

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

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3 TED MICHAEL DONKO,) No. 81075

4 Appellant,)

5 v.)

6)

7 THE STATE OF NEVADA,)

8 Respondent.)

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10 **APPELLANT'S APPENDIX VOLUME III PAGES 457-706**

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1 The State needs to prove their case beyond a reasonable
2 doubt, correct?

3 PROSPECTIVE JUROR NO. 719: Correct.

4 MR. LEXIS: Let's say if we put up one witness and you
5 believe that person, beyond a reasonable doubt, that the crime
6 charged was committed; would you be able to find guilt, or are you
7 somebody who says, you know what, that's not going to be enough
8 for me, State, you put up one witness, even if I agree beyond a
9 reasonable doubt, I'm going to need more.

10 MR. SHAYGAN-FATEMI: Your Honor, I'd like to renew my
11 objection.

12 THE COURT: So the objection's overruled.

13 Is there anyone here who in their head has a specific type
14 of evidence that they have to see or, you know, one juror said, I
15 need cameras, I need DNA, I need this and that; is there anyone
16 here that has a specific amount of evidence in their mind that they
17 need in order to find the defendant guilty beyond a reasonable
18 doubt?

19 PROSPECTIVE JUROR NO. 714: I would say definitely.

20 MR. LEXIS: Okay. Let's go to Juror Number 714.

21 PROSPECTIVE JUROR NO. 714: I think proof is
22 everything. Because a lot of people that have gone to jail and
23 prison and been falsely accused, it's more common than it ever
24 should have been or is currently. And I would have to have proof. I
25 couldn't -- and people, when you -- she says under oath, I know it's

1 a crime to lie under oath, but people are liars and people lie. So I
2 would not just believe somebody and what they said. I would have
3 to have something, some kind of physical evidence of some sort.

4 MR. LEXIS: Okay. You believe -- first of all, you
5 understand that testimony from this witness stand is evidence?

6 PROSPECTIVE JUROR NO. 714: Okay. And I understand
7 that. But, I mean, you know, did OJ do it? I mean, you know what
8 I'm saying? It's not enough. It's -- I just don't -- it's not enough.
9 People lie.

10 MR. LEXIS: Okay.

11 PROSPECTIVE JUROR NO. 714: You know, I can say my
12 shirt's blue and it's white. I mean --

13 MR. LEXIS: Okay.

14 PROSPECTIVE JUROR NO. 714: -- people are liars.

15 MR. LEXIS: So --

16 PROSPECTIVE JUROR NO. 714: Especially when they're
17 criminals.

18 MR. LEXIS: Okay. Ma'am, so if it's a situation where
19 there's just one witness and it gets submitted to the district
20 attorney's office, do you believe that we should just, you know
21 what, deny -- all we have is one witness, so we're done.

22 PROSPECTIVE JUROR NO. 714: Honestly, some -- with no
23 proof and just one person saying something happened, I would
24 actually have to judge, was there alcohol involved? Was there
25 drugs and alcohol involved? I would judge, like, the situation. But

1 it would take a lot for just somebody's words to convince me.

2 MR. LEXIS: Okay. Who else raised their hand?

3 THE COURT: Thank you, Mr. Nevarez. Do you have -- did
4 you have your hand raised, sir?

5 MR. LEXIS: Badge Number 778.

6 PROSPECTIVE JUROR NO. 778: Yes, I had similar
7 concerns as pretty much what she says. I couldn't take
8 someone's -- just for their word when it's -- could potentially be
9 putting someone's life, you know, in a bind --

10 MR. LEXIS: Okay.

11 PROSPECTIVE JUROR NO. 778: -- for potential long
12 period of time.

13 MR. LEXIS: Can you give me some examples of where
14 there's a crime and just one witness?

15 PROSPECTIVE JUROR NO. 778: I've been an example of
16 it. I've got mugged outside of a bank.

17 MR. LEXIS: Okay. Yeah, so somebody walking to the
18 mailbox, no cameras around, and someone gets mugged, right?

19 PROSPECTIVE JUROR NO. 778: Uh-huh.

20 MR. LEXIS: Battery, domestic violence, right? Often if
21 there's kids around, they're too small to know what's going on, or
22 they're in the other room; would you agree with that?

23 PROSPECTIVE JUROR NO. 778: Yes.

24 MR. LEXIS: And we could go on and on. Carjacking -- we
25 could go on and on about crimes where there's just one witness,

1 correct? Okay.

2 First of all, do you believe the police should show up and
3 take a report?

4 PROSPECTIVE JUROR NO. 778: If that person wants to.
5 The victim, I would say.

6 MR. LEXIS: Okay. And say, it's the district attorney's
7 office. And again, my same question: You know what, you do it,
8 it's only going to be one witness. Do you believe we should
9 prosecute that or just, you know what, hopefully next time we'll get
10 him when there's more than one witness.

11 PROSPECTIVE JUROR NO. 778: I guess I would say that
12 I've been a byproduct of the same circumstance that you're
13 presenting. And still being presented with that instance on the
14 other side of it, I would still need more --

15 MR. LEXIS: Okay.

16 PROSPECTIVE JUROR NO. 778: -- to make someone
17 credible. It's just, like I said, if you're putting somebody life in a
18 bind --

19 MR. LEXIS: Okay.

20 PROSPECTIVE JUROR NO. 778: -- you'd want more than
21 just someone's word.

22 MR. LEXIS: Even though the law states, you know, you
23 can have just one witness. And if you believe that person beyond a
24 reasonable doubt, the State's entitled to a guilty verdict. But you're
25 telling me no, I wouldn't be able to follow that; I would need more

1 evidence?

2 PROSPECTIVE JUROR NO. 778: I guess it would depend
3 on the circumstance of the situation at hand.

4 MR. LEXIS: Okay. Anybody else feel that way?

5 Can you please pass the mic to someone else? Just to
6 your left, sir. Or, I'm sorry, I didn't know who was back there. All
7 right.

8 So Juror Number 702?

9 PROSPECTIVE JUROR NO. 702: Yes.

10 MR. LEXIS: I want to build on something that the last
11 juror talked about, when he says, Well, you know, if they want to
12 prosecute, if they want to go forward; did you hear that?

