
17 that --

18          Q     That's not my --

19          A     -- robbery.

20          Q     That's not my question. Do you still want to  
21 charge Jerome Thomas with murder in September of 2011?

22          A     Well, I submitted a warrant for his arrest.

23          Q     Again, not an answer to my question.

24          A     Yes, absolutely.

25          Q     Okay.

1 A He is a part of --

2 Q See how much easier --

3 A -- of everyone.

4 Q -- it goes if you just say yes? Showing you AA.

5 The guy you want to charge with murder, you didn't collect  
6 buccal swabs, did you?

7 A No.

8 Q Was Jerome Thomas's DNA ever tested against any  
9 of the scenes?

10 A Not yet because he's out-of-state. So, no.

11 Q Oh, so they don't have DNA in California?

12 A No, they do, but even if you get a hit on DNA,  
13 you're required or I'm required to get that DNA personally  
14 through our agency and --

15 Q So it's too --

16 A -- then submit it.

17 Q -- much work? Too much work to go --

18 A No.

19 Q -- get a murder suspect if it's in California,  
20 right?

21 A No, I did it twice.

22 Q Oh, so you --

23 A For the two --

24 Q -- could have done it?

25 MS. WECKERLY: Objection. Argumentative.

1 BY MR. SGRO:

2 Q Could you have got -- could you --

3 THE COURT: Overruled.

4 BY MR. SGRO:

5 Q Could you have gotten -- you just admitted to  
6 the jury you got him twice. Could -- so you could have done  
7 it three times, right?

8 A Right.

9 Q And the jury saw a tape with Monica Martinez  
10 being interviewed, where from the time of the interview you  
11 got a warrant and executed the warrant all while she's still  
12 standing there -- sitting there?

13 A Correct. Absolutely.

14 Q Even if that -- that overall drawing, by the  
15 way, would have occurred on the second visit, that second  
16 visit where the photo lineup happened on September 29; do you  
17 remember that? Does that seem about right?

18 A That sounds about right.

19 Q Do you remember interviewing Monica Martinez,  
20 obviously, right?

21 A I do.

22 Q Monica Martinez was someone that was trying to  
23 manipulate you; would you agree with that?

24 A I don't know that she was trying to manipulate  
25 me. She was definitely deceptive and wasn't being honest

1 throughout her statement.

2 Q Do you remember a time in the interview where  
3 she reached over and held your -- both of your hands?

4 A I do.

5 Q And do you remember when another detective  
6 walked in she quickly let go and sort of sat back up in her  
7 chair?

8 A I don't know if it was abrupt or not. I'd have  
9 to watch it. I don't remember.

10 Q But you remember --

11 A Yes. I remember she removed her hands from  
12 mine, yes.

13 Q Do you believe that that was an effort by her to  
14 try to work you or manipulate you?

15 A Well, what I think it was --

16 Q This is just yes or no.

17 A Well, then the answer is no.

18 Q You were asked some questions about ballistics  
19 in the -- or, I'm sorry, about how many shots could have been  
20 fired in the residence at the Grand Jury, right?

21 A Yes, sir.

22 Q And you said, Well, it's consistent there were  
23 six shots fired; do you remember saying that?

24 A Mm-hmm.

25 Q Yes?

1           A     Yes.

2           Q     Is it consistent with a different number of  
3 shots being fired; in other words, could there have been fewer  
4 shots fired than six?

5           A     I believe that there were six shots fired, if  
6 that's any --

7           Q     That's not my question. You said in the Grand  
8 Jury, It's consistent that there were six shots fire. Do you  
9 remember saying that, or do you want me to show it to you?

10          A     Yes.

11          Q     Which one?

12          A     Yes.

13          Q     Do you want me to show it to you?

14          A     No. Yes, I did say that.

15          Q     All right. So if it's consistent with six, is  
16 it also consistent based on what you saw that they were --  
17 that there were fewer than six?

18          A     I don't understand your question.

19          Q     Could the scene as you observed it have been the  
20 result of four shots being fired?

21          A     Of four?

22          Q     Yes, sir.

23          A     I believe there were six, so, no.

24          Q     Again, sir, could it have been four? I know  
25 what you -- everyone in the room knows what you believe.

1 Could it have been four?

2 A I don't believe it was four.

3 Q Could it have been four?

4 A No.

5 Q Could it have been five?

6 A Once again, sir, my answer is the same.

7 Q I know what you believe, but will you concede  
8 whether or not it's consistent that there were five shots that  
9 were fired?

10 A No. It's consistent that there were six shots  
11 that were fired.

12 Q So it couldn't have been five, right?

13 A I don't believe so.

14 Q It couldn't have been seven?

15 A I don't believe that it was.

16 Q Would it surprise you -- do you know who James  
17 Crywell is?

18 A Yes.

19 Q Would it surprise you that he placed a minimum,  
20 a maximum of 4 to 15 based on what he examined?

21 MS. WECKERLY: Objection. That's not the scene.  
22 That's the actual fragment. It's a different analysis, so...  
23 BY MR. SGRO:

24 Q Well, let me -- let me ask it a different way.  
25 I'll --

1 THE COURT: Yeah, I mean -- I think you better  
2 rephrase that.

3 MR. SGRO: I will. I will, Judge.

4 BY MR. SGRO:

5 Q I understand from you that it couldn't have been  
6 four. Could it have been more than six? Could it have been  
7 seven?

8 A You -- you're giving me hypotheticals. I --  
9 there's no way for me to answer that because I believe that  
10 there were six, so --

11 Q Sir, but what you said --

12 A -- I can't say that --

13 Q -- was --

14 A -- it could be seven if I believe it could be  
15 six. I don't -- I don't know how you want me to answer that,  
16 but I -- I don't believe that it was seven, so in my mind, no.

17 Q Okay. So impossible it could have been any  
18 other number other than six, right?

19 A I believe that it was six shots.

20 Q And it's impossible that it could have been less  
21 than six or more than six in your opinion?

22 THE COURT: I think we've covered it.

23 MR. SGRO: All right.

24 BY MR. SGRO:

25 Q Let me ask you about -- turning to Job-Loc here

1 just for a second about wanting to charge him. All right.  
2 You knew that the murder weapon belonged to Job-Loc?

3 A I -- I knew that he had possession of it at one  
4 time, yes. Or I believe that it was the same. Per Monica's  
5 statement, she mentions that he has a large-frame revolver, so  
6 I believe that it's possible that those were the same -- the  
7 same, correct.

8 Q Did you trace the ownership of that revolver?

9 A Yes, there was a trace done.

10 Q Okay. Did you learn how long Jerome Thomas  
11 owned that revolver?

12 A The -- the revolver that we have --

13 Q Yes, sir. The revolver --

14 A -- possession of?

15 Q -- that you have possession of now, how long did  
16 Jerome Thomas own it?

17 A Oh, I have no idea. And --

18 Q Did you --

19 A -- how long he owned it, I have no idea.

20 Q It is an incriminating piece of evidence, is it  
21 not, if someone possesses the murder weapon, fair?

22 A Sure.

23 Q It is an incriminating piece of evidence, is it  
24 not, if someone is cleaning the murder weapon right after a  
25 homicide takes place?



1           A     That's why I charged him with it.

2           Q     It is a -- it is an incriminating piece of  
3 evidence, is it not, for someone to destroy the inside of the  
4 barrel of a murder weapon?

