

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

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown  
Supreme Court Case No. 80834  
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1           A     Again, behind me.

2           Q     Throughout the night has Willie and David always  
3 been in those two positions in your vehicle?

4           A     Yes.

5           Q     What about Stephanie, do you see her at this  
6 point?

7           A     No.

8           Q     What about -- what do you do at this point once  
9 they jump in the vehicle?

10          A     I don't remember who it was, but they were just  
11 saying, Go, go. And so I pulled out and made a left on the  
12 street. And then -- and then a right onto another dark  
13 street. Willie was concerned about where Stephanie was, so he  
14 called her.

15          Q     Willie called Stephanie?

16          A     Yes, to find out where she was. And David said,  
17 Just leave her. And he said no, he couldn't leave her.

18          Q     Did Willie say why he couldn't leave her?

19          A     He said that was -- he -- I just remember him  
20 saying something about being his homey's mom or something.

21          Q     Saying, That's my homey's mom? Is that a yes?

22          A     Yes. Sorry.

23          Q     Okay. Does Willie ever get a hold of Stephanie  
24 on his phone?

25          A     Yes. And he told me to make the -- I made the

1 U-turn going back towards Lake Mead, and then he told me she  
2 was on Christy. I was familiar with the area.

3 Q Why were you familiar with this area?

4 A Well, I -- I lived all the way from -- anywhere  
5 from Lake Mead to Charleston. So I was -- I knew the streets.

6 Q How far is Cinnabar from this apartment, do you  
7 think?

8 A Probably about two major lights over. Because I  
9 lived right by El Dorado High School.

10 Q So do you drive back to Christy Lane?

11 A Yeah. I made the left on Lake Mead and headed  
12 back towards Nellis. Christy -- she -- she was walking on the  
13 left side and Willie told me just to kind of pull over. So I  
14 pulled to the left in the median. And Stephanie came and got  
15 back in the car.

16 Q Describe her demeanor at this point.

17 A She was breathing heavily and, like, panicked.  
18 Like, hyperventilating, kind of.

19 Q What about Willie's demeanor; had it changed at  
20 all from prior to the robbery to after the robbery?

21 A Not really that I could tell. They -- the --  
22 their demeanor just -- they seemed calm, quiet.

23 Q What about David, did his demeanor change at  
24 all?

25 A He seemed a little irritated. Stephanie kept

1 asking for a cigarette and he -- he told her to shut the fuck  
2 up.

3 Q Does David make any other statements while he's  
4 in the car?

5 A He said that he had blood on him.

6 Q Did he say where on him the blood was?

7 A No.

8 Q What happens -- where are you guys going at this  
9 point?

10 A Towards Nellis. Stephanie wanted to be dropped  
11 off at the -- the Food4Less was near her apartments.

12 Q And do you drop her off at the Food4Less?

13 A No.

14 Q Where do you drop her off?

15 A There's some houses across from her apartment,  
16 dropped her off there.

17 Q So outside of her apartment complex, but near  
18 her apartment?

19 A Yes.

20 Q So Vegas Valley and Nellis, correct?

21 A Correct.

22 Q After you drop her off, where do you go?

23 A Back to the Brittnae Pines.

24 Q On the way to the Brittnae Pines, is there any  
25 discussion by anybody about Stephanie and what should have

1 happened with Stephanie?

2 A David said he -- he should have shot her. David  
3 said he should have killed her. And Willie said no, that  
4 that's the homey's mom.

5 Q David's reaction to Stephanie's behavior was I  
6 should have killed her, too?

7 A Yes.

8 Q At this point do you know exactly what happened  
9 inside that apartment? I'm talking in 2010 at 4:00 in the  
10 morning, do you know exactly what happened inside that  
11 apartment?

12 A No.

13 Q Do you have a general idea?

14 A From the sounds of the screaming and the -- the  
15 quietness, I thought the worst.

16 Q Where do you go -- where do the three of you  
17 drive to?

18 A I'm sorry?

19 Q Where do the three of you drive to at this  
20 point?

21 A Back to Job's apartment.

22 Q Do you go into Job's apartment?

23 A No.

24 Q Who -- does anybody get out of the vehicle?

25 A Willie and David get out at -- at the Rebel.

1           Q     The Rebel gas station that's near Torrey Pines  
2 and whatever the cross-street is with Job's apartment?

3           A     Yes.

4           Q     Do you see how they get into the apartment  
5 complex?

6           A     They jumped the wall.

7           Q     Behind the Rebel?

8           A     Correct.

9           Q     What are you thinking at this point?

10          A     I mean, I was panicked. I -- I really didn't  
11 want to be -- I didn't know what was going on from that point.  
12 So my concern was, you know, for my kids. I -- I knew  
13 something bad happened and I left from there and drove down  
14 Lake Mead towards the Texas, and I went in the Texan. I tried  
15 kept trying to call Job.

16          Q     Was Job answering as you were trying to call  
17 him?

18          A     No, not at first. It took a while for me to get  
19 through.

20          Q     Do you eventually wind up at the Texas Station?

21          A     Yes.

22          Q     What do you do when you get to the Texas  
23 Station?

24          A     Used the bathroom in there and threw up.

25          Q     While you're in the bathroom, did you hear



1 anything else going on inside that bathroom?

2 A Yeah. There was another female in there getting  
3 sick, as well, throwing up, as well.

4 Q And do you do anything about that female that  
5 was getting sick?

6 A Yes. I -- I let a security guard --

7 MR. ORAM: Objection. Relevance.

8 THE COURT: Is that important in this case?

9 MR. DiGIACOMO: Well, it's going to factually match  
10 some of the physical evidence or some of the evidence that's  
11 going to come.

12 THE COURT: It will?

13 MR. ORAM: That -- that a woman's getting sick in the  
14 bathroom? It --

15 THE COURT: I don't know. I --

16 MR. ORAM: -- seems like a completely unrelated  
17 incident.

18 THE COURT: It seems unrelated. I -- I -- if there's  
19 something -- if he represents that it's going to be related,  
20 I'll overrule the objection.

21 MR. DiGIACOMO: Thank you.

22 MR. ORAM: Could I just get a offer of proof as to  
23 how it's relevant?

24 THE COURT: No, let's go on.

25 BY MR. DiGIACOMO:

1 Q Before leaving the Texas Station, do you contact  
2 anybody?

3 A Yeah. I got a hold of Job.

4 Q What about anybody that works at the Texas  
5 Station?

6 A Oh, well, I was in there, I let a security  
7 officer know that there was a -- a lady in the bathroom  
8 getting sick. Who --

9 Q While you're at the Texas Station you finally  
10 get a hold of Job by phone?

11 A Yes.

12 Q Do you have a conversation with Job?

13 A Yeah. I -- I told him I didn't want to be  
14 alone, that I didn't want to go home. And he told me to go  
15 ahead and come back.

16 Q Do you have any concerns about going back to the  
17 apartment considering Willie and David were there?

18 MR. ORAM: Judge, objection. Leading.

19 THE COURT: Sustained.

20 BY MR. DiGIACOMO:

21 Q Why would you go back to that apartment?

22 A Because I didn't know what was going on. And --  
23 and I felt safer being there so that I could hear what's going  
24 on. I didn't know -- Job had already made threats to me  
25 before, prior. He pulled his gun out on me before. And I

1 just felt safer being there so I could know what was going on,  
2 and versus me going home with my kids being alone there. A  
3 week before this incident some -- somebody tried to break into  
4 my house. My daughter was home and --

5 MR. ORAM: Judge, this is nonresponsive and seems --

6 THE COURT: Well --

7 MR. ORAM: -- highly irrelevant.

8 THE COURT: -- I think we're getting kind of  
9 rambling.

10 MR. ORAM: Yeah.

11 THE COURT: Sustained.

12 BY MR. DiGIACOMO:

13 Q But you do go back to that apartment?

14 A Yes.

15 Q Do you actually go inside the apartment?

16 A Yes.

17 Q When you get to the apartment door, is there  
18 some sort of security measure in place at the door?

19 A Yes. There was a chair and some boxes up  
20 against the front door.

21 Q And that have to get moved to let you in?

22 A Yes.

23 Q When you get inside the apartment, who's at the  
24 apartment at that point?

25 A Job, Willie, and David.

1           Q     Is there any conversation about what happened at  
2 the apartment or anything?

3           A     Job had told David to take a shower.

4           MR. ORAM: Judge, objection as to what he's --

5           THE COURT: Sustained. It's hearsay.

6           MR. DiGIACOMO: That's a statement of a coconspirator  
7 in the course [indiscernible].

8           THE COURT: I'm not sure Job's a coconspirator.

9           MR. DiGIACOMO: He -- he provided the weapon. She  
10 already testified to that. He provided the weapon to David  
11 Burns to commit the murder.

12          MR. ORAM: And how is it in furtherance of the crime,  
13 Judge?

14          MR. DiGIACOMO: Telling her to take a -- he's telling  
15 David to take a shower.

16          THE COURT: All right.

17          MR. DiGIACOMO: Reference to take the blood off.

18          THE COURT: Okay. Overrule the objection.

19          MR. DiGIACOMO: Thank you.

20 BY MR. DiGIACOMO:

21          Q     Job told David to do what?

22          A     To take a shower and he told him to use bleach.

23          Q     Did he say why to use the bleach?

24          A     To get rid of any blood that was on him.

25          Q     What about the gun; did you see the gun

1 afterwards?

2 A Not until later.

3 Q Where did you see the gun at?

4 A Job was wiping it down.

5 Q What was he wiping it down with?

6 A A blue rag.

7 Q While you were at that apartment, do you ever  
8 see anybody else come over to that apartment?

9 A Yes. A younger guy named Wes, he goes by Wes.  
10 Well, that's what I know him as.

11 Q Wes?

12 A Wes.

13 Q How do you know Wes?

14 A Through Job.

15 Q How many times have you met Wes?

16 A Quite a few during the three and a half, four  
17 months that I was with Job.

18 Q How would you describe your relationship with  
19 Wes?

20 A I didn't like him.

21 Q Why didn't you like him?

22 MR. ORAM: Objection as to relevance.

23 THE COURT: Overruled.

24 THE WITNESS: I just didn't like his personality, his  
25 demeanor. It just -- he -- he would just talk shit a lot

1 about me being Job's ho' or he made -- he was trying to get  
2 with my daughter. I just didn't like him. I mean, I didn't  
3 like his personality at all.

4 BY MR. DiGIACOMO:

5 Q When Wes comes over, is there any discussion  
6 about anything related to the crime that occurred?

7 A You said when Wes comes over?

8 Q Yeah.

9 A I just remember Job telling him to get rid of  
10 the gun, either sell it or do whatever just to get rid of it.

11 Q Does Job give him the gun?

12 A Yeah.

13 Q How does he give him the gun?

14 A In that bag that he would carry with him.

15 Q That who would carry with him? Job or Wes would  
16 carry it with them?

17 A Whoever had the gun, whenever, it was always in  
18 a bag when we were out if it wasn't under his pillow or with  
19 him.

20 Q So Job provides the gun to Wes?

21 A Yes.

22 Q Did you see, other than Job wiping the gun down,  
23 Job do anything else to that gun?

24 A No.

25 Q Did you see anybody else do anything to that

1 gun?

2 A No.

3 Q After Job gives Wes the gun, where do you go?

4 Well, let me ask this: Does Wes leave with the gun?

5 A Yes.

6 Q Where do you go -- or do -- how long do you stay  
7 at that apartment?

8 A Till late afternoon.

9 Q And then where do you go?

10 A I -- I walked down to my cousin's house.

11 Q Where's your car?

12 A I leave it parked across the street in another  
13 apartment complex from the Brittnae Pines.

14 Q Why don't you drive your car over to your  
15 cousin's house?

16 A I was scared.

17 Q Scared of what?

18 A Being pulled over, that the car may have been  
19 being looked out, you know, by the police, if they were  
20 looking for it.

21 Q What do you do at your cousin's house?

22 A I -- I -- my intentions were to go over there  
23 and watch the news to see what -- what had happened, what they  
24 were saying on the news. But I ended up falling asleep there.  
25 And I was charging my phone.

1           Q     Do you have any more contact with Job, Willie,  
2 or David that day?

3           A     Yeah. I -- I had to go back over there and pick  
4 up my car.

5           Q     Are they still in the -- at the apartment?

6           A     Yes.

7           Q     Anything noteworthy while you're at the  
8 apartment when you have to go back to get your car?

9           A     There was just phone conversations. Willie was  
10 getting -- he said that he was getting calls from his family.

11          Q     Willie was getting calls from his family?

12          A     Uh-huh.

13          Q     That a yes?

14          A     Yes.

15          Q     About what?

16          A     I -- I wasn't paying attention to the phone  
17 call. I -- I just remember Job telling him just to turn off  
18 their phones and Job, I don't know who he was talking to, I  
19 think it was Sean, and he had mentioned that something  
20 happened between the three of us. And he said no longer.

21          Q     You said Willie was getting texts from his  
22 family. Were you aware of Willie receiving information from  
23 anybody else? Or phone calls from his family? Were you aware  
24 of Willie receiving information from anybody else?

25          A     No.



1           Q     Did you know whether or not Sean and Willie knew  
2 each other?

3           A     Yes.

4           Q     Do you leave or do you stay the night at the  
5 apartment on Saturday, or on the night of the 7th?

6           A     I left.

7           Q     And where do you go?

8           A     I -- I went back home.

9           Q     Do you drive your car home?

10          A     Yes.

11          Q     After you drive your car home that day, do you  
12 drive your car anymore?

13          A     No.

14          Q     Why not?

15          A     Well, again, because I was scared that, you  
16 know, police were going to be looking for it, but also because  
17 my plates expired.

18          Q     Do you -- do you make any sort of plans on  
19 getting out of town, doing anything else like that?

20          A     No.

21          Q     Well, when's the next time you have to go to  
22 work?

23          A     Tuesday.

24          Q     How do you get to work?

25          A     I had my supervisor pick me up.

1 Q And what's her name?

2 A Samantha Knight.

3 Q And why do you have her pick you up?

4 A My -- my plates are expired. I -- I didn't want  
5 to drive the car anymore at all.

6 Q Prior to Tuesday when Samantha picks you up, do  
7 you have any idea where Job or Willie or David is?

8 A They were at the apartment, but Job had called  
9 and said that they were leaving, I want to say Sunday, Sunday  
10 night.

11 Q So Job had called and said he was leaving on  
12 Sunday sometime?

13 A That -- that they had left, that they were  
14 getting ready to leave, yeah.

15 Q And do you know where -- where they were going?

16 A To California.

17 Q San Bernardino?

18 A Yes.

19 Q Now, at some point in time in this general time  
20 period, does Job change phone numbers?

21 A Yes.

22 Q What kind of phone number did he have  
23 previously?

24 A I think it was Texas.

25 Q So he had a phone number from a different state?

1 A Yes.

2 Q And then what does he change his phone number  
3 to?

4 A I don't remember what the area code was.

5 Q When you were at work on Tuesday, you make some  
6 sort of plan if you get contacted by the police?

7 A Yes. I asked Samantha to call my grandmother  
8 and call Job.

9 Q And did you provide Samantha Job's new phone  
10 number?

11 A Yes.

12 MR. DiGIACOMO: May I approach, Judge?

13 THE COURT: Yes.

14 BY MR. DiGIACOMO:

15 Q Ma'am, I'm showing you what's been marked as  
16 State's Proposed Exhibit No. 281, and ask you if you recognize  
17 that little piece of Post-It?

18 A Yes.

19 Q What is that?

20 A It's a 404-519-3377.

21 Q Is that the number you wrote down for Job's new  
22 phone?

23 A Yes -- I -- don't remember.

24 Q If you don't remember, you don't remember.

25 A I don't remember.

1 Q That's fine.

2 A It was a new phone number, so I don't...

3 Q Now, it's been a number of years. Do you  
4 remember what your phone number was way back when?

5 A No.

6 Q You've seen the discovery in this case, I'm  
7 assuming?

8 A Yes.

9 Q Okay. And if your number was a 702 and started  
10 with 927, does that sound right to you?

11 A I couldn't remember. It's been so long.

12 Q It's been so long? Let's talk about when the  
13 police arrive -- well, how do you come into contact with them?

14 A I was up at the front desk working that day  
15 training a new guy, and the receptionist from the main area, I  
16 guess she had kept calling my line, but we were so busy. And  
17 then Samantha came up and said to call the front desk. So I  
18 called up there and receptionist said that there was some  
19 detectives there that wanted to speak to me.

20 Q Do you go talk to them?

21 A Well, I went to the back. I had Chris cover for  
22 a minute, and I got him caught up. And then I went to the  
23 back and told my manager, Sandy, that there were detectives  
24 were there to speak to me. And she said okay. She was on the  
25 phone. And I said, Well, do you want me to have Samantha go

1 up with Chris, because it's busy? And she said yeah.

2 Q Before the cops had come talked to you, other  
3 than obviously Job, David, and Willie, had you told anybody  
4 about what had happened out there in any manner?

5 A No.

6 Q Did the cops -- when you contact the cops, what  
7 do they ask you?

8 A They -- they -- what did you say? I'm sorry.

9 Q When the cops contact you, what did they ask  
10 you?

11 A They said they wanted to speak to me in regards  
12 to a shooting, and I volunteered to go with them.

13 Q And how many cops were there?

14 A There was two detectives.

15 Q Do you remember either of their names?

16 A Chris and Marty.

17 Q Chris and Marty?

18 A Yes.

19 Q Where do you go?

20 A Off of Oakley in Decatur.

21 Q A police station?

22 A Yeah. It was a building. Didn't look like a  
23 regular police station. But yeah.

24 Q Okay. But it was a -- it was a law enforcement  
25 location?

1 A Yes. I had been there before.

2 Q Do they conduct an interview with you?

3 A Yes. Yes, they do.

4 Q And how long do you think that you were there at  
5 the detective bureau talking with the detectives?

6 A There was -- I hadn't had lunch yet when they  
7 came, so it was around noon that Tuesday. And it went well  
8 into the early morning, Wednesday morning that I was there.

9 Q What took so long to get that information?

10 A I was lying at the beginning.

11 Q Why'd you lie?

12 A I was scared.

13 Q Scared of what?

14 A I was scared of the detectives, I'd never been  
15 in a situation like that before. It was -- I was scared of  
16 Job, scared of David and Willie, what was going to happen to  
17 me.

18 Q Do you -- let me ask you this. At the time were  
19 you still -- well, at the time did you have feelings for  
20 Job-Loc?

21 A Yes.

22 Q Did you want to protect anybody?

23 A To an extent, yes.

24 Q Okay. Let me ask this, did you want to protect  
25 yourself?

1 A Yes.

2 Q Did you want to protect Job to a certain extent?

3 A Yes.

4 Q Did you want to protect anybody else?

5 A Yes.

6 Q Who?

7 A Willie and David.

8 Q At some point during the course of the  
9 interview, do you get told that you're being arrested for  
10 murder?

11 A Yes.

12 Q When you find out that you're being arrested for  
13 murder, you get handcuffed; is that fair?

14 A Yes.

15 Q Read your rights? Yes?

16 A Yes.

17 Q And on the way to -- on the way to be taken to  
18 jail, do you tell the police anything?

19 A I told them that I was scared and, I mean, I was  
20 going to jail either way. So I gave them another attempt of  
21 what happened.

22 Q And you used the term another attempt of what  
23 happened. Even after you tell them, Hey, I want to be more  
24 truthful with you, do you still continue to hold certain  
25 things back?

1 A Yes.

2 Q And does that go on throughout your interview?

3 A Yes.

4 Q Even when the interview is over, are there still  
5 things you haven't told them?

6 MR. ORAM: Judge, he's leading this witness.

7 THE COURT: Yes, it's leading. Sustained.

8 BY MR. DiGIACOMO:

9 Q Well, let me ask you this. I'm assuming you've  
10 seen at least the portions of the interview where you're  
11 actually speaking; would that be fair?

12 A Yes, I have.

13 Q Is there anything in the interview or after  
14 you've watched the whole interview that there's some things  
15 that you didn't fully come clean about or not?

16 A Yes, I did.

17 Q At the end of your -- the wee morning hours of  
18 that Wednesday morning, do you get arrested for murder?

19 A Brought down to booking, is that what you mean?

20 Q Yeah.

21 A Yes. I was brought down to booking.

22 Q You were booked into the Clark County Detention  
23 Center?

24 A Correct.

25 Q And have you remained an inmate of the Clark



1 County Detention Center up until this day?

2 A Yes, I have. Yes, I am.

3 MR. DiGIACOMO: Judge, I don't know if this is  
4 probably a pretty good time for a break? I don't know if the  
5 Court wants to take it now or if you want me to go for another  
6 17 minutes?

7 THE COURT: If you want to recess for an hour for  
8 lunch, is that what you want?

9 MR. DiGIACOMO: Yeah. I was going to say 1:00 would  
10 be -- would be perfect.

11 THE COURT: Okay.

12 MR. DiGIACOMO: That'd be good.

13 THE COURT: Ladies and gentlemen, during the recess  
14 it's again your duty not to converse amongst yourselves or  
15 with anyone else on any subject connected with this trial, or  
16 to read, watch, or listen to any report of or commentary on  
17 the trial by any medium of information, including newspapers,  
18 television and radio, and you may not form or express an  
19 opinion on any subject connected with this case till it is  
20 finally submitted to you. We'll be in recess until 1:00.

21 (Jury recessed at 11:46 a.m.)

22 THE COURT: All right. The record will reflect that  
23 the jury has executed the -- exited the courtroom. Anything  
24 further on the record?

25 MR. DiGIACOMO: Yes, you --

1 MR. LANGFORD: Briefly, yes. Go ahead.

2 MR. DiGIACOMO: I intend as the -- the next thing,  
3 and I wanted to make a record before I did it, that's why I  
4 asked to take a break. I was going to offer State's Proposed  
5 Exhibit 274. It's the -- it's the video portion of Ms.  
6 Martinez when she's in the interview room where she's talking  
7 to detectives. So the blank periods where she sits alone in  
8 the room have been removed. I also last night redacted the --  
9 the portion that the Court ordered redacted based upon Mr.  
10 Oram's request.

11 And for the record, to the extent that it's  
12 inconsistent with what Ms. Martinez has testified to here,  
13 it's a prior inconsistent statement, and therefore admissible.  
14 Then to the extent that it occurred prior to the entry of her  
15 plea, which is throughout this case, actually, at this point  
16 has been suggested as a basis for a reason for recent  
17 fabrication as a prior consistent statement. As such it is  
18 completely admissible, and I was going to offer it. I just  
19 wanted to make sure there was a record of that before I did so  
20 in front of the jury.

21 THE COURT: Any objections?

22 MR. LANGFORD: I have no objection.

23 MR. ORAM: We object.

24 THE COURT: On what basis?

25 MR. SGRO: We don't think it's admissible.

1 THE COURT: Excuse me?

2 MR. ORAM: We don't think it's admissible.

3 THE COURT: Why?

4 MR. ORAM: For the reasons that the State said, we're  
5 not sure that it's admissible.

6 THE COURT: Why isn't it admissible? It's either  
7 inconsistent with her statement, right? I -- I haven't seen  
8 it. So are -- is it inconsistent with her statement?

9 MR. ORAM: I'll just -- I just -- that's all I have  
10 at this point, Your Honor. I have nothing more.

11 MR. DiGIACOMO: I believe it's for the record, Judge.

12 THE COURT: Okay. Well, objection's overruled.

13 MR. ORAM: Yes, Your Honor.

14 MR. LANGFORD: I also, Judge, wanted to join in Mr.  
15 Oram's ongoing objection to the confrontation clause quasi  
16 hearsay issue regarding Stephanie Cousins and all of  
17 everything that she continues to say, Stephanie said this and  
18 Stephanie said that. I think it's objectionable --

19 THE COURT: As I understand it, the Crawford case  
20 doesn't exclude the statements of coconspirators made in the  
21 course and in furtherance of the conspiracy. If that is the  
22 case, then the statements that she has related that were said  
23 by these two defendants and Stephanie Cousins are all  
24 statements of coconspirators in the course and scope of the  
25 conspiracy and admissible as non hearsay.

1           MR. DiGIACOMO: That's correct. And just for the  
2 record. Mr. Oram made one objection, or maybe more than one,  
3 I have to remember, as it relates to Job. Certainly by the  
4 time Job is helping as an accessory after the fact, he has  
5 joined the conspiracy. Now, he may not be liable for the  
6 underlying charges because they have occurred, but certainly  
7 at that point he had joined in the conspiracy and --

8           THE COURT: It does sound like he becomes an  
9 accessory after the fact.

10          MR. DiGIACOMO: Correct. And under Crew, that  
11 means --

12          THE COURT: Is he in custody -- is he in custody in  
13 this case?

14          MR. DiGIACOMO: He has an active warrant in Nevada  
15 because he's serving a dozen years in California for the cases  
16 of which they were trying to get money to get a lawyer for.

17          THE COURT: So he's going to be brought eventually  
18 back here for trial --

19          MR. DiGIACOMO: Correct.

20          THE COURT: -- as an accessory?

21          MS. WECKERLY: At least.

22          MR. DiGIACOMO: At the very least, accessory. He may  
23 be more.

24          THE COURT: Okay.

25          MR. SGRO: Your Honor, there's one more housekeeping

1 matter. As we reported at the bench, we have subpoenaed a  
2 number of Ms. Martinez's family members. And I don't  
3 recognize everyone by face as well as I know the names. If we  
4 could just have the gentleman in the back of the courtroom  
5 identify himself just to make sure there's no exclusionary  
6 rule problems. I'd ask --

7 THE COURT: That's up to him.

8 UNIDENTIFIED SPEAKER: It's Ms. Martinez's uncle.  
9 Tell the judge your name.

10 UNIDENTIFIED SPEAKER: [Indiscernible.]

11 MR. SGRO: Thank you, Your Honor.

12 THE COURT: All right. Anything further on the  
13 record before we have lunch?

14 MR. LANGFORD: No.

15 MR. DiGIACOMO: No.

16 MR. ORAM: No, sir.

17 MR. SGRO: No.

18 THE COURT: 1:00.

19 (Court recessed at 11:50 a.m. until 1:08 p.m.)

20 (In the presence of the jury.)

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

24 Please be seated. We're still on examination of Ms.  
25 Martinez.

1 Ms. Martinez, you're still under oath, and you may  
2 proceed.

3 MR. DIGIACOMO: Thank you, Judge. Judge, I've had  
4 marked as State's Proposed Exhibit No. 274, which is a video  
5 recording of the interview of Ms. Martinez. For the record,  
6 it has the portion that when she's not speaking removed, as  
7 well as some other portions upon agreement of counsel. I'd  
8 like to offer it now.