13 PROSPECTIVE JUROR NO. 702: Yes.

14 MR. LEXIS: Okay. Do you believe that's the case? Do you
15 believe that it's up to the victim on whether or not a case is going to
16 be brought forward?

17 PROSPECTIVE JUROR NO. 702: Yes, I do.

18 MR. LEXIS: Okay. So do you believe -- you know,
19 you're -- let's say you're a victim of a violent crime. Tonight you
20 could call me up, Chad, I heard you were the DA on the case, I don't
21 want to go forward. And I'm going to say, Okay, sounds good, case
22 dismissed.

23 PROSPECTIVE JUROR NO. 702: I mean, if I'm the only
24 one out of the victims, the only one that it happened to.

25 MR. LEXIS: Okay. Also, that's not what happened. That's

1 not the law, basically.

2 PROSPECTIVE JUROR NO. 702: Uh-huh.

3 MR. LEXIS: Could you explain why that won't be the
4 case? Why wouldn't it be where a victim could just call me up and
5 say, you know what, I don't want to prosecute, and I have to just
6 dismiss the case?

7 PROSPECTIVE JUROR NO. 702: I guess it depends on
8 what exactly the crime was, what the extent of what happened.

9 MR. LEXIS: Okay.

10 PROSPECTIVE JUROR NO. 702: But I can see if the law's
11 broken, how it has to be accounted for.

12 MR. LEXIS: Okay. Do you understand that in this case it's
13 the State of Nevada versus Ted Donko, and not a particular victim
14 versus Ted Donko?

15 PROSPECTIVE JUROR NO. 702: Yes.

16 MR. LEXIS: Okay. Do you get the distinction?

17 PROSPECTIVE JUROR NO. 702: I do.

18 MR. LEXIS: Okay. Does anybody -- I think everyone gets
19 what I'm getting at. Does anyone disagree with that? That, you
20 know what, if a victim calls you up, Chad, you should be dismissing
21 that case if they don't want to prosecute. Let the record reflect no
22 hands.

23 Can you please pass it to someone who hasn't talked yet.

24 Ma'am, Juror Number 691, correct?

25 PROSPECTIVE JUROR NO. 691: Yep.

1 MR. LEXIS: Okay. Ma'am, do you believe victims react
2 differently or do you believe that every victim should act a
3 particular way every time?

4 PROSPECTIVE JUROR NO. 691: I think victims act
5 differently depending on the case.

6 MR. LEXIS: Okay. If we call a witness up or a victim up
7 and they react differently than how you think you would have
8 reacted, are you going to hold that against them?

9 PROSPECTIVE JUROR NO. 691: No.

10 MR. LEXIS: Why?

11 PROSPECTIVE JUROR NO. 691: Because everybody has
12 their own way of, I guess, expressing themselves in a certain
13 situation.

14 MR. LEXIS: Okay. Anybody disagree with that? Let the
15 record reflect no hands.

16 Can you please pass it to someone who hasn't spoken.
17 Pass it to your left.

18 Juror Number 777?

19 PROSPECTIVE JUROR NO. 777: Uh-huh.

20 MR. LEXIS: Ma'am, can you think of reasons why victims
21 or witnesses don't want to get involved, don't want to testify, don't
22 want to talk?

23 PROSPECTIVE JUROR NO. 777: I think the reason they
24 don't want to testify is because they think what they need to say
25 wouldn't be important, pretty much. That's what I think.

1 MR. LEXIS: Okay. What are some other factors?
2 PROSPECTIVE JUROR NO. 777: That's all.
3 MR. LEXIS: This isn't a domestic violence case. But you --
4 can you think, you know, maybe they love them or they don't want
5 to get them in trouble?
6 PROSPECTIVE JUROR NO. 691: Yeah, I would think that.
7 MR. LEXIS: Do you think that comes into play
8 sometimes?
9 PROSPECTIVE JUROR NO. 691: Yes.
10 MR. LEXIS: Okay. How about if they're scared of them?
11 Do you think that comes into play?
12 PROSPECTIVE JUROR NO. 691: Yeah.
13 MR. LEXIS: Possible retaliation or they're scared or --
14 PROSPECTIVE JUROR NO. 691: Uh-huh.
15 MR. LEXIS: -- they've been worried about their family; do
16 you think that comes into play?
17 PROSPECTIVE JUROR NO. 691: Yes.
18 MR. LEXIS: Do you think sometimes it's all the above?
19 PROSPECTIVE JUROR NO. 691: Yes, all the above.
20 MR. LEXIS: Does anybody disagree with that?
21 Can you please pass the mic to someone --
22 Sir, 245, is that correct?
23 PROSPECTIVE JUROR NO. 245: Yes.
24 MR. LEXIS: Can you think of some other reasons?
25 PROSPECTIVE JUROR NO. 245: No.

1 MR. LEXIS: Would you agree with all the ones I've talked
2 about?

3 PROSPECTIVE JUROR NO. 245: Yes.

4 MR. LEXIS: Has anybody -- first of all, does anyone
5 disagree with that notion that we just brought? Let the record
6 reflect no hands.

7 Has anybody heard of the phrase, Had it coming? Okay. I
8 see -- would you pass it down to your right, sir? Back to Juror
9 Number 691.

10 You were nodding your head definitely yes, ma'am; is that
11 correct?

12 PROSPECTIVE JUROR NO. 691: Yeah.

13 MR. LEXIS: Okay. What am I talking about?

14 PROSPECTIVE JUROR NO. 691: I guess wrong place, right
15 time. Or wrong place, wrong time.

16 MR. LEXIS: Okay. Well, and just mention they had it
17 coming. And you could think about certain victims, right, that
18 whether this is some people have a problem with, you know,
19 prostitutes, and they end up getting victimized, or drug dealers, and
20 they end up getting themselves into a problem. We go on and on,
21 right?

22 PROSPECTIVE JUROR NO. 691: Right.

23 MR. LEXIS: And it's easy to look at these folks and say,
24 you know what, they had it coming, right?

25 PROSPECTIVE JUROR NO. 691: Right.

1 MR. LEXIS: All right. Do you believe -- or let's put it this
2 way: Are you going to be able to set that aside, this notion of Had it
3 coming, and follow the law?