5           A     Yes.

6           Q     It is incriminating if he -- if someone changes  
7 their phone number right after a homicide occurs, right?

8           A     I believe so. Depending on the circumstance,  
9 absolutely.

10          Q     It can be, right?

11          A     Sure.

12          Q     Was Job-Loc arrested in this case?

13          A     Well, he's in custody. I submitted a warrant,  
14 so technically we're just waiting for him to be extradited.

15          Q     For accessory after the fact?

16          A     Correct.

17          Q     Not with murder?

18          A     I had no choice in that one.

19          Q     How was Job-Loc moving at the time of his  
20 arrest? And by that I mean, was he walking on both legs? Did  
21 he --

22          A     I didn't arrest him.

23          Q     -- have two -- hold on. Did he have two  
24 crutches or did he have a crutch; do you know?

25          A     I was not there. I can't answer that question.

1           Q     Are you aware that at the time -- have you ever  
2 been told that at the time of his arrest he was only using one  
3 crutch?

4           MS. WECKERLY:  Objection.  Hearsay.

5           THE COURT:  I'll allow it.  Overruled.

6 BY MR. SGRO:

7           Q     Are you aware of that, sir?

8           A     I don't recall.

9           Q     The search of his residence happened on August  
10 13, six days after the homicide, right?

11          A     The Brittnae Pines?

12          Q     Yes, sir.

13          A     Okay.  Yes, sir.

14          Q     At the search of Brittnae Pines you found a knee  
15 brace, right?

16          A     I believe there was one in there.

17          Q     And you found pain meds, right?

18          A     I believe there were, yes.  I believe --

19          Q     Were there --

20          A     -- so.

21          Q     Were there pills inside of those prescription  
22 bottles?

23          A     I wasn't -- I wasn't there during the whole  
24 search warrant, so I don't recall.

25          Q     But it -- did it -- did it appear to you as a

1 detective in the case that perhaps he was getting better  
2 because he left a brace and his meds behind?

3 A Well, that doesn't mean he doesn't have another  
4 brace or other meds.

5 Q That's not the answer to my question. Did it  
6 appear to you -- strike that.

7 Did you consider it to be of any evidentiary value  
8 that Job-Loc had left a knee brace at the residence?

9 A Yeah, the fact that he was there, absolutely.

10 Q Okay. How about relative to his ability to move  
11 around, did it have any evidentiary value that his knee brace  
12 was in his Las Vegas residence?

13 A No, because it could go either way on that. He  
14 could --

15 Q How many -- how many of his legs were broken or  
16 fractured or hurt?

17 A I believe one.

18 Q Just one?

19 A Correct.

20 Q So I -- if I heard you correctly, did you say he  
21 has another leg -- you're not suggesting to the jury that he  
22 injured both legs, are you?

23 A No.

24 Q All right. Did it have any evidentiary value  
25 that he'd left his meds behind?

1           A     That he was at the residence.

2           Q     Other than that, none?

3           A     That he left in a hurry.

4           Q     Okay. And do you know that he was facing a life  
5 sentence in California?

6           A     I don't know what sentence he was facing. I  
7 know -- I mean, I know that he was under investigation and he  
8 had a case against him, but I don't --

9           Q     So you're --

10          A     -- know what his --

11          Q     -- you're not familiar -- you're not familiar  
12 with kidnapping, robbery, and --

13          A     Yes, but you asked if I was familiar with a life  
14 sentence. I don't know what that sentence is in California.

15          Q     All right. When you recorded Mr. Burns, it  
16 began with a sentence -- or a statement that said, This is  
17 going to be a surreptitious recording, right?

18          A     Yeah, I believe Wildemann did that, correct.

19          Q     That means that the tape-recording device is  
20 hidden so that the person doesn't know that he or she is being  
21 recorded?

22          A     Yes, sir.

23          Q     Okay. So Mr. Burns didn't know he's being  
24 recorded?

25          A     We didn't put the recorder in front of him,

1 that's for sure.

2 Q Now, I want to talk to you about the interview  
3 technique you used with Mr. Burns. During the course of the  
4 interview, do you remember calling -- asking if he was  
5 retarded?

6 A I did not ask that question.

7 Q Detective Wildemann did, right?

8 A Detective Wildemann did ask that question, yes.

9 Q Did Detective Wildemann call him a motherfucker?

10 A Yes, he did.

11 Q Did Detective Wildemann call him a bastard or  
12 was that you?

13 A That one might have been me.

14 Q Who told -- who said, Cut the shit? Was that  
15 you or Detective Wildemann?

16 A I think that was Detective Wildemann.

17 Q Was it you or Detective Wildemann that called  
18 him a jackass?

19 A I believe that one was me.

20 Q And you started confronting him with sentences  
21 that began with, We already know, right?

22 A Correct.

23 Q Right? So one of the interview techniques that  
24 you used, aside from calling him a bunch of names, was telling  
25 him that, We already know what happened, right?

1           A     Yes, sir.

2           Q     Okay. And when you say, We want to hear your  
3 side, you're not really interested in hearing his side, such  
4 that he can extricate himself out of harm's way? You'd  
5 already decided what happened, right?

6           A     Well, we asked him to give his side of the  
7 story.

8           Q     Sir, listen to my question.

9           A     All right.

10          Q     By the time you get to where David Burns is at,  
11 you already decided what happened, right?

12          A     I think we have a really -- yes. Yeah, I think  
13 so.

14          Q     And so when you say, We want to hear your side,  
15 that's not because you want to hear that -- how he didn't have  
16 anything to do with it, right? You're there already to effect  
17 an arrest whether he speaks to you or not, fair?

18          A     Yeah. We asked him, Why?

19          Q     David Burns, despite being called all those  
20 names by you, always refers to you as, Sir, right? Sir,  
21 follows the end of his sentences, correct?

22          A     I -- every sentence, I don't know one way.

23          Q     Is it -- do you remember any time that David  
24 Burns responds with, Sir?

25          A     Yeah. I believe he did, yes, sir.

1           Q     Are you aware of the jeopardy that attaches to  
2 an individual in --

3           A     I'm sorry, the what?

4           Q     Jeopardy, harm --

5           A     Okay.

6           Q     -- that could potentially come to an individual  
7 in California if they're seen speaking to a police officer?

8           A     Just it gets -- potentially that's any inmate.

9           Q     Have you heard this phrase, Snitches get  
10 stitches? You ever heard of that?

11          A     Sure.

12          Q     Okay. And in California it's worse than it is  
13 here even in Las Vegas; is that right?

14          A     I have no idea what it's like in California.

15          Q     Would you agree with me, sir, that the way that  
16 Mr. Burns was confronted -- he was getting arrested no matter  
17 what he told you?

18          A     Yeah, he was definitely getting arrested.

19          MR. SGRO: Your Honor, do you want to -- this might  
20 be a good time to take a break if the Court was inclined.

21          THE COURT: You want to take an evening recess now?

22          MR. SGRO: Yes, sir.

23          THE COURT: All right. I think that it's pretty  
24 obvious we're going to go on tomorrow with this witness,  
25 Ladies and gentlemen. So we'll take our evening recess now.