9 THE COURT: Are you okay? When Randy coughs, Randy  
10 coughs. All right. And you want to play it. Has it been  
11 admitted?

12 MR. DIGIACOMO: Well I'm offering it at this point.

13 THE COURT: Oh, okay. Any objection?

14 MR. ORAM: Judge, just --

15 THE COURT: Subject to the objections previously  
16 made, it'll be received.

17 (State's Exhibit 274 admitted.)

18 MR. DIGIACOMO: Thank you, Your Honor. Judge, may I  
19 publish?

20 THE COURT: Yes.

21 (State's Exhibit No. 274 played.)

22 MR. DIGIACOMO: Judge, would now be a good time for a  
23 break?

24 THE COURT: All right. Yes, I think it would be a  
25 good time for a break.

1 Ladies and gentlemen, during the recess, you are  
2 again admonished not to converse among yourselves or with  
3 anyone else on any subject connected with this trial or to  
4 read, watch or listen to any report of or commentary on the  
5 trial from any medium of information including newspapers,  
6 television, radio, and you may not form or express an opinion  
7 on any subject connected with this case until it is finally  
8 submitted to you.

9 We'll be in recess for about 10 minutes for break.

10 (Jury recessed 2:43 p.m.)

11 THE COURT: The record will reflect that the jury has  
12 exited the courtroom.

13 MR. SGRO: I have a quick question, Your Honor. Can  
14 we make arrangements over the break or even before the  
15 examination starts, once the tape has concluded, that Ms.  
16 Martinez's hands get unshackled?

17 THE COURT: That's up to the officers.

18 MR. SGRO: So here's -- here's the dilemma, and I  
19 just heard the officer say, Absolutely not. We spent an  
20 inordinate amount of time on tone and demeanor of witnesses,  
21 and unshackled as she appears in the tape is her natural tone  
22 and demeanor, and I have -- I've had lots of witnesses from  
23 the jail come in in multiple cases. The jury is entitled to  
24 see her tone and demeanor, Your Honor.

25 There is a United States Supreme Court case called US

1 versus Riggins, and it's a case that talks about the ability  
2 of the jury to observe tone and demeanor in person's  
3 natural state. The Riggins case was a defendant who was  
4 medicated so that he could be competent to stand trial. Now,  
5 the bottom line is --

6 THE COURT: I'm familiar with Riggins. It has  
7 nothing to do with this case.

8 MR. SGRO: It does -- it does relative to the jury's  
9 ability to observe people in their natural state and their  
10 natural tone and demeanor. So the only case that --

11 THE COURT: Riggins was a case Judge Brennan had,  
12 wasn't it?

13 MR. SGRO: Yes, with Mace Yampolsky.

14 THE COURT: It went to the United States Supreme  
15 Court with Judge Brennan. I think it was.

16 MR. SGRO: It may well have been. It went all the  
17 way through --

18 THE COURT: I'm not running the jail. If they say  
19 she has to remain shackled, she has to remain shackled.

20 We'll be in recess for 10 minutes.

21 MR. DIGIACOMO: Thank you, Judge.

22 MR. SGRO: Thank you.

23 (Court recessed at 2:45 p.m. until 3:01 p.m.)

24 (Outside the presence of the jury.)

25 THE COURT: Do you have to sit there through this?



1 MR. DiGIACOMO: What?

2 THE COURT: Does she need to sit here through this?

3 MR. DiGIACOMO: Yep.

4 THE COURT: Okay. Sorry. I was going to try.

5 THE WITNESS: Thanks.

6 THE COURT: Are you ready?

7 THE MARSHAL: I'm ready when you are.

8 THE COURT: Let's go.

9 (In the presence of the jury.)

10 THE COURT: All right. State versus Burns and  
11 Mason. The record will reflect the presence of the  
12 defendants, their attorneys, the District Attorneys, all  
13 members of the jury. We're back with direct examination.

14 And you're on a video, as I recall.

15 MR. DiGIACOMO: That's correct, Judge. I'm just  
16 going to back it up a couple of seconds so the jury kind of  
17 gets the same spot we were in.

18 (State's Exhibit No. 274 played.)

19 MR. DiGIACOMO: Judge, that might be a good breaking  
20 point for the day.

21 THE COURT: All right. Ladies and gentlemen, during  
22 the recess it's again your duty not to converse among  
23 yourselves or with anyone else on any subject connected with  
24 this trial, to read, watch, or listen to any report of or  
25 commentary on the trial by any medium of information,

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

4 I've got a very brief criminal motion calendar  
5 tomorrow morning, so we're going to get back at 9:30 tomorrow  
6 morning to resume the trial. We'll see you then. Have a good  
7 evening.

8 Did we lose the marshal? Holly, you want to help us  
9 out? Thanks.

10 (Jury recessed at 4:29 p.m.)

11 THE COURT: Let the record will reflect that the  
12 jury left the courtroom. Anything further on the record?

13 MR. LANGFORD: Judge, I would just like to join in  
14 Mr. Sgro's request that Ms. Martinez be unshackled during her  
15 testimony. I just want to put that on the record.

16 THE COURT: We'll see you tomorrow morning at 9:30.

17 MR. LANGFORD: Thank you, Your Honor.

18 THE COURT: Be here a few minutes early, please.

19 MR. ORAM: Yes, Your Honor.

20 MR. DiGIACOMO: Of course.

21 (Court recessed for the evening at 4:30 p.m.)  
22  
23  
24  
25

**CERTIFICATION**

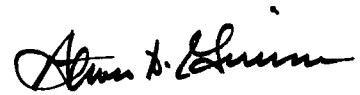
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**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-10-267882-1
	)	C-10-267882-2
vs.	)	DEPT NO. XX
	)	
WILLIE DARNELL MASON, AKA	)	
WILLIE DARNELL MASON, JR.,	)	<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 8**

THURSDAY, JANUARY 29, 2015

APPEARANCES:

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

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**AA 1758**

## **I N D E X**

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MONICA MARTINEZ

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 29, 2015, 9:43 A.M.

2 \* \* \* \* \*

3 (In the presence of the jury.)

4 THE COURT: All right. State vs. Burns and Mason,  
5 the record will reflect the presence of the defendants, their  
6 counsel, the district attorneys, and all members of the jury.

7 Good morning, ladies and gentlemen. We're going to  
8 take a witness out of order. While we're still playing a tape  
9 of Ms. Martinez, the State has asked permission to call a  
10 witness out of order and I have granted that request.

11 So you can call your next witness.

12 MS. WECKERLY: Thank you, Your Honor. The State  
13 calls Dr. Gosche.

14 JOHN ROBERT GOSCHE, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated.

16 THE COURT: Please be seated.

17 THE CLERK: Please state your name and spell your  
18 first and last name for the record.

19 THE WITNESS: John Robert Gosche, J-O-H-N  
20 G-O-S-C-H-E.

21 DIRECT EXAMINATION

22 BY MS. WECKERLY:

23 Q Sir, how are you employed?

24 A Currently I work for the University of South  
25 Alabama School of Medicine. I'm a professor of surgery in

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1     pediatrics.

2                 Q     And --

3                 A     And I work at the Children's Hospital of South  
4     Alabama.

5                 Q     At one time did you work in Las Vegas as a  
6     pediatric surgeon?

7                 A     Right. I was -- I worked here in Las Vegas 2007  
8     to 2012. At that time I was chief of the division of  
9     pediatric surgery, professor of surgery for University of  
10    Nevada School of Medicine.

11                Q     And to have that position and -- at the School  
12    of Medicine and also to conduct those surgeries, can you  
13    describe your educational background?

14                A     So a pediatric surgeon, first of all, you have  
15    to go through medical school. So it's four years of medical  
16    school, University of South Florida. To do pediatric surgery  
17    you have been trained first as a general surgeon. So it's a  
18    -- five years of general surgery. And then on top of that you  
19    do a two -- two additional years specializing in pediatric  
20    surgery. So we do surgery on everything from newborn  
21    premature babies all the way up to most of us will do  
22    18-year-olds, but some of us will even do older ones if they  
23    have pediatric type diseases.

24                Q     Okay. And now you're a professor and do you do  
25    -- still do surgery in Alabama?

1           A     Yes.

2           Q     And do you do surgeries in other states, too,  
3 involving --

4           A     I also work part-time at the Rainbow Baby --  
5 Babies and Children's Hospital in Cleveland one weekend a  
6 month.

7           Q     Okay. And, sir, back in 2010, you said you were  
8 at -- well, associated with UMC?

9           A     Uh-huh.

10          Q     Is that yes? Sorry.

11          A     That is correct.

12          Q     Okay. Did you -- were you involved in the care  
13 of a child by the name of Devonia Newman?

14          A     Yes, I was.

15          Q     Can you explain to the members of the jury how  
16 it was that you would have become involved in her care?

17          A     So she was a trauma patient. The way it works  
18 at UMC is there is a group of surgeons who specialize in  
19 trauma and they are in-house all the time. So what happens is  
20 when they come -- when someone comes in and needs emergency  
21 surgery, they take care of those patients. And what we've  
22 always tried to do is we want to be involved in the care of  
23 those patients. Because there's only two of us, you can't be  
24 there 24 hours a day. So the next day typically they would be  
25 transferred to our service, and then we would help managing at



1 that point.

2 Q So if I understand you correctly, you wouldn't  
3 have done the initial surgery of Devonina?

4 A I did not do the initial surgery.

5 Q But you were involved in her care after that  
6 trauma surgery?

7 A Right. She required multiple surgeries during  
8 her hospitalization, and so I was involved in several of those  
9 surgeries.

10 Q Have you reviewed -- or I'm sure you did at the  
11 time -- what her initial surgery involved?

12 A Yes. I have a copy of that operate report.

13 Q And can you describe for the members of the jury  
14 what her surgery was when she arrived at the trauma center?

15 A So the child had a -- a gunshot wound, looks  
16 like a single-entrance wound in the abdomen to the left side  
17 of the midline, upper part of the abdomen. They did what's  
18 called an exploratory laparotomy. Literally, the meaning is  
19 that you're just looking in the abdomen. At the time they did  
20 that, they found multiple injuries. They -- she had multiple  
21 injuries to the small intestine. She had a  
22 through-and-through injury that pretty much divided the mid  
23 portion of her colon. She also had some other smaller  
24 injuries to the colon that they were able to over-sew.

25 And then it looks like the trajectory of the bullet

1 was it went down into the pelvis. And so there were injuries  
2 also to both of her ovaries. Divided one of her -- the tubes.  
3 And then it also creased -- it went through the back wall of  
4 her uterus and into her vagina.

5 Q And obviously the projectile would have been  
6 removed in that initial trauma surgery?

7 A Not always. Sometimes the risk of actually  
8 chasing the bullet is higher than leaving it alone. If a -- a  
9 bullet is pretty much -- because it -- it's such a high  
10 trajectory, in most cases, if it hasn't crossed through  
11 anything, it actually is sterile. And so we don't always go  
12 after the bullets, because you can actually cause damage to  
13 other structures in the process of retrieving a bullet. So we  
14 don't always pull out the bullets if -- if they're in places  
15 where it's hard to get to.

16 Q Okay. In this case, was it removed, though?

17 A I think there -- if I -- I don't actually have a  
18 picture of the -- or a copy of her x-ray.

19 Q Okay.

20 A But there are comments there are multiple  
21 fragments. So my guess is that there were multiple small  
22 pieces that'll -- oftentimes a bullet will partially fragment  
23 and you'll have multiple pieces within the cavity in this  
24 case.

25 Q Okay.

1           A     So parts may have been removed, I don't know  
2     that. But again, that's not our goal. Our goal was to  
3     control the -- control the problems with the leakage and --  
4     and stool, in this case, was actually leaking out of her  
5     colon.

6           Q     And so in that initial trauma procedure, what  
7     would the trauma surgeon have done to -- to save her life,  
8     essentially?

9           A     Well, the -- first of all -- the first thing you  
10    do is make sure there's nothing actively bleeding. And so it  
11    doesn't really look like there is ongoing active bleeding in  
12    terms of real severe life-threatening bleeding. So what they  
13    did is they had to do -- did a complete exploration.

14                So we pretty much start at the top, start with the  
15    esophagus, the stomach, you go all the way down through the  
16    small intestine, you look at all the parts of the small  
17    intestine, you look at all the colon. You make sure the  
18    liver's not injured, you make sure the spleen's not injured.  
19    If they are, are they bleeding still or not. And then we  
20    basically, all the other structures in this case in her  
21    pelvis, they had to look at those things.

22                So what they found was there were multiple injuries  
23    to the small intestine. So what they did is divided parts of  
24    the small intestine that had multiple injuries. In other  
25    words, it was -- if there's a segment that has multiple

1 injuries, you oftentimes just have to take that segment out  
2 and put it back together. And they did that -- did that in  
3 two locations.

4           There were also several other injuries where there  
5 were just like a hole, and sometimes you can actually just sew  
6 those up. And there are a couple of places where they just  
7 did that. There are one in the colon where they also did  
8 that. And then they also found that the mid-portion of the  
9 colon was completely sort of separated. And so they repaired  
10 that, also.

11           Q     Okay. So to her small intestine, where there  
12 were multiple areas of damage, they would have just kind of  
13 taken that section out and put the other two together?

14           A     Correct.

15           Q     And then --

16           A     That is correct.

17           Q     -- you said also there was, I think, on her  
18 colon there was an actual hole, so that would have been  
19 repaired?

20           A     Right.

21           Q     And --

22           A     And the other part of the colon were separated,  
23 they also just repaired that, too.

24           Q     Okay. Would that have all been done in the  
25 initial trauma surgery?

1           A     Yeah. That was all done as the first -- the  
2 first operation.

3           Q     Okay.

4           A     The other thing is she had blood coming from her  
5 rectum. And given the location of the bullet -- because the  
6 bullet went down into the pelvis behind her uterus and down  
7 towards the rectum. That's a very difficult area to get to.  
8 It's hard to see. And so they also did what -- a  
9 sigmoidoscopy. That's a medical term for looking inside  
10 someone's lower colon.

11           What they saw was a lot of blood. They couldn't see  
12 an obvious hole. So in other words, because it was difficult  
13 to treat that, what you do in that case is you actually just  
14 try to keep stool from going down there. So that's what they  
15 gave her, what's called a diverting loop colostomy. So they  
16 basically brought a part of the colon up -- the -- above where  
17 that injury is, they bring it out to the outside, so there's  
18 no longer stool going down to that area where there's an  
19 injury or presumed injury.

20           Q     So, and then if I understand you correctly about  
21 how you come into her treatment, you would have come in the  
22 next day?

23           A     Right. So after this operation, she was then  
24 admitted to the pediatric intensive care unit.

25           Q     Okay.

1           A     In the pediatric intensive care unit, there are  
2 pediatric critical care specialists who manage the patients on  
3 a day-to-day, minute-to-minute basis. And we get involved in  
4 the surgical aspect of their care.

5           Q     Okay. And the person who's the specialist  
6 managing her care at some point saw some issue that you would  
7 have been asked to assist with?

8           A     So, again, I don't have all the operative  
9 reports or the -- because it's quite an extensive chart. So  
10 at some point she was developing infections. So not an -- a  
11 surprising event, given the fact that she had a lot of stool  
12 in her belly. And she still had a lot of injury to her  
13 tissues. So at some point she needed to have her abdomen  
14 reopened, washed out, and it required multiple operations to  
15 actually to get her -- all the infection cleared out.

16           As part of those operations, we will do is basically,  
17 in most cases we don't close their abdomen in between  
18 operations. If we expect more than one operation, going back  
19 and re-sewing everything up each time, actually causes more  
20 injury to tissues. And so we just -- we just leave their  
21 abdomens open. And then we -- allows it to go back easier.  
22 We just open -- take the dressings off, we wash everything  
23 out. If we find dead tissue, we try to clean that up as much  
24 as possible. And so it's -- usually it's a multiple-stage  
25 thing where you're just trying to get the infection cleared up

1 until you think that it's -- that you have it under control  
2 and then you think about getting her closed again.

3 Q Now, is it -- you said it isn't unusual to  
4 develop infections. Is that because of the organs or  
5 structures that were -- were damaged because they're involved  
6 in, like, digestion or?

7 A That -- that's correct.

8 Q Okay.

9 A Colon has a lot of bacteria. So whenever you  
10 have a colon injury, your risk of developing infection after a  
11 repair of a colon injury goes up a lot. So it's typically in  
12 the 10-to-20 percent range you expect a high incidence of  
13 infection problems.

14 (Audio play interruption.)

15 MR. DiGIACOMO: Apologize, Judge.

16 THE COURT: What are you doing?

17 MS. WECKERLY: What are you doing, Marc?

18 MR. SGRO: Technology.

19 MR. DiGIACOMO: Technology, Judge. I apologize.

20 MS. WECKERLY: Sorry, Doctor.

21 THE WITNESS: That's all right.

22 BY MS. WECKERLY:

23 Q You mentioned that she had a subsequent surgery  
24 to address I think you said, like, kind of dead tissue and  
25 that the infection -- was it just one subsequent or would that

1 have happened over time?

2 A She had multiple operations.

3 Q Okay. And then each one of those operations, is  
4 she sedated and intubated and?

5 A When we know we're going to be taking the  
6 patient back to the operating room frequently, typically what  
7 we do is we will keep them intubated. So each time they go  
8 back downstairs to the operating room, they don't have to be  
9 reintubated again. And during that time while they're  
10 intubated, usually we keep them well sedated and on pain  
11 medicine.

12 Q And in -- in terms of her care, do you know how  
13 long approximately she was actually in the hospital?

14 A Approximately three months, I believe.

15 Q Three months?

16 A Yeah. She was -- she was admitted early in  
17 August and I think she finally was discharged early November,  
18 if I remember right.

19 Q And from your review of her medical records, was  
20 there a parent or guardian assigned to -- well, was there a  
21 parent, I guess, that you -- that was consulted about her  
22 care?

23 A You know, I don't -- I don't see that there was  
24 -- I don't have any of the consents, so I don't know who was  
25 signing her consents for operations. We typically try to get



1 a parent to sign a consent if there's one available. But I do  
2 believe that she was actually under the -- she became a ward  
3 of the State.

4 Q Okay. And --

5 A I believe, but I'm not certain of that. So.

6 Q And does someone have, I guess, a CPS person  
7 assigned to them if there is no parent available?

8 A Typically, yes.

9 Q And you said she would have been there about  
10 three months?

11 A Yeah. She was there about three months. I  
12 think she was discharged on the -- let's see if the operative  
13 -- there's an operative -- or the discharge summary here. It  
14 says, yeah, she was discharged November 1st, 2010. She was  
15 admitted August 7, 2010.

16 Q Thank you, sir. Thank you, sir.

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

18 THE COURT: Cross-examination.

19 MR. SGRO: Thank you, sir. May I approach the clerk,  
20 Your Honor?

21 THE COURT: Certainly.

22 MR. SGRO: Your Honor, prior to this morning's  
23 proceedings, the State and I got together and agreed to the  
24 admission of Defense Exhibits H through L. Thank you.

25 So I'd move for their admission at this time.

1 MS. WECKERLY: No objection, Your Honor.

2 THE COURT: They'll be received.

3 (Defendant's Exhibit H through L admitted.)

4 CROSS-EXAMINATION

5 BY MR. SGRO:

6 Q Doctor, did we have an opportunity to chat this  
7 morning --

8 A Yes, we did.

9 Q -- before the proceedings began?

10 A Yes, we did.

11 Q All right.

12 MR. SGRO: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MR. SGRO:

15 Q I had the opportunity to go over some records  
16 with you with the State of Nevada, correct? With the  
17 prosecutor?

18 A That is correct.

19 Q And are the records I showed you this morning  
20 the ones you have in front of you? Can you just quickly flip  
21 through the --

22 A Yes, they are.

23 Q -- exhibits. Now, I want to start with --

24 MR. SGRO: And if I could -- Your Honor, do you mind  
25 if I ask a few questions from here just to --

1 THE COURT: You've got to be --

2 MR. SGRO: -- be on the same page?

3 THE COURT: -- in front of a microphone, if you can  
4 do it.

5 MR. SGRO: Let's see if the clerk can pick me up.  
6 Maybe we can share this one.

7 THE WITNESS: All right.

8 BY MR. SGRO:

9 Q All right. Doctor, I want to start with Exhibit  
10 H.

11 MR. SGRO: Is that okay, Madam Recorder?

12 THE COURT RECORDER: Yes. Thank you.

13 BY MR. SGRO:

14 Q Exhibit H shows that Devonia Newman, age 12, was  
15 receiving some medications on what date, sir?

16 A This is a medication administration record, and  
17 it's for the dates of August 8th through August 10th --

18 Q Okay.

19 A -- of 2010.

20 Q And does it start at 7:00 a.m. and go until 7:00  
21 p.m.?

22 A It actually starts 7:00 a.m., August 8th, and  
23 goes till 7:00 a.m., August 9th.

24 Q Okay. And --

25 A So it's a 24-hour record.

1           Q     Okay.  And -- and I'm -- I know you don't know  
2 this, but I'm going to represent to you that police officers  
3 interviewed Devonia Newman about 4:00, 4:00 p.m.  On August  
4 8th, okay?  So with that representation, does this record show  
5 us some of the medications she was on starting in the morning  
6 of the day of the interview?

7           A     Yes.  It shows that it was ordered.

8           Q     Okay.  And then there is also a chart that shows  
9 the administration; is that right?

10          A     That is correct.

11          Q     And what -- can you turn it over so we've got  
12 the exhibit, please.

13          A     I?

14          Q     Yes.  So Defense Exhibit I shows the  
15 administration; is that right?

16          A     That's correct.  It's a record of the  
17 administration.

18          Q     Okay.  And just for the record, what's the date  
19 of the administration of Defense Exhibit I?

20          A     August 7th.

21          Q     Okay.  So now -- and -- and if you can do me the  
22 favor of Exhibit -- is that J?

23          A     J, that's correct.

24          Q     And what's the date of that one?

25          A     Also August 7th.

1           Q     Okay. Now, with these exhibits in front of you,  
2 would it be fair to say that starting on August 7th, that  
3 there was a drug that had been administered to Ms. Newman  
4 called fentanyl?

5           A     That is correct.

6           Q     And can you explain for the ladies and gentlemen  
7 of the jury what fentanyl is?

8           A     Fentanyl is a pain medicine. It's a variation  
9 on morphine. A lot of people know morphine. Fentanyl is a  
10 little more -- it's stronger, but we use lower doses, so it  
11 gives the same effect, but we use smaller amounts of it.

12          Q     Now, there's 100 milligrams looks like every  
13 hour that are being administered to Ms. Newman; is that right?

14          A     That is correct, according to this record. Yes.

15          Q     All right. And we are going to need to assume,  
16 because it's administration of medication to a minor child,  
17 that these records are probably accurate?

18          A     That's correct.

19          Q     100 milligrams of fentanyl is a pretty  
20 significant amount, would you agree with that, sir?

21          A     Micro -- micrograms.

22          Q     I'm sorry. Micrograms. I misspoke.

23          A     That's all right.

24          Q     100 micrograms; would you agree that that's a --  
25 that's a significant amount?

1           A     It is -- it is actually not an extreme amount.  
2     So -- but it is -- it would be enough to control her pain, as  
3     really was the goal, I'm sure.

4           Q     And are you aware at the time that these drugs  
5     are being administered, Ms. Newman only weighs 110 pounds?

6           A     All we know, actually, was just looking at her  
7     medication administration record, they have her weight as  
8     being 50 kilos. So it was -- the dosing, I'm sure, was based  
9     upon that estimated weight.

10          Q     Okay.

11          A     Because at that point she was probably too sick  
12     to actually weigh her. So -- so what they do is we estimate a  
13     weight and we use that as a way of dosing. So, based upon  
14     that estimated weight, her dosing was approximately two  
15     micrograms per kilo per hour, and that's -- that's how we  
16     usually figure the doses on things like that.

17          Q     Right. And 50 kilos, and I don't know if you  
18     said this --

19          A     She gets 100 micrograms per hour. So she's --  
20     therefore is getting -- since she's 50 kilos, presumably it  
21     would be two micrograms per kilo per hour.

22          Q     And 50 kilos is about 110 pounds?

23          A     Yes, about that, right.

24          Q     All right. Now, let's talk -- before we go onto  
25     the other medication --

1           A     Uh-huh.

2           Q     -- let's talk about the -- the impact of  
3 fentanyl. Now, this started on August 7th, 2012. And  
4 remember, right now I want to focus on a time of about 4:00  
5 p.m. on August 8th. So from 4:00 p.m. August 8th,  
6 backtracking about 30-some hours, she's receiving fentanyl,  
7 right?

8           A     That is correct.

9           Q     Okay. Fentanyl has some side effects, correct?

10          A     It does.

11          Q     And are you -- and -- and as a practicing  
12 surgeon, you're required to keep up on what's going on  
13 medically, read publications, go to CMEs, etcetera, correct?

14          A     That's correct.

15          Q     CME is an acronym for continuing medical  
16 education, correct?

17          A     That is correct.

18          Q     And I assume you probably subscribe to a bunch  
19 of magazines, New England Journal of Medicine, etcetera?

20          A     That is correct.

21          Q     All right. And you're familiar with the Mayo  
22 Clinic that also publishes a lot of data?

23          A     Yes.

24          Q     And Mayo Clinic's a highly regarded institution  
25 in our country that a lot of physicians like yourself rely on

1 in terms of coming to conclusions?

2 A Not always for pediatric surgery, but yes.

3 Q Okay. Well, let's talk -- fair -- fair point.

4 Let's talk about just relative to fentanyl. All right.

5 Fentanyl has side effects, correct?

6 A Correct.

7 Q Some of those side effects can include a change  
8 of consciousness, right?

9 A Correct.

10 Q Some of those side effects include confusion,  
11 correct?

12 A Yes. Well, yes. I mean, one of the -- all pain  
13 medicine, one of the side effects of most -- of all pain  
14 medicine is it also has a sedative effect, so it makes you  
15 sleepy.

16 Q Okay.

17 A So I guess if you're sleepy enough, you may seem  
18 confused, but yes.

19 Q And -- and are you aware that, at least  
20 according to the Mayo Clinic, one common side effect of  
21 fentanyl is seeing, hearing, or feeling things that are not  
22 there?

23 A I wasn't aware of that, but it's not too  
24 surprising. Many things will have those effects.

25 Q Okay. And fentanyl can also have an impact on



1 the person that's under the influence of fentanyl, on their  
2 suggestibility; would that be fair?