4 PROSPECTIVE JUROR NO. 691: Wait, what do you mean?

5 MR. LEXIS: Okay. You're going to be instructed on
6 certain elements of the crime, and whether or not those elements of
7 the crime are bad. And I could assure you one of those elements
8 are not going to be, you know, what you should discard as crime if
9 you believe the person had it coming. Are you going to be able to
10 set that aside, that notion, let's say, if you don't like the victim? You
11 don't like the witness? Are you going to be able to set that aside
12 and follow the law, and you know what, let me look at the elements
13 and see if these elements are met.

14 PROSPECTIVE JUROR NO. 691: Yes, I would set it aside.

15 MR. LEXIS: I think everyone gets what I'm talking about.
16 Is anyone else going to have a problem with, you know what, State,
17 you put up a witness and if I don't like them or I believe they "had it
18 coming," you're going to have a problem? The record reflect no
19 hands.

20 Who watches crime scene shows? Okay. Anybody
21 believe that that's how it operates in real life? On every case, we're
22 going to have DNA, video surveillance, fingerprints, and an
23 eyewitness, maybe a drone hanging above the head? Let the
24 record reflect no hands.

25 The judge touched on it, but at the end of this case you're

1 going to be asked to cast judgment upon this man, whether it's
2 guilty or not guilty. Besides what was already talked about, is there
3 anyone that says, you know what, whether it's religion, the way I
4 was raised, past experience, I'm going to have a problem casting
5 judgment upon this individual?

6 Will you please pass the mic forward.

7 Ma'am, I believe you're Number --

8 PROSPECTIVE JUROR NO. 768: 768.

9 MR. LEXIS: -- 768. Yes, ma'am?

10 PROSPECTIVE JUROR NO. 768: I have a problem with it,
11 because he's been judged by courts and people. And I have a
12 problem with judgments. And in the bible, the 10 commandments,
13 Thou shall not judge.

14 MR. LEXIS: And I won't re-ask what you stated earlier,
15 ma'am. But because if you believe that you wouldn't be fair and
16 impartial in this case because of past experiences and this issue
17 here?

18 PROSPECTIVE JUROR NO. 768: Yes.

19 MR. LEXIS: Okay. Anybody else?

20 The judge also touched on this, when she told you that it's
21 the Court, the judge that's going to be in charge of sentencing,
22 whether it's classes, probation, or jail, or a combination, if it's
23 appropriate. Is anybody here going to say, You know what, even
24 the Court is going to instruct me that the Court is the one that takes
25 sentencing into consideration, it's still going to weigh on me; when

1 I go back and deliberate, the man's potential sentence is still going
2 to weigh on my deliberations on whether he's guilty or not guilty?
3 Let the record reflect no hands.

4 Almost done, folks.

5 Could you please pass the -- oh, you've got the
6 microphone. Juror Number 767?

7 PROSPECTIVE JUROR NO. 767: Uh-huh.

8 MR. LEXIS: Would you agree with me that a lot of laws
9 are in dispute as far as whether people agree or disagree with
10 them? For example, the marijuana laws is the new thing; some
11 people disagree with it, some people -- do you agree?

12 PROSPECTIVE JUROR NO. 767: There's always going to
13 be agreements and disagreements on things.

14 MR. LEXIS: Okay. Let's say the judge, as stated earlier, is
15 going to give you a packet at the end of this trial with the law. Let's
16 say you're reading through it and you say, you know what, this ain't
17 right, I don't believe in this, this shouldn't be the law. Are you
18 going to be able to set that aside and follow the law the judge gives
19 you? Or are you going to say, you know what, I'm going to have a
20 problem with it if I don't believe in the law?

21 PROSPECTIVE JUROR NO. 767: I guess that kind of
22 depends, again, like, on the situation and what evidence is shown.

23 MR. LEXIS: Okay. So let's take a step back, then.

24 The judge told you she's going to give you the law,
25 correct? And that's the law you are to follow.

1 PROSPECTIVE JUROR NO. 767: Oh, okay.

2 MR. LEXIS: So regardless of the evidence, if the judge is
3 giving you the law and telling you to follow this law, are you going
4 to be able to do that?

5 PROSPECTIVE JUROR NO. 767: Yes.

6 MR. LEXIS: Okay. Is anybody else going to say -- have a
7 problem with that? Say, you know what, I understand what you're
8 saying, but if it's something I strongly believe in and I don't believe
9 that should be the law, I'm going to have a problem following that.
10 Let the record reflect no hands.

11 Judge, I'll pass. [Indiscernible.]

12 THE COURT: Okay. Would you approach.

13 [Bench conference transcribed as follows.]

14 THE COURT: [Indiscernible] challenges now?

15 MR. LEXIS: No, Your Honor.

16 THE COURT: So we don't [indiscernible] if anyone is
17 kicked --

18 MR. LEXIS: Moving for cause.

19 THE COURT: [Indiscernible.]

20 UNIDENTIFIED SPEAKER: Beautiful, I appreciate that.

21 THE COURT: Cool.

22 UNIDENTIFIED SPEAKER: [Indiscernible] shake that.

23 THE COURT: All right. Anybody who goes on the
24 [indiscernible].

25 UNIDENTIFIED SPEAKER: Yes, Judge.

1 MR. LEXIS: Judge, we'll give up on 772. And 768 was
2 pretty obvious, as well. She came two different ways. She's not
3 going to be fair and impartial. It's not just the murder of the cousin,
4 then she threw the bible into it.

5 THE COURT: So while you were gone, the State agreed
6 with you on 772. So I'm going to let Mr. Razo go.

7 MR. SHAYGAN-FATEMI: Okay. Beautiful.

8 THE COURT: And then he made a motion in regards to
9 Ms. Cross pursuant to the last [indiscernible] part of the
10 [indiscernible].

11 MR. LEXIS: 768.

12 MR. SHAYGAN-FATEMI: Judge, we'll submit it on that
13 one.

14 MR. HAUSER: Thank the Catholics. That's all right.

15 THE COURT: That he doesn't think that that's true.
16 Mr. Hauser.

17 MR. HAUSER: I'm sorry. I could have identified myself.
18 That was Mr. Hauser.

19 MR. LEXIS: We'll submit it on that, Judge.

20 THE COURT: All right. Okay. So we've got --

21 MR. SHAYGAN-FATEMI: Oh, so that -- we're referring
22 to 768?

23 THE COURT: Yeah.

24 MR. SHAYGAN-FATEMI: Okay.

25 THE COURT: All right. Sounds good. Thanks, guys.

1 MR. LEXIS: Thank you, Judge.

2 [End of bench conference.]