1           During the recess, it's again your duty not to  
2 converse among yourselves or with anyone else on any subject  
3 connected with this trial or to read, watch, or listen to any  
4 report of, or commentary on the trial from any medium of  
5 information, including newspapers, television, and radio, and  
6 you're not to form or express an opinion on any subject  
7 connected with this case until it's finally submitted to you.

8           We'll be in recess until 9:30 tomorrow morning.

9           (Jury recessed at 4:11 p.m.)

10          THE COURT: Let the record reflect that the jury's  
11 left the courtroom. Anything further on the record?

12          MR. DIGIACOMO: Judge, it's my understanding that you  
13 had to go because we still had to address a couple of  
14 things --

15          THE COURT: Well, if you want --

16          MR. DIGIACOMO: -- before we broke at --

17          THE COURT: -- to address something --

18          MR. DIGIACOMO: -- 4:00?

19          THE COURT: -- I can do it.

20          MR. DIGIACOMO: Well, the only thing is this: Is if  
21 we are going to argue a bunch of things and still have a  
22 second cross of Detective Bunting and another --

23          THE COURT: I -- we've got -- he hasn't finished his  
24 cross, and we -- we've got -- I'm sure Mr. Langford is going  
25 to have some questions.



1           MR. DIGIACOMO: No. No, my only concern is this: Is  
2 that we do not want to split the argument. So as -- as long  
3 as we all have an agreement that we can just finish wherever  
4 we finish and then argue Thursday the whole day so that we get  
5 the whole thing in?

6           THE COURT: We can start arguments tomorrow if we can  
7 finish.

8           MR. DIGIACOMO: I don't -- I don't think either side  
9 necessarily wants to cut it in the middle, like, have them  
10 here --

11          THE COURT: No, we're going to --

12          MR. DIGIACOMO: -- just to stay --

13          THE COURT: -- go as fast as we can. Let's -- so if  
14 we do tomorrow -- if we finish tomorrow -- tomorrow morning  
15 with evidence, we can start instructions and arguments in the  
16 afternoon, maybe the State's opening and the defense can go on  
17 Thursday.

18          MR. ORAM: That sounds fair.

19          THE COURT: And then you get your reply after theirs.  
20 That's the way it goes.

21          MR. DIGIACOMO: Well, I want to -- I do not want --

22          THE COURT: I'm not --

23          MR. DIGIACOMO: -- to split them up is what I'm  
24 saying. Because, like --

25          THE COURT: I'd like to get this to the jury as soon

1 as possible. I'd like to get a verdict this week. If we  
2 don't this week, then we've got a problem of what are we going  
3 to do next week. You guys have already told me that you want  
4 to take Tuesday off.

5 MR. DIGIACOMO: Well, the jury's going to --

6 THE COURT: The jurors don't have --

7 MR. DIGIACOMO: -- deliberate.

8 THE COURT: -- to take Tuesday off.

9 MR. DIGIACOMO: Right. The jury can still  
10 deliberate. And based on our agreement, only one lawyer needs  
11 to be present for the verdict. So that's not an issue.

12 THE COURT: Well, that's true too. Somebody had to  
13 be gone Tuesday. I can't remember which one --

14 MR. DIGIACOMO: Mr. Sgro.

15 THE COURT: -- of you though. Mr. Sgro? Okay.

16 MR. DIGIACOMO: But, I mean, to take a verdict --

17 THE COURT: To take a verdict --

18 MR. DIGIACOMO: -- but ultimately --

19 THE COURT: -- Mr. Oram could be present.

20 MR. DIGIACOMO: But the issue is --

21 THE COURT: I -- are you going to be available by  
22 telephone, at least, if there's questions?

23 MR. SGRO: I'm flying on Tuesday, Your Honor.

24 MR. ORAM: I'll be okay.

25 MR. SGRO: But Mr. Oram will be available and --

1 MR. ORAM: We don't need Mr. Sgro.  
2 MR. LANGFORD: I can help him out, Judge.  
3 THE COURT: Thank you.  
4 MR. ORAM: Thank you, Judge.  
5 THE COURT: We'll see you tomorrow morning at 9:30.  
6 MR. ORAM: Thank you.  
7 MR. DIGIACOMO: Thank you, Your Honor.  
8 (Court recessed for the evening at 4:14 p.m.)  
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**CERTIFICATION**

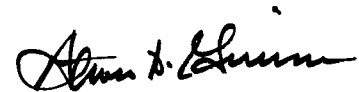
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CLARK COUNTY, NEVADA  
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|                            |   |                        |
|----------------------------|---|------------------------|
| THE STATE OF NEVADA,       | ) |                        |
|                            | ) |                        |
| Plaintiff,                 | ) | CASE NO. C-10-267882-1 |
|                            | ) | C-10-267882-2          |
| vs.                        | ) | DEPT NO. XX            |
|                            | ) |                        |
| WILLIE DARNELL MASON, AKA  | ) |                        |
| WILLIE DARNELL MASON, JR., | ) | <b>TRANSCRIPT OF</b>   |
| AKA G-DOGG,                | ) | <b>PROCEEDING</b>      |
| DAVID JAMES BURNS, AKA     | ) |                        |
| D-SHOT,                    | ) |                        |
|                            | ) |                        |
| Defendants.                | ) |                        |

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

**JURY TRIAL - DAY 14**

WEDNESDAY, FEBRUARY 11, 2015

APPEARANCES:

|                      |  |
|----------------------|--|
| For the State:       | MARC P. DIGIACOMO, ESQ.<br>PAMELA C. WECKERLY, ESQ.<br>Chief Deputy District Attorneys |
| For Defendant Mason: | ROBERT L. LANGFORD, ESQ.   |
| For Defendant Burns: | CHRISTOPHER R. ORAM, ESQ.<br>ANTHONY P. SGRO, ESQ.                                     |

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| EE | Victim's Notes | 88 |
| DD | Drawing        | 90 |

1       **LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 11, 2015, 9:32 A.M.**

2                               \* \* \* \* \*

3                       (Outside the presence of the jury.)

4               THE COURT: All right. State vs. Mason and Burns.  
5 The record will reflect the presence of the defendants, their  
6 counsel, and the district attorneys, in the absence of the  
7 jury. We're going to make a record on the Shoemaker issue?

8               MR. SGRO: Yes, sir. So there -- there's --  
9 actually, Mr. Oram reminded me of a second one, but we can  
10 resolve that as we speak as well.

11               So Detective Shoemaker is a former homicide  
12 detective who is now retired. I interviewed him. I don't  
13 remember how long ago. But in the course of the interview, I  
14 learned the following information: That he was a part of the  
15 team that was involved in the prosecution of David Burns, and  
16 as being part of the team, they would regularly have these  
17 debriefing meetings, which Mr. Shoemaker attended.

18               He was to be apprized of the case because I think he  
19 had a supervisorial role in the case, and he admittedly did  
20 not personally interview any of the witnesses in this case;  
21 however, he was to compile information and then he had a  
22 specific role of delivering that compiled information to CPS.

23               The Court has heard mention in this case through  
24 various witnesses the parallel investigation that was  
25 occurring with CPS insofar as Cornelius Mayo and his children

1 were involved. Devonian Newman also a victim in this case was  
2 also involved with CPS. And I have had all of those witnesses  
3 and I've asked each of those witnesses their different  
4 interactions with CPS.