3 A If Mayo says that, it's probably true. Or at  
4 least they've seen it.

5 Q Okay. Let's talk about -- and I butchered this  
6 pronunciation before and I'm going to do it again --  
7 midazolam; is that right?

8 A Midazolam.

9 Q Midazolam. That is the actual drug that has a  
10 brand name called Versed, correct?

11 A That's correct.

12 Q All right. And Versed is what's listed on the  
13 treatment for Ms. Newman, correct?

14 A That is correct.

15 Q Now, Versed is also something that's being  
16 administered to Ms. Newman in the preceding hours prior to --  
17 again, if we assume my 4:00 p.m. on the 8th is -- is accurate,  
18 Ms. Newman's also taking Versed, correct?

19 A She has been receiving, Versed; that's correct.

20 Q All right. Now, the purpose of Versed is to  
21 produce amnesia, right?

22 A That is -- yeah, it's a sedative, but it creates  
23 an amnestic event, too, so you don't recall things as much.

24 Q All right. So the reason a hospital would give  
25 a patient Versed is because they specifically don't want them

1 to remember the pain they're going through, the agony of  
2 presurgery and the surgery itself, fair?

3 A That's probably a good assessment. We do it  
4 also because Versed, because it's a sedative, we actually use  
5 it also because it keeps them from sort of thrashing. So it  
6 keeps them quieter.

7 Q Sure. I'm not -- I'm not suggesting that each  
8 of these medications don't have more than one --

9 A Right.

10 Q -- impact. Fentanyl can be used to control  
11 pain --

12 A Right.

13 Q -- right? And on balance as -- as someone  
14 administering or prescribing this medication, you're willing  
15 to say, Yeah, it might cause confusion or an altered state of  
16 consciousness, but it's more important that we relieve the  
17 pain?

18 A That's the goal, right.

19 Q Right. And similarly, when you prescribe Versed  
20 or midazolam --

21 A Right.

22 Q -- clearly, one of the goals is to have a  
23 sedative effect --

24 A Right.

25 Q -- correct? Keep the patient calm?

1           A     Right.

2           Q     But doctors who administer that know that  
3 they're also going to create amnesia or -- how did you say it?

4           A     Amnestic.

5           Q     Amnestic effect. Okay. Which, obviously, in  
6 lay terms means you just --

7           A     You don't recall.

8           Q     Okay. And the Versed that was being  
9 administered, was it being administered on August 8th?

10          A     So from what I'm seeing is it was on and off a  
11 couple of times, it looks like.

12          Q     Right.

13          A     So on August 7th it started at 8:00 in the  
14 morning, and it looks like it was discontinued at 9:00 p.m.  
15 Then on August 8th, they started a lower dose at 6:00 a.m.  
16 And stopped it at 11:00 -- no, they stopped it at 10:00,  
17 because there's no note of it being given at 11:00. So.

18          Q     Let's go -- I'm sorry, I missed -- missed August  
19 8th. What time --

20          A     August 8th, they gave her a smaller dose from  
21 about 6:00 a.m. until 10:00 a.m.

22          Q     Okay. And these are both drugs that have  
23 half-lives, correct?

24          A     Correct.

25          Q     And is a half-life some -- the -- if I were to

1 put that in lay terms, would that mean as I initially feel a  
2 dramatic impact over the course of sometimes days, weeks,  
3 months, some are measured in years, the impact of what I just  
4 took gets lesser and lesser over time; would you agree with  
5 that lay assessment?

6 A Yes. So a half-life is actually a measurement  
7 pharmacologic of the amount of time it takes to get rid of  
8 half the original dose.

9 Q Okay. And in your opinion, she would -- Ms.  
10 Devonia Newman would have been -- obviously, fentanyl is still  
11 being administered throughout the course of the day, so  
12 clearly she's feeling the impact of fentanyl, correct?

13 A That's correct.

14 Q And according to the amount of Versed she's  
15 being administered, she's still going to be feeling the impact  
16 of Versed even at 4:00 p.m., correct?

17 A Versed has a shorter half-life, and so therefore  
18 it has a shorter effect.

19 Q Correct. It has a short --

20 A So six hours later --

21 Q Five hours later --

22 A -- it would be -- well, it stopped at 10:00.

23 So, yeah, I don't know -- I guess you could say it didn't stop  
24 really till 11:00.

25 Q Exactly.

1           A     Five hours later there would probably be some  
2 residual effect. I don't know how much. But yeah, there was  
3 -- probably some -- be some residual effect.

4           Q     And -- and the -- the level of residual effect  
5 of the amnesia would be more than just the one single dose?  
6 And -- and I don't know if that made sense.

7           The -- there's an accumulated effect of Versed,  
8 right? They give it at 6:00, they give it at 7:00 -

9           A     Right.

10          Q     -- they give it at 8:00. Do you get what I'm  
11 saying?

12          A     Yeah. So it's -- but it's actually given as a  
13 continuous drip. So --

14          Q     Right.

15          A     -- so yeah. So it -- there tends to be a  
16 cumulative effect.

17          Q     That's what I was going for. Okay. And that  
18 cumulative effect is where we start the math problem of the  
19 half-life and how much it's dissipating over each hour, day,  
20 whatever our unit of measurement is, fair?

21          A     Correct.

22          Q     All right. And then I had two more exhibits in  
23 front of you. The -- the handwritten excerpts out of the  
24 chart; is that right?

25          A     That's correct. Because they're mostly notes

1 from -- one is August 7th and the other is August 8th of 2010.

2 Q Okay. All right. Can we start with August 7th.  
3 Do you remember me asking you just to look to see the CPS  
4 arrived at the hospital around 2:30 on the one for August 7th?

5 A Yeah. So the one from August 7th, this is your  
6 Exhibit K, there's a note by the nurse at 1435, so 2:35. And  
7 basically she describes her blood pressure. The nurse -- the  
8 doctor was in the area checking labs. They discussed some  
9 things about the patient. At the end there is a notation that  
10 the CPS worker was at bedside.

11 Q Okay. And then -- well, strike that. It's not  
12 uncommon for hospital staff to record any visits or what they  
13 call at-beside, right?

14 A They try.

15 Q They try.

16 A So again, the assumption is that I come and go  
17 quite frequently, and so oftentimes they don't note every time  
18 I come. Or I come and I didn't write any order, so therefore  
19 I came and we didn't discuss anything and they happened to be  
20 in other rooms. So -- but yes, if they -- usually, in most  
21 cases, they -- they're aware that if one of the physicians or  
22 nurses or someone who's involved in the patient's care is at  
23 the bedside, they will try to record in their notes.

24 Q Right. And let's distinguish you. You're a --  
25 you're a surgeon, you're going in there for postoperative

1 care, you're a familiar face. You're not someone that's  
2 remarkable or different or that stands out. You're there --

3 A Yeah.

4 Q -- every day?

5 A They were used to seeing me around.

6 Q Exactly. That's different than seeing someone  
7 from CPS, for example, right?

8 A Yeah. So if someone comes in they don't know,  
9 obviously the first thing I'd ask is who are you and what are  
10 you doing here? Because obviously, don't want the people  
11 walking in who don't know this patient or shouldn't be in the  
12 patient's room.

13 Q Now, did I show you a chart entry from August  
14 8th that cover --

15 A So this, again, is the nurse's notes from August  
16 8th. This is your Exhibit L.

17 Q Okay. And did I ask you to see if anyone from  
18 hospital staff recorded the time or any notation at all about  
19 the police being at Devonia's bedside around 4:00?

20 A So as we discussed, the penmanship is maybe less  
21 than ideal. But I don't see any notes about anyone being at  
22 the bedside in terms of police or a CPS worker. There's  
23 several notes about the doctors, either discussing with the  
24 doctors or some of the doctors being at beside. But I don't  
25 see anything else.

1           Q     Okay. Thank you. And then I neglected to ask  
2 you, and I apologize, relative to fentanyl, are you aware --  
3 well, first off, do you know, or are you familiar with the  
4 U.S. National Library of Medicine?

5           A     Yes.

6           Q     Okay. And they -- they are also one of these  
7 groups that will publish material that physicians like  
8 yourself can rely on?

9           A     Correct.

10          Q     Okay. Are you aware of studies they have done,  
11 the U.S. National Library of Medicine, relative to the  
12 hallucinogenic effect of fentanyl?

13          A     Not where I -- not something I read about all  
14 the time.

15          Q     Okay. It wouldn't surprise you to -- to hear  
16 that, though?

17          A     No, it wouldn't surprise me.

18          Q     All right. And relative to Versed, are you  
19 aware of any -- any such studies that have discussed the  
20 hallucinogenic effect of Versed?

21          A     Again, that's not something I would commonly  
22 read about, but I'm sure there are -- there are studies out  
23 there.

24          Q     Okay.

25          MR. SGRO: I pass the witness, Your Honor.



1 MR. LANGFORD: I have no questions, Your Honor.

2 THE COURT: Any redirect?

3 MS. WECKERLY: Just a few questions.

4 REDIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q Doctor, when the defense counsel asked you to  
7 look at the chart on August the 8th with the bad penmanship,  
8 that one?

9 A Yes.

10 Q And you didn't see a notation on there I believe  
11 that -- that the police entered the room?

12 A No, I don't see any comment or notes about the  
13 police being in the room. I just --

14 Q Is that always noted in your experience?

15 A Again, they try. The nurses really do try.

16 Q Sure.

17 A But there's times when -- it's possible that  
18 this nurse may have been at lunch. So -- or she may have been  
19 dealing with some other problems. So it's possible that  
20 things went on that just weren't noted.

21 Q Okay.

22 A Or maybe she just had a really busy day and  
23 maybe that's why her penmanship wasn't very good that day and  
24 she's trying to catch up at the end of the day and forgot to  
25 note things. It's -- it's hard to know. I mean, I wouldn't

1 -- I wouldn't put -- personally, I wouldn't put too much into  
2 that, because again, like I said, I come and go a lot and  
3 sometimes you'll note that they say Dr. Gosche at bedside --

4 Q Uh-huh.

5 A -- and even sometimes when I've talked to them,  
6 they don't note that.

7 Q Right.

8 A And so --

9 Q And you're someone involved in the actual  
10 medical care?

11 A That's correct.

12 Q Okay. And a police officer obviously wouldn't  
13 be?

14 A That's correct.

15 Q Sir, I was -- in your -- over your career I  
16 assume you have actually prescribed fentanyl?

17 A Yeah. We do. We don't use it as much. Again,  
18 we deal with a lot of children and so we're very cautious  
19 about using too much narcotics on children.

20 Q Okay.

21 A And so for that reason, I don't use a lot of it.  
22 But we certainly do use it.

23 Q Do you think that the -- the dosage given in  
24 this case, does -- I mean, does that seem like a overdose  
25 for her, or does it seem like an appropriate dosage given her

1 weight and size and age?

2 A It seems like a very appropriate dosage.

3 Q Okay. When you have prescribed it, have your --  
4 your patients become hallucinogenic?

5 A I've not seen that. But --

6 Q Okay. And you --

7 A -- it's possible that, again, usually something  
8 like that happen, you would think the nurse would be saying  
9 he's seeing things to -- you know, when we make rounds and --

10 Q Yeah.

11 A -- but I've not seen that.

12 Q Okay. Actually --

13 A But again I -- sometimes, my kids, we can't tell  
14 when they're hallucinating because they're just so --

15 Q Because they're too little?

16 A -- so -- too young. So --

17 Q Right. If they're preverbal --

18 A -- you'd have to have a teenager who's verbal.  
19 Right.

20 Q Right. And you said -- I think you kind of  
21 answered my next question. If someone were hallucinogenic,  
22 that should be noted on the chart, right?

23 A Typically, yeah. They'll make comments about  
24 the patient.

25 Q Okay.

1           A     Because they're -- there are actually  
2     conversations -- both -- I think they've had conversations  
3     with her and asked her how she's feeling, Are you hurting?  
4     And so -- and she's answering. It would seem appropriate.  
5     So.

6           Q     Okay. So they're actually talking to her and  
7     not noting that?

8           A     Yeah. And I'm -- I'm not sure, this one -- if  
9     we're talking about August 7th, is -- that's the one I have.

10          Q     Yeah.

11          A     And then the one from August 8th. I'm trying to  
12     decide -- okay. Now she has an intratracheal tube in on the  
13     8th. So she wouldn't be able to respond verbally.

14          Q     Right.

15          A     But she would -- they were able to answer -- get  
16     her to answer questions with yes, nods and --

17          Q     Okay.

18          A     -- shaking her head. So.

19          Q     I -- and I guess if -- even -- I realize that  
20     communication would be difficult with the -- the tube in -- in  
21     her. But if she were appearing hallucinogenic, that should  
22     have been noted on the -- on the chart?

23          A     I would think there would be notes about her  
24     being combative.

25          Q     Okay.

1           A     And I don't --

2           Q     Yeah. And then do you -- do you prescribe or  
3 have you ever prescribed, I'll say the easier name for it,  
4 Versed? Or --

5           A     Yes.

6           Q     And in your experience, have you seen  
7 hallucinations when you prescribe it to children?

8           A     Now I have seen that, yes.

9           Q     Okay. And you said that it has -- can you  
10 describe how those hallucinations manifest or what that would  
11 be?

12          A     What -- usually what it is, is the child will  
13 tell us afterwards --

14          Q     Uh-huh.

15          A     -- that I saw you, but you had two heads. Or --

16          Q     Uh-huh.

17          A     -- I saw you in my dream. So it's like they're  
18 -- they feel like they're in a dream state.

19          Q     Does it affect their memory, though, of, like,  
20 something that happened prior to them being in the hospital?

21          A     Midazolam, you mean?

22          Q     Yes.

23          A     The Versed? Yes. It -- it mostly affects the  
24 period from the point it's given and for a certain period of  
25 time afterwards.

1 Q Okay.

2 A I actually haven't seen that many children who  
3 have loss of, in my case, loss of memory of events that  
4 occurred much -- much before it was given. So, not like days  
5 before, they wouldn't -- they would still have recalled those  
6 events. That's been my experience.

7 Q Okay. So it's when it's administered is when  
8 the amesiatic [sic] effect or hallucinogenic effect takes  
9 over?

10 A Right.

11 Q It happens?

12 A So once the dose is given, then that's -- that's  
13 when you start to have those effects. And the length of those  
14 effects may vary from person to person.

15 Q Okay. But it doesn't alter, like, two days  
16 before maybe the kid was given --

17 A I've not seen that --

18 Q -- the drug?

19 A -- no.

20 Q Okay. And then you said the -- the -- from the  
21 time it's given, and I know I'm oversimplifying this, from the  
22 time it's given, it's probably the most amnesiac, or if you're  
23 going to have a side effect it'll be when the dose is the  
24 highest, and then throughout the hours that ensue, have less  
25 of an effect?

1           A     Yes. So when you give the dose, it's got the  
2 greatest concentration in your blood stream, and that's when  
3 you'll see the greatest effects.

4           Q     Okay. And --

5           A     Now, in her case, she was getting a continuous  
6 infusion. So she was getting sort of a dose that was smaller  
7 than you would give, like, as a one-time dose, but it was  
8 given over a period of time to have the same effect that -- in  
9 other words, you don't have to give her too high -- too much  
10 more of a dose, it's not too extreme dose, but you want to  
11 keep that effect going. So the continuous -- that's where we  
12 do -- why we do continuous infusions.

13          Q     And with the a continuous -- I mean, have you  
14 noticed any difference in how children react with a, you know,  
15 a continuous low-level dose versus a very big dose at the  
16 beginning in terms of amnesia or hallucinations?

17          A     When you give a bolus, a big dose, they are  
18 usually completely unresponsive. And that's -- so if we're  
19 doing this, we do this oftentimes for children who are about  
20 to have surgery. If they're really anxious, we'll give them  
21 Versed or midazolam. And then usually if we give them a large  
22 enough dose they'll be really sleepy or at least much more  
23 agreeable.

24          Q     Okay.

25          A     With the continuous, it's -- we try to adjust it

1 so that they're not completely sedated, but they seem  
2 comfortable.

3 Q All right.

4 A Did that -- did that answer your question?

5 Q Yes.

6 A Okay.

7 Q And in your experience with these side effects,  
8 do they occur in all patients? Like the hallucinations or the  
9 amnesia or anything like that?

10 A The amnesia, yes. Hallucinations, I don't  
11 believe they do. But again, it's not -- that's not something  
12 I don't really interview all my patients about --

13 Q Right.

14 A -- whether they're hallucinating afterwards.

15 So --

16 Q Okay.

17 A And I'm sure there's been studies that have  
18 shown that, you know, it's a certain -- I'm sure there are  
19 some people that are more sensitive to it than others.

20 Q And her last dose on the 8th was at 10:00 a.m.?

21 A Which one are we talking about now?

22 Q On the 8th?

23 A Midazolam, you mean?

24 Q Versed.

25 A Okay. The Versed?



1 Q Yes.

2 A Yeah. It looks like she had a continuous  
3 infusion going at two milligrams per hour, and it's recorded  
4 that it was -- there's nothing recorded in the 11:00 hour. So  
5 I presume she got the two milligrams per hour between the  
6 10:00 and 11:00 time.

7 Q Okay. And then after that there's no record of  
8 her getting any?

9 A There's no record on this chart.

10 Q Okay.

11 A Which I would assume it'd all continue if it was  
12 -- it -- it was still going on.

13 Q Okay. It should have been on there if she did?

14 A Yeah. I don't know why they would change to a  
15 different sheet.

16 Q Okay. So she -- that was discontinued somewhere  
17 between 10:00 and 11:00?

18 A That is correct.

19 Q And then the dose prior to that was at 6:00  
20 a.m.?

21 A So she started a continuous infusion again at  
22 6:00 a.m. is what it looks like, it started from -- at 6:00  
23 a.m., two milligrams per hour continuously between 6:00 a.m.  
24 and 11:00 a.m.

25 Q Okay. And then there's no notation of it?

1           A     No notation after that.

2           Q     And then the -- the first drug, fentanyl, that  
3 was constant?

4           A     That was -- we're just -- we're just now talking  
5 about the 8th?

6           Q     Yeah.

7           A     So starting at midnight there's a note that it  
8 was still going on at 100 micrograms per hour, and it went all  
9 the way until it looks like 6:00 p.m.

10          Q     Okay. Thank you.

11          MR. SGRO: Very briefly, Your Honor.

12          THE COURT: Yes.

13                        RE CROSS-EXAMINATION

14 BY MR. SGRO:

15          Q     So, Doctor, just very quickly, one of the things  
16 you said I think hits the nail on the head, relative to a lot  
17 of the symptoms, amnesia, hallucinations, a lot of that comes  
18 from physicians that do those sorts of interviews --

19          A     That's correct.

20          Q     -- when treatment's concluded, correct?

21          A     Right. And I'm sure there are -- I mean, again,  
22 I'm not a pharmacologist.

23          Q     Right.

24          A     I'm a surgeon. So I got simple things. I -- if  
25 there's something that needs to come out, I take it out.

1 Something needs to be fixed, I fix it. And we -- we're  
2 involved in the care postoperatively. But it's not my forte.

3 Q Sure. When you --

4 A I don't worry about -- unless they bring  
5 something up, I don't -- I don't make it a point to interview  
6 them about everything that happened to them after --

7 Q Correct.

8 A -- or during their procedure.

9 Q Correct. So there's two parts. There's the --  
10 the interview that may be conducted by the surgeon, the other  
11 part would be self-reporting, right? Yes?

12 A Right. That's correct.

13 Q Okay. And self-reporting is simply, as you gave  
14 an example, a patient sometime after the treatment's  
15 administered, saying --

16 A Hey I saw you in my dream or something. Yeah.  
17 That's typically what I'll get is --

18 Q Okay.

19 A -- Hey, you were in my dream. So.

20 Q Right. And -- and to go from the -- the general  
21 to the specific, in terms of the impact, I think you said that  
22 fentanyl and Versed and the combination could have an -- an  
23 amnesia effect at or about the time of its administration,  
24 correct?

25 A It starts at the time of administration.

1 Q Right.

2 A And then it wears off over a period of time.

3 Q Right. And let me ask you this. Because we're  
4 not talking about days here. Are you aware that there --  
5 there was an incident that preceded Devonia Newman's admission  
6 into the hospital? You're -- you treated --

7 A I am not aware of that.

8 Q Okay. Well, you treated a gunshot wound,  
9 correct?

10 A That is correct.

11 Q All right. And again, I know you don't know,  
12 but if I were to represent to you that an incident occurred  
13 around 3:45 a.m. and Ms. Newman arrived at UMC around 6:00,  
14 we're talking about only a two-hour or so time span, correct?

15 A That's correct.

16 Q All right. Let me ask you some of the questions  
17 that Ms. Weckerly did from a different perspective. I have  
18 someone under the influence of Versed and fentanyl, and I go  
19 on August 8th, 24 hours or 36 hours after the drugs have been  
20 administered, and I begin to ask questions of that person, you  
21 would expect some level of deviation and accuracy, right?  
22 With that person's ability to perceive, recall, and then tell  
23 someone, right? As opposed to -- as opposed to speaking to  
24 that same individual that's not under the influence of  
25 fentanyl and Versed.

1           A     Okay.

2           Q     Do you see the --

3           A     Now, where -- were we talking about asking about  
4 events that occurred since they started the Versed or events  
5 before?

6           Q     Well, let's -- we're going to -- well, let's  
7 break it down.

8           A     So if someone's on -- currently on Versed and  
9 fentanyl, to some degree at that point, if they're still  
10 getting that, they may be a little sedated.

11          Q     Right.

12          A     And so in that regard it may be harder for them  
13 to recall.

14          Q     Right.

15          A     And carry on a conversation.

16          Q     And it may be easier for them to be prompted,  
17 correct?

18          A     I don't know. It's possible. I hadn't thought  
19 about that. But yeah, it's possible.

20          Q     Okay. And I guess at the end of the day my  
21 question is -- is perhaps self-evident. But if you're going  
22 to rely on someone to give you an accurate rendition of  
23 detail, you're -- you would rather do it when they're not  
24 under the influence of the combination of fentanyl and Versed  
25 as opposed to when they are; would you agree with that?

1           A     That's correct.

2           Q     Okay.

3           A     So one of the -- I guess one of my questions,  
4 maybe I shouldn't be asking you this, is are you saying that  
5 she was interviewed by the police on the 8th; is that what  
6 you're -- you think has happened or?

7           Q     I'm representing to you that on approximately  
8 4:00 p.m. --

9           A     Uh-huh.

10          Q     -- on August 8th, she's interviewed by the  
11 police.

12          A     Okay.

13          Q     Okay?

14          A     I'm trying to find that in the record here, that  
15 time.

16          Q     That's the one that we asked you to see if it  
17 was either --

18          A     Right. And I didn't find a note about it.

19          Q     Right. And it's not in there, correct?

20          A     What I'm wondering about is she was -- in that  
21 morning of -- of that -- that same day, she had a tube in her.

22          Q     Exactly.

23          A     She couldn't speak.

24          Q     Right.

25          A     So if they were interviewing her, she couldn't

1 speak. So my question is did she -- was there a point during  
2 her course between 6:45 in the morning and you say around 4:00  
3 p.m. --

4 Q Yes.

5 A -- when they removed that tube so that they  
6 could actually have interviewed her?

7 Q Correct. And -- and you're not being called  
8 upon right now to answer that particular --

9 A Okay.

10 Q -- question.

11 A Okay.

12 Q But I did -- again, and that's an excellent  
13 observation, because one of the things the State just asked  
14 you was, well, you know, is it noted in the chart? And you  
15 answered, Well, she wouldn't have been able to say anything --

16 A Right.

17 Q -- and we at least know that she's intubated at  
18 6:45 a.m., right?

19 A That's correct.

20 Q All right.

21 A And there's going to be a record somewhere when  
22 -- if she was extubated on this day, there will be a record  
23 somewhere. And I was just trying to see if it's noted here  
24 somewhere.

25 Q Fair enough.

1 MR. SGRO: I believe that's all I have, sir.  
2 MR. LANGFORD: No questions, Your Honor.  
3 THE COURT: Doctor, thank you for being a witness.  
4 THE WITNESS: All right.  
5 THE COURT: You'll be excused.  
6 THE WITNESS: Thank you.  
7 THE COURT: Do you want to take your exhibits and --  
8 back, Mr. Sgro?  
9 MR. SGRO: Oh.  
10 THE COURT: Give them to the clerk.  
11 MR. SGRO: Here, I'll take those.  
12 THE COURT: I don't -- those are his --  
13 MR. SGRO: May I approach, Your Honor?  
14 THE COURT: You left yours up here. The clerk would  
15 like those back.  
16 MR. SGRO: Yes, she would.  
17 THE COURT: She'll tackle you if you try to take them  
18 out of the courtroom.  
19 MR. SGRO: Thank you.  
20 MR. DiGIACOMO: I need Mr. -- I think Randy's going  
21 to go get our next --  
22 THE COURT: All right.  
23 MR. DiGIACOMO: -- get Ms. Martinez again.  
24 THE COURT: All right.  
25 MR. DiGIACOMO: If I could just have a second,



1 hopefully this thing won't start blaring at me again while I  
2 load it back up.

3 (Pause in proceedings.)

4 THE COURT: I've got a hunch we're going to have a  
5 break. Would you guys like a break for a few minutes?

6 THE JURY: Sure.

7 THE COURT: All right. During the recess you're  
8 again -- it -- it's your duty not to converse among yourselves  
9 or with anyone else on any subject connected with this trial,  
10 or to read, watch, or listen to any report of or commentary on  
11 the trial from any medium of information including newspapers,  
12 television, or radio. You're not to form or express an  
13 opinion on any subject connected with this case until it's  
14 finally submitted to you.

15 Give you about 10-minute break. How's that?

16 (Jury recessed at 10:33 a.m.)

17 THE COURT: All right. The record will reflect that  
18 the jury has left the courtroom. 10-minute break, okay?

19 Apparently, Ms. Martinez is someplace else?

20 MR. DiGIACOMO: I got a text from my investigator  
21 that he was in court holding, which I assume means that door  
22 right there. So she just may have to come through.

23 THE COURT: You might want to check. I don't know.

24 (Court recessed at 10:33 a.m., until 10:42 a.m.)

25 (Outside the presence of the jury.)

1 THE COURT: We're on the record, folks.

2 (Pause in proceedings.)

3 (Jury reconvened at 10:44 a.m.)

4 THE COURT: All right. State vs. Burns and Mason.

5 The record will reflect the presence of the defendants, their  
6 counsel, the district attorneys, and all members of the jury.