3 THE COURT: All right. We are going to thank and excuse
4 Badge Number 768, Ms. Cross, and Badge Number 772, Jose Razo.

5 If you two can go ahead and check in on the third floor,
6 please, you're excused.

7 And if the clerk could fill those two seats for me, please.

8 THE CLERK: Yes, Your Honor.

9 Next in Seat Number 2, Badge Number 787, Patricia
10 Hildreth, and Seat 23, Badge Number 794, Amanda Miller.

11 THE COURT: All right. Ms. Hildreth and Ms. Miller, I'm
12 going to ask you both a few questions.

13 Did both of you hear when I was talking about the
14 opportunity that jurors have to ask questions? And that I don't
15 want you to hold it against either of the parties if I don't ask
16 questions, that that -- that's just because there's a legal reason why
17 I can't ask it. Do either of you have an issue with that?

18 PROSPECTIVE JUROR NO. 787: No, ma'am.

19 THE COURT: Okay. Great. Neither have expressed a
20 concern about that.

21 Under our system, certain principles apply in every
22 criminal trial. They are, Number one, that the charging document
23 filed in the case is merely an accusation and is not evidence of guilt;
24 that the defendant is presumed innocent; and that the State must
25 prove that the defendant is guilty beyond a reasonable doubt. Do

1 either of you have any issues with those three principles of our
2 criminal justice system?

3 PROSPECTIVE JUROR NO. 787: No, ma'am.

4 THE COURT: Both have expressed no.

5 Do either of you have trouble in following the law or
6 following my instructions on the law, even if you disagree with
7 what the law should be?

8 PROSPECTIVE JUROR NO. 787: No, ma'am.

9 THE COURT: All right. Both have expressed no.

10 All right. Ms. Hildreth, how long have you been in Clark
11 County, ma'am?

12 PROSPECTIVE JUROR NO. 787: A little over 12 years.

13 THE COURT: All right. And how far did you go in school?

14 PROSPECTIVE JUROR NO. 787: I have a master's degree.

15 THE COURT: In what?

16 PROSPECTIVE JUROR NO. 787: In MA of English.

17 THE COURT: I'm sorry, what?

18 PROSPECTIVE JUROR NO. 787: English. English
19 Literature.

20 THE COURT: Oh. All right. And are you employed?

21 PROSPECTIVE JUROR NO. 787: I am.

22 THE COURT: What do you do?

23 PROSPECTIVE JUROR NO. 787: I am a director of test
24 about lit for the American Institute for Research.

25 THE COURT: Are you married, in a significant

1 relationship, or single?

2 PROSPECTIVE JUROR NO. 787: I am married.

3 THE COURT: And what does your spouse do?

4 PROSPECTIVE JUROR NO. 787: He is retired.

5 THE COURT: What is he retired from?

6 PROSPECTIVE JUROR NO. 787: He had an IT consulting
7 firm.

8 THE COURT: Any children?

9 PROSPECTIVE JUROR NO. 787: No.

10 THE COURT: You or anyone close to you been the victim
11 of a crime?

12 PROSPECTIVE JUROR NO. 787: No, ma'am.

13 THE COURT: You or anyone close to you been accused of
14 a crime?

15 PROSPECTIVE JUROR NO. 787: No, ma'am.

16 THE COURT: Have you ever been a juror before?

17 PROSPECTIVE JUROR NO. 787: No, ma'am.

18 THE COURT: Anything that you've heard about this case
19 thus far or the facts of the case that make you feel like you wouldn't
20 be able to be fair?

21 PROSPECTIVE JUROR NO. 787: No, ma'am.

22 THE COURT: Can you base your verdict solely on the
23 evidence and testimony that you hear in this case?

24 PROSPECTIVE JUROR NO. 787: Yes.

25 THE COURT: And see, I guess, in this case.

1 PROSPECTIVE JUROR NO. 787: Yes.

2 THE COURT: And can you wait in forming your opinion

3 until the case is submitted to you to discuss with your fellow jurors?

4 PROSPECTIVE JUROR NO. 787: Yes, ma'am.

5 THE COURT: And you can be fair to both sides?

6 PROSPECTIVE JUROR NO. 787: Yes.

7 THE COURT: All right. Thank you. I appreciate that.

8 If you could pass it to Ms. Miller, please.

9 Ms. Miller, how long have you been in Clark County?

10 PROSPECTIVE JUROR NO. 794: Seven months.

11 THE COURT: And before that, where were you?

12 PROSPECTIVE JUROR NO. 794: Baltimore, Maryland, for

13 four years.

14 THE COURT: And before Baltimore, Maryland?

15 PROSPECTIVE JUROR NO. 794: Oakland, California, for

16 four years.

17 THE COURT: All right.

18 PROSPECTIVE JUROR NO. 794: So I think you might need

19 one more, which is Chicago for four years.

20 THE COURT: And why so much moving?

21 PROSPECTIVE JUROR NO. 794: Mostly for school.

22 THE COURT: All right. And tell me a little bit about your

23 schooling; why were you moving so much?

24 PROSPECTIVE JUROR NO. 794: I did my undergrad in

25 Chicago. I initially went to California for law school, then moved to

1 Baltimore for my masters.

2 THE COURT: Okay. And what is your master's in?

3 PROSPECTIVE JUROR NO. 794: Social work.

4 THE COURT: And in law school, did you finish law school
5 or you said I want to do something different?

6 PROSPECTIVE JUROR NO. 794: I finished my first year.

7 THE COURT: All right. Now, are you employed currently?

8 PROSPECTIVE JUROR NO. 794: Self-employed.

9 THE COURT: And I think you just said it, but I -- somehow
10 it escaped me. What is your master's in?

11 PROSPECTIVE JUROR NO. 794: Social work.

12 THE COURT: Social work.

13 PROSPECTIVE JUROR NO. 794: Uh-huh.

14 THE COURT: That's right.

15 And what do you do?

16 PROSPECTIVE JUROR NO. 794: I'm an independent
17 consultant for states, setting up systems for children in family
18 services.