5 Detective Shoemaker was going to be offered to  
6 testify to the fact that he advised CPS that Derecia Newman --  
7 sorry, Devonian Newman was, quote/unquote, "a mule". And by  
8 that I mean she would go to the front door to collect money  
9 from Mom and deliver it to the back room to Dad to pick up  
10 drugs to return to the front door. And that is consistent  
11 with the evidence in this case, in that she was at the front  
12 door at the time that Ms. Cousins knocked on the door.

13 So I asked Mr. Mayo, Did you use Devonian as a mule?  
14 Did you ever say that to CPS? I asked Erica Newman if she was  
15 aware of Devonian's involvement. I did not ask Devonian. It  
16 was clear, and I think the Court probably would agree with me,  
17 that she had little if any recollection of the events today.  
18 The -- in fact, the State offered her prior recorded statement  
19 into evidence based on her inability to recall.

20 So my plan was to then call Shoemaker, who would  
21 testify that he was personally involved in these debriefings,  
22 number one. Number two, no notes were ever taken at the  
23 debriefing, so no report was ever generated. Number three, he  
24 cannot tell me which police officer gave him the information;  
25 however, he did specifically recall the information, and that



1 would be offered to do a couple of things.

2           Number one, to show the course of the CPS  
3 investigation to the extent that that -- it would be offered  
4 for that purpose; it would not be hearsay. It would simply be  
5 to advise the jurors what -- what was going on at CPS at given  
6 times, given the testimony that's come in thus far. The  
7 second thing is, Your Honor, I would be offering it, if the  
8 Court did find it to be hearsay, as a prior inconsistent  
9 statement relative to the -- my ability to impeach Cornelius  
10 Mayo and Erica Newman.

11           And number three, I would offer it as an inherently  
12 -- it's -- it's in a state -- it's a statement that has  
13 inherent indicia of reliability because it's being made from a  
14 summary law enforcement investigation to another arm of -- and  
15 it's not criminal, but it's pseudo -- it's pseudo criminal in  
16 nature, the proceedings done at CPS, and so I would offer the  
17 statement as inherently -- inherently reliable.

18           And the statement is number one, Derecia Newman was  
19 a mule for the parents --

20           THE COURT: Devonia.

21           MR. DIGIACOMO: Devonia.

22           MR. SGRO: Devonia, I don't know why I keep doing  
23 that. Devonia was the mule.

24           THE COURT: Apparently, at one point Detective  
25 Shoemaker testified at a CPS hearing that Devonia had gone to

1 the front door and then taken money down -- is that what he  
2 said?

3 MR. DIGIACOMO: No. On August 10, I believe of 2010,  
4 so three days after our homicide, there's a conversation  
5 between Detective Shoemaker and CPS to generally give them an  
6 overview of what happened at the scene so CPS could make some  
7 of the -- the decisions about what's happening. There's a  
8 report from CPS saying, Detective Shoemaker reported that --  
9 and I'm -- let's read it directly --

10 MR. SGRO: Yeah, I'll --

11 MR. DIGIACOMO: -- into the record.

12 MR. SGRO: It says here, His investigation -- this is  
13 Shoemaker -- His investigation has revealed that Devonias was  
14 accustomed to collecting money from Derecia at the front door  
15 of the apartment and taking it to the back bedroom where  
16 Cornelius would give her drugs to bring back to Derecia.  
17 Detective Shoemaker stated, This is why Devonias was at the  
18 front door during the robbery.

19 Now, the other thing was that Cornelius Mayo,  
20 according to Detective Shoemaker, was going to call 9-1-1,  
21 then he decided to hang up and call some friends, presumably  
22 to pick up his product. Now, those two statements are things  
23 that we have made much hay about in this case through a number  
24 of different witnesses. So to -- to exclude it simply on  
25 hearsay denies us the opportunity to use it for impeachment,

1 as well as the fact, Your Honor, that we're not -- I'm -- I'm  
2 not even sure it is hearsay because it simply explains what  
3 CPS did after receiving the information.

4 Because what -- what's going to happen is they're  
5 going to now move towards making the kids wards of the state.  
6 They're going to limit the contact with Devonia and the rest  
7 of the outside world. They -- they become significantly --  
8 significantly involved. Detective Bunting, that I -- and I  
9 had asked him about this yesterday -- will ultimately testify  
10 at a hearing and also suggest to a judge that Cornelius Mayo  
11 is not an honest person.

12 And so it just -- it helps to articulate to the jury  
13 what was going on in the -- in the days, weeks, and months  
14 prior to those hearings.

15 THE COURT: As I understand it, Detective Shoemaker  
16 never interviewed any of the witnesses; is that correct?

17 MR. DIGIACOMO: That is correct.

18 MR. SGRO: That's my understanding as well.

19 THE COURT: So what he told CPS was based upon what  
20 he thought he knew from briefings with the officers in  
21 homicide?

22 MR. SGRO: Right. And here's --

23 THE COURT: Is that right?

24 MR. SGRO: Yes, sir. And if I might address that  
25 just for a moment. Relative to -- to this particular case --

1 and I want to make sure the Court understands we're just  
2 focusing here and not making some global pontification here --  
3 it is unfair that the Defense -- it can be restricted from  
4 introduction of this evidence with a hearsay objection because  
5 the notes, whether or not they're taken, we have no control  
6 over that. And what I mean by that is, if notes were taken at  
7 this debriefing when this important information came out, I  
8 would then be able to figure out who said what and I would be  
9 able to do my own investigation and go track it down.

10 The difficult --

11 THE COURT: If it's hearsay, it's hearsay.

12 MR. SGRO: No, but -- right. But what -- what --  
13 what might start as hearsay -- if Shoemaker would have taken a  
14 note down and said, I got this from Bunting, or I got this  
15 from Wildemann, or Wildemann wrote a note that made its way to  
16 the homicide file, today here's what we discussed, I would  
17 have been able to ultimately get to who Mr. Mayo said this to  
18 and put that person on.

19 And so --

20 MR. DIGIACOMO: That assumes the fact that Mr. Mayo  
21 ever said it, and I believe that there is absolutely no  
22 witness on earth who is ever going to say that Mr. Mayo ever  
23 made those statements.

24 THE COURT: Well --

25 MR. SGRO: Well, it came from somewhere, Judge.

1 THE COURT: We -- well, he --

2 MR. SGRO: I'm not making it up. It's in the report.

3 THE COURT: I don't know where it came from, but we  
4 certainly don't have percipient knowledge by a witness to  
5 testify to that.

6 MR. SGRO: If that's -- if that's the case, Your  
7 Honor, isn't it -- then doesn't it then become a reward for  
8 the State to engage in a tactical decision to not record notes  
9 because what happens is, if you don't take notes of this  
10 debriefing, someone like me and the next 10, 20 attorneys  
11 after me can never find out. And so if I'm a DA or if I'm in  
12 charge of homicide, I instruct people, Listen, don't take  
13 notes, let's tell person X to make a report and that way it  
14 never comes in evidence if it hurts us.