7 We're back to playing the video recording of Ms.  
8 Martinez. And Ms. Martinez is present. You may.

9 MR. DiGIACOMO: Thank you, Judge. And for the  
10 record, we stopped last night at 2:54 and some seconds. I  
11 backed up to 2:53 so the -- the context isn't lost. And we'll  
12 start there.

13 (State's Exhibit 274 played.)

14 MR. DiGIACOMO: Judge, it's about noon. Would you  
15 like to take a break?

16 THE COURT: Is this about the end of the video?

17 MR. DiGIACOMO: About an hour and 26 minutes left.

18 THE COURT: Oh, really?

19 MR. DiGIACOMO: Yes.

20 THE COURT: Okay. All right.

21 Ladies and gentlemen, during the recess it's again  
22 your duty not to converse among yourselves or with anyone else  
23 on any subject connected with this trial, or to read, watch,  
24 or listen to any report of or commentary on the trial from any  
25 medium of information including newspapers, television, or

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

3 We'll be in recess till 1:00.

4 (Jury recessed at 11:58 a.m.)

5 THE COURT: Let the record reflect that the jury has  
6 executed the -- exited the courtroom.

7 Anything further on the record?

8 MR. ORAM: Just -- just so that the Court could have  
9 the appropriate staff here to deal with Ms. Martinez's shackle  
10 situation.

11 THE COURT: I think that the investigator for the  
12 DA's office is in charge of Ms. Martinez.

13 MR. DiGIACOMO: That's correct.

14 THE COURT: Okay. You can explain to her she's going  
15 to have to be unshackled when we come back. And she can do  
16 that first before the jury comes in.

17 MR. SGRO: Are you going to -- how do you want it?  
18 Do you want just the hands free?

19 THE COURT: Yeah. That's all that's necessary.

20 MR. SGRO: All right. Okay.

21 MR. DiGIACOMO: Thank you, Judge.

22 THE COURT: See you then.

23 MR. DiGIACOMO: Thank you.

24 (Court recessed at 12:00 p.m., until 1:08 p.m.)

25 (In the presence of the jury.)

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

4 We're still on direct examination and playing the  
5 video.

6 MR. DiGIACOMO: It's Exhibit 274, Judge. And we  
7 haven't touched it. So hopefully it'll start up right.

8 (State's Exhibit 274 played.)

9 MR. DiGIACOMO: Would you like to take a break,  
10 Judge?

11 THE COURT: Let's take a break. All right.

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

19 Be in recess for about 10 minutes.

20 (Jury recessed at 2:36 p.m.)

21 THE COURT: Are you through with the monitor here?

22 MR. DiGIACOMO: I think we should move the monitor so  
23 that the jury can all see. There's some other things to  
24 watch, but nothing that long.

25 THE COURT: Okay. Record reflect that the jury's

1 left the courtroom. 10-minute break.

2 (Court recessed at 2:36 p.m. until 2:51 p.m.)

3 (In the presence of the jury.)

4 THE COURT: All right. State versus Burns and  
5 Mason. The record will reflect the presence of the  
6 defendants, their counsel, the district attorneys, and the  
7 members of the jury. We're still on direct examination of Ms.  
8 Martinez.

9 And, Ms. Martinez, you're still under oath.

10 DIRECT EXAMINATION (Continued)

11 BY MR. DiGIACOMO:

12 Q Ma'am, they took the box away from me so just  
13 make sure you speak up for us, okay?

14 THE MARSHAL: I'll put it back.

15 THE WITNESS: Okay.

16 BY MR. DiGIACOMO:

17 Q At the end of this interview there's a  
18 discussion about how you're going to go looking to point Job's  
19 apartment with the homicide detectives. Do you do that?

20 A No.

21 Q What happens to you?

22 A I come down to booking here at Clark County  
23 Detention Center.

24 MR. ORAM: Your Honor, I can't hear.

25 THE COURT: Yeah, we're going --

1 THE MARSHAL: I'm fixing that --

2 THE COURT: -- to use the box again.

3 THE MARSHAL: -- problem right now.

4 THE COURT: There we go.

5 BY MR. DiGIACOMO:

6 Q They take you down to the Detention Center and  
7 you are then arrested for the crimes that you wind up being in  
8 custody for; correct?

9 A Yes.

10 Q You were arrested for conspiracy to commit  
11 robbery?

12 A Yes.

13 Q Robbery with use of a deadly weapon?

14 A Yes.

15 Q And murder with use of a deadly weapon?

16 A Yes.

17 Q Despite the fact that you are now charged,  
18 ultimately you get some lawyers appointed to you, is that  
19 fair?

20 A Yes.

21 Q Okay. And even while they -- you are  
22 continuing to be processed in the criminal justice system, do  
23 you continue to have contact with the homicide detectives?

24 A Yes.

25 Q When you left the interview room you had

1 already identified Mr. Mason in the photograph. That's the  
2 photograph --

3 MR. ORAM: Objection. Leading.

4 THE COURT: Sustained.

5 BY MR. DiGIACOMO:

6 Q Foundationally, who is the photograph that you  
7 kept pointing to saying this is D? Who is that person?

8 A Willie Mason.

9 Q Okay. So that photograph had been identified  
10 when you left the interview room?

11 A Yes.

12 Q Towards the end of the interview they come in  
13 and show you a photograph of Job-Loc, do you remember that?

14 A Yes, I do.

15 Q Okay. And so when you left the interview room  
16 Job-Loc had been identified; is that correct?

17 A Correct.

18 Q When you left the interview room, had you --  
19 had they come to you and shown you a picture of D-Shot yet?

20 A No.

21 Q Okay, Mr. Burns?

22 A No.

23 Q How many times or how many different times do  
24 you think you had contact with the police where they showed  
25 you various photos to see if you could identify D-Shot?

1           A       One time.

2           MR. DiGIACOMO: May I approach, Judge?

3           THE COURT: Sure.

4 BY MR. DiGIACOMO:

5           Q       I'm showing you what's been marked as State's  
6 Proposed Exhibit No. 283 and ask you do you recognize that  
7 document?

8           A       Yes.

9           Q       Okay. Is some of that handwriting on that  
10 document yours?

11          A       That's my handwriting.

12          Q       Okay. And then I'm going to show you the  
13 second page. Do you recognize what's depicted on the second  
14 page?

15          A       Yes.

16          Q       Okay. And it's a six-pack lineup for lack of  
17 a better term; is that correct?

18          A       Okay. Yes.

19          Q       Yes? All right. And is this a copy of your  
20 photograph, both photo lineup witness instructions, as well as  
21 the lineup that you actually viewed and then identified  
22 somebody in?

23          A       Yes.

24          MR. DiGIACOMO: Move to admit 283.

25          MR. ORAM: No objection.



1 MR. LANGFORD: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 283 admitted.)

4 BY MR. DiGIACOMO:

5 Q Now, prior to them coming to show you a photo  
6 lineup, did you have any contact with the detectives when they  
7 were showing you other people and asking you if it was D-Shot  
8 or not, or is this the only time that you had contact with the  
9 detectives?

10 A I remember that incident that -- that time. I  
11 don't know if there was another one. I don't remember.

12 Q Okay. I'm going to put up the front page of  
13 283 for you. Prior to them showing you the photographs, were  
14 you provided the witness instructions that are up here and did  
15 you read through those?

16 A I did.

17 Q Okay. And then did you sign off that you  
18 acknowledge that you understood the witness instructions?

19 A Yes.

20 Q And the date on this is September 16th of  
21 2010. So more than a month after you were arrested, would  
22 that be fair?

23 A Yes.

24 Q Okay. And then I'm going to put up No. 2.  
25 I'm going to turn it so that it actually is the right way. Is

1 that the photo lineup form that you looked at and then  
2 ultimately did you make some mark identifying the person you  
3 know as D-Shot?

4 A Yes, it is.

5 Q If you could, did you then -- well, let me ask  
6 you did you then write out kind of your own personal statement  
7 as to why it is you picked this particular person?

8 A Yes.

9 Q Okay. Will you read to the ladies and  
10 gentlemen of the jury what you wrote?

11 A This picture that I circled and initialed is  
12 the person I know as D-Shock. I am 100 percent sure D-Shock  
13 is the one who was in my car with myself, Willie Mason, who I  
14 knew that night as G-Dog, and Stephanie Cousins on August 7,  
15 2010.

16 Q And I'm not going to show you what's been  
17 marked as State's Proposed Exhibit No. 282, and I'm just going  
18 to show you the fifth page and ask you do recognize first the  
19 person in that photograph?

20 A Yes, I do.

21 Q And who is that?

22 A It's Job-Loc.

23 Q And is that the photograph that the police  
24 showed you during the interview of Job towards the end where  
25 there's that discussion about I thought that was a kite at

1 first?

2 A Yes.

3 Q Okay. Now, ma'am, you told the detectives  
4 kind of a series of events between the time period where you  
5 wound up downtown with Mr. Mason and Mr. Burns, kind of up and  
6 through to the time period that the homicide occurred. And  
7 I'm going to ask you a couple questions kind of about the  
8 timing of various pieces of evidence, okay?

9 A Okay.

10 MR. DiGIACOMO: And, Judge, based upon an agreement  
11 from counsel, there has been an agreement to a number of  
12 different pieces of surveillance video. They have been marked  
13 as the Golden Nugget ATM as State's Proposed Exhibit 270; the  
14 Golden Nugget camera 334 as State's Proposed Exhibit 269; the  
15 Golden Nugget camera 330, State's Proposed Exhibit 268; the  
16 Binion's Hotel & Casino, State's Proposed Exhibit 267; the  
17 Opera House Hotel & Casino, or Opera House Casino, State's  
18 Proposed Exhibit 275; and the Texas Station, State's Proposed  
19 Exhibit 276. I'd offer them at this time.

20 MR. ORAM: No objection.

21 MR. LANGFORD: No objection.

22 THE COURT: They'll be received.

23 (Exhibit 267 through 270 and 275, 276 admitted.)

24 MR. DiGIACOMO: And for the edification of the jury,  
25 I have taken small portions of each one of those discs so they

1 don't have to go searching for it.

2 THE COURT: Good.

3 MR. DiGIACOMO: So for the record, State's Proposed  
4 Exhibit 271 is the Texas composition, State's Proposed Exhibit  
5 272 is the Opera House composite, and State's Proposed Exhibit  
6 273 is the downtown area composite and I'd offer those, as  
7 well.

8 MR. LANGFORD: No objection.

9 MR. ORAM: No objection.

10 THE COURT: They'll be received.

11 (State's Exhibit 271 through 273 admitted.)

12 MR. DiGIACOMO: Thank you.

13 BY MR. DiGIACOMO:

14 Q Now, ma'am, what I'm going to do is I'm going  
15 to start with -- you said when you first came down to  
16 downtown, where did you park?

17 A At the Horseshoe parking garage.

18 Q And you said you exited with Mr. Mason and Mr.  
19 Burns; is that correct?

20 A Yes.

21 Q And then you said you personally entered the  
22 Golden Nugget Hotel & Casino?

23 A Correct.

24 Q And then after the Golden Nugget, you made a  
25 phone call to Mr. Mason or Mr. Mason made a phone call to you;

1 is that correct?

2 A Yes.

3 Q And that's how you wound up back in contact  
4 with him?

5 A Yes, it is.

6 MR. ORAM: Judge, this is continuously leading.

7 MR. DiGIACOMO: Judge, at this point I'm --

8 THE COURT: Well, it's preliminary, as well, so --

9 MR. DiGIACOMO: Thank you. At this point I'm going  
10 to publish 273.

11 THE COURT: All right.

12 (State's Exhibit 273 played.)

13 BY MR. DiGIACOMO:

14 Q I want you to focus on the three people  
15 walking past the door there. Did you see those three  
16 individuals?

17 A I did.

18 Q Okay. And who were they?

19 A It was -- excuse me, myself, Willie, and  
20 David.

21 Q And then the woman whose face is just entering  
22 now, who is that?

23 A That's me.

24 Q If you review the top left-hand photograph  
25 there is a woman approaching an ATM. Who is that?

1           A       That's me.

2           Q       I am going to try and drag it so that we don't  
3 watch you standing at an ATM the whole time here. The woman  
4 now exiting the Golden Nugget?

5           A       That's me again.

6           Q       And once again I'm going to refer you to the  
7 top left-hand video. There's in a moment going to be a woman  
8 or a person standing in this area over here. The woman that's  
9 standing there using her phone and walking away, can -- are  
10 you able to distinguish from that view since you have a pretty  
11 small screen there who that is or not?

12          A       It's kind of dark. It's hard to tell.

13          Q       You said after leaving downtown -- first you  
14 went to the Jerry's Nugget; is that correct?

15          A       Yes.

16          Q       And then ultimately you wound up at the Opera  
17 House.

18               MR. DiGIACOMO: I'm going to publish 272, Judge.

19                       (State's Exhibit 272 played.)

20 BY MR. DiGIACOMO:

21          Q       And so that I can focus you in, there's a car  
22 that parked there, and there now appears to be three  
23 individuals walking in that direction. Do you recognize the  
24 two people in this video?

25          A       I do.

1 Q And who is the person in the white shirt?

2 A Willie.

3 Q And who is the person in the overalls?

4 A David.

5 (State's Exhibit 272 played.)

6 BY MR. DiGIACOMO:

7 Q The car that you guys are walking to, is that  
8 your silver Crown Victoria in the parking lot?

9 A From this camera view it's hard to tell it's  
10 so far back.

11 Q Well, let me ask you this. Is your silver  
12 Crown Victoria that you went to the Opera House in?

13 A Yes.

14 Q Okay. And the timing here says 2:57 and  
15 almost 2:58 in the morning. Is it from the Opera House where  
16 you drive to his cousin's apartment?

17 A Yes.

18 Q You also testified that after the homicide you  
19 went alone to the Texas Station. Do you remember that?

20 A Yes, I did.

21 MR. DiGIACOMO: I'm going to publish 271, Judge.

22 (State's Exhibit 271 played.)

23 BY MR. DiGIACOMO:

24 Q Now, you -- you told the detectives, and I  
25 believe you testified here, the only time you met Mr. Burns

1 was in that time period from the time you picked him up in  
2 California until --

3 MR. ORAM: Object to leading. I don't think that's  
4 what she said at all. She said that she met him on the strip  
5 about two weeks beforehand. So that's a leading question.

6 THE COURT: I think she -- I think she said both.

7 MR. SGRO: Well, that's the problem.

8 MR. DiGIACOMO: She said that --

9 MR. ORAM: That's the problem.

10 MR. DiGIACOMO: -- at the interview, but she  
11 testified that she picked him up in California.

12 THE COURT: She did testify to that.

13 MR. DiGIACOMO: And that was in the interview -- at  
14 the end of the interview, as well.

15 THE COURT: Objection is overruled.

16 BY MR. DiGIACOMO:

17 Q You indicated that you only knew Mr. Burns  
18 from that weekend, a week and a half before, up and through --  
19 or to the homicide a week later. Is that the only time that  
20 you knew Mr. Burns or that you had met Mr. Burns?

21 A It is.

22 Q After you went to the Clark County Detention  
23 Center, did you have communication with Mr. Burns?

24 A In the course of the four and a half years  
25 that I've been here, yes.



1           Q       Okay. Has any of it been face to face like a  
2 conversation where he's -- where you can see him and he can  
3 see you?

4           A       Once, yes.

5           Q       Okay. And do you remember how long ago that  
6 occurred?

7           A       It was about the fall of last year, just not  
8 too far long ago.

9           Q       Is there other times where you had contact  
10 with him voice to voice?

11          A       Yes.

12          Q       Can you describe to the ladies and gentlemen  
13 how it is you can have a conversation with somebody at the  
14 Clark County Detention Center when you physically can't see  
15 them?

16          A       Through the air vents.

17          Q       And in particular was there an incident this  
18 December, just last month, where you were able to have a  
19 conversation with Mr. Burns in a vent?

20          A       Yes.

21          Q       So let me back up. At some pint did you enter  
22 a plea -- a plea of guilty in this case?

23          A       Yes.

24          Q       And do you remember approximately when that  
25 was?

1 A Around October of last year.

2 Q October of 2014?

3 A Correct.

4 Q And do you remember what crimes you pled  
5 guilty to?

6 A I do.

7 Q What crimes did you plead guilty to?

8 A Second degree murder, robbery, and conspiracy  
9 to commit robbery.

10 Q And did you know essentially what your  
11 sentencing range is for those crimes?

12 A I know the minimum on the robbery and the  
13 conspiracy to commit robbery and the second degree is -- it  
14 can range anywhere from 10 to life with the possibility of  
15 parole.

16 Q And the agreement that you've reached with the  
17 State, what position are we taking at your sentencing, do you  
18 know?

19 A I don't understand.

20 Q When it comes to time for sentencing, you  
21 three charges; correct?

22 A Correct.

23 Q You recognize that you will get a sentence on  
24 all three charges; correct?

25 A Correct.

1 Q And do you recognize that those sentences --

2 MR. ORAM: Judge, this is leading.

3 THE COURT: I'm sorry?

4 MR. DiGIACOMO: Foundational.

5 MR. ORAM: Leading. Correct? Correct? He is  
6 leading the witness.

7 MR. DiGIACOMO: This is really foundational, Judge.

8 THE COURT: This is -- there's no issue about this,  
9 is there?

10 MR. ORAM: I think it's subjective belief of what  
11 she's going to receive.

12 THE COURT: Objection is overruled.

13 BY MR. DiGIACOMO:

14 Q You realize there will be three sentences, one  
15 for each crime that you've pled guilty to; is that correct?

16 A Yes.

17 Q And that those sentences may be run concurrent  
18 or consecutive; correct?

19 A Yes.

20 Q And do you remember what position the State of  
21 Nevada is taking as it relates to your guilty plea?

22 A I'm still not understanding what --

23 MR. DiGIACOMO: May I approach, Judge?

24 THE COURT: Yes.

25 BY MR. DiGIACOMO:

1           Q       Ma'am, I have what's been marked as State's  
2 Proposed Exhibit No. 286.

3           MR. ORAM: Is that the guilty plea, Counsel?

4           MR. DiGIACOMO: It is.

5 BY MR. DiGIACOMO:

6           Q       Do you recognize that document as the  
7 agreement to plead guilty?

8           A       Yes.

9           Q       Okay. And looking at that, if you look at  
10 line 23 right there --

11          A       Okay.

12          Q       -- does it say that the State retains the  
13 right to argue?

14          A       Yes, I just wasn't sure.

15          Q       Okay. And if we were to go to the second page  
16 of this, each one of those counts has all your possible  
17 sentencing ranges included in there, is that fair?

18          A       Yes, it does.

19          Q       Okay. You just testified that you recognize  
20 that at the very least you have to do ten years in prison,  
21 that no court can do anything about that. Your minimum parole  
22 eligibility is ten years.

23          A       Yes.

24          Q       Okay. And that a Court -- or do you recognize  
25 that a court can potentially give you as much as a minimum of

1 18 years before you're eligible for parole?

2 A Yes, I understand.

3 Q So back to this vent conversation. You enter  
4 your plea in October of 2014. In December of 2014, how are  
5 you having a conversation with Mr. Burns in the vents?

6 A That evening, it was about 9:30, my neighbor,  
7 the girl that was in the cell next to me, I was in the  
8 shower --

9 Q Don't tell us what your neighbor tells you,  
10 but based upon what she tells you -- well, do you do anything  
11 based upon what she tells you?

12 A Yeah, she told me somebody was asking for me,  
13 so I went --

14 MR. ORAM: Objection as to what she told her.

15 THE COURT: Well, maybe -- if it's for why she did  
16 what she did, not for the truth of it. It -- it's probably  
17 inadmissible. Sustained.

18 BY MR. DiGIACOMO:

19 Q Based upon what she told you, what did you do?

20 A I went to the vent and talked to him.

21 Q When you went to the vent, did you know that  
22 it was David Burns that was looking to speak to you?

23 A No, I didn't.

24 Q Is it unusual for the women in the jail to  
25 talk to other men on other floors of the jail?

1 A Yes. You said is it unusual?

2 Q Yeah, is it unusual.

3 A No, it's not unusual.

4 Q Okay. That's --

5 A It happens all the time. Sorry.

6 Q -- the socialization over at the Clark County  
7 Detention Center?

8 A Yes.

9 Q Okay. When you got to the vent, describe for  
10 the ladies and gentlemen of the jury the conversation that you  
11 had.

12 A I asked for DJ and he asked -- DJ asked me  
13 if --

14 MR. ORAM: Judge.

15 THE WITNESS: -- if I knew D-Shock.

16 MR. ORAM: Judge, objection. Who is DJ? And if  
17 she's going to talk about who DJ is or what DJ said, it's  
18 hearsay.

19 MR. DiGIACOMO: Well, let me clear that up.

20 BY MR. DiGIACOMO:

21 Q Ultimately during the course of the  
22 conversation, is the speaker always David Burns?

23 A Yes.

24 Q Okay. Thank you.

25 THE COURT: That's admissible.

1 BY MR. DiGIACOMO:

2 Q So you go to the vent, ask for DJ, and you  
3 start having a conversation with someone who says they were  
4 DJ, but it's David Burns.

5 A Yes.

6 Q Describe the conversation.

7 A He said do you know D-Shock? And I said yes.  
8 He said that's your co-defendant? And I said yes. He said so  
9 is it true? And I said, what? And he said that you jumped  
10 ship. And I said I was never on his fucking ship. And I was  
11 cussing. I was upset because I had been receiving threats.  
12 So I was cussing at him. And I asked him if he knew another  
13 person up there who was a porter, Straight Up. He goes by  
14 Straight Up. And he said, yeah. I said, well, that's the guy  
15 that I talked to. And he said, oh. And he said -- he said so  
16 what happened? And I said, what do you mean what happened?  
17 And I -- I said things that happened that night.

18 Q Things that happened what night?

19 A In the incident of --

20 Q The night of the murder?

21 A Correct.

22 Q Okay.

23 A I said that there -- there was a woman that  
24 was executed and her daughter was chased and shot. And then  
25 he said -- DJ said, oh, so he should be dealt with. And I

1 said, well, I have nothing to do with that. And he said, oh,  
2 that's funny because I'm D-Shock. And then I just stayed  
3 quiet. And he said, oh, cat got your tongue? And I said,  
4 well, I don't know what you want me to say.

5 Q Based upon that contact that you had with him,  
6 did you report that to somebody?

7 A I did.

8 Q And who did you report that to?

9 A Officer Batu.

10 Q Okay. Now, is it unusual for you to be able  
11 to have access to a co-defendant or somebody in your case  
12 through the vents? Is that the first time you've ever been  
13 able to speak to anybody else associated with this case  
14 through the vents?

15 A No, I've had -- I've spoken with D-Shock  
16 before.

17 Q You've spoken with him before through the  
18 vents?

19 A Yes, one time before.

20 Q And how -- you've seen him face to face one  
21 time and spoken to him on two separate occasions --

22 A Yes.

23 Q -- is that correct?

24 A Yes.

25 Q Based upon that -- let me back up for a



1 second. Did you also get some written communications from Mr.  
2 Burns?

3 A Yes, I received letters from him.

4 MR. DiGIACOMO: May I approach, Judge?

5 (Pause in the proceedings.)

6 MR. DiGIACOMO: Judge, may we approach?

7 THE COURT: Yes.

8 (Bench conference.)

9 MR. DiGIACOMO: In some -- in some of Mr. Burns's  
10 letters to other people he indicates that, you know, basically  
11 I copped to manslaughter but nothing else. We have agreed to  
12 remove that. In this letter he's instructing her what deal to  
13 take and not take.

14 THE COURT: That's okay.

15 MR. DiGIACOMO: And, to me, that's completely  
16 admissible.

17 MR. ORAM: Judge --

18 MR. DiGIACOMO: They want --

19 MR. ORAM: -- could you --

20 MR. DiGIACOMO: -- they want [inaudible].

21 MR. ORAM: Is there any way we can -- I think we can  
22 solve this real quick. Could you just look at the line we're  
23 doing and then you can just make a ruling and we'll be done.

24 MR. DiGIACOMO: Oh, sorry, Judge. Yeah, it's starts  
25 off with when he's talking about --

1 THE COURT: Where? I mean, I can barely read this.

2 MR. DiGIACOMO: I know. Do you want to take them  
3 out and I'll read it to you on the record? He's telling her  
4 not to -- not to take a first or second, but if they offer her  
5 her own -- her own manslaughter to take it.

6 THE COURT: I mean, it's certainly -- it's certainly  
7 admissible for him if it's his statement to her.

8 MR. DiGIACOMO: To her.

9 MR. ORAM: It is. We just thought it is somewhat  
10 vague, highly prejudicial, and is more -- more prejudicial  
11 than probative, Judge.

12 THE COURT: It's pretty probative.

13 MR. ORAM: Is that a record?

14 THE COURT: It's going to come in.

15 MR. ORAM: Is that a record?

16 THE COURT: That's a record. All right.

17 MR. DiGIACOMO: Thank you, Judge.

18 (End of bench conference.)

19 BY MR. DiGIACOMO:

20 Q Ma'am, I'm going to approach and show you two  
21 separate documents. One is State's Proposed Exhibit 285, and  
22 the other one is State's Proposed Exhibit 284. So I guess I  
23 did that a little backwards. And I'm going to ask you just  
24 briefly to look at these and ask you if these appear to be two  
25 of the letters that you received from Mr. Burns, excluding the

1 part that has been redacted by agreement of the parties. I  
2 don't need you to read it all now because --

3 A Oh.

4 Q -- you're going to read it in a minute.

5 A Okay.

6 Q Does this appear to be a redacted copy of the  
7 letter that Mr. -- one of the letters Mr. Burns sent to you?

8 A Yes, it is.

9 Q Okay. And 284 has no redactions, but does  
10 this look like a copy of one of the letters that Mr. Burns  
11 sent to you?

12 A Yes.

13 MR. DiGIACOMO: Move to admit 284 and 285.

14 MR. ORAM: No objection other than what we've talked  
15 about at the bench.

16 MR. LANGFORD: No objection, Your Honor.

17 THE COURT: They'll be received.

18 (State's Exhibit 284 and 285 admitted.)

19 BY MR. DiGIACOMO:

20 Q So now I want to start with the one that's  
21 dated October 22, 2012. It has a stamp, a mail stamp on it.  
22 And this is the redacted one. And just so we're clear, that's  
23 State's Exhibit 285. 284 has a stamp from DSD business on  
24 11/10 of '11. So this would be November of 2011, this would  
25 be October of 2012, okay.