19 THE COURT: Okay. Great. Married, in a significant
20 relationship, single?

21 PROSPECTIVE JUROR NO. 794: Married.

22 THE COURT: And what does your spouse do?

23 PROSPECTIVE JUROR NO. 794: He is a postdoctoral
24 researcher at the School of Education at the University of Nevada.

25 THE COURT: Any children, besides the one on the way?

1 PROSPECTIVE JUROR NO. 794: Just the one on the way.

2 THE COURT: All right. You or anyone close to you been
3 the victim of a crime?

4 PROSPECTIVE JUROR NO. 794: No.

5 THE COURT: You or anyone close to you been charged
6 with a crime or accused of a crime?

7 PROSPECTIVE JUROR NO. 794: No.

8 THE COURT: Have you ever been a juror before?

9 PROSPECTIVE JUROR NO. 794: No.

10 THE COURT: Is there anything about the facts of this case
11 or anything that you've heard this far that makes you feel like you
12 would not be able to be fair?

13 PROSPECTIVE JUROR NO. 794: No.

14 THE COURT: And can you wait in forming your opinion
15 until the case is submitted to you?

16 PROSPECTIVE JUROR NO. 794: Yes.

17 THE COURT: And can you base your verdict solely on the
18 evidence and the testimony that's presented during the case?

19 PROSPECTIVE JUROR NO. 794: Yes.

20 THE COURT: You feel like you could be fair to both sides?

21 PROSPECTIVE JUROR NO. 794: Yes.

22 THE COURT: All right. State, would you ask these two
23 potential jurors the questions?

24 MR. LEXIS: Yes, ma'am.

25 THE COURT: Thank you. Juror Number 787, what type of

1 research did you do?

2 PROSPECTIVE JUROR NO. 787: I -- it was for the
3 American Institute for Research. I worked [indiscernible], we
4 developed large-scale [indiscernible] assessments for mostly K-12.

5 MR. LEXIS: Okay. You heard my questions earlier?

6 PROSPECTIVE JUROR NO. 787: Yes.

7 MR. LEXIS: Would you have answered any of those?

8 PROSPECTIVE JUROR NO. 787: No. I mean, if you ask me
9 directly? Yes.

10 MR. LEXIS: If I would ask you directly?

11 PROSPECTIVE JUROR NO. 787: Yeah. No, I mean, I --

12 MR. LEXIS: Oh, but you know what I'm getting at.

13 PROSPECTIVE JUROR NO. 787: Yeah, yeah. Yeah.

14 MR. LEXIS: Is there anything that would have caused me
15 concern?

16 PROSPECTIVE JUROR NO. 787: No.

17 MR. LEXIS: All right. Can you think of some reasons why
18 people don't want to get involved and testify [indiscernible]?

19 PROSPECTIVE JUROR NO. 787: Yeah, that was already
20 described. No. I'm retribution, loyalty.

21 MR. LEXIS: Okay. So all the above, what we talked about
22 previously?

23 PROSPECTIVE JUROR NO. 787: Uh-huh. That's correct.

24 MR. LEXIS: Okay. Would you hold that against the
25 person?

1 PROSPECTIVE JUROR NO. 787: No.
2 MR. LEXIS: Thank you, ma'am.
3 PROSPECTIVE JUROR NO. 787: Yeah.
4 MR. LEXIS: Juror 794?
5 PROSPECTIVE JUROR NO. 794: Yes.
6 MR. LEXIS: Right? Okay.
7 What kind of family services work?
8 PROSPECTIVE JUROR NO. 794: It's more policy
9 administrative work. I consult on developing service systems.
10 MR. LEXIS: Did you understand my question earlier with
11 regards to the one witness?
12 PROSPECTIVE JUROR NO. 794: I believe so.
13 MR. LEXIS: Okay. What side are you on? Do you believe
14 that person beyond a reasonable doubt, would you be able to find
15 guilt or you someone that says, you know what, State, doesn't
16 matter. You put one witness on that stand, even if I find them --
17 what they're saying beyond a reasonable doubt, it's not going to be
18 nothing.
19 PROSPECTIVE JUROR NO. 794: I think it really depends
20 on the circumstances of the testimony. I mean, if, beyond a
21 reasonable doubt, I agree with, you know, the facts of the case, then
22 sure. But I -- it would depend on what that testimony is.
23 MR. LEXIS: Okay. I'll pass, Judge. Thank you.
24 THE COURT: Okay. All right. Ladies and gentlemen, it is
25 five to 5:00. And so I'm going to read you recess admonishment.

1 So this is something that you'll get tired of me reading, but the law
2 basically says that every time we take a recess, whether it be for
3 five minutes or the evening, I have to read you this admonishment
4 just to remind you that you can't talk about the case or you can't
5 research it. Okay?

6 So during the recess you're admonished not to talk or
7 converse among yourselves or with anyone else on any subject
8 connected to this trial or read, watch, or listen to any report of or
9 commentary on the trial of any person connected with this trial by
10 any medium of information, including, without limitation to
11 newspapers, television, the Internet, and radio, or form or express
12 any opinion on any subject connected with the trial until the case is
13 finally submitted to you.

14 Can the attorneys approach briefly for scheduling.

15 [Bench conference transcribed as follows.]

16 THE COURT: So I'm reading an e-mail right now that my
17 evidentiary hearing is going away tomorrow. That was going to be
18 at 11:00. So if you guys want to start earlier, at 11:00, you can.

19 MR. SHAYGAN-FATEMI: Perfect.

20 MR. LEXIS: Yeah.

21 THE COURT: Cool?

22 MR. LEXIS: Yeah.

23 MS. GOODMAN: Sure.

24 MR. HAUSER: Let's do it.

25 THE COURT: All right. Thank you.

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[End of bench conference.]

THE COURT: All right. So I will -- I have a civil calendar tomorrow, which means that I'll have trials -- excuse me, not trials, but I'll have motions to hear before you guys all come in. But I should be done by 11:00. So if you could meet outside these doors at 11:00 a.m. --

Do they have to check in with jury services in the morning?

THE MARSHAL: No, Your Honor.

THE COURT: All right. So just come up to my department at 11:00 a.m. tomorrow.