15 Now, that -- maybe it's just coincidental, but  
16 clearly that's a consequence of not taking notes, and perhaps  
17 it's an unintended consequence, but it's certainly a decision  
18 that Mr. Burns and his defense attorneys had nothing to do  
19 with. So I guess what I'm suggesting to the Court is the  
20 statements -- I'm not making the statements up. They come  
21 from reports and they came from somewhere. So for Mr.  
22 DiGiacomo to state he never said it to anyone in the planet,  
23 well, that implies that Detective Shoemaker then made the  
24 whole thing up. That's not --

25 MR. DIGIACOMO: No, that doesn't imply that.

1 Detective Shoemaker -- it was Sergeant Shoemaker, I think will  
2 say, Hey, there was discussions in which were, like, we  
3 theorized that maybe this happened, but I don't have any  
4 evidence that anyone ever told me that they had evidence that  
5 this fact happened. I was pontificating, for lack of a better  
6 word. I was speculating that this is possible and that is not  
7 admissible evidence.

8 THE COURT: It's a possibility because --

9 MR. SGRO: That's not what he told me, though, Judge.

10 THE COURT: -- the -- the argument is there's a claim  
11 that the perpetrator went down and went through the pockets of  
12 Devonian.

13 MR. DIGIACOMO: Correct.

14 THE COURT: And if -- and the argument could be made  
15 if that occurred, then it occurred because Devonian had  
16 something like drugs or money on her.

17 MR. SGRO: Exactly.

18 MR. DIGIACOMO: So that's an inference that can be  
19 drawn from the evidence that they have. They can't put a  
20 witness on to speculate that that's what happened.

21 THE COURT: That sounds to me like what Shoemaker was  
22 guessing that Devonian had done that and said that. But that's  
23 no more than you could guess or the jurors could guess.

24 MR. SGRO: Well --

25 THE COURT: I'm sorry. They -- it's -- it's hearsay,

1 and I have to sustain the objection on it.

2 MR. SGRO: Okay. What of the -- so does -- does his  
3 testimony -- does that sustaining of that objection also go to  
4 the fact that Cornelius Mayo didn't call 9-1-1 until after he  
5 called some friends?

6 THE COURT: If he interviewed Cornelius --

7 MR. SGRO: He did not, sir.

8 THE COURT: -- well --

9 MR. SGRO: It's the same factual predicate as the one  
10 we just outlined.

11 MR. DIGIACOMO: There's no basis to believe that that  
12 fact is true.

13 THE COURT: I mean, he's got to have percipient  
14 knowledge of something.

15 MR. SGRO: Your Honor, I don't mean to quarrel with  
16 the Court, I understand the ruling. I just, for purposes of  
17 the record, wanted to make sure --

18 THE COURT: I mean, the hearsay rule does apply to  
19 the defense too.

20 MR. SGRO: Of course, sadly, that's true. I guess at  
21 the end of the day, though, I was offering it under a couple  
22 of exceptions, and I -- I'm asking the Court if the --

23 THE COURT: Because it's inherently reliable.

24 MR. SGRO: And because it comes in to impeach a  
25 number of the State witnesses.

1 THE COURT: I'm not about to hold that the records or  
2 reports from CPS are inherently reliable. I can't say that.

3 MR. SGRO: And the ruling relative to the prior  
4 inconsistent statement, the denial of that is based on the  
5 unavailability or the inability of us to produce someone that  
6 Mr. Mayo spoke to; is that right, Your Honor?

7 THE COURT: That's true.

8 MR. SGRO: Okay. So -- and that applies, then, to  
9 the 9-1-1 situation where in the CPS records it reflects that  
10 Sergeant Shoemaker advised them that he called somebody before  
11 he called 9-1-1. The same ruling, Your Honor?

12 THE COURT: Yes, that would be the same record.

13 MR. SGRO: Okay. Then -- then the -- then while  
14 we're here, I would invite the Court to consider -- to save a  
15 witness -- a business records exception ruling. There is a  
16 security log from UMC. It's part of the medical records chart  
17 that Dr. Goshi testified from. The Court will recall me  
18 showing him some pages of a medical chart from which he opined  
19 what Fentanyl was and what Versed was and the effects, et  
20 cetera.

21 THE COURT: You can get those into evidence.

22 MR. SGRO: Sure. In the same medical records chart  
23 there are entries by UMC security guards relative to the visit  
24 between Mr. Mayo --

25 THE COURT: I would admit those.



1 MR. DIGIACOMO: Yeah.

2 THE COURT: Those are --

3 MR. DIGIACOMO: If he -- if he --

4 THE COURT: -- medical records --

5 MR. DIGIACOMO: I think I have that one.

6 THE COURT: Medical records are almost always  
7 admissible --

8 MR. SGRO: Yeah.

9 THE COURT: -- if they're certified. And even if  
10 they're not certified, you can get them certified. So I  
11 wouldn't have any problem.

12 MR. SGRO: Right. So to save time, then, I just need  
13 the piece of paper where the security guard logged the visit  
14 and the statements perceived that --

15 THE COURT: If you have it and it's a medical record,  
16 then --

17 MR. SGRO: I do.

18 THE COURT: -- it can come in.

19 MR. SGRO: Yeah.

20 THE COURT: It can come in.

21 MR. DIGIACOMO: Yeah, if we could just look  
22 beforehand, we probably wouldn't even object to it because I  
23 think it's the same one that I found in the -- in the records,  
24 but there is about 15,000 pages of records.

25 MR. SGRO: Right. I'll -- I'll get that to them at

1 -- so I'm assuming we're going to break around 11, and I'll  
2 have it here --

3 THE COURT: We can't break until you guys quit  
4 talking and we get the jury in here.

5 MR. SGRO: Thank you, Judge.

6 MR. DIGIACOMO: Also, for the record, I had joined in  
7 Mr. Sgro's request to have Detective Shoemaker testify, Your  
8 Honor.

9 THE COURT: The record will so reflect.

10 Bring in the jury.

11 MR. SGRO: I'm just going to call to get that record  
12 down here. I'll need to give him a minute.

13 MR. DIGIACOMO: Do you want me to put Detective  
14 Bunting back on the stand?

15 THE MARSHAL: All rise for the entering jury, please?  
16 Juror's please.

17 (Jury entering at 9:47 a.m.)

18 THE COURT: All right. State of Nevada vs. Burns and  
19 Mason. The record will reflect the presence of the  
20 Defendants, their counsel, the district attorneys, all members  
21 of the jury. Good morning, Ladies and gentlemen.

22 We are still -- and you may be seated, Detective.  
23 We're still on the cross-examination of Detective Bunting.

24 And, Mr. Sgro, you may proceed.

25 MR. SGRO: Thank you. May I approach the witness,

1 Your Honor?

2 THE COURT: Yes.

3 CHRISTOPHER BUNTING, STATE'S WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION - (Continued)

5 BY MR. SGRO:

6 Q I'm showing you what's been marked as Defense  
7 Exhibit W. Is that a picture of Job-Loc or Jerome Thomas?

8 A Yes, sir.

9 MR. SGRO: I'd move for its objection.

10 MS. WECKERLY: No objection.

11 THE COURT: It will be received.

12 (Defendant's Exhibit W admitted.)

13 BY MR. SGRO:

14 Q We spoke a little bit about the Grand Jury  
15 yesterday. Do you recall that conversation?

16 A Yes, sir.

17 Q And during the Grand Jury proceedings, do you  
18 recall testimony that there was information that Job-Loc was  
19 actually the shooter in this case, correct?

20 A I -- I recall that there were potential  
21 witnesses -- or not witnesses, excuse me, possibilities of  
22 other people being the shooter at that time at the beginning  
23 of the case.