1           A       Okay.

2           Q       I want to read the second letter first.

3           A       Okay.

4           Q       Okay. So what I'm going to ask you to do is  
5 I'm going to ask you to start on the first page. I'm going to  
6 ask you to read to the jury. If there's anything that you  
7 can't read, read all the way to the end. You don't have to  
8 read the poem at the end.

9           A       Okay.

10          Q       Okay. Go ahead.

11          A       Also the -- up here in the top?

12          Q       Yeah, you can read that all. Read the top and  
13 then read the letter.

14          A       Okay. It says to you from me. Song, you got  
15 to keep your head up by Tupac. Todo esta bien ahora. Buenos  
16 dias, Senora Martinez and como esta. Me, same shit, keeping  
17 my head up like a permanent nosebleed. Only strong minds make  
18 it through tough times. It's hard to free your mind in a  
19 place that's not free.

20                I know you miss your kids and they'll miss you.  
21 They'll be there. They'll never forget you or about you.  
22 Right now it's time to fix yourself. If you can't do that,  
23 then you'll be in the same lifestyle you left. Some people  
24 didn't have a chance to fix themselves and died stuck in their  
25 ways. That's a cold way to go out. Knowing that you could

1 have been better than what you were. It's not over. It's  
2 only a time a out, a serious one.

3 Some people go through tough situations and come out  
4 on top. It's all in how you dealt with things while you were  
5 going through it. If you don't correct yourself now, then  
6 people will always remember you how you were. I'm not saying  
7 you were a bad person. I'm saying there is always room for  
8 correction and improvement. This is not the first or the last  
9 holiday, so don't act like it.

10 The day I come out -- the day I come out I talk to  
11 you, two hours later I'm off to my new housing. I told you  
12 something you needed to hear. It takes a man to put  
13 everything aside and say what I have to say. It's probably  
14 even hurting my case to write you. Everything happens for a  
15 reason.

16 I want you to look through your statement and see  
17 that you weren't read your rights. You have the right to  
18 remain silent. You have a right to appointed an attorney  
19 while being questioned. Anything you say can and will be used  
20 against you in a court of law. If you don't have any money an  
21 attorney will be appointed for you.

22 I knew a guy who made a statement and fucked his  
23 self, but he was not read his rights. I noticed this about  
24 your case a year ago. They're going to say you weren't under  
25 arrest at the time, but when they handcuffed you, took you out

1 that room and brought you back in, that changed. I don't  
2 think Stephanie was read her rights neither.

3 This does not benefit me. The cases are severed.  
4 I'm trying to give you the little I know, if any. You were  
5 intoxicated during questioning. You admitted that. This does  
6 not help me. This is for you. They have the power of  
7 throwing the statement away to do -- due to intoxication.  
8 Donovan Roland made a statement. When it came time for Grand  
9 Jury he got up there and said I was high and drunk when I made  
10 this statement. He was thrown out due to this.

11 You're not a little girl. You're a full grown woman  
12 with a brain that works at average -- at average capacity.  
13 I'm not saying you're the smartest, nor dumbest. I'm saying  
14 open your fucking eyes and get in that law work. Have one of  
15 your family members go online and get you a used up to date  
16 law book. Nolo criminal law books are the best. Keep them  
17 bitches out of your business. If you wasn't at work for it --  
18 I'm reading it as it says.

19 Q Read it just as it says.

20 A Okay.

21 Q You can't adlib.

22 A If you wasn't at work for it, the Lord you  
23 pray to every night only helps the willing. The ones who will  
24 help themselves. If your legal help is not doing what you  
25 ask, do what you must. If they don't look into what you need,

1 do what you must. Do not lay there like a wounded antelope  
2 waiting to be eaten. Do something. It's all for you.

3           They offer you something pretty high. Listen, if I  
4 had a car that I'm trying to sell to someone for, let's say, I  
5 accept 8,000, I know you got some money so I tell you I'll  
6 sell the same car for 18,000. You talk me down to 12,000 and  
7 I say no, but I'll accept 14,000. Sold. You think you won  
8 because you talked me down four stacks. I really won, though,  
9 because I made an extra 6,000. You see where I'm coming from?  
10 They're doing the same with sentences, going higher than what  
11 they -- than what a charge really holds.

12           Manslaughter holds a possible four to ten, but if  
13 they can make you cop to first degree or even second, they  
14 won. It's your life. Don't take something stupid because  
15 someone tells you it's good or you think you'll be home soon.  
16 This is not a time to use your heart. It's a time to use your  
17 mind.

18           You're not stupid, you just don't know certain  
19 things. It's okay. You can learn. A lot of people come here  
20 not knowing the law, and I'm not saying I'm that fresh at it.  
21 I'm saying use your mind for something more than reading love  
22 novels or being stuck in dream land.

23           If you ever think you have it worse off, think of  
24 this. I have to deal with the family members in here. They  
25 don't want any story on how I didn't -- how I didn't do

1 nothing or know nothing. They're going to try and do their  
2 best to hurt me. I have to protect myself by any means. I'm  
3 not saying this is something I'm scared of. I'm saying it's  
4 what I'm aware of.

5 Every time someone new comes on a unit of mine, I  
6 have to take precaution. Every time I get moved this is a  
7 precaution of mine. That is why I always try to keep myself  
8 fit, not to mention the people who don't like the  
9 circumstances of my case. People don't care who did it. They  
10 only care that you're in for it. I can go to the joint and  
11 get stabbed or shot in a riot. I'm letting you know how real  
12 it is on this side of the fence.

13 I'm your daughter's age, if not younger. That means  
14 nothing in this world. A person -- a person with an older  
15 mind gets treated older. A young person doesn't get taken  
16 serious. If you don't apply yourself you're not to be taken  
17 serious. In case you thought you had any privacy around here,  
18 you don't.

19 Every single letter you are written, someone made a  
20 copy of and printed out. Everyone read your letters. All  
21 attorneys, COs who do -- COs who do intel, and anyone on the  
22 case who asked for a copy. They will read and make a copy of  
23 this. They read and make a copy of anything sent to anyone  
24 you write in prison in California, where else.

25 The DA goes to sleep at night with your letters as a



1 bedtime story. For example, all your little freaky tails or  
2 how you don't like wearing the panties without a pad because  
3 you don't know who they belong to, everything gets read. I  
4 thought you knew that. Don't write me talking about -- about  
5 no bullshit. You don't want to be broadcasted to 20-plus  
6 people. I'm not trying to scare you. I'm trying to prepare  
7 you.

8 Don't write no one talking about your case. Them  
9 bitches down there will twist something on you faster than  
10 these dudes will. Stop telling your business to everyone. I  
11 know it's hard, but you and only you are the only ones you can  
12 trust. The information I gave you should help. Look up  
13 information on witness interrogation. You will need some NRS.  
14 If you write me talking about your case, expect me not to  
15 write back. I mean it. I only have one envelope right now  
16 and I'm using it to write you.

17 I need you to understand something. Everyone you  
18 talk to is not your friend. You will get one of the  
19 venom-spitting females down there to say fuck me or don't talk  
20 to me. At the same time they can offer any advice. You  
21 didn't write me before because you said you didn't know what  
22 to say.

23 Well, all I want you to do is listen because after  
24 all this time you seem lost. Read this, then read it again so  
25 you can get an understanding of where I'm coming from.

1 Communication rules the nation. This is what you've got to  
2 understand. They want me and you not to talk and to keep us  
3 divided. Divided we fall, and together we stand.

4 I'm not asking for any favors. You don't owe me any  
5 favors. I'm not trying to make a pact. I just feel it's  
6 things you need to know. They want you in the blind and want  
7 you to stay there. I'm going to end this, but think of what I  
8 said. Until next time, stay safe and out the way.

9 Then he writes something in Spanish and I don't -- I  
10 don't know what that is.

11 Q Okay. So at least by October 22nd of 2012, it  
12 appears Mr. Burns has reviewed your statement. Would that be  
13 a fair characterization?

14 MR. ORAM: Objection. Leading.

15 THE COURT: Sustained.

16 BY MR. DiGIACOMO:

17 Q I want to show you State's Exhibit -- Exhibit  
18 284. This one is only one page. I'm going to ask you to read  
19 -- just read the quote at the top. Read the two and then just  
20 this one page.

21 A Okay. To Momo, from Pretty Boy Floyd. Song,  
22 I ain't mad at you, smile for me by Tupac. I laugh and my  
23 laughter is not within me; I burn and the burning is not seen  
24 outside, Machiavelli.

25 What up Momo? How is the fam-bam? Hope everything

1 is well on that end. Holidays coming up. Don't mean this is  
2 the last, just got to sit this one out. I know you fed up,  
3 just keep your head up. Keep your mind stress free is the  
4 best thing in situations like this. Hope you're not bitter  
5 with a young nigga.

6           You'll be home one day, not too quick, not too soon,  
7 but just on time. Poor little tink-tink. The only way  
8 through a tunnel is to keep moving forward. You'll be  
9 alright, ma. Hopefully me striking you is all right and don't  
10 make it into the wrong hands. What more could they do? Heard  
11 your name three times, so I thought I spit at you. No  
12 alternative ego, just seeing what's up.

13           Me, just stuck in knowledge and getting big. I  
14 don't know what it says. I think all -- all vain with the  
15 young, you dig? I hope you're doing the same. We've got to  
16 use this time to meditate on what and where we came from and  
17 where we're going. Hope you're working out that gluteus  
18 maximus and -- I'm not sure what it says on that line.  
19 Something should sit.

20           This is a small stop for a major start and -- for a  
21 major start in your life, ma. Me striking you is to let you  
22 basically feel where I'm coming from since we never had words.  
23 Just misunderstood, but everything is good. No stress and a  
24 lot of rest. Be careful how you talk -- who you talk to in  
25 them vents. You never know who you're talking to, ma.

1 I hope your loved ones keeping in touch with you. I  
2 know they are because you -- you gave -- you gave to get love.  
3 Family plays a big part in this. Sometimes they could lighten  
4 your day and make you feel better. It's all mental, but the  
5 mental controls the physical. What you think is how sometimes  
6 you act or what you act upon. No family with me. Solo-bolo.  
7 Never been, and how it looks, never will be. It's good for  
8 me. Just makes you stronger in my world. Actually, you the  
9 only person I wrote ever.

10 Just thought I would give you input on my situation  
11 and views on life. Lonely road down a deserted street. After  
12 the rain the sun will shine again. Just got to weather the  
13 storm, ma. Never let them see you sweat, even in the heat.  
14 Take care, ma. Always remember, enough pressure makes  
15 diamonds, and too much pressure busts pipes.

16 Q Can I ask you just about one line in here. I  
17 think you read, quote, hope you're not bitter with a young  
18 nigga. Did you have any reason to be mad at David Burns?

19 A Absolutely.

20 Q What was that reason?

21 A For me being in here. For him shooting  
22 Derecia.

23 MR. DiGIACOMO: I have nothing further.

24 MR. ORAM: Court's indulgence.

25 CROSS-EXAMINATION

1 BY MR. ORAM:

2 Q Good afternoon.

3 A Hi.

4 Q I want to ask you some questions and start where  
5 the prosecution sort of left off, and that was the negotiation  
6 that you received in this case, okay.

7 A Okay.

8 Q Now, originally my understanding is you were  
9 charged by way of Criminal Information with conspiracy to  
10 commit robbery, correct?

11 A Correct.

12 Q Burglary while in possession of a firearm?

13 A Yes.

14 Q Robbery with use of a deadly weapon?

15 A Yes.

16 Q First-degree murder with use of a deadly weapon?

17 A Yes.

18 Q Battery with a deadly weapon with substantial  
19 bodily harm?

20 A Yes.

21 Q Okay. And my understanding is up until October  
22 of just a few months ago, those were the charges you were  
23 facing?

24 A Yes.

25 Q The same charges that Mr. Burns and Mr. Mason

1 are facing?

2 A I don't know what charges they're facing.

3 Q Well, you know that they're facing the similar  
4 acts that you're facing, right?

5 A Yes.

6 Q Okay. And the jury would be well aware, as you  
7 would be, that on the murder case alone, first-degree, you  
8 were facing a maximum punishment of life without parole, fair?

9 A I don't know what it held. I didn't really look  
10 it up.

11 Q Well, you were represented by competent  
12 attorneys, were you not?

13 A Yes.

14 Q And you've been in a Clerk County Detention  
15 Center for a few years facing these charges, correct?

16 A Yes.

17 Q I imagine that one of the questions you must've  
18 wanted to know is, What can they do to me, right?

19 A Yes.

20 Q And surely you are aware that you could be sent  
21 to the penitentiary by a jury like this for the rest of your  
22 life, without parole?

23 A Yes.

24 Q Okay. So you're aware of that?

25 A Yes.

1           Q     Okay. And not only could you have been given  
2 life without parole on those charges, you could have been  
3 given an additional charge for -- additional time consecutive?  
4 Do you know what that means, consecutive?

5           A     Yes, I do.

6           Q     You've heard the term running wild, right?

7           A     I've never heard that term.

8           Q     You've been in the jail for all those years;  
9 you've never heard running wild?

10          A     No.

11          Q     Okay. But you know consecutive?

12          A     I do.

13          Q     And consecutive means not only could you be  
14 given life without parole, but then you could have to do extra  
15 time, theoretically, on that, right?

16          A     Yes.

17          Q     On the murder, if you are given life with the  
18 possibility of parole, you could have had to do extra time  
19 based upon all these other charges?

20          A     Yes.

21          Q     Okay. And robbery with a deadly weapon,  
22 burglary while in possession of a firearm, conspiracy to  
23 commit robbery, those all carry tens of years, fair?

24          A     Yes.

25          Q     You knew, Ms. Martinez, that you were facing the

1 rest of your life in prison without parole?

2 A Yes.

3 Q And that scared you, didn't it?

4 A Absolutely.

5 Q And fair to say, over the years you complained  
6 bitterly about your attorneys, didn't you?

7 A I did.

8 Q You felt that they were not helping, correct?

9 A Yes.

10 Q In fact, you complained over the phone to  
11 different people about the fact that you felt you were not  
12 properly represented?

13 A Yes.

14 Q In fact, you told whoever would listen to you  
15 that you felt you were not properly represented?

16 A Yes.

17 Q In fact, you told Mr. Burns that, didn't you?

18 A I did.

19 Q You did. And so what those -- the last letters  
20 are Mr. Burns, in his own little mind, trying to give you the  
21 best advice he could?

22 MR. DIGIACOMO: Objection. Calls for speculation.  
23 She can't possibly know what's going on in Mr. Burns's mind.

24 THE COURT: Its cross-examination. Overruled.

25 BY MR. ORAM:



1 Q Correct?

2 A Could you repeat the question.

3 Q Mr. Burns was trying to give you advice, the  
4 best he could? It sounds that way, doesn't?

5 A I didn't understand what he was writing. You're  
6 talking about the car?

7 Q No, I'm talking about him telling you to look up  
8 the law, have people send you stuff on the law. Do you  
9 remember that?

10 A Oh, yes.

11 Q And that's in direct response to you complaining  
12 to everybody that your attorneys were not helping you; isn't  
13 that right?

14 A Yes.

15 Q So now you make a deal with the State, correct?

16 A Yes.

17 Q A few months ago, right?

18 A Yes.

19 Q And part of this deal, if I understand it  
20 correctly, is that you can actually go to a parole board in  
21 about five years; is that right?

22 A Yes.

23 Q But it doesn't have to be that way. In other  
24 words, your sentencing is going to come down the road, right?  
25 You haven't been sentenced?

1 A Right.

2 Q And you can actually be given 18 years to life,  
3 correct?

4 A Yes.

5 Q But you're hoping that you get 10 to 25 years,  
6 right?

7 A Yes.

8 Q And let's go through carefully how that works,  
9 okay, so we all understand it. At some point you or your  
10 attorneys make contact with the State, and you agreed to go  
11 meet with Mr. DiGiacomo and homicide; is that fair?

12 A Yes.

13 Q When did that occur?

14 A Early on when I got here.

15 Q Okay. Could you be a little more specific.

16 A I don't remember.

17 Q Could you tell me a year?

18 A I want to say maybe 2011.

19 Q 2011?

20 A Possibly, I'm just throwing it out there.

21 Q And what happens in this procedure is you're  
22 actually taken from the Clark County Detention Center, and  
23 you're brought over to the district attorney's Office, right?

24 A It's in the same building, like where I'm coming  
25 to court. I don't remember leaving the building at all.

1           Q     So you were in the jail when you met with the  
2 district attorney? It's not a trick question. I'm just  
3 asking. Where were you when you met with that man, Mr.  
4 DiGiacomo? Where were you?

5           A     I mean, isn't the building all connected?

6           Q     Which building are you referring to?

7           A     All I remember is going through elevators.

8           Q     Were you in a conference room?

9           A     I never left in a vehicle.

10          Q     Were you in a conference room?

11          A     Yes.

12          Q     Big table, lots of chairs around it?

13          A     It's about the same size table as that.

14          Q     At the district attorney's office, isn't that  
15 right?

16          A     I don't know where the district attorney's  
17 office is.

18          Q     Okay. So you were taken out of your cell. You  
19 were taken somewhere, but you don't know where it is?

20          A     It wasn't by vehicle. So I'm assuming it's the  
21 same building.

22          Q     So fair to say you don't know where -- you're  
23 telling us you don't know where you met with the district  
24 attorney in August; is that fair?

25          A     I just thought it was the basement.

1 Q Okay. Who was there at this meeting?

2 A Pam and Marc, both of my attorneys and FBI.

3 Q Chris Bunting? Marty Wildemann?

4 A I don't recall.

5 Q Okay. When you say Pam and Marc, for the  
6 record, do you mean the two district attorneys over here, Ms.  
7 Weckerly and Mr. DiGiacomo?

8 A Yes.

9 Q And your two attorneys are those two attorneys  
10 sitting back there in the second row?

11 A Yes.

12 Q What are their names?

13 A Julia Murray and Andrea Luem.

14 Q Okay. And they were with you as well?

15 A Yes.

16 Q And how long was this meeting?

17 A Maybe a couple hours.

18 Q Could it have been longer? three? four? five  
19 hours?

20 A I don't think it was that long.

21 Q And when you have this meeting, Mr. DiGiacomo  
22 was asking you questions, wasn't he?

23 A Yes.

24 Q And there's something missing or not happening  
25 during that meeting. One thing that's not happening is it's

1 not being recorded; isn't that right?

2 A Yes.

3 Q It's not recorded, correct?

4 A Correct.

5 Q It's not videotaped, correct?

6 A Correct.

7 Q There are no notes on this meeting, correct?

8 A I didn't take any.

9 Q And you didn't see anybody else taking any?

10 A I wasn't paying attention. I was nervous.

11 Q Okay. So what we know is there is a lengthy  
12 meeting with the prosecutors, an FBI agent, your attorneys,  
13 and there's no recording of this whatsoever; fair to say?

14 A Right. We already covered that. Yes.

15 Q And would it be your testimony today that what  
16 you said here in this courtroom is what you told those  
17 prosecutors?

18 A Yes.

19 Q So what you told the police in this 285-page  
20 statement, right -- is what you told the prosecution at that  
21 meeting different than this? What does it say?

22 A At the beginning of that statement with the  
23 detectives when I was interrogated, I lied a lot.

24 Q You lied a lot, okay. And that's something that  
25 I think we've got to go through because, like you said, you

1     lied a lot; is that a fair statement?

2             A     Yes.

3             Q     In fact, you lied so many times you couldn't  
4     even count; fair to say?

5             A     Yes.

6             Q     Is that funny?

7             A     I'm not laughing.

8             Q     But your testimony today is when you met with  
9     the prosecution you never lied, right?

10            A     I held something back, yes.

11            Q     Okay. So you mean you met with the prosecutors  
12    in this unrecorded statement, and now you're telling us that  
13    you've held stuff back from them?

14            A     One thing.

15            Q     Have you told the ladies and gentlemen of the  
16    jury the truth, the whole truth and nothing but the truth?

17            A     Yes, I have.

18            Q     Would you agree with me that if I am to catch  
19    you in a lie while I'm questioning you that that jury should  
20    question everything you say on this witness stand?

21            A     Sure.

22            Q     Did you touch that gun, Monica?

23            A     No.

24            Q     And is that true?

25            A     Yes.

1 Q Okay. Can you explain how it is that scientists  
2 are unable to eliminate you as a source of DNA on that murder  
3 weapon?

4 MR. DIGIACOMO: Objection. Assumes a fact not in  
5 evidence.

6 MR. ORAM: It will be in evidence.

7 MR. DIGIACOMO: It clearly will not be in -- well, it  
8 may or may not be in evidence, but it's certainly not now.

9 THE COURT: It's not in evidence now. Sustained.

10 BY MR. ORAM:

11 Q Is your DNA going to be on that murder weapon?

12 A No.

13 Q And if it is, would you see that as a problem,  
14 Monica?

15 A Yes.

16 Q It's your testimony in front of this jury that  
17 at no time did you ever physically handle the Dirty Harry,  
18 Clint Eastwood gun you described?

19 A I never touched that weapon.

20 Q Okay. Ms. Martinez, today you told -- I think  
21 yesterday actually, you told the ladies and gentlemen of the  
22 jury that after the murder you went to Job-Loc's?

23 A Yes.

24 Q Do you remember telling the ladies and gentlemen  
25 of the jury yesterday that a man named Donovan Rowland came

1 over to the house and took the weapon?

2 A No, I didn't say that.

3 Q Did you say, West?

4 A I did, Wes, yes.

5 Q Okay. And West is Donovan Rowland, or do you  
6 not know?

7 A I know that now.

8 Q Okay. So did you tell the ladies and gentlemen  
9 of the jury that the person we all know as Donovan Rowland,  
10 West, came over to the house and then took the gun?

11 A Yes.

12 Q And we've just heard your 285-page statement.  
13 You never mentioned Donovan Rowland or West one time in that  
14 statement, did you?

15 A I don't recall.

16 Q But you just heard it, right?

17 A Yes, I did.

18 Q And do you remember the detective specifically  
19 asked you if, when you were at Job-Loc's after the murder,  
20 anyone else was there, other than you calling him G-Dogg and  
21 D-Shot and Job-Loc? Do you remember that?

22 A Yes.

23 Q And your testimony was -- or your statement to  
24 the police was, No, right?

25 A Can I see it?



1 Q Sure. You don't remember? You don't remember?

2 A I'm asking to see it.

3 Q No, that was my question. I'll show it to you.

4 A Okay. What is your question?

5 Q You don't remember what you said to the police  
6 on that statement?

7 A At the end of the part, yes, I do.

8 Q What do you think you said? Do you think you  
9 told them you -- that other people were there?

10 A When we got there, it was just the four of us  
11 there. Wes didn't show up until the next day.

12 Q Okay. So West didn't show up at 5 a.m., an hour  
13 and 10 minutes after the murder; is that your testimony?

14 A I don't know what time he showed up there.

15 Q But --

16 A It was -- I know it was daytime.

17 Q Well, you said it was the next day. What day  
18 are you talking about that he showed up?

19 A The 7th.

20 Q Okay. So the day -- the murder happened on the  
21 7th?

22 A Yeah, that happened early morning. Yes.

23 Q When did West show up?

24 A I don't know what time he was there, but it was  
25 -- it was still in the daytime.

1 Q So it was the same day as the murder?

2 A Yes.

3 Q And you just so happened not to remember that  
4 until when?

5 A I don't know.

6 Q You don't remember when you remembered?

7 A I don't remember when I said it. I was still  
8 keeping things that -- I mean, there were so many times in the  
9 statement that I eliminated things or didn't say.

10 Q Okay. So listen to my question carefully. When  
11 did you remember that West had shown up to take the gun?

12 A I don't know.

13 Q Was that after you read discovery and realized  
14 that's what he had said?

15 A Who's "he"?

16 Q West. Did you read the Grand Jury?

17 A Once, yes.

18 Q Did you read his testimony?

19 A I may have.

20 Q See, because you never mentioned -- the jury  
21 just heard it. You never mentioned anything about this  
22 cleaning of the weapon with the sheet. You said it yesterday?

23 A I did.

24 Q Yeah, and that's what Donovan Rowland said,  
25 isn't it?

1           A     I don't remember.

2           Q     You don't remember?

3           A     I've been here four and a half years. I didn't  
4 -- I don't continuously read my statement. I don't  
5 continuously read the discovery.

6           Q     Are you telling the jury that you've lied a lot  
7 in this case, but as a person, you're pretty straightforward?  
8 A pretty honest person?

9           A     I -- I lied in the interrogation.

10          Q     I understand that, but, you know, lying in the  
11 interrogation is one thing, and I understand that, but would  
12 you like to represent to the jury that besides this  
13 interrogation that you're a pretty truthful person?

14          A     Yes.

15          Q     I'd like to talk to you about your job at the  
16 pharmaceutical company, okay. At the pharmaceutical company,  
17 kind of give us a picture of what you do there.

18          A     I answer phones. I make outgoing calls.  
19 Sometimes when it's slow we have to go outside recruiting.

20          Q     Who comes in? I mean, who are they? Are there  
21 patients? Are there -- what is this place?

22          A     It's clinical trials.

23          Q     So do people come for trials to get help?

24          A     No, they -- we test medication -- prescribed  
25 medication, generic versus name brand.

1 Q For people who need medical help?

2 A No, ours is a Phase 3. You don't have to have  
3 the ailment. We're not -- we're not testing to see if it  
4 actually works. We're testing to see if the generic  
5 medication is being absorbed and eliminated at the same time  
6 as the name brand.

7 Q So at some point, that firm is storing the names  
8 of honest citizens in our state; is that right?

9 A Yes.

10 Q People like Albert Davis, right?

11 A Yes.

12 Q Who is Albert Davis?

13 A I don't know him personally.

14 Q It's somebody who needed something, right, some  
15 kind of help that this pharmaceutical company had the records  
16 on his Social Security, height, weight, information, right?

17 A I don't know if he needed help. It's not --  
18 it's third --

19 Q Forget -- let's say he didn't need any help at  
20 all. The pharmaceutical company had his name, Social Security  
21 number, date of birth, this type of personal information of  
22 this man, fair?

23 A Yes.

24 Q And you stole it, didn't you?

25 A Yes.

1 Q And you stole it as an honest person, outside of  
2 this interrogation, to help someone, right?

3 A Yes.

4 Q Okay. And that's because you wanted to help  
5 Osama, right?

6 A Yes.

7 Q Who is Osama? Who is that person?

8 A Job-Loc.

9 Q Mohammed?

10 A Yes.

11 Q Jamal? Am I getting the names right?

12 A I don't -- I never referred to him as Jamal.

13 Q It's Osama. It's -- and so this man, Job-Loc --  
14 is it Job-Loc or Job-Lock?

15 A Job-Loc.

16 Q Job-Loc. And this man needs some type of  
17 surgery -- he claimed -- because he hurt himself during a  
18 crime, right?