So during the recess, during the recess you're admonished not to talk or converse among yourselves or with anyone else on any subject connected to this trial or read, watch, or listen to any report of or commentary on the trial of any person connected with this trial by any medium of information, including, without limitation to newspapers, television, the Internet, and radio, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Thank you so much. Have a great evening, and I'll see you tomorrow morning at 11:00.

[Prospective jury recessed at 4:56 p.m.]

THE COURT: All right. We're outside the presence of the jury. Any issues that we need to discuss before we recess for the night?

1 MR. SHAYGAN-FATEMI: Not from the defense, Your
2 Honor.

3 MR. LEXIS: Just for witnesses purposes, Judge --

4 THE COURT: Yeah?

5 MR. LEXIS: -- what is your lunch schedule you plan on
6 doing tomorrow?

7 THE COURT: I just kind of go with the flow, to be honest
8 with you. So tomorrow just give me an approximate of how long
9 you guys think you'll have with the jury.

10 MR. SHAYGAN-FATEMI: Your Honor, I'm pondering 45 to
11 an hour.

12 THE COURT: All right.

13 MR. SHAYGAN-FATEMI: Somewhere in that ballpark.

14 THE COURT: So 11:00 to 12:00, you guys will pass it back
15 and forth. That usually takes about 30 minutes. We'll probably do
16 a lunch then. How long are openings?

17 MR. LEXIS: Very quick.

18 MS. GOODMAN: Really quick.

19 THE COURT: All right. So depending -- we'll either --

20 MR. HAUSER: Slightly longer on our side.

21 THE COURT: So we'll either do openings and then lunch,
22 so -- all right. So 11:00, by the time we get the jury, I better leave
23 at 12:30, so we'll probably lunch from 1:00 to 2:00. So I would have
24 people lined up about 2:00.

25 MR. LEXIS: Okay.

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THE COURT: To start with witnesses.

MR. HAUSER: Okay.

MR. SHAYGAN-FATEMI: That works.

THE COURT: All right. Sounds good, guys. We'll see you
in the morning.

MR. LEXIS: Thank you, Your Honor.

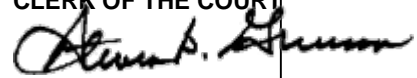
MR. HAUSER: Thank you.

[Proceeding concluded at 4:58 p.m.]

///

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.


Shawna Ortega, CET *562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	
)	Case No. C-19-345584-1
vs.)	
)	Department VI
TED MICHAEL DONKO,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 11, 2020

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – PART I – DAY 2 OF 4**

APPEARANCES:

For the Plaintiff(s):	CHAD N. LEXIS, ESQ. LAURA ROSE GOODMAN, ESQ. (Deputy District Attorneys)
-----------------------	--

For the Defendant(s):	ROBSON M. HAUSER, ESQ. KAMBIZ SHAYGAN-FATEMI, ESQ. (Deputy Public Defenders)
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RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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1 **LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 11, 2020**

2 [Proceeding commenced at 11:14 a.m.]

3
4 [Outside the presence of the prospective jury panel.]

5 THE COURT: We are back on the record in C-345584-1,
6 State of Nevada versus Ted Michael Donko. Mr. Donko is present
7 with both attorneys, Mr. Hauser and Mr. Shaygan, both deputy
8 district attorneys, Mr. Lexis as well as Ms. Rose Goodman, are also
9 present.

10 The jury is lining up outside, the prospective jury panel.

11 Anybody have anything before we start?

12 MR. HAUSER: Yes.

13 THE COURT: Okay.

14 MR. HAUSER: We made contact with a juror yesterday
15 inadvertently, and I wanted to just disclose that in the interest of
16 fairness. As we were leaving, Mr. Shaygan and I didn't want to get
17 in the elevator with everybody. We turned left, went down the hall.
18 One of the jurors then came back and asked where the stairs were.
19 And by instinct, I said, Oh, they're down there to the left.

20 As soon as I said that, I realized that was a juror, I'm not
21 supposed to talk to them.

22 THE COURT: Okay.

23 MR. HAUSER: That was the entire interaction. But I,
24 obviously, want to disclose it. So.

25 THE COURT: All right. I --

1 MR. HAUSER: It was Juror Number 7.
2 THE COURT: Okay. I appreciate that.
3 And let's bring them in. I'm going to grab my glasses.
4 [Prospective jury panel reconvened at 11:16 a.m.]
5 THE COURT: Thank you. Good morning, ladies and
6 gentlemen. We're back on the record in C-345584-1, State of
7 Nevada versus Ted Michael Donko. He is present with both his
8 attorneys, Mr. Hauser and Mr. Shaygan, both deputy district
9 attorneys are present, Ms. Goodman, as well as Mr. Lexis.
10 Do both sides stipulate to the presence of the prospective
11 jury panel?
12 MR. LEXIS: Yes.
13 MR. SHAYGAN-FATEMI: Yes.
14 THE COURT: All right. When we left off yesterday
15 afternoon, I believe I was turning it over either to you, Mr. Hauser,
16 or you, Mr. Shaygan, whichever one.
17 MR. SHAYGAN-FATEMI: Absolutely. Thank you, Your
18 Honor.
19 THE COURT: You're welcome.
20 MR. SHAYGAN-FATEMI: Your Honor, with your
21 permission, may I use one of the podiums?
22 THE COURT: Yeah, please do.
23 MR. SHAYGAN-FATEMI: Thank you.
24 Your Honor, I apologize, my back is to you.
25 THE COURT: Oh, no. You're good.

1 MR. SHAYGAN-FATEMI: Thank you.
2 Your Honor, could we get headphones for Mr. Haynes?
3 THE COURT: Yes, of course.
4 MR. SHAYGAN-FATEMI: Thank you.
5 THE COURT: You're welcome.
6 MR. SHAYGAN-FATEMI: How's that? Are we good? Can
7 you hear me?
8 Good morning, folks. How's everybody doing this
9 morning? Welcome back. Everybody seems to be back.
10 I'm going to ask you folks some questions this morning.
11 Robson Hauser, my co-counsel, introduced me yesterday. My
12 name is Kambiz Shaygan. I have the pleasure of representing Ted
13 Donko in this case.
14 Just to be completely candid with you folks, I'm going to
15 ask kind of the same questions that Mr. Lexis asked you yesterday.
16 I want the fairest jury possible. There's no parlour tricks associated.
17 And I want you to be completely honest, at the risk of feeling
18 embarrassed in front of your fellow jurors. Okay? There's no right
19 or wrong answer. And if you don't understand, sometimes I have a
20 tendency to ask really lousy questions. If you don't understand
21 what I'm asking, just let me know and it'll be my pleasure to
22 rephrase it in a way that perhaps it'll make more sense. Okay?
23 Honorable Bluth yesterday spoke with you folks about a
24 principle referred to as the presumption of innocence. I want to
25 spend a little bit of time this morning as we begin to talk about that.