24 Q You don't recall Job-Loc was the shooter as  
25 information that you'd received?

1           A     That he was the shooter?

2           Q     He --

3           A     No.

4           Q     You don't recall that?

5                 We spoke a little bit about Devonia Newman's  
6 statement yesterday. I want to show you -- I want to refer  
7 you to one page, this is page 11. Now, on page 11, does it  
8 start with, Okay. And then what?

9           A     On the floor, okay. And then what? Yes, sir.

10          Q     And then it says, That was it. Homey left.  
11 Yeah. Okay. He was the -- and have I read it all accurately  
12 so far?

13          A     That's what it says.

14          Q     Now, we had this conversation yesterday about  
15 the lines being things that the transcriber, as he or she was  
16 typing, didn't catch, right?

17          A     Correct.

18          Q     All right. Now, there is a few lines which --  
19 the lines basically suggest that it's shorter or more lengthy,  
20 right? The more lines we have, the more unintelligible  
21 conversation, fair?

22          A     Possibly.

23          Q     In this particular section, do you remember  
24 hearing Devonia tell you, He, speaking of Cornelius, said, I  
25 shot my daughter. I shot my daughter?

1           A     That Devonia said that he shot her?

2           Q     Listen to my question because I don't want to  
3 get -- I don't want to lose track of the speaker. I want to  
4 focus on the words that were uttered. Did you hear in this  
5 part of the interview, when you were with Devonia, when you  
6 say, Okay. He was the -- do you hear Devonia say, He was  
7 telling family where we stay and he said, I shot my daughter,  
8 I shot my daughter.

9           A     Doesn't say that on there, so I don't know.

10          Q     You don't recall that from the interview?

11          A     That she said that Mayo shot her? No.

12          Q     Not Cornelius Mayo shot me, okay? I'm saying,  
13 Telling family where we've stayed. Do you remember that?

14          A     At the -- I don't understand your question.

15          Q     I'm simply referencing you to a part of Devonia  
16 Newman's statement --

17          A     Okay.

18          Q     This is page 11 of the transcript.

19          A     Right.

20          Q     Okay? And I am asking you if in this portion of  
21 the transcript, if you recall Devonia uttering the phrase, He  
22 was telling family where we stay. Does that ring a bell to  
23 you?

24          A     No, I don't remember. No.

25          Q     Do you recall it from hearing it yesterday as we

1 were all listening to the tape?

2 A No, but I'll -- I'll listen to it again.

3 Q Do you recall in this same section the phrase, I  
4 shot my daughter, I shot my daughter?

5 A No, I don't remember.

6 Q Now, you told the jury yesterday that you did a  
7 lot of repeating information back to Devonian Newman to verify  
8 what it was she was telling you. Is that the gist of what you  
9 said?

10 A Correct.

11 Q On this one here at page 11, do you see where  
12 I'm pointing, you say, Okay. Hold on, let me slow you down.

13 A Okay.

14 Q Right? Did I read that right?

15 A Yes, sir. That's what it says.

16 Q Then you -- instead of clarifying that  
17 unintelligible language here, you ask another question. You  
18 don't -- in other words, would this be an example on this page  
19 of something different than you had done in the remainder of  
20 the statement?

21 A Well, I'd have to see the remainder of the  
22 statement to see how many times I had specifically not  
23 repeated what she said to answer that.

24 Q Would this be an example -- this particular  
25 page, would this be an example of not going back to clear up

1 whatever it was that she said that was unintelligible?

2 A Well, can I read what's after that to see what I  
3 say? Thank you.

4 Q Can you see that on your screen?

5 A I can see all the way down to, At this point is  
6 the last three words?

7 Q Yes, that's the last three words on the page.

8 A (Witness complied.) For that particular one,  
9 yes, sir, I'd agree with that.

10 Q Okay.

11 MR. SGRO: May I approach the witness, Your Honor?

12 MS. WECKERLY: Your Honor, can we approach as well?

13 (Bench conference.)

14 MS. WECKERLY: You can ask him that, but that's from  
15 Stephanie's statement, and she doesn't say Job-Loc's the  
16 shooter. She says, My daughter told me Job-Loc associates  
17 with Melanie Mason and a friend of his is the shooter. So  
18 that's why --

19 MR. SGRO: Well, that's --

20 MS. WECKERLY: -- he's saying that. So what he's  
21 basing it on is stuff that the State would -- what I'm happy  
22 to go into, and [inaudible], you know, I'm going to ask him  
23 about it.

24 MR. DIGIACOMO: We asked him, What does that mean?  
25 He's going to tell you that.

1 MS. WECKERLY: Stephanie's [inaudible] --

2 MR. DIGIACOMO: If you want to go into that --

3 THE COURT: It is what it is.

4 MR. DIGIACOMO: -- that Stephanie talked to her --

5 MS. WECKERLY: Stephanie talked to her [inaudible]

6 you know, later on, and her daughter says, Willie Mason -- the

7 daughter -- yeah, Willie Mason associates with Job-Loc, and it

8 was a friend of his -- a friend of Job-Loc's that's the

9 shooter. That's what Stephanie's interview says.

10 MR. SGRO: That's not what this says, though.

11 MS. WECKERLY: Correct. That statement is a

12 [inaudible].

13 MR. SGRO: Okay.

14 MS. WECKERLY: Okay? But -- but --

15 THE COURT: I guess we'll find out?

16 MR. SGRO: Yeah, we'll find out --

17 MS. WECKERLY: We're going to ask why you said it.

18 (End of bench conference.)

19 THE COURT: All right.

20 MR. SGRO: Okay.

21 BY MR. SGRO:

22 Q You referred to your officer's report yesterday,  
23 correct?

24 A Yes.

25 Q And you -- did -- and you sit there and --



1           A     This is a copy of it, yes, sir.

2           Q     All right. You had met with Cornelius Mayo on  
3 October 1, 2010, to show you some text messages; is that  
4 right?

5           A     I believe that's the correct date. Yes, we met.

6           Q     And did he tell you, as he showed you the text  
7 messages, that he thought Job-Loc was involved in the murder?

8           A     Yes, that was the context of the -- yes, the  
9 text.

10          Q     And did he tell you that based on some text  
11 messages that had dropped from his phone that he believed  
12 Job-Loc was the shooter?

13          A     I don't know that he said that he believed he  
14 was the shooter or not. I know that he knew that he was  
15 involved based on the text messages.

16          Q     So you can't tell the jury if Cornelius Mayo  
17 told you -- well, let me back up.

18                 Do you know that Cornelius Mayo's phone held a  
19 certain finite number of text messages and as he reached that  
20 limit they would drop off?

21          A     Correct.

22          Q     He met with you in October of 2010 and told you  
23 that he was --

24          A     Can I turn to the page that you're referring to?

25          Q     Would that refresh your recollection?

1           A     Well, I just want to read what -- what it says,  
2     so yeah.

3           Q     It's page --

4           A     It's what --

5           Q     -- page 28.

6           A     28? Thank you.

7           Q     And it's the first full paragraph.

8           A     Mayo was involved in the --

9           Q     Sir, you've --

10          A     -- shooting --

11          Q     -- got to -- sir --

12          A     -- or Job-Loc --

13          Q     Sir? You have to read it to yourself.

14          A     Okay. Well, that -- it doesn't say what you're  
15     saying. It says that he was involved.

16          Q     I'm going to ask -- sir --

17          A     So --

18          Q     -- have you read it?

19          A     -- that's what I recall is that he was involved.

20          Q     Have you read the information to yourself?

21          A     Not all of it.

22          Q     Do you need time to finish that paragraph?

23          A     Please. Okay.

24          Q     Have you read that paragraph?

25          A     Yes, sir.

1           Q     Does it say, Mayo stated he learned Job-Loc was  
2 involved in shooting Derecia and Devonia Newman?

3           A     Yes, it does.

4           Q     And sent him two text messages that had been  
5 erased. Does it say that? It's the same sentence, sir.