19 A Yes.

20 Q And he commits this crime with who?

21 A Wes and his two cousins.

22 Q In what vehicle?

23 A Mine.

24 Q And as an honest person, that concerns you that  
25 Job-Loc had been hurt while committing a serious offense,

1 right? Right?

2 A I don't know that he was committing a serious  
3 offense.

4 Q Oh, okay.

5 A I wasn't there.

6 Q And so then he needed to go to a hospital, and  
7 you wanted to make sure that that hospital performed medical  
8 services on him, correct?

9 A Yes.

10 Q Some surgeon performing surgery on him, correct?

11 A Yes.

12 Q Somebody paying for all of this, correct?

13 A Yes.

14 Q And I imagine when he walked into the hospital  
15 in Utah he didn't just walk up there and say, Hey, I'm  
16 Job-Loc, I'm Osama, Can I come in as Albert Davis, did he?

17 A No.

18 Q In fact, he must've had some kind of fake ID,  
19 right?

20 A No.

21 Q Oh, he didn't?

22 A No.

23 Q Oh, he didn't?

24 A No.

25 Q Well, did they -- how did he get any type of

1 service?

2 A He told them he didn't have an ID.

3 Q And then what happened?

4 A He filled out the necessary paperwork, and he  
5 went through triage -- is that what you call it -- where they  
6 take the vitals and everything. And then they took x-rays.

7 Q So you took him to Utah? It was you driving,  
8 right?

9 A Yes.

10 Q Under the guise that this so-called Albert  
11 Davis, who's some innocent poor guy here, using his name in an  
12 effort to have hospitals and insurance pay for this, fair to  
13 say?

14 A Yes.

15 Q Do you see that as dishonest?

16 A Yes.

17 Q And then you brought him back to Sunrise  
18 Hospital?

19 A Yes.

20 Q And you tried the same here?

21 A Yes.

22 Q And did he get surgery?

23 A Yes, he did.

24 Q Under the name Albert Davis?

25 A Yes.

1 Q How was that paid for?

2 A I don't know.

3 Q You don't care either, do you?

4 A I didn't know.

5 Q Okay. My question is: You don't care?

6 A Well, I do now. I didn't then, no.

7 Q You do now. I mean, have you ever heard the  
8 term identity theft?

9 A Yes.

10 Q Is that identity theft?

11 A Yes.

12 Q So you're working at this company as an office  
13 worker, and you're stealing people's identity, fair to say?

14 A Yes.

15 Q Would you agree with me then -- let's discount  
16 this 285-page statement you gave to the police. This event  
17 you've done, this identity theft makes you look like a  
18 dishonest person, doesn't it?

19 A Yes.

20 Q I'm sorry?

21 A It does.

22 Q So when you told the jury just a couple minutes  
23 ago that besides this statement you were pretty much an honest  
24 person, it's not true, is it?

25 A Why not?



1 Q Because --

2 A Well, all of that happened prior to me talking  
3 to the jury.

4 Q Oh. So what you're saying is that you were --

5 A My statements and that was prior to me  
6 testifying in here today.

7 Q So did you -- you became honest when you came in  
8 here today?

9 A The truth is all out there. There's no reason  
10 to lie anymore.

11 Q Well, now, Monica, at some point you hope your  
12 attorneys are going to stand up and tell the Judge, She did a  
13 good job on the witness stand. The defendants were convicted.  
14 Mr. Burns was sentenced to death, and we'd like to give her  
15 the minimum sentence for her efforts. That's what you're  
16 hoping?

17 A I am hoping for the minimum sentence.

18 Q Right. And you really would be worried that  
19 what happens is the State comes in and said, We think Monica  
20 did a terrible job. We want her to do a lot more time. That  
21 would be very worrisome to you; isn't that right?

22 A It's not worrisome to me.

23 Q No. It isn't worrisome to you because you're  
24 not worried about spending time in the penitentiary?

25 A A woman's life was taken. Her daughter was

1 shot.

2 Q That's right. And then -- and that was  
3 upsetting to you, wasn't it?

4 A Yes.

5 Q And I remember that part because you said you  
6 were scared. You told the jury you were scared after. Do you  
7 remember that?

8 A Yes.

9 Q And then you went to Job-Loc's house. You were  
10 at the Texas. You were by a security guard, right?

11 A Yes.

12 Q And he had a gun, right?

13 A I didn't pay attention.

14 Q Didn't pay attention. And you didn't say, Oh,  
15 my God, a woman's life is being taken? I've heard screams.  
16 Help me. You didn't do that, did you?

17 A No, I didn't.

18 Q You didn't say, Help, help a child, did you?

19 A No.

20 Q But today you're worried about it?

21 A I didn't say I was worried about it.

22 Q And you were so concerned and so worried about  
23 it that when you went to Job-Loc's house that night, you went  
24 and had sex with him, right?

25 A I did.

1           Q     Does that to you sound like somebody who gave a  
2 rat's about those people that had lain there dying in a house?  
3 Does it?

4           A     No, it doesn't.

5           Q     Because it sounds almost like a celebration,  
6 doesn't it?

7           A     No.

8           Q     I'm going to go through some of your statement,  
9 and I'm going to figure out, okay, what's true and what's a  
10 lie, okay. So if you just tell me -- and the reason I wanted  
11 to do this is because at the end, you see, Mr. Sgro and myself  
12 are going to get up, and we want to be able to say what you  
13 say is true and what you admit is false, okay?

14          A     Okay.

15          Q     And you realize that there's been so many  
16 different lies that it's kind of difficult to tell; would you  
17 agree with that?

18          A     Okay.

19          Q     Would you agree with that?

20          A     If you're reading it, yes, I guess it would be.

21          Q     Page 4. You told the detective, You know more  
22 than I do; do you remember that?

23          A     Yes.

24          Q     Was it true or was it a lie?

25          A     I don't know what he knew. I told him he

1 probably knows more than I do. Whether that's true or not,  
2 how am I supposed to know?

3 Q You would know the detective wasn't sitting  
4 right outside the apartment hearing screams and having the  
5 people who have done this get in your car? You know the  
6 detective wouldn't know that, right? Right? Right Monica?

7 A Please repeat the question.

8 Q Monica, do you recall Detective Wildemann, right  
9 at the beginning of the tape, he tells you, Don't tell me how  
10 to do my job? Do you remember that?

11 A I remember that in the statement yes.

12 Q And you saw it on videotape?

13 A Yes.

14 Q And you remember it from actually seeing it  
15 happen, right? Because that's when you said, What did you  
16 want them to do, pull a rabbit out of your ass? Isn't that  
17 what you said?

18 A Yes.

19 Q And that didn't make him very happy, did it?  
20 Did he seem very happy to you?

21 A No. Can I see that part of the statement?

22 Q No.

23 A Can I see that part of the statement?

24 Q No, you can listen and answer my questions,  
25 okay. We've all seen the statement. We've all seen the

1 video.

2 A Yeah, but I'm -- I'm questioning what you're --  
3 what you're asking me though.

4 Q Okay. Let me do it this way. Do you not  
5 remember the detective getting up and storming out of the  
6 room, right, in the beginning?

7 A But you said Wildemann. I don't remember it  
8 being Wildemann. So I'd like to see the statement.

9 Q Who did you think it was? You tell us who you  
10 think it was.

11 A Can I see the statement?

12 Q The way this works is you are going to answer my  
13 questions, okay. Okay. And if they have an objection,  
14 they'll do so. Okay. So you're saying you don't know what  
15 detective that was, right?

16 A I'm not saying that I don't know. I just don't  
17 remember.

18 Q The detectives were very frustrated with you  
19 that day, weren't they?

20 A Yes. Off and on, yes.

21 Q And that's because you kept saying things like,  
22 Well, I lied, right? Do you remember that?

23 A Uh-huh. Yes.

24 Q You told the detective on the way to homicide  
25 that you you had taken numerous drugs on the night of the

1 murder, the night and into the early morning hours. Do you  
2 remember telling the detectives all the different narcotics  
3 you had ingested?

4 A I don't remember all the different narcotics I  
5 told them. I just remember Xanax and weed.

6 Q That's all you remember ingesting that night?

7 A And alcohol.

8 Q Is that all?

9 A Yes.

10 Q Not PCP?

11 A No.

12 Q So if a police officer put that in a report,  
13 that wouldn't be accurate, would it?

14 MR. DIGIACOMO: Objection.

15 THE WITNESS: Correct.

16 THE COURT: Sustained.

17 BY MR. ORAM:

18 Q Did you ingest PCP that night or tell anybody,  
19 any police officer that you had ingested PCP?

20 MR. DIGIACOMO: Objection. Compound question.

21 MR. ORAM: I'll rephrase it.

22 BY MR. ORAM:

23 Q Did you ingest PCP that night?

24 A No.

25 Q Did you tell law enforcement that you had

1 ingested PCP that night?

2 A No.

3 Q Okay. Page 8, you told the detective that you  
4 were so stoned at that time you didn't even know what day it  
5 was; do you remember that?

6 A Yes.

7 Q Is that true, or is that a lie?

8 A It's a lie.

9 MR. SGRO: Your Honor, I'm sorry to interrupt,  
10 especially my own counsel. We need to approach very briefly.

11 (Bench conference.)

12 MR. SGRO: I'm paying attention to the witness, Your  
13 Honor, but Mr. Langford advises me she's getting signals from  
14 the back from her lawyers.

15 THE COURT: I've been watching the lawyers. I  
16 haven't seen them do a thing.

17 MR. SGRO: Can I --

18 MR. LANGFORD: I saw -- (Inaudible).

19 THE COURT: Well, I haven't seen it.

20 MR. SGRO: So Mr. Langford -- just because he's far  
21 away from the microphone --

22 MR. LANGFORD: Tell the lawyers not to signal the  
23 witness.

24 MR. SGRO: Mr. Langford, just for the record, just  
25 indicated that they were nodding.

1 MR. LANGFORD: Tell them right now.

2 MR. SGRO: I'm going to --

3 THE COURT: Do you want to take a recess?

4 MR. SGRO: Pardon me?

5 THE COURT: Do we need a recess?

6 MS. WECKERLY: That's fine.

7 THE COURT: Are you going to be a while?

8 MR. ORAM: (Inaudible.)

9 THE COURT: Sure.

10 MR. SGRO: And we'll just keep an eye on them then,  
11 Your Honor. Thank you.

12 (Bench conference ends.)

13 BY MR. ORAM:

14 Q You told the police on page 11 that you had had  
15 drinks on the night of the murder and Xanax; is that true?

16 A I had alcohol that night only.

17 Q In your statement, you talked about three bars  
18 of Xanax. I don't know what a bar of Xanax is.

19 A We had two bars in the bag.

20 Q Did you ingest Xanax that night?

21 A No.

22 Q So when you told the police that, that was a  
23 lie?

24 A Yes.

25 Q You told the police you had drinks. That was



1 true?

2 A Yes.

3 Q You told the police that you were loaded on the  
4 night of the incident. Is that true, or is that a lie?

5 A I was not loaded.

6 Q So is that true or a lie?

7 A I told them I was.

8 Q And it wasn't true?

9 A Correct.

10 Q So it's a lie?

11 A Yes.

12 Q You told the police about a person named Albert  
13 Davis. We heard it. I mean, you were listening, right? You  
14 said it over and over and over. You talked about Albert  
15 Davis, didn't you?

16 A Yes.

17 Q And I think we get to almost page, like, 210  
18 before you ever -- strike that. It's past page 200 before the  
19 police actually realize that is just a lie. You just  
20 manufactured a name for Job, right?

21 A Yes, I did.

22 Q And you did it because you wanted to cover up,  
23 fair?

24 A To cover up what?

25 Q To cover up for your lover, Job-Loc.

1           A     But to cover up what? Are you talking about the  
2 incident or his injury? I used the name --

3           Q     You covered up his identity, fair?

4           A     I used the name Albert Davis to get him medical  
5 treatment.

6           Q     To cover up his identity, correct? You wanted  
7 to cover his identity when you were talking to the police,  
8 correct?

9           A     Yes.

10          Q     And the reason you do that is because otherwise  
11 we are -- I mean, we are not stupid. If you didn't want to do  
12 it, you'd say, This is Jerome Thomas, right?

13          A     Yes.

14          Q     And so it's fair to say that you led the police  
15 for what, 10 hours, trying to give them the belief that your  
16 lover -- no, strike that. That there was this man in the  
17 picture named Albert Davis, that's what you wanted to convince  
18 the police of, right?

19          A     Yes.

20          Q     And you did it over and over and over, didn't  
21 you?

22          A     I did.

23          Q     And those were all lies, right?

24          A     Yes.

25          Q     The police asked you: Who is he? Are you okay?

1           A     I'm fine.

2           Q     The police asked you who was in the back of that  
3 vehicle. Do you remember that?

4           A     Yes.

5           Q     They asked you the seating arrangements of that  
6 vehicle, right?

7           A     Yes.

8           Q     And you said in the back was a man wearing  
9 jeans; do you recall saying that?

10          A     Yes.

11          Q     Is that true, or is that a lie?

12          A     Well, the overalls were a jean material.

13          Q     That's pretty good. So when you said jeans, you  
14 really meant overalls with jean material?

15          A     When I said jeans, I meant pants.

16          Q     You said the man in the back had braids; do you  
17 remember saying that?

18          A     Yes.

19          Q     And in fact you said that six, seven, eight  
20 times, talked about the man with the braids; do you remember  
21 that?

22          A     Yes, I do.

23          Q     And you even were able to talk about -- do you  
24 remember you were talking about the length of the braids? Do  
25 you remember that?

1           A     Yes.

2           Q     And that was important, wasn't it? You wanted  
3 to give a good description, right?

4           A     Yes.

5           Q     And then so you were thinking, well, how long  
6 was it; do you remember? And then there was even discussion  
7 about beads; do you remember?

8           A     Uh-huh.

9           Q     Is that yes?

10          A     Yes.

11          Q     They were old braids, weren't they, I think you  
12 said?

13          A     Yes.

14          Q     So you really tried to give them a visual of  
15 what they would be looking for, the police, right?

16          A     Yes.

17          Q     And is that true, Monica, or is it a lie?

18          A     It was a lie.

19          Q     It wasn't just one lie. It was a constant lie  
20 is what you're telling the jury, right?

21          A     Of the description, yes.

22          Q     And you told the police that the person in the  
23 backseat, you didn't know the nickname of that person. Do you  
24 remember that?

25          A     Yes.

1 Q And that was a lie, right?

2 A Yes.

3 Q That's your testimony today?

4 A Yes.

5 Q It's a lie. How many times did you throw up  
6 that evening?

7 A One.

8 Q Where?

9 A The Texas.

10 Q Well, I thought you threw up at Bonanza and  
11 Nellis? Remember, they asked you -- you pulled over to the  
12 side of the road to -- you threw up; do you remember that?

13 A I remember saying it.

14 Q Was that a lie?

15 A Yes.

16 Q You thought you'd just lie to the police about  
17 throwing up in different places?

18 A Yes.

19 Q Is that because you thought if you said that  
20 you'd sound more believable?

21 A Yes.

22 Q And that's -- that's what a good liar does,  
23 isn't it? A good liar tries to make people believe things,  
24 right? Right?

25 A Yes.

1 Q A good liar may look someone in the eye and try  
2 to convince them of something that's not true, fair?

3 A I don't know.

4 Q Do you think you're a good liar?

5 A No.

6 Q Well, the police sure believed a lot of what you  
7 said at first, didn't they?

8 MR. DIGIACOMO: Objection, Your Honor.

9 MR. ORAM: I'll rephrase.

10 THE COURT: Sustained.

11 BY MR. ORAM:

12 Q So we know now that you didn't throw up at  
13 Bonanza and Nellis. We can conclude that that's false, right?

14 A Right.

15 Q You hesitated. It's false, right?

16 A I'm saying what -- in my head what you're asking  
17 me before I answer.

18 Q Do you remember when the police put you under  
19 oath?

20 A Yes.

21 Q And they seemed a little fed up with you, didn't  
22 they?

23 A Yes.

24 Q And then they asked you to tell the truth, no  
25 more half-truths, and you agreed. You said, I'm going to do

1 it, right?

2 A Yes.

3 Q And right after that they ask you if there was  
4 still the same description of the person in the backseat; do  
5 you remember that?

6 A Yes.

7 Q And you said it was, right?

8 A Yes.

9 Q Is that true, or is that a lie?

10 A It was a lie.

11 Q So even after they had tried to use techniques  
12 on you to get you to tell the truth, you admitted you'd lied.  
13 Now, you admitted you were going to tell the truth. You  
14 continued to lie, right?

15 A Yes.

16 Q Did you say you worked at the Glitter Gulch?

17 A Yes.

18 Q As a dancer?

19 A Cocktail waitress.

20 Q And you've told the ladies and gentlemen of the  
21 jury -- and I don't mean to be rude about this -- but that you  
22 have worked as a prostitute, fair?

23 A Yes.

24 Q And one of the things you do in that profession  
25 is you know kind of how to work men, fair?

1           A     No.

2           Q     You don't. Well, would you agree when you  
3 watched that video and you had that lean-over moment where you  
4 just got real close and have that nice moment with Detective  
5 Bunting -- do you remember that, where you held hands?

6           A     Yes.

7           Q     You were doing that to try to convince Detective  
8 Bunting that now you were -- you were really going to tell the  
9 truth, right?

10          A     No.

11          Q     Well, what was that then? Explain to the ladies  
12 and gentlemen of the jury what holding hands in a homicide  
13 investigation had to do with anything. What was the purpose?

14          A     I don't know it had to do anything with the  
15 investigation.

16          Q     Let me ask this another way. Did you see  
17 yourself do that?

18          A     Yes.

19          Q     Put your head down, grasped his hands, what were  
20 you thinking?

21          A     I needed support.

22          Q     And you continued to lie even after you got that  
23 support, right?

24          A     I was being interrogated by -- by detectives.  
25 Yes, I did continue to lie.



1           Q     You told the police you didn't know how you got  
2 to the Texas Station that evening. Do you know how you got to  
3 the Texas Station that night?

4           A     Yes.

5           Q     So that was a lie, right?

6           A     Yes.

7           Q     You told the police that you were in and out.  
8 You were blacking out at times; is that true?

9           A     I didn't say I was blacking out.

10          Q     Were you in and out?

11          A     Yes, that's what I said.

12          Q     You don't remember saying blacking out? Being  
13 in and out, what did you mean?

14          A     I was zoning in and out.

15          Q     Zoning in and out?

16          A     Yes.

17          Q     Do you recall saying, Chris, I was blacking,  
18 inaudible, in and out?

19               MR. DIGIACOMO: Counsel, can I have a page, please.

20               MR. ORAM: Mister DiGiacomo, it's on page 30 and 38.  
21 It's the very last line.

22               MR. DIGIACOMO: Thank you.

23 BY MR. ORAM:

24           Q     We'll wait until he gets there, okay. I want to  
25 ask you if you remember --

1 MR. ORAM: Are you there, Counsel?

2 BY MR. ORAM:

3 Q Do you make the following statement: Chris, I  
4 was blacking, inaudible, in and out? Do you remember saying  
5 that?

6 A Yes.

7 Q What did you mean?

8 A I don't know.

9 Q Was it just some made up story?

10 A Quite possibly, yes.

11 Q You told the police that you don't even know  
12 when certain people got in and out of the vehicle; do you  
13 remember saying that?

14 A Yes.

15 Q Is that true?

16 A No.

17 Q So that was a lie?

18 A Yes.

19 Q Monica, you told the jury yesterday that you  
20 were lying to protect certain people. Do you remember that?

21 A Yes.

22 Q And you said one of the people you were lying to  
23 protect was David Burns; do you remember that?

24 A Yes.

25 Q And I want to ask you about that because in your

1 statement -- do you remember the police ask you at first, Have  
2 you ever seen the man with braids? And that's -- I guess at  
3 that time that's what you were saying was the man in the back  
4 of the car. You said you had never seen him before. Do you  
5 remember saying that to the police?

6 A Yes.

7 Q And then you changed it, and you said that in  
8 fact you had met David Burns down on The Strip. You guys were  
9 going to get ecstasy, and you exchanged phone numbers. Do you  
10 remember that?

11 A I remember saying that.

12 Q And so the police would have an image. I mean,  
13 I'm sure we all have an image, okay; however, it was dark.  
14 There was Burns and you. You were trying to get dope. Do you  
15 remember that? Do you remember it?

16 A I remember saying that, yes.

17 Q And that was just a fantasy, wasn't it? It was  
18 all made up, a big lie, right?

19 A Well, we did go down on The Strip before.

20 Q You told the police -- remember, the police got  
21 upset with you about that. You said, I hadn't really met him  
22 on The Strip. Do you remember saying that?

23 A Yeah, I didn't meet him on The Strip.

24 Q So that's my point. It was a fantasy. You made  
25 it up?

1 A Yes.

2 Q It was a lie, right?

3 A Yes.

4 Q And it was a lie to help David Burns to tell  
5 them that you knew this guy you'd met on The Strip, yet you're  
6 getting dope? It was a lie to help Mr. Burns?

7 A What do you mean, It was a lie to help him? I  
8 don't understand the question.

9 Q You said yesterday that you were covering up to  
10 help Mr. Burns. Do you see? Do you see that? That's what  
11 you said?

12 A I said yesterday that I was covering up because  
13 I was scared.

14 Q But you also said yesterday that you were  
15 covering up for people; do you remember?

16 A Yes.

17 Q And you included Mr. Burns, didn't you?

18 A Yes.

19 Q And so what I'm really asking you is, if you're  
20 trying to cover up for somebody -- see, now, I would see if  
21 you're covering up for somebody so you used a fake name, like  
22 Albert Davis. See -- I see that, but what I'm struggling to  
23 understand, if you could help us understand, is why would you  
24 make up a fantasy, something that didn't even happen that  
25 makes Mr. Burns look bad in an effort to help him? It doesn't

1 make sense, does it, Monica? Does it?

2 A I don't understand what you're asking me. I  
3 mean, how does it make it look bad that I was trying to make  
4 up a lie about where I met him?

5 Q The police originally asked you on page 43 if  
6 you had a boyfriend. Do you remember that?

7 A Yes.

8 Q You said you didn't, right?

9 A Yes.

10 Q And that was a lie?

11 A Yes.

12 Q The police asked you -- now before I go any  
13 further, you gave the statement to homicide on August 10,  
14 2010, at 12:45 p.m, so right after noon. Right after lunch  
15 time started you started; do you remember that?

16 A Yes.

17 Q And you told the police you hadn't seen Albert  
18 Davis in a week, right?

19 A Yes.

20 Q So essentially what you're telling the police is  
21 -- the murder happened on the 7th, right?

22 A Yes, it did.

23 Q Just three days later, you're in homicide  
24 talking to them, right?

25 A Yes.

1           Q     And you're trying to convince the police that  
2 you haven't seen Albert Davis in a week, right?

3           A     Correct.

4           Q     And that was in an effort to cover for Job-Loc,  
5 wasn't it?

6           A     Yes.

7           Q     The guy with the murder weapon, right?

8           A     It was his gun. Is that what you're asking me?

9           Q     Yes.

10          A     Yes, it was his gun.

11          Q     You always saw him with that big gun, didn't  
12 you?

13          A     It wasn't the only one I seen him with.

14          Q     Did you see him with the big gun often?

15          A     Yes.

16          Q     Job-Loc, yes or no?

17          A     I said yes.

18          Q     You see him -- did he carry it in a designer  
19 bag? Did he?

20          A     Yes.

21          Q     That's right. And you saw -- yesterday -- you  
22 told us yesterday you saw Donovan Rowland with that murder  
23 weapon, right?

24          A     Yes.

25          Q     And you saw Job-Loc cleaning that murder weapon,

1 right?

2 A Yes.

3 Q And you saw Donovan Rowland take it out of  
4 there, being instructed, Bury it, get rid of it, sell it,  
5 right?

6 A Yes.

7 Q Has west been in your vehicle?

8 A Has he been in my vehicle?

9 Q Yes.

10 A He was in my vehicle.

11 Q When was the last time he was in your vehicle  
12 around this time period?

13 A The last time that I can remember was when Job  
14 got in the accident, when he broke his leg.

15 Q When was that in comparison to the murder?

16 A I have no idea.

17 Q When was the last time you cleaned that vehicle?

18 A I hardly ever washed my car. I don't know.

19 Q You loved Job-Loc?

20 A Yes.

21 Q And Job-Loc and Donovan Rowland are  
22 extraordinarily close, aren't they?

23 A They appeared to be, yes.

24 Q Almost like -- I know that it's not the right  
25 age but almost like a father-son kind of thing, right?

1 A No.

2 Q How would you describe it?

3 A I would I describe it -- Job was like his older  
4 homie.

5 Q That's a better term. So we'll use that one.  
6 So Job is the older homie of Donovan Rowland. They're close.  
7 They're homies, right? Right?

8 A I don't know how close they were. They hadn't  
9 known each other very long.

10 Q Close enough so that maybe Donovan could break  
11 him out of prison?

12 A I don't -- I don't know.

13 Q Did I hear you correctly on that tape say that  
14 Job-Loc had a murder in California -- another murder in  
15 California?

16 A No, I didn't say that.

17 Q You didn't say that?

18 A No.

19 Q On that video, you didn't say that?

20 A I didn't say that.

21 Q What did you say?

22 A I didn't say anything about him having a murder.  
23 I said that he was on the run and he was wanted.

24 Q From what?

25 A I don't know.



1 Q So he's on the run from California, right?

2 A Yes.

3 Q But he's running to California, right?

4 A Yes.

5 Q And he's got an apartment here, right?

6 A He stays --

7 Q Torrey Pines, right?

8 A He stays at his cousin's apartment, yes.

9 Q And he stays with you a lot, right?

10 A Yes.

11 Q And Donovan Rowland stays with you a lot, right?

12 A He stayed a couple of times.

13 Q Not every other day?

14 A No.

15 Q So if --

16 A If he was there, I was at work.

17 Q So he could've been there every other day. You

18 were just at work and don't know?

19 A Yes.

20 Q But you know, don't you, that Mr. Burns lived in

21 California, right?

22 A Job told me he was homeless.

23 Q He was homeless, okay. That's what -- that's

24 what Job told you?