1 The presumption of innocence is the core principle that
2 one is innocent until proven guilty. Does anybody here disagree
3 with that? A show of hands.

4 Ms. Miller?

5 PROSPECTIVE JUROR NO. 794: Yes.

6 MR. SHAYGAN-FATEMI: Good morning.

7 PROSPECTIVE JUROR NO. 794: Good morning.

8 MR. SHAYGAN-FATEMI: Do you agree with the
9 presumption of innocence?

10 PROSPECTIVE JUROR NO. 794: Yes.

11 MR. SHAYGAN-FATEMI: Tell me why.

12 PROSPECTIVE JUROR NO. 794: Because --

13 MR. SHAYGAN-FATEMI: And I apologize, Ms. Miller.

14 PROSPECTIVE JUROR NO. 794: Yes.

15 MR. SHAYGAN-FATEMI: Your Honor, that's Juror 794.

16 THE COURT: Okay. Thank you.

17 PROSPECTIVE JUROR NO. 794: The presumption of
18 innocence, I mean, besides it being something that is central to our
19 justice system, I think it's important to be able to see all of the facts
20 and the evidence before deciding whether someone is guilty or not.

21 MR. SHAYGAN-FATEMI: As he sits here right now, what
22 is Ted in your mind?

23 PROSPECTIVE JUROR NO. 794: Innocent.

24 MR. SHAYGAN-FATEMI: And why is that?

25 PROSPECTIVE JUROR NO. 794: Because we have not

1 seen any evidence.

2 MR. SHAYGAN-FATEMI: Okay. Does anybody disagree
3 with Ms. Miller? And it's okay to disagree, folks. If you do disagree,
4 I want to know about it.

5 If you were to go back right now, Ms. Miller, and
6 deliberate --

7 PROSPECTIVE JUROR NO. 794: Uh-huh.

8 MR. SHAYGAN-FATEMI: -- a fancy word for making a
9 decision, what would you decide?

10 PROSPECTIVE JUROR NO. 794: It would have to be
11 innocent, because we don't know anything at this point.

12 MR. SHAYGAN-FATEMI: I appreciate that. Thank you.

13 Mr. Liu, how are you, sir?

14 PROSPECTIVE JUROR NO. 781: Good.

15 MR. SHAYGAN-FATEMI: You said you were
16 self-employed. Can you elaborate a little bit on what you do for a
17 living?

18 PROSPECTIVE JUROR NO. 781: I own a company, it's a
19 publication company. Very small business. I focus on the
20 academic proceedings, books, magazines, literature, translation,
21 [indiscernible], like that.

22 MR. SHAYGAN-FATEMI: How long have you been doing
23 that?

24 PROSPECTIVE JUROR NO. 781: Like, five years.

25 MR. SHAYGAN-FATEMI: Five years? Okay.

1 PROSPECTIVE JUROR NO. 781: Yeah.

2 MR. SHAYGAN-FATEMI: As we sit here right now, is Ted

3 innocent or guilty?

4 PROSPECTIVE JUROR NO. 781: We don't know yet.

5 MR. SHAYGAN-FATEMI: Okay. If I told you that he was

6 innocent, because that's what our criminal justice system says he

7 is, because of the presumption of innocence, how would you then

8 answer that question, is he innocent or guilty?

9 PROSPECTIVE JUROR NO. 781: We don't know yet. We

10 need to see the proof [indiscernible].

11 MR. SHAYGAN-FATEMI: So, in other words, Robson and I

12 need to prove to you that he's innocent?

13 PROSPECTIVE JUROR NO. 781: Through everybody

14 present here.

15 MR. SHAYGAN-FATEMI: I appreciate your candor. Thank

16 you, sir.

17 Ms. Howell.

18 PROSPECTIVE JUROR NO. 719: Uh-huh.

19 MR. SHAYGAN-FATEMI: How are you?

20 PROSPECTIVE JUROR NO. 719: Good. And you?

21 MR. SHAYGAN-FATEMI: Good.

22 PROSPECTIVE JUROR NO. 719: 719 is my number.

23 MR. SHAYGAN-FATEMI: Thank you.

24 Moving on from the presumption of innocence, I think -- a

25 show of hands, does everybody feel comfortable with the

1 presumption of innocence? May the record reflect everyone's
2 raising their hands.

3 Forgive me, folks, for you sitting over there.

4 Moving on from the presumption of innocence, I want to
5 speak to you about the burden of proof in a case. Burden of proof
6 is a fancy lawyerly way of saying who has the responsibility of
7 proving this case? The prosecution in this case has the
8 responsibility of proving this case. Do you agree with that?

9 PROSPECTIVE JUROR NO. 719: Yes.

10 MR. SHAYGAN-FATEMI: Ms. Howell?

11 PROSPECTIVE JUROR NO. 719: Yes.

12 MR. SHAYGAN-FATEMI: And why do you agree with
13 that?

14 PROSPECTIVE JUROR NO. 719: Because the client's
15 innocent, and the State, it's their job to bring the charges and show
16 the case that they have prepared.

17 MR. SHAYGAN-FATEMI: No that Mr. Hauser, also known
18 as Robson, I call him Robson; in this setting, we'll call him
19 Mr. Hauser. Not that Robson and I plan on sleeping during this
20 trial. But if we slept the whole trial, and these two prosecutors
21 didn't prove this case to you beyond a reasonable doubt, what
22 would your decision be in that situation?

23 PROSPECTIVE JUROR NO. 719: If they haven't proved
24 their case beyond a reasonable doubt, he'd be innocent.

25 MR. SHAYGAN-FATEMI: Show of hands; does everybody

1 agree with Ms. Howell?