6           A     It had been -- I was looking at the next one,  
7 Was involved in the shooting. Let me see, Sent him two text  
8 messages that had been erased. Yes, sir.

9           Q     Did you ever go see Jerome Thomas about this  
10 case? Did you ever try to visit him?

11          A     No.

12          Q     Did you ever try to effect an extradition  
13 warrant?

14          A     I don't know that they did an extradition on him  
15 -- actually, that may have been done, but that's not done by  
16 me.

17          Q     Are you aware of one? Can you go to anywhere in  
18 your file to show me one?

19          A     Well, I can't go to anywhere on this report,  
20 that's -- we'll say that -- no. It's somebody else would be  
21 involved in that, not me.

22          Q     Early on in the morning hours of this case you  
23 had information that the assailant in this case had a white  
24 T-shirt on, correct?

25          A     I believe Ms. Cousins had said that, yes.

1           Q     And that came hours after the investigation  
2 began, correct?

3           A     Sometime around the time of the investigation,  
4 yes, sir.

5           Q     And you know that Cornelius Mayo was -- and this  
6 is my words, not your words, but he was shaking her down for  
7 information. He was threatening her.

8           A     Who?

9           Q     Cornelius Mayo.

10          A     Right.

11          Q     Is, shaking down, Stephanie Cousins?

12          A     Oh, yeah, he was pissed off.

13          Q     And Cornelius Mayo also learned from Stephanie  
14 Cousins that the assailant had a white T-shirt on, correct?

15                MS. WECKERLY: Objection. Calls for speculation as  
16 to what Mr. Mayo heard from --

17                THE COURT: Oh --

18 BY MR. SGRO:

19           Q     Did you --

20                THE COURT: -- you can't ask what his state of  
21 mind -- you can't -- you can't ask him to relate what  
22 Cornelius Mayo's state of mind was.

23           MR. SGRO: Fair enough. I'll rephrase.

24 BY MR. SGRO:

25           Q     Did Cornelius tell you that he had learned --

1           A     He did not tell me anything. I didn't speak to  
2 him that morning.

3           Q     Let me finish my question.

4           A     Okay.

5           Q     At any time, did Cornelius Mayo tell you that  
6 the assailant in this case had on a white T-shirt?

7           A     He didn't tell me that, no.

8           Q     He told others that and you learned of it later?

9           A     I don't know what his description -- well, he --  
10 I know he didn't see the shooter, so I don't know what he told  
11 the other detectives, but I'm sure it's in his statement. I  
12 think he --

13          Q     There's no -- there's no more question pending.

14          A     Okay.

15          Q     Did you have anything to do with charging Jerome  
16 Thomas with obtaining and using personal identification of  
17 another -- the whole Albert Davis situation? Were you  
18 involved in that prosecution at all?

19          A     No, sir.

20          Q     You were asked some questions about letters. Do  
21 you remember those questions? And I think you read some  
22 yesterday.

23          A     Yes.

24          Q     Letters in the jail are not copied as a matter  
25 of course; is that right?

1           A     You mean, just everybody's?

2           Q     Everybody's letters all day, every day, they're  
3 not copied?

4           A     No, we request those to be done.

5           Q     And so you make an affirmative request on a  
6 given day, right? So you can call and say, hey, I want you to  
7 start copying letters from person X, correct?

8           A     Correct.

9           Q     And then you also have the ability to say, We  
10 don't need you to copy any more, we're good?

11          A     Correct.

12          Q     Do you know what the dates are in this case of  
13 when you started --

14          A     No.

15          Q     Let me finish my question.

16          A     Okay.

17          Q     Do you know the day that you first asked for  
18 letters to be copied?

19          A     No.

20          Q     Is that memorialized in a report anywhere or in  
21 a note?

22          A     No, I don't believe so.

23          Q     Do you recall the day that you asked for the  
24 letters to not be copied anymore?

25          A     No.

1 Q You know who Donovan Rowland is?

2 A I do.

3 Q And you know who Ulonda Cooper is?

4 A Speaking to her, I do.

5 Q You spoke to her, right?

6 A Right. Yes, sir.

7 Q Now, we talked yesterday about things that you  
8 have to do -- draft under oath, right?

9 A I'm not following you on that one, I'm sorry.

10 Q You remember talking about search warrant  
11 applications yesterday?

12 A Correct.

13 Q Those search warrant applications are drafted  
14 sometimes by you, sometimes by others, but the --

15 A Correct.

16 Q -- the one common thing is they're all done  
17 under oath?

18 A Correct.

19 Q Judges are supposed to be able to look at the  
20 documents --

21 A Yes, sir.

22 Q -- police officers and -- and they know that the  
23 police officers are sworn that what they put in there is true?

24 A Correct.

25 Q And you did an application and affidavit for a

1 search warrant for 3260 Fountain Falls; is that right?

2 A Correct.

3 Q And that was associated with?

4 A Donovan Rowland.

5 Q And in every application for a search warrant  
6 you have to say why you need certain materials?

7 A Correct.

8 MR. SGRO: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. SGRO:

11 Q And just so you can orientate yourself, does  
12 this look like a copy of the application and affidavit for a  
13 search warrant?

14 A Yes.

15 Q For the Fountain Falls Way address?

16 A Correct.

17 Q And so this is what you're telling the Judge  
18 under oath relative to why you need to search Donovan  
19 Rowland's home?

20 A Yes, sir.

21 Q And do you recall stating under oath, Rowland  
22 implied --

23 MS. WECKERLY: Objection. Hearsay.

24 THE COURT: No, it's not.

25 MS. WECKERLY: What Rowland said?



1 THE COURT: If it's his statement.

2 MS. WECKERLY: What Rowland --

3 MR. SGRO: His statement --

4 MS. WECKERLY: -- said?

5 MR. SGRO: Yeah, Your Honor, it's his statement to  
6 the Court.

7 THE COURT: It's his statement to the Court. It  
8 isn't offered for the truth. It was proffered why he said --  
9 or what he said to the Court.

10 MS. WECKERLY: What he said to the Court that Rowland  
11 said.

12 THE COURT: The objection is overruled.

13 BY MR. SGRO:

14 Q Rowland implied he was at the victim's apartment  
15 at the time of the shooting; did I read that correct?

16 A Yes.

17 Q The mother grabbed a knife and that was why she  
18 was shot?

19 A Correct.

20 Q The -- the fact that the mother grabbed a knife,  
21 and that's why she was shot, is that also -- strike that.

22 Is that consistent with a statement that Cornelius  
23 Mayo made to you?

24 A That the mother grabbed a knife?

25 Q Yes, sir. Do you remember that?

1           A     No.

2           Q     Okay. Rowland was not specific as to why the  
3 daughter was shot nor did he give their names; did I read that  
4 correctly?