25 A Yes, that's why he wanted to bring him out here.

1 Q And Job was a truthful person, wasn't he?

2 A No.

3 Q You wrote a lot of those jail letters to  
4 Job-Loc, didn't you?

5 A At the beginning, when I got here, I wrote some  
6 letters, yes.

7 Q Professing your love, right?

8 A Yes.

9 Q And he professed his love?

10 A Yes.

11 Q Did you send him those summaries of discovery  
12 that he asked for?

13 A No.

14 Q Why didn't you?

15 A It was illegal.

16 Q Job-Loc was worried he was going to be  
17 identified at the crime scene by the, Smoker bitch; isn't that  
18 what he said?

19 A I don't know what he said.

20 Q You don't. Do you recall, Monica, that Job was  
21 concerned that he could be identified at the scene in a lineup  
22 by someone he referred to as, The smoker bitch?

23 A I don't remember that.

24 Q If I showed you the letter, would it help  
25 refresh your memory?

1           A     Yes.

2           MR. ORAM: Court's indulgence.

3 BY MR. ORAM:

4           Q     Were you ever pregnant with his child?

5           A     No.

6           MR. ORAM: Permission to approach?

7           THE COURT: Is it marked?

8           MR. DIGIACOMO: Judge, can I see it before he  
9 approaches the witness with it?

10          MR. ORAM: No, I'm going to see if I can refresh her  
11 memory with the letter.

12          THE COURT: Well, she can refresh her recollection  
13 from anything, but --

14          MR. ORAM: Thank you.

15          THE COURT: -- counsel is entitled to see it.

16          MR. ORAM: Do you want it now?

17          MR. DIGIACOMO: I'm entitled to see it. If it's a  
18 letter from Job, I think we should approach.

19          MR. ORAM: Well, Judge, he says --

20          THE COURT: Well, I tell you what. Let's take our --

21          MR. DIGIACOMO: Oh, Mr. Oram --

22          THE COURT: Timeout. Let's take our evening recess  
23 now.

24          Ladies and gentlemen, during the recess, it's again  
25 your duty not to converse among yourselves or with anyone else

1 on any subject connected with this trial or to read, watch or  
2 listen to any reports of or commentary on the trial from any  
3 medium of information including newspapers, television, radio,  
4 and you may not form or express an opinion on any subject  
5 connected with this case until it is finally submitted to you.

6 We'll be in recess until 9:30 tomorrow morning.

7 (Jury recessed 4:39 p.m.)

8 THE COURT: We'll do it in the morning. The record  
9 will reflect that the jury has left the courtroom.

10 MR. DIGIACOMO: Judge, it appears Mr. Oram is going  
11 to try and elicit the hearsay statements of Job-Loc --

12 THE COURT: Well, if it refreshes her recollection --

13 MR. DIGIACOMO: -- as to what Job-Loc said --

14 THE COURT: -- maybe --

15 MR. DIGIACOMO: Well, I have an objection to --

16 THE COURT: I don't -- well, she was asked what  
17 Job-Loc said.

18 MR. DIGIACOMO: He said -- he said, Do you remember  
19 Job-Loc saying something to you. She said, No. Now he wants  
20 to show her this, and he was going to read what Job-Loc said.

21 THE COURT: No. No. He doesn't have to read it. He  
22 just shows it to her. She says, yes, I've refreshed my  
23 recollection, or, no, it doesn't.

24 MR. DIGIACOMO: Right.

25 THE COURT: And if it does, then she can answer the

1 question.

2 MR. DIGIACOMO: Okay. But I'm moving to prevent the  
3 question as not relevant because it's his hearsay statement.  
4 What does it matter what Job says or doesn't say? It's  
5 irrelevant.

6 MR. ORAM: Well, Judge, I thought that was very  
7 interesting. I objected numerous times to what Job-Loc said,  
8 and the State every single time was able to get it in under  
9 this co-conspirator statement. She's a conspirator. The  
10 State has said so.

11 THE COURT: I agree. It ought to come in.

12 MR. DIGIACOMO: Okay. So every statement of Job-Loc  
13 comes in?

14 THE COURT: I think it ought to come in.

15 MR. DIGIACOMO: Because every statement that's made  
16 to Mr. Burns, Mr. --

17 MR. ORAM: Judge, it's a--

18 MR. DIGIACOMO: I just want to make sure the record  
19 is clear.

20 MR. ORAM: No, but --

21 MR. DIGIACOMO: Every statement made to Mr. Burns and  
22 Mr. Mason from Job-Loc will come in. If that's the record, I  
23 have no objection.

24 THE COURT: If he is a co-conspirator, at least after  
25 the fact --

1 MS. WECKERLY: That's --

2 THE COURT: -- I --

3 MR. DIGIACOMO: I appreciate --

4 MS. WECKERLY: Accepting that they're relying on  
5 that, we'll accept that.

6 MR. DIGIACOMO: That's acceptable.

7 MR. ORAM: Judge, first of all, let me just say  
8 something so the record is clear and not emotion. I objected  
9 commonly during the times. The Court overruled, and I  
10 understood that. I didn't make statements like, Well, okay  
11 then everything is coming in. I didn't. I brought in this  
12 one statement because I thought I had a right to. I stopped.  
13 I've made my record.

14 THE COURT: He is a co-conspirator, at least there is  
15 an argument that he assisted in cleaning up afterwards, at  
16 least after the fact.

17 Anything else we can do tonight?

18 MR. DIGIACOMO: No, that's fine.

19 MR. ORAM: Nothing.

20 THE COURT: See you at 9:30 tomorrow morning.

21 (Court recessed for the evening 4:41 p.m.)  
22  
23  
24  
25

**CERTIFICATION**

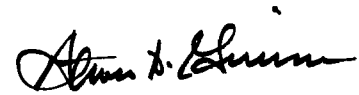
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**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Aurora, Colorado**

  
KIMBERLY LAWSON



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 9**

FRIDAY, JANUARY 30, 2015

APPEARANCES:

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

RECORDED BY SUSAN DOLORFINO, COURT RECORDER  
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1           **LAS VEGAS, NEVADA, FRIDAY, JANUARY 30, 2015, 9:39 A.M.**

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

3                           (In the presence of the jury.)

4           THE COURT: Good morning, ladies and gentlemen. This  
5 is State of Nevada vs. Mason and Burns. The record will  
6 reflect the presence of the defendants, their counsel, the  
7 district attorneys and all members of the jury.

8           We're still on cross-examination of Ms. Martinez, and  
9 Mr. Oram. And I had indicated that because Job-Loc was a  
10 co-conspirator, at least insofar as the covering up of the  
11 act, that asking her to relate what was said in the course and  
12 in furtherance of that co-conspiracy would be admissible.

13           You may continue.

14           MONICA MARTINEZ, STATE'S WITNESS, PREVIOUSLY SWORN

15                           CROSS-EXAMINATION - (Continued)

16           MR. ORAM: Thank you.

17 BY MR. ORAM:

18           Q     Good morning.

19           A     Good morning.

20           Q     Now, when we ended last night, I'd like to know  
21 if you have spoken to anybody about this case since last  
22 night.

23           A     No.

24           Q     You did not meet with your attorneys?

25           A     No.

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1           Q     You have met with anyone from the district  
2 attorney's office?

3           A     No.

4           Q     You have talked to no one about this case?

5           A     No.

6           Q     Okay. Now, you would write love letters to  
7 Jerome Thomas, Job-Loc, after you were arrested, fair?

8           A     Yes.

9           Q     And he would write you love letters, fair?

10          A     Yes.

11          Q     And in one of the letters that you wrote, do you  
12 recall telling him, I told the police you weren't there?

13          A     I don't recall, no.

14          Q     You don't recall saying that?

15          A     I don't remember.

16          Q     Okay. Do you recall that Job-Loc was very  
17 concerned -- or was -- or was concerned that he was going to  
18 be identified out of a lineup as being present at the scene of  
19 the crime?

20               MR. DiGIACOMO: Objection as to form of the question,  
21 as to Job-Loc's state of mind. He can ask about the  
22 statements. But what was in Job-Loc's mind at the time he  
23 said it this witness would have no personal knowledge of.

24               MR. ORAM: I'll rephrase it.

25

1 BY MR. ORAM:

2 Q Did you receive a letter from Job-Loc where he  
3 talked to you about being identified at the scene of a -- at  
4 the scene of the crime in a lineup?

5 A I don't remember the contents of any of the  
6 letters that I received from him.

7 Q If I showed you a copy, would that refresh your  
8 memory?

9 A Yes.

10 MR. ORAM: Permission to approach?

11 THE COURT: Yes.

12 MR. ORAM: I'm going to show for the record  
13 Defendant's Proposed Exhibit M.

14 BY MR. ORAM:

15 Q Do you recognize the writing on that?

16 A Yes.

17 Q Do you see a date at the top?

18 A Yes.

19 Q Is the date October 22, 2010?

20 A Yes, it is.

21 Q I want you to read the first portion of it, and  
22 specifically I would like you to read just past the  
23 highlighted portion and let me know when you're done.

24 A You said this?

25 Q I'd like you to read from the top all the way

1 down two lines past the highlighted portion and let me know  
2 when you're done.

3 A Okay. To my everything --

4 Q No. Just read it to yourself.

5 A Oh. Oh, I'm sorry.

6 Q Have you had an opportunity to read that?

7 A I'm still in the highlighted -- okay.

8 Q Does that refresh your memory as to the letter  
9 that Job-Loc wrote you?

10 A Yes.

11 Q And in that letter, he indicated to you that he  
12 was worried that if the smoker bitch told them I was there,  
13 she can't pick me out of no lineup and even if she did, it  
14 documents saying my leg is broke, I couldn't even walk or run.  
15 Is that what he's telling you?

16 A Yes.

17 Q Okay. Now, this is your lover, right?

18 A Yes.

19 Q And you're telling the ladies and gentlemen of  
20 the jury that he wasn't there at the scene of the crime,  
21 right?

22 A Yes.

23 Q Okay. And if he wasn't at the scene of the  
24 crime, then he would know that he wasn't at the scene of the  
25 crime, right?

1           A     Yes.

2           Q     And yet he's having a conversation with you  
3 about his concern that he could be identified at the scene of  
4 this crime.

5           MR. DiGIACOMO: Object to the form of concerned.

6           THE COURT: It's argumentative as well.

7           MR. ORAM: Okay.

8 BY MR. ORAM:

9           Q     He tells you in this letter about the belief  
10 that the smoker bitch -- who is the smoker bitch?

11          A     Stephanie Cousins.

12          Q     That he gives you advice on what to say, doesn't  
13 he, on the fact that he may be identified and what to say if  
14 he is, right?

15          A     I don't remember reading that part in there.

16          Q     Doesn't he say that he had a broken leg and he  
17 couldn't even walk or run?

18          A     Yes.

19          MR. ORAM: Move for its admission.

20          MR. DiGIACOMO: We have no objection.

21          MR. LANGFORD: I have no objection, Your Honor.

22          THE COURT: It'll be received.

23                   (Defendant's Exhibit M admitted.)

24 BY MR. ORAM:

25          Q     Do you recall in that same letter he's talking

1 to you about discovery?

2 A I don't recall.

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

5 A Yes.

6 MR. ORAM: Permission to approach?

7 THE COURT: Yes.

8 BY MR. ORAM:

9 Q Showing you page 2, in the middle. If you could  
10 read the highlighted portion to yourself and let me know when  
11 you're done.

12 A [Complies.]

13 Q Have you finished that?

14 A Yes.

15 Q Does that refresh your memory as to what he told  
16 you?

17 A Yes.

18 Q Does he tell you, Since you get your discovery,  
19 write me something brief on everybody that said something?

20 A Yes.

21 MR. ORAM: Can you put up Exhibit 2, is that  
22 possible, Counsel?

23 MR. DiGIACOMO: Sure.

24 MR. SGRO: I'm sorry, Your Honor. I had it switched  
25 because I know we have some things.



1 MR. ORAM: That's fine. I can do it another time.  
2 That's fine.

3 MR. DiGIACOMO: Well, you just switch it back to me  
4 and --

5 THE COURT: I have no idea what you're talking about.

6 MR. DiGIACOMO: I think the court reporter knows,  
7 Judge.

8 MR. ORAM: Yes.

9 BY MR. ORAM:

10 Q Can you see that on your monitor?

11 A Yes, I can see it.

12 Q Now, do you see where the pin is?

13 A Yes.

14 Q That's the scene of the crime, correct?

15 A Yes.

16 Q And you know that area really well, don't you,  
17 Monica?

18 A Further north, not so much as the -- I'm more  
19 familiar with the south part of like towards Charleston,  
20 Washington.

21 Q Well, how far do you live from there? How far  
22 did you live from there, Monica?

23 A About a major block or two over.

24 Q A major block or two over. So really close?

25 A Yes.

1           Q     So most people -- how long had you lived at that  
2 area where you lived on -- it's Cinnabar, right?

3           A     I had just moved there. About two months.

4           Q     So you had been in that area for two months?

5           A     Yes.

6           Q     So you must have been reasonably familiar with  
7 it, right?

8           A     Yes.

9           Q     And if I understood you, you said to the ladies  
10 and gentlemen of the jury that there were actually two  
11 stoplights between the crime scene and your house?

12          A     About one or two, yes.

13          Q     Isn't it in fact true that if you come out of  
14 that house and go left and then take a right, you don't have  
15 to stop at any stoplights?

16          A     Are you talking about on the dark street?

17          Q     Yes.

18          A     Yes.

19          Q     So you don't have to, do you?

20          A     No.

21          Q     So why did you tell the jury that there were two  
22 major -- or there were two stoplights if you don't --

23          A     I was talking about from Nellis, the major  
24 streets.

25          Q     So it'd be fair to say that it would only take

1 you a matter of minutes to get from your house to that crime  
2 scene, fair?

3 A Taking the side streets?

4 Q Yes.

5 A Yes.

6 Q Especially at 3:00 in the morning, right?

7 A Yes.

8 Q And you notice that your house, your street is  
9 actually not on there, is it?

10 A No. It's -- well, I haven't examined it enough  
11 to know.

12 Q Point to the direction for the jury, touch your  
13 screen to where you think your house would be approximately.  
14 Can you draw an arrow so we can see?

15 MR. ORAM: May I approach the witness, Your Honor?

16 THE COURT: Maybe her screen doesn't --

17 MR. ORAM: Just because I can't --

18 THE COURT: I thought it did though.

19 MR. DiGIACOMO: If she pushes hard enough it will.  
20 She might just be pushing too light.

21 THE COURT: These are the John Madden screens. You  
22 know John who used to do this at football?

23 THE WITNESS: It was right there.

24 BY MR. ORAM:

25 Q Okay. Do you see Cinnabar on there?

1           A     Yes.

2           Q     I don't think the jury can see.

3           MR. ORAM: Judge, do you mind if I approach the big  
4 screen so I can imitate where she's pointing and --

5           THE COURT: Sure.

6           MR. ORAM: Your point -- do you see where it says  
7 Google on there?

8           THE COURT: Why don't you do it on your screen, can  
9 you do that?

10          MR. DiGIACOMO: She's now got a mark there, or close  
11 to it.

12          THE COURT: Oh, she's got a mark there. Yeah.

13 BY MR. ORAM:

14          Q     Okay. So that's where you're saying you lived  
15 approximately?

16          A     Yes.

17          Q     Right before the murder, Monica, you would have  
18 had to drive [inaudible] easily have driven right by your  
19 house to go to that scene, couldn't you?

20          A     Can you repeat the question?

21          Q     Where had you come from directly before that  
22 murder? Where?

23          A     From the other apartment where they said that  
24 the guy had a gun in the window.

25          Q     And where would that be on this map?

1           A     It wouldn't be on this map.

2           Q     Would it be lower out like if you looked at your  
3 screen, would it be lower?

4           A     Yes.

5           Q     So in order to get from that apartment that you  
6 just referred to, to that murder scene, you could easily have  
7 gone right by your house; isn't that right?

8           A     Yes.

9           Q     And you'd only be a minute or two away, right?

10          A     Yes.

11          Q     Yesterday when we were watching the video, on  
12 page 46 of our transcript you told -- the police asked you had  
13 you ever been to Job-Loc's house. Do you remember those  
14 questions?

15          A     Yes.

16          Q     And you started talking about how you'd been to  
17 rooms. Do you remember that?

18          A     Yes.

19          Q     And they, the police asked you what do you mean,  
20 rooms, right?

21          A     Yes.

22          Q     And you talked about hotel rooms, motel rooms;  
23 am I getting that right?

24          A     Yes.

25          Q     And was that true or was that a lie?

1           A     It was a lie.

2           Q     The police asked you if Job-Loc had ever been to  
3 your residence. Do you remember that?

4           A     Yes.

5           Q     And you said he hadn't, right?

6           A     Yes.

7           Q     And that was a lie?

8           A     Yes.

9           Q     You told the police you don't know if you had  
10 seen Albert that night, the night of the crime; Albert being  
11 Job-Loc, also known as Jerome Thomas, also known as  
12 [inaudible]. Had you seen him that night?

13          A     Yes.

14          Q     So that was a lie?

15          A     Yes.

16          Q     At one point during the interview you asked the  
17 police do you think there's something wrong with me. Do you  
18 recall that?

19          A     Yes.

20          Q     Did you mean psychologically?

21          A     Yes.

22          Q     Were you asking a legitimate question, or were  
23 you -- was this something made up?

24          A     Well, I was being interviewed, so I was nervous  
25 and it was legitimate.

1           Q     So you think there's something wrong with you  
2 mentally?

3           A     Well, at the time. I was suicidal.

4           Q     Did you think they would have the answers?

5           A     No.

6           Q     At one point during the interview, page 60, you  
7 told the police you don't know where the guy with the braids  
8 went that evening. Do you recall that?

9           A     Yes.

10          Q     Was that made up?

11          A     Yes.

12          Q     So it was a lie?

13          A     Yes.

14          Q     Yesterday I asked you questions about meeting  
15 with the district attorneys. Do you remember that?

16          A     Yes.

17          Q     You talked about you don't know what building  
18 you were in exactly, but you were at some building, there was  
19 an FBI agent, you thought, DA's or attorneys, right?

20          A     Correct.

21          Q     And you told the ladies and gentlemen of the  
22 jury that you even then withheld information from the district  
23 attorneys, fair?

24          A     Yes.

25          Q     So you deceived them, correct?

1 A Yes.

2 Q You looked them in the eye, these two  
3 prosecutors, and you deceived them, right?

4 A Yes.

5 Q And that was years after this incident, correct?

6 A The first time, no.

7 Q There were multiple times?

8 A Just recently.

9 Q Okay. So the first time you admit that you  
10 deceived them, correct?

11 A Yes.

12 Q When did you meet with them again?

13 A I think it was like one or two weeks in this  
14 last month.

15 Q I'm sorry. I didn't hear you. Say that again.

16 A Like one or two weeks in this last month.

17 Q So just within this last month?

18 A Yes.

19 Q Where did this occur?

20 A I don't -- I don't know where it was at.

21 Q They brought you out of your jail cell and they  
22 took you somewhere, correct?

23 A Yes.

24 Q And who was present at this meeting?

25 A Both of my attorneys and Marc and Pam.



1 Q Was it video-taped?

2 A No.

3 Q Was it audio-taped?

4 A Not to my knowledge.

5 Q Any notes on this meeting?

6 A I didn't take any.

7 Q How long did it last?

8 A A few hours.

9 Q Monica, did Mr. DiGiacomo and Ms. Weckerly go  
10 over cellphone records with you?

11 A No.

12 Q It was never discussed in any of your meetings?

13 A Not to my recollection.

14 Q So is it your testimony that the only time you  
15 went over cellphone information was with the detective?

16 A That I remember, yes.

17 Q During your interview with the police, you told  
18 the police that they had pulled more out of you than you could  
19 pull out yourself, and that was page 61. That wasn't true,  
20 was it?

21 A No.

22 Q It was a lie?

23 A Yes.

24 Q I asked you yesterday about your attorneys, and  
25 you said that you had complained about your attorneys to

1 anybody who would listen, right?

2 A You said that.

3 Q Is it true?

4 A Yes.

5 Q And you complained to different people in the  
6 jail, right?

7 A Yes.

8 Q You complained over the phone to different  
9 people that you have relationships with, family members and  
10 such, right?

11 A Yes.

12 Q She's not here right now, but one of your  
13 attorneys has black hair. Do you remember she was here  
14 yesterday?

15 A Yes.

16 Q Ms. Luem, right?

17 A Yes.

18 Q And Ms. Luem is actually attending court right  
19 now on a pro bono basis; is that right?

20 A I don't know where she's at.

21 Q Do you know what pro bono means?

22 A [No audible response.]

23 Q Pro bono means to do something to help a client  
24 for free.

25 A Okay.

1 Q Is she helping you for free right now?

2 A No.

3 Q She's being paid?

4 A I don't know what -- I don't know what's going  
5 on with her right now. She's through the public defender.  
6 She was appointed to me through the PD's office.

7 Q Okay. And now she's a private attorney; is that  
8 right?

9 A [No audible response.]

10 Q You don't know?

11 A I don't know.

12 Q All right. Did you feel that they had not done  
13 a good job for you?

14 A At times, yes.

15 Q And yet you're going to be eligible for parole,  
16 you're hoping, in five years?

17 A Yes, I'm hoping.

18 Q You indicate in several letters that you're here  
19 behind a man. Do you remember saying that?

20 A Yes.

21 Q You said that to numerous people in numerous  
22 letters, didn't you?

23 A Yes.

24 Q And what you meant was you were talking about  
25 how as a woman you've got yourself in a relationship with --

1 you've been in some bad relationships with men, right?

2 A Yes.

3 Q And here you are in this situation because of a  
4 bad relationship with a man, right?

5 A Yes.

6 Q Because you're blaming in those letters Job-Loc,  
7 right?

8 A Yes.

9 Q You feel he's victimized you, right?

10 A Yes.

11 Q Your attorneys have not done a good job, right?

12 A [No audible response.]

13 Q Right?

14 A Are you asking me like --

15 Q Yes, I'm asking you.

16 A -- directly?

17 Q Yes.

18 A I feel that they -- now I feel that they've done  
19 what they can.

20 Q You told the police on video that you were as  
21 much a victim -- you were a victim in this case. Do you  
22 remember saying that?

23 A I do.

24 Q And the police weren't very happy about that,  
25 were they?

1 A No.

2 Q They reminded you that a woman had been shot in  
3 the face and a child chased down, right?

4 A Yes.

5 Q And you persisted saying that you were still in  
6 your mind sort of a victim, right?

7 A Yes.

8 Q Now, my understanding is you've told the judge  
9 that you're guilty of murder, right?

10 A Second degree.

11 Q Second degree murder?

12 A Yes.

13 Q You've said you're guilty. You are guilty,  
14 aren't you?

15 A Yes.

16 Q And so if you're guilty of the murder of this  
17 lady, how are you a victim?

18 A I mean, that was 4 1/2 years ago when I made  
19 that statement.

20 Q You would agree with me that you're not a victim  
21 at all, correct?

22 A Not in comparison to everything, no, not at all.

23 Q I don't mean any kind of comparison. I'm asking  
24 you do you feel like you're a victim of this circumstance?

25 A Of this circumstance, no.

1           Q     The police asked you for DNA. Do you recall  
2 that?

3           A     Yes.

4           Q     And there was a portion of the video where we  
5 see them take a buccal swab from you. Do you recall that?

6           A     Yes.

7           Q     And you seemed quite nervous about that, Monica.  
8 Do you remember that?

9           A     Yes.

10          Q     Do you remember you kept asking, where's the  
11 warrant, I want to see it? Do you remember that?

12          A     Yes.

13          Q     And Detective Hardy said to you, look, if  
14 it's -- if we don't have one -- he kept assuring you we have  
15 one, right?

16          A     Yes.

17          Q     And do you recall that you said at one point,  
18 does the DNA -- is it on my -- are you guys looking at the  
19 house, in the house? Do you remember that?

20          A     No, I don't.

21          Q     You don't remember that. You were nervous,  
22 Monica, because you thought DNA was going to harm you; isn't  
23 that right?

24          A     No.

25          Q     Okay. Yesterday the prosecutor asked you if you

1 had had a chance to review discovery. Do you remember that?

2 Do you remember the prosecutor asking you that question?

3 A If I had a chance to what?

4 Q Review discovery in this case.

5 A If I had a chance to review it, yes.

6 Q And you have?

7 A Yes.

8 Q And tell the ladies and gentlemen of the jury  
9 what you understand discovery to mean.

10 A All statements, witness statements, any DNA a  
11 medical examiner --

12 Q Any DNA. And you had a chance to review it  
13 because you just told us that, right?

14 A Yes.

15 Q Now, without telling me anything that DNA report  
16 says, were you concerned about the DNA?

17 A Not at all.

18 Q Not at all. You're telling the truth to the  
19 jury?

20 A Yes.

21 Q It wouldn't concern you whether your DNA was on  
22 a murder weapon?

23 A No.

24 Q Because you never touched that murder weapon,  
25 right?

1 A Correct.

2 Q You're lying, aren't you?

3 A No.

4 Q During the interview with the police you asked  
5 the police, and you say, I don't know if Albert's involved.  
6 You say that on page 104. Albert being Job-Loc, correct?

7 A Yes.

8 Q You were worried they were going to implicate,  
9 get Job-Loc in trouble, weren't you?

10 A Yes.

11 Q And here at that point you're saying you don't  
12 know if he's involved, right?

13 A Yes.

14 Q Was that true or was that a lie?

15 A That was true. I didn't know if he was  
16 involved. Like he wasn't there, but I don't know if he put  
17 them up to anything.

18 Q Okay. Well, although you don't say it on your  
19 statement to the police, you have told the ladies and  
20 gentlemen of the jury you saw Job-Loc wiping down a firearm,  
21 right?

22 A Yes.

23 Q The firearm had to have been in your car, right?

24 A Yes.

25 Q You had to be driving that vehicle with that



1 firearm to that crime scene, right?

2 A Yes.

3 Q Away from that crime scene?

4 A Yes.

5 Q You're seeing your lover wiping it down, right?

6 A Yes.

7 Q You're seeing another man being told to bury it,  
8 get rid of it, right?

9 A Yes.

10 Q And you don't know if Albert's involved, right?

11 A Yes.

12 Q During your statement to the police, you tell  
13 the police that the defendant, Mr. Burns, gets out of the car  
14 at some point after the Opera House. Do you recall that?

15 A No.

16 Q Did you see the defendant leave your vehicle  
17 after the Opera House and before going to that murder scene?  
18 Think, Monica.

19 A Only the time when we got -- when we walked into  
20 the Opera House and then he got back in with us.

21 Q Oh, Monica. Help me understand this. Are you  
22 telling the ladies and gentlemen of the jury he gets back in  
23 after the Opera House and he never leaves that seat until he  
24 gets to the murder scene; is that what you're trying to  
25 tell us?