5           A     Specific why the daughter was shot nor did he  
6 give their names. Correct.

7           Q     Okay. Now, if we drop down, Rowland admitted  
8 his involvement; did I read that right?

9           A     Mm-hmm.

10          Q     Yes?

11          A     Yes.

12          Q     And stated, They took \$4,000 weed and dope out  
13 of the apartment?

14          A     That's a yes, sir.

15          Q     Rowland received \$1,000 for participating?

16          A     Correct.

17          Q     And that's what you told the Judge under oath in  
18 order to get the search warrant for Donovan Rowland's  
19 residence?

20          A     For Ulonda Cooper, correct.

21          Q     Well, getting a search warrant is serious  
22 business, right?

23          A     Yes, it is.

24          Q     And you're not going to invade a private  
25 citizen's rights and swear to things under oath unless you

1 believe in what you're doing, fair?

2 A That's fair, but the context of what you're  
3 reading is inaccurate.

4 Q Did I read it correct?

5 A You read those sentences correct, yes, sir, you  
6 did.

7 Q I didn't write those sentences, did I?

8 A No, sir, you did not.

9 MR. SGRO: May I have just a moment, Your Honor?

10 THE COURT: Sure.

11 While you're doing that, Officer, are you familiar  
12 with the term "burner"?

13 THE WITNESS: I've heard the term used, yes, sir.

14 THE COURT: In what context?

15 THE WITNESS: It's used in different ways, depending  
16 on what the subject is. Sometimes it's a firearm, sometimes  
17 it's cell phones, sometimes -- it can be used in a different  
18 variation of context.

19 THE COURT: Thank you.

20 THE WITNESS: Yes, sir.

21 MR. SGRO: May I have just a moment, Your Honor?

22 THE COURT: Yes, you may.

23 THE CLERK: What juror was this, please?

24 JUROR NO. 11: 11.

25 MR. DIGIACOMO: You done?

1 MR. SGRO: Oh, that's all I have, Your Honor.

2 MR. LANGFORD: Mr. Sgro has covered the areas I  
3 intended to cover, Your Honor. So I have no questions.

4 THE COURT: Okay. Redirect?

5 MS. WECKERLY: Mr. Sgro, can I see the -- what you  
6 just showed the detective?

7 MR. SGRO: Yes.

8 MS. WECKERLY: Thank you.

9 MR. SGRO: You're welcome.

10 REDIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Detective, Mr. Sgro just asked you about the  
13 search warrant, and he was reading statements that he asked  
14 you; Were these statements that were made by Donovan Rowland?

15 A Correct.

16 Q And this is the entire warrant? I'll let you  
17 look at it. Can you flip to the page that he was reading, or  
18 having you read?

19 A Okay. It's --

20 Q Okay.

21 A -- right there. And --

22 Q Let me just --

23 MS. WECKERLY: Can I have this put on the overhead,  
24 please.

25 THE COURT: Sure.

1 MS. WECKERLY: Thank you.

2 BY MS. WECKERLY:

3 Q Now, we're on page 8. Will you read from the  
4 top?

5 A On August 18, 2010, Wednesday, at approximately  
6 ten-hundred hours, Detective C. Bunting was contacted by  
7 Detective A. McClelland, I believe, from Southeast Burglary  
8 Detail. Detective McClelland said she was contacted by Ulonda  
9 Cooper who informed her she had information regarding a friend  
10 of her son's named Donovan Rowland who was trying to sell a  
11 handgun recently used in a murder.

12 Detective Bunting called Cooper and she told him the  
13 following on August --

14 Q Well, let me [inaudible]. So what he read from,  
15 and we'll get to that, is what Ms. Cooper told you after you  
16 called her?

17 A Correct.

18 Q All right. So let's read that.

19 A On --

20 Q This is information from Ms. Cooper?

21 A Correct. On August 17, 2010, Cooper was at home  
22 with her son Michael Johnson and her boyfriend Damian Kelley.  
23 At approximately twenty-one hundred hours Donovan Rowland  
24 arrived at her residence located at 2968 Juniper Hills,  
25 Building 15 -- I can't -- sorry, it's a little blurry on here,

1 I think it's 16, Apartment 102, Las Vegas, Nevada, 89124.  
2 Upon entering the residence, Rowland asked if anyone wanted to  
3 buy a gun? Kelley asked, What kind and how much? Rowland  
4 stated the firearm was a .44 Ruger revolver recently used in  
5 the shooting of a mother and her daughter and was selling it  
6 for \$250.

7 Rowland implied he was at the victim's apartment at  
8 the time of the shooting and the mother grabbed a knife and  
9 that was why she was shot. He was not specific as to why the  
10 daughter was shot, nor did he give their names. He explained  
11 an unnamed crackhead, quote/unquote, set the whole thing up  
12 and there was four people involved total. Two fled to  
13 Pasadena and one was wanted out of San Bernardino.

14 Rowland admitted his involvement and stated they  
15 took \$4,000, weed, and dope out of the apartment. He received  
16 \$1,000 for participating, but wasn't specific as to what he  
17 did.

18 Q So none of that was anything that Mr. Rowland  
19 told you. It was all what Ms. Cooper relayed on the phone,  
20 sort of detailing what she believed Rowland said to her?

21 A Correct. Nor anybody else that was involved in  
22 that case.

23 Q I know you didn't interview Mr. Mayo the first  
24 morning, but you've reviewed his interview?

25 A Yes.

1           Q     Did he ever say he saw the shooter and he was  
2 wearing a white shirt or I know he was wearing overalls or  
3 anything like that?

4           A     No.

5           Q     He never gave -- did he even give a description  
6 of gender or -- or race?

7           A     He had no information from a firsthand account  
8 of what took place.

9           Q     And this was after he spoke to Stephanie  
10 Cousins?

11          A     Correct.

12          Q     Or threatened her in that way?

13          A     Right.

14          Q     Mr. Sgro asked you about Stephanie Cousins and  
15 her interview with the police, and he asked you if she said  
16 that in that first interview, The shooter was wearing a white  
17 T-shirt. Do you recall being asked that on cross-examination?

18          A     Yes, ma'am.

19          Q     Now, ultimately, Stephanie Cousins made an  
20 identification of the shooter, correct?

21          A     She did.

22          Q     It wasn't Job-Loc?

23          A     No.

24          Q     Then when you were speaking to Monica Martinez  
25 in the videotaped interview?

1           A     I'm sorry, say that one more time?

2           Q     When you were speaking to Monica Martinez in the  
3 -- in the --

4           A     Oh, yeah.

5           Q     -- videotaped interview --

6           A     Yes, ma'am.

7           Q     -- room, there was a suggestion on  
8 cross-examination that she reached out her hands and that  
9 there was some form of you -- you being played or some form of  
10 manipulation; do you --

11          A     Correct.

12          Q     -- recall that?

13                Is that, like, a successful tactic typically when  
14 you're doing suspect interviews?

15          A     Successful from the suspect's point of view?

16          Q     From your -- well --

17          A     No.

18          Q     -- does that --

19          A     No.

20          Q     -- work on you?

21          A     No. No, I mean, every -- everybody that sits  
22 across from me as a suspect in any -- any interview lies. And  
23 if that ever happens that they don't, I'll fall out of my  
24 chair. Everybody lies and in this case. She was no  
25 different.



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

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

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**APPELLANT'S APPENDIX**

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**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