1 A Yes.

2 Q Oh, but what about those other robberies?

3 Remember, you go pick up Stephanie Cousins, right?

4 A Yes.

5 Q And then you go to do a robbery, right?

6 A Yes.

7 Q And they get out of the vehicle?

8 A Yes.

9 Q So he does get out of the vehicle.

10 A Oh, I thought you meant like permanently, like  
11 he was no longer in the vehicle. So it was a  
12 misunderstanding.

13 Q Okay. So he gets out of the vehicle at times  
14 according to you --

15 A Yes.

16 Q -- right?

17 But it's your testimony he gets back in that vehicle?

18 A Yes.

19 Q And at one point he gets back in that vehicle  
20 and he has blood on him, right?

21 A That's what he said.

22 Q And you've looked at that DNA report, haven't  
23 you?

24 A [No audible response.]

25 Q Haven't you?

1 A I don't remember.

2 Q You don't remember looking at the DNA report?

3 A [No audible response.]

4 Q Do you remember telling the police that you  
5 didn't need to protect Stephanie Cousins because you didn't  
6 know Stephanie Cousins?

7 A Yes.

8 Q So fair to say that if you don't really know  
9 somebody very well, you don't feel any obligation to protect  
10 them, right?

11 A I guess. I don't know. I mean --

12 Q Well, I'm asking you.

13 A -- they had told me that she pointed me out, so.

14 Q You thought you'd give her back some?

15 A No. I didn't think that at all.

16 Q Well, when you said, I don't need to protect her  
17 because I don't know her, what'd you mean?

18 A I just didn't know her.

19 Q So you didn't need to protect her?

20 A Correct. That's what I said, yes.

21 Q Fair to say in your mind if you really care  
22 about somebody then you need to protect them, right?

23 A Yes.

24 Q Like your kids?

25 A Yes.

1           Q     Do you remember on that video when the police,  
2     in an effort to assist your children, asked you where are your  
3     children? Do you remember that?

4           A     I do.

5           Q     They said they wanted to make sure your children  
6     were safe. Do you remember that?

7           A     That's what they said, yes.

8           Q     And you didn't even know where your children  
9     were.

10          A     I did know where my children were.

11          Q     Oh, so you were lying to them?

12          A     Yes.

13          Q     You were lying to the police about the  
14     whereabouts of your children?

15          A     I'm not going to tell anybody where my children  
16     were.

17          Q     Monica, one of your children was 12 years old at  
18     the time that you were in that police station, correct?

19          A     Yes.

20          Q     And the police wanted to make sure that those  
21     children would be safe, correct?

22          A     I don't know that. I didn't know that.

23          Q     What did you think they were going to do?

24          A     Try to take them away.

25          Q     You were going to be arrested for murder.

1           A     I understand that, but they were better off with  
2 my family.

3           Q     The night of the incident, you tell us that you  
4 go to Texas Station and then up to Job-Loc's, right?

5           A     Yes.

6           Q     You have sex, you fall asleep, right?

7           A     Yes.

8           Q     Where are your kids?

9           A     At home.

10          Q     Do you recall the police say you don't even care  
11 about your children?

12          A     I do.

13          Q     Do you recall the police say you care about one  
14 person, Monica, and that person is a woman that you see when  
15 you look in the mirror?

16          A     Yes.

17          Q     And that's pretty accurate, isn't it, Monica?  
18 You care about yourself.

19          A     No, that's not -- it wasn't accurate.

20          Q     They even said that they thought you had a  
21 heart, but you don't?

22          A     Yes.

23          Q     After telling the police numerous times about  
24 this person with braids in the back seat, you change it to  
25 curly hair, right?

1           A     Yes.

2           Q     And then just like with the braids, you go on a  
3 really good description about the hair, right?

4           A     Yes.

5           Q     The -- how the curls are. Do you remember that?  
6 You even described a film I was unfamiliar with, Vern or  
7 something like that.

8           A     Yes.

9           Q     And so we could have a visual of the curls,  
10 right?

11          A     Yes.

12          Q     And at one point you pointed at Marty Wildemann.  
13 Do you remember Detective Wildemann?

14          A     Yes.

15          Q     He was the man who had stormed out in the  
16 beginning. And you start showing him how his hair has  
17 similarities to the person in the back seat's hair. Do you  
18 remember that?

19          A     Yes.

20          Q     And at one point you say the hair is as short as  
21 Marty Wildemann's, don't you?

22          A     I don't remember.

23          Q     Well, were you watching the video yesterday?

24          A     Yes.

25          Q     And you weren't -- were you paying attention to

1 the video?

2 A Yes.

3 Q I mean, this was something that you were  
4 pointing at his hair and saying, hey, Marty, you know, do you  
5 remember that?

6 A Yes.

7 Q So you do remember.

8 A But I don't remember making the statement of the  
9 comparison of the shortness.

10 Q So you just let the video speak for itself; fair  
11 to say?

12 A Yeah.

13 Q And so you gave the details of the curls because  
14 you wanted the police to be able to apprehend the killer,  
15 right?

16 A Yes.

17 Q But at that point, Monica, they had asked you  
18 about a hat, and you had said that the person didn't have a  
19 hat on. Do you remember that?

20 A Yes.

21 Q Was that true or was that a lie?

22 A It was a lie.

23 Q And later in your statement you tell the police,  
24 oh, he had a hat on, right?

25 A Yes.

1           Q     The police, fair to say, were extraordinarily  
2 frustrated with you because you lied so often; is that fair?

3           A     Yes.

4           Q     You told the police you didn't know if the  
5 person with the braids or the curls or the hat or the jeans or  
6 the overalls had light skin or dark skin. Do you remember  
7 saying that?

8           A     Yes.

9           Q     Is that true or is that a lie?

10          A     It was a lie.

11          Q     We talked about the person you're saying is Mr.  
12 Burns saying he had blood on him. Is that true or is that a  
13 lie?

14          A     He did say that.

15          Q     You haven't washed your car -- you hadn't washed  
16 your car in quite a while before that murder, had you?

17          A     Not that I remember.

18          Q     And we all see pictures of the inside of your  
19 car. Your car was pretty dirty. And I don't mean it in a bad  
20 way. I just mean it hadn't been cleaned, just like you say.  
21 You told the truth.

22          A     Yes.

23          Q     You told the police you couldn't identify the  
24 person you're saying is Mr. Burns. Do you recall saying that?

25          A     Yes.



1 Q So that's a lie?

2 A Yes.

3 Q And I just want to make sure, Monica, I'm  
4 talking -- I've been talking now in the -- about things you've  
5 been saying in the mid-hundreds of this statement. Okay.  
6 When I say mid-hundreds, I mean we've been going through pages  
7 146 through 180. You've already taken this oath that they've  
8 put you under, right? Right?

9 A For the court, yes.

10 Q Say again.

11 A You're talking about being sworn in?

12 Q No. You remember the police put you under oath  
13 a couple times?

14 A Oh, yes.

15 Q And then you had the hand holding moment for  
16 moral support, and we're talking about things you're lying  
17 about after that point, right?

18 A Yes.

19 Q You told the police you had a bad memory. Do  
20 you have a bad memory?

21 A I tend to not remember everything.

22 Q So that was true?

23 A Yes.

24 Q You told the police that Job had nothing to do  
25 with this. Do you remember saying that?

1 A Yes.

2 Q And that was a lie?

3 A I don't know that. He wasn't there. That's  
4 the -- he wasn't there when everything happened. That's what  
5 I was implying.

6 Q That letter he sent you, that must have been  
7 shocking to you, just to think, well, why would you think --  
8 why would you be worried about being identified at the scene  
9 by the smoker bitch when you and I both know you weren't  
10 there.

11 MR. DiGIACOMO: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. ORAM:

14 Q You told the police -- do you remember the  
15 police asked, what's going on, who are you hiding, who are you  
16 covering up for? Do you remember that?

17 A Yes.

18 Q And you told the police you were covering up for  
19 Job-Loc?

20 A Yes.

21 Q And a few pages later Marty Wildemann tells you,  
22 I don't understand, why are you covering up for somebody who  
23 has no involvement. Do you remember that on the video?

24 A Vaguely.

25 Q Do you want me to show it to you?

1 A Sure.

2 MR. ORAM: Page 220, Counsel.

3 Permission to approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. ORAM:

6 Q Okay. In the middle of the page on 220, if you  
7 could read to yourself where it says, MW, Marty Wildemann, if  
8 you could just read what I have in that box to yourself and  
9 let me know when you're done.

10 A Okay.

11 Q Does that refresh your memory as to the  
12 detective asking you how could you be essentially covering up  
13 for somebody who has no involvement?

14 A That's not what he said.

15 Q That's not what he says. Does he say, "I don't  
16 want to get into that. I want you to get into the whole I'm  
17 protecting Job-Loc, because right now I don't even understand  
18 why, why you would be protecting Job-Loc because you haven't  
19 told me anything that would need protecting"? Do you remember  
20 him saying that?

21 A Yes. Yes.

22 Q It seems like a legitimate question, doesn't it?

23 A Yes.

24 Q And as you sit here today, Monica, you're still  
25 protecting Job-Loc, aren't you?

1 A No.

2 Q In that video, you knew that homicide was  
3 desperately trying to apprehend people involved in this crime.  
4 I mean, that's obvious, right?

5 A Yes, it is.

6 Q And of course one of the things that they would  
7 have liked to have known is where the murder weapon is. That  
8 would be a great thing, wouldn't it?

9 A Yes.

10 Q And you knew. You had seen that murder weapon  
11 pass hands, hadn't you?

12 A After the incident?

13 Q Yes.

14 A Yes.

15 Q You had seen it be given to Donovan Rowland,  
16 right?

17 A Yes.

18 Q The same man who you'd let use your vehicle to  
19 commit crime with Job-Loc just weeks before?

20 A I don't know that they were committing any  
21 crime.

22 Q And you knew that he had possession of that  
23 murder weapon, right?

24 A Yes.

25 Q And you failed to tell the police anything about

1 that murder weapon. We watched the video. You don't mention  
2 it.

3 A I described what the gun looked like. I did  
4 mention it.

5 Q That's right, you did.

6 A Yes.

7 Q You talked about the Dirty Harry thing.

8 A Yes.

9 Q Right. And it was a big gun. And that was the  
10 big gun they were looking for, right?

11 A Yes.

12 Q And you knew that's what they were looking for,  
13 right?

14 A Yes.

15 Q And you lied and deceived and covered it up,  
16 didn't you?

17 A They didn't ask about the weapon early on. So  
18 when they did ask about it, I described it.

19 Q Twelve hours you're in that room, correct?

20 A Yes.

21 Q And is it your testimony in front of this jury  
22 that you didn't think maybe that was something important to  
23 tell them?

24 MR. DiGIACOMO: Well, objection to argumentative.

25 THE COURT: Yeah, that is argumentative.

1 BY MR. ORAM:

2 Q Did you think it was important to tell the  
3 police, hey, I saw the murder weapon, it was being wiped down  
4 by Job-Loc, handed over to Donovan Rowland and it could be  
5 buried or sold, go quickly and find it? Did you say anything  
6 along those lines?

7 A No.

8 Q You just -- that wasn't really important, was  
9 it?

10 A I was nervous. I was there for an extended  
11 amount of hours.

12 Q I understand. I understand you're nervous and  
13 you were there -- but what I'm asking about is the murder  
14 weapon. Did you think maybe it'd be a little bit important to  
15 tell the police about that?

16 A I wasn't thinking like that, no.

17 Q You've just lied to this jury, haven't you? You  
18 just lied. You know that's important, you knew it was  
19 important at the time.

20 A Yeah, I know it was important, but I wasn't  
21 thinking to saying anything.

22 Q Do you recall the police in the video are going  
23 over your cellphone records with you?

24 A Yes.

25 Q And they're talking about how you talked to

1 Job-Loc all the time?

2 A Yes.

3 Q And that you can't go 15 minutes without talking  
4 to your lover?

5 A Yes.

6 Q Did Job-Loc change phones often?

7 A A couple of times, yes.

8 Q Did he have multiple phones?

9 A I don't remember.

10 Q Did he have multiple -- did he have multiple  
11 phones that night? Like maybe if we went to his house and  
12 took pictures of his house right around that time period we'd  
13 see multiple phones on countertops, something you'd remember  
14 maybe?

15 A No. I wouldn't remember.

16 Q You wouldn't remember that. Okay. Is that  
17 true?

18 A Yes.

19 Q I want to ask you a little bit about the  
20 cellphone records from your memory. In the hours, let's say  
21 two hours leading up to the crime, how many times did you  
22 speak to Job-Loc on the phone?

23 A I don't remember speaking to him. You mean from  
24 the time that I picked up Willie and David?

25 Q Listen to my question carefully.

1 A Okay.

2 Q Within two hours of the crime, how many times  
3 did you speak to Job-Loc on your cellphone?

4 A I don't remember.

5 Q Did you speak to him shortly before the crime?

6 A Not that I remember.

7 Q Was he at your house?

8 A No.

9 Q Was he at your house just minutes before that  
10 crime?

11 A No.

12 Q Did you pick him up --

13 A No.

14 Q -- at your house?

15 A No.

16 Q Did you pick up Donovan Rowland at your house?

17 A No.

18 Q And we can rely upon you because you're being  
19 truthful today, correct?

20 A Yes.

21 Q Now, yesterday, I want to make sure it's  
22 absolutely clear, you talked about this meeting where you had  
23 previously met Mr. Burns and, I believe, Mr. Mason on the  
24 Strip, and you tried to tell the police that's how you knew  
25 Mr. Burns. And it is your testimony that that is a false



1 statement, you made it up, correct?

2 A Yes.

3 Q It was a lie?

4 A Yes.

5 Q That night, the 6th of August 2010, you were  
6 stressing about money, weren't you?

7 A That night I was tired. But yes, I was under  
8 the stress of money, yes.

9 Q And Job-Loc was stressed about money?

10 A Yes.

11 Q He needed money, right?

12 A Yes.

13 Q Because he had a case and he needed an attorney,  
14 right?

15 A Yes.

16 Q Attorneys sometimes aren't cheap, right. It's  
17 not something you're going to turn a trick and be able to pay  
18 for the attorney, right, because this was a serious case he  
19 had; is that fair?

20 A I didn't know that, but yeah.

21 Q You didn't know that. You didn't know that it  
22 was a serious case that he had, right? Fair? I mean, I  
23 understand that. Okay.

24 A Yes.

25 Q Tell the jury you didn't know. So you can

1 affirm that you did not know, right?

2 A Yes.

3 MR. ORAM: The Court's indulgence.

4 BY MR. ORAM:

5 Q Do you remember when I asked you that agreement  
6 we could make about whether you wouldn't lie to the jury? Do  
7 you remember that?

8 A Yes.

9 Q Is murder a serious case?

10 A Yes.

11 Q If I showed you what the detectives were talking  
12 to you about, Job-Loc's other case that we all watched  
13 yesterday, would that refresh your memory?

14 A Yes.

15 MR. ORAM: Permission to approach. Page 217, in the  
16 middle.

17 BY MR. ORAM:

18 Q Monica, I'd like you to read to yourself what  
19 Detective Wildemann says to you, and your answer. And let me  
20 know when you're done.

21 A Okay.

22 Q Okay. The detectives are talking to you. They  
23 start off with Jamal Mohammad. Do you remember that?

24 A Yes.

25 Q You even say that he's got a warrant for murder

1 out of California and he ran from LVMPD, Las Vegas  
2 Metropolitan Police Department recently driving your car. I  
3 mean, that's how much you're running your mouth to this woman,  
4 right? And your answer was, yes --

5 A Yes.

6 Q -- you nodded your head. You even say he's got  
7 a warrant for murder out of California, right?

8 A That's what the detective said, yes.

9 Q And you affirmed it? You agreed?

10 A I nodded my head, yes.

11 Q And they were commenting on the fact that you're  
12 telling some woman about it, right?

13 A Yes.

14 Q And I thought you just told us that you didn't  
15 know if it was a serious case or not.

16 A I didn't. That's what the police said. That's  
17 not what I said.

18 Q Monica, what are the police saying to you?  
19 They're saying that you've been running your mouth; do you  
20 understand what that means?

21 A Yes.

22 Q That you've told some woman that there's a  
23 Job-Loc or Jamal or Mohammad or whatever has a warrant for  
24 murder, right?

25 A Yes.

1           Q     And you've been running your mouth about this,  
2 right?

3           A     That's what the police said, yes.

4           Q     And when they asked you that, you say yes, you  
5 nod your head yes?

6           A     Yes.

7           Q     So you knew it was very serious.

8                 That night after the incident, Job-Loc is turning off  
9 his phone and directing people to do things, turn off their  
10 phones, be careful, right?

11          A     Yes.

12          Q     Including you, right?

13          A     Yes.

14          Q     And that's because he's savvy to the fact that  
15 cellphones can hurt a person in a criminal case, correct?

16          A     I don't know.

17          Q     But when the police asked you, you remembered  
18 that Job-Loc was doing that, right?

19          A     Yes.

20          Q     This man who you didn't know had any involvement  
21 was doing things with his phone, right?

22          A     Yes.

23          Q     And a couple days later he got a new phone,  
24 didn't he?

25          A     Yes.

1 Q He turned off the old phone, right?

2 A Yes.

3 Q And he told you, didn't he, how to deal with the  
4 whole phone situation, didn't he?

5 A What phone situation?

6 Q He told you about his concern with cellphones,  
7 right?

8 A He just asked me to get him a new number.

9 Q That must have made you suspicious, right?

10 A No. I was at work that day. I was busy. I  
11 didn't have time to do anything.

12 Q See, Monica, you knew that Job-Loc and West or  
13 Donovan Rowland, West being Donovan Rowland, they were close,  
14 right? You called them Little Homie, Big Homie kind of thing?

15 A Yes.

16 Q And you've told the ladies and gentlemen of the  
17 jury that Job-Loc had pointed a gun at you in the past --

18 A Yes.

19 Q -- on multiple occasions. Maybe just once?

20 A Once or twice.

21 Q So you would know not to mess with Job-Loc,  
22 fair?

23 A Yes.

24 Q And you would know not to mess with his little  
25 homie, right?

1           A     I wasn't scared of Donovan.

2           Q     But you were scared of Job?

3           A     Yes.

4           Q     And you're scared of Job's relationships with  
5 other people?

6           A     Some.

7           Q     Fair to say that was his closest person to him  
8 other than you at the time, right? Him and Donovan Rowland  
9 were pretty tight at the time, right?

10          A     They got close in the short time, yes.

11          Q     Do you recall at one point during the interview  
12 the detectives asked you if you had seen the person, you were  
13 identifying him as Mr. Burns, with a firearm? Do you remember  
14 that?

15          A     Yes.

16          Q     And you told them at one point, yes, I did see  
17 it. Do you remember that?

18          A     I don't remember that, no.

19          Q     Do you remember -- maybe this will refresh your  
20 memory, because right when you're done with that, you look at  
21 him, kind of smile and say, I lied; do you remember? And they  
22 didn't like that very much. Do you remember that little  
23 scenario?

24          A     No.

25          Q     No? Don't you remember, and then you started to

1 explain, oh, no, no, it was the way he had his hand in his  
2 pocket?

3 A Oh, yes.

4 Q You remember that?

5 A Yes.

6 Q They seemed really irritated with you, didn't  
7 they?

8 A Yes.

9 Q Because you keep saying things like, oh, I said  
10 it, no, I lied, right?

11 A Yes.

12 Q Almost like it's funny, right?

13 A Yes.

14 Q Almost like today. It kind of looked that way  
15 today. Monica, this isn't funny, is it?

16 A No.

17 Q Now, the police asked you about why you didn't  
18 just drive away. Do you recall that?

19 A Yes.

20 Q You had heard gunshots, right?

21 A Yes.

22 Q And you don't just drive away. And what you  
23 answer is because you would have had to answer to Job's  
24 consequences.

25 A Yes.

1 Q Not Mr. Burns' consequences, right?

2 A No.

3 Q You've got a man that you're telling this jury  
4 he's running around with a gun just shooting people, right?

5 A Say that again.

6 Q You have a man running around, getting in and  
7 out of your car shooting people, right?

8 A Yes.

9 Q And you're not worried about the consequences of  
10 that man, you're worried about Job-Loc, right?

11 A Yes.

12 Q Does that make any sense to you at all? Does  
13 that make --

14 MR. DiGIACOMO: Objection. Argumentative.

15 THE COURT: Sustained.

16 MR. ORAM: Okay.

17 BY MR. ORAM:

18 Q The police asked you what's up with the loyalty  
19 to Job-Loc. Do you remember that?

20 A Yes.

21 Q And excuse my language, you say, "He mind fucks  
22 me, mind fucks me." Do you remember that?

23 A Yes.

24 Q What does a mind fucking consist of?

25 A Mind games. Having control.



1 Q And because he plays games and has control,  
2 you're scared of the consequences?

3 A Yes. Scared of -- yes, I was scared of him.

4 Q And you're scared of him for good reason,  
5 weren't you? You had good reason to be frightened of him?

6 A Yeah. He used to hit me.

7 Q He'd hit you as well?

8 A Yes.

9 Q And he'd pointed a gun at you and you'd seen him  
10 with the murder weapon, right?

11 A Yes.

12 Q Now, at the time you're saying you didn't know  
13 Donovan Rowland as Donovan Rowland, you knew him as Wes; is  
14 that right?

15 A Wes, yes.

16 Q Now, when I -- just so we're saying the same  
17 thing, is this north, south, east, west, or is it Wes without  
18 the T?

19 A Without the T.

20 Q You never mention that man in ten hours of  
21 video, do you?

22 A Wes?

23 Q Yes.

24 A No.

25 Q The police had asked you who was over at

1 Job-Loc's that night, and you've told the jury that he was  
2 over there, West was over there at one point, right?

3 A He arrived later. He wasn't there when I got  
4 there.

5 Q But that's not what the police asked you,  
6 Monica.

7 A Then I didn't understand what they were asking.

8 MR. DiGIACOMO: Objection. Argumentative.

9 THE COURT: That is argumentative.

10 MR. ORAM: Okay. The Court's indulgence.

11 (Pause in proceeding.)

12 MR. ORAM: Page 242, Counsel. Your Honor, may I have  
13 permission to approach the witness?

14 THE COURT: She hasn't indicated that she's...

15 BY MR. ORAM:

16 Q If I showed you a copy of your statement where  
17 they're asking who's present at Job-Loc's after the shooting,  
18 would that refresh your memory as to the police asking was  
19 there anybody else at the house?

20 A Yes.

21 MR. ORAM: Permission to approach.

22 Page 242. If you could read from approximately  
23 line 2, down to where my finger is.

24 The last full paragraph, Counsel.

25 Let me know when you're done.

1 THE WITNESS: Okay.

2 BY MR. ORAM:

3 Q Have you had a chance to read that?

4 A Yes.

5 Q Does that refresh your memory?

6 A Yes.

7 Q The police asked you who was present at  
8 Job-Loc's that night?

9 A Yes.

10 Q And they ask you in the end was there anybody  
11 else there?

12 A Yes.

13 Q And you shake your head no?

14 A Yes.

15 Q And that was a lie?

16 A No. Donovan didn't go until later. He wasn't  
17 there when I got there. That's when I got back there. At the  
18 top of it, it says I asked to go back over there, he told me  
19 to go ahead and come through.

20 Q Okay. Did they ask you who you're hanging out  
21 with over there? Did they use that word? "So you were  
22 hanging out at Job's with the shooter and G-Shock [sic]?" Do  
23 you remember that?

24 A Yes.

25 Q You say D-Shock, they say D-Shock, and you talk

1 about you don't know the name. And then they say and Job, or  
2 you say and Job, and they say and Job, and then they say,  
3 Anybody else in there? And you say -- you shake your head no.

4 A Right.

5 Q You knew what they were looking for, Monica. I  
6 mean, we're not playing games. You knew what they wanted to  
7 know, right?

8 MR. DiGIACOMO: Objection. Argumentative.

9 THE COURT: Sustained. And you got to delete the  
10 argumentative questions.

11 BY MR. ORAM:

12 Q Did you know what they were trying to figure  
13 out?

14 A No. They say was anybody else there, so I took  
15 it as the present. There was nobody else there but them.

16 Q Well, at present you were in a homicide  
17 interrogation room, right?

18 A Yes.

19 Q And I would imagine they're trying to figure out  
20 who is at that residence; is that fair?

21 A Yes. I told them --

22 THE COURT: That she would imagine is not something  
23 she --

24 BY MR. ORAM:

25 Q They asked you directly who you were hanging out

1 with there, right?

2 A And I told them.

3 Q And so if we wanted to include Wes, what would  
4 have been the correct answer that these experienced homicide  
5 investigators didn't ask you? What -- what would --

6 MR. DiGIACOMO: Objection. Argumentative.

7 BY MR. ORAM:

8 Q Well, what would be the right question to have  
9 elicited that information?

10 THE COURT: What would be the right question?

11 MR. ORAM: Yes.

12 BY MR. ORAM:

13 Q What would they have to have asked you to get  
14 you to say that you'd seen Wes leave with the murder weapon?

15 MR. DiGIACOMO: Objection. Argumentative.

16 MR. ORAM: How is that argumentative?

17 THE COURT: I don't know that that's argumentative.

18 THE WITNESS: I guess did anybody else go there  
19 later, did anybody else show up there later.

20 BY MR. ORAM:

21 Q You were put under oath when you first came in  
22 here. Do you recall that?

23 A Yes.

24 Q And you take that seriously, right?

25 A Yes.

1           Q     We've gone over the fact that the police would  
2 have loved, we all watched it, that you know they wanted to  
3 know if you knew where the murder weapon was. You know they  
4 would have wanted to know that, right?

5           THE COURT: You need to speak up, Mr. Oram.

6 BY MR. ORAM:

7           Q     You would have -- they would have wanted to know  
8 that, right? You know that?

9           A     Yes.

10          Q     And never once, Monica, does a murder weapon,  
11 that being the murder weapon and the whereabouts of that  
12 murder weapon, do you ever discuss it?

13          A     Until later.

14          Q     Until what?

15          A     Until later.

16          Q     What do you mean?

17          A     I had discussed it later when they asked about  
18 it. When they said, Who showed up, I told them -- it's in the  
19 statement.

20          Q     What is in the statement?

21          A     That I told them that Job was wiping it down and  
22 he told Wes to get rid of it.

23          Q     You think you say that in your statement?

24          A     It's in there.

25          Q     You heard that on the video?

**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:

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