2 Does anybody disagree with Ms. Howell?

3 You like to draw, Ms. Howell?

4 PROSPECTIVE JUROR NO. 719: Yes.

5 MR. SHAYGAN-FATEMI: What do you like to draw?

6 PROSPECTIVE JUROR NO. 719: Oh, all kinds of things.

7 Everything.

8 MR. SHAYGAN-FATEMI: Nature?

9 PROSPECTIVE JUROR NO. 719: Nature, shapes, patterns,
10 ideas.

11 MR. SHAYGAN-FATEMI: How long have you been
12 drawing?

13 PROSPECTIVE JUROR NO. 719: Since I could pick up a
14 pencil.

15 MR. SHAYGAN-FATEMI: Yeah? Do you like micron pens?

16 PROSPECTIVE JUROR NO. 719: They're okay.

17 MR. SHAYGAN-FATEMI: I find the point goes away when
18 you use them, very short life, huh?

19 PROSPECTIVE JUROR NO. 719: Yeah, it's expensive. Just
20 get a Crow Quill pen.

21 MR. SHAYGAN-FATEMI: Yeah. Thank you for your
22 candor this morning.

23 PROSPECTIVE JUROR NO. 719: My pleasure.

24 MR. SHAYGAN-FATEMI: Mr. Usher?

25 PROSPECTIVE JUROR NO. 702: Yes.

1 MR. SHAYGAN-FATEMI: Good morning, sir.

2 PROSPECTIVE JUROR NO. 702: Form.

3 MR. SHAYGAN-FATEMI: How are you doing this
4 morning?

5 PROSPECTIVE JUROR NO. 702: Well.

6 MR. SHAYGAN-FATEMI: Good. I want to ask you a
7 question. Ms. Goodman and Mr. Lexis are lawyers who happen to
8 be employed by the Clark County District Attorney's Office,
9 therefore making them prosecutors. Do you tend to give them
10 more credibility because they're prosecutors?

11 PROSPECTIVE JUROR NO. 702: No.

12 MR. SHAYGAN-FATEMI: Okay. Does anybody here tend
13 to give them more credibility because they're lawyers that work at
14 the Clark County District Attorney's Office? Thank you.

15 Mr. Usher, I want to move on from the burden of proof,
16 which is their responsibility to prove this case. Has anybody --
17 before I move on from that, is anybody here a little bit confused
18 about who needs to prove this case? Does anybody thing Robson
19 and I need to do anything in this case at all? If you do, it's okay. It's
20 okay. It's confusing, all these legally words that thrown at you very
21 quickly in a short amount of time.

22 I appreciate your candor, Mr. Usher. Thank you.

23 Ms. Connor.

24 PROSPECTIVE JUROR NO. 718: Yes.

25 MR. SHAYGAN-FATEMI: Good morning to you.

1 PROSPECTIVE JUROR NO. 718: Good morning.

2 MR. SHAYGAN-FATEMI: Would you agree that freedom is
3 more valuable than money?

4 PROSPECTIVE JUROR NO. 718: Yes.

5 MR. SHAYGAN-FATEMI: Okay. Our criminal justice
6 system agrees with you. And the standard of proof, which is proof
7 beyond a reasonable doubt, and you hear that all the time, it's
8 higher in a criminal case than it is in a civil case; did you know that?

9 PROSPECTIVE JUROR NO. 718: I do now.

10 MR. SHAYGAN-FATEMI: All right. That's proof beyond a
11 reasonable doubt. And Honorable Bluth is going to give you an
12 instruction as to exactly what beyond a reasonable doubt is, folks.
13 So don't worry about maybe kind of being confused with these
14 legal jargon. Just know it is the highest standard that we have in
15 the justice system. Okay?

16 I want to ask you a very personal question, and I
17 appreciate your candor and response. If you get selected for this
18 jury, okay, 11 jurors think that Ted is guilty.

19 PROSPECTIVE JUROR NO. 718: Okay.

20 MR. SHAYGAN-FATEMI: But you think he's not guilty
21 because you don't believe these prosecutors proved this case
22 beyond a reasonable doubt. Are you going to be pressured by
23 those 11 jurors?

24 PROSPECTIVE JUROR NO. 718: No.

25 MR. SHAYGAN-FATEMI: And why is that?

1 PROSPECTIVE JUROR NO. 718: I am the kind of person if
2 the evidence proposed before me and shown before me leans
3 towards his innocent, he's innocent, regardless of what 11 jurors
4 say. If I find the one thing and I can't prove to my 11 people that I
5 sit with that the -- this has happened this way and not that -- the
6 way they thought, I can't change their mind. But I'm not changing
7 my mind.

8 MR. SHAYGAN-FATEMI: What if the jurors turn on you
9 and start to frown their eyebrows at you a little bit?

10 PROSPECTIVE JUROR NO. 718: Not the first time in my
11 life. So, for the record, okay, because I did mention it before, this is
12 what happened when you're a shop steward in a union shop, and I
13 was the shop steward. I was the lead. So yes, I got turned on a lot.
14 I'm used to it. It's part of the job, brush it off, you go back to work
15 the next day.

16 MR. SHAYGAN-FATEMI: Thank you for allowing me to
17 frown my eyebrows at you.

18 PROSPECTIVE JUROR NO. 718: You're welcome.

19 MR. SHAYGAN-FATEMI: Is there anybody here that may
20 feel pressured, and that's okay if you feel pressured by other
21 people. Is there anybody that feels that way? A show of hands,
22 everybody can make their own decision in this case. All right.
23 Thank you, folks.

24 Ms. Jacquez.

25 PROSPECTIVE JUROR NO. 787: Good morning.

1 MR. SHAYGAN-FATEMI: I want to ask you a question this
2 morning that is a little bit aggressive. You're selected for this jury;
3 go home at night, you're driving home, you're with your family, and
4 you think Ted did it. You think Ted committed this crime. But you
5 don't think these two prosecutors proved this case to you beyond a
6 reasonable doubt. You don't think they met their burden, which is
7 what their responsibility is by charging Ted.

8 PROSPECTIVE JUROR NO. 787: Uh-huh.

9 MR. SHAYGAN-FATEMI: What would your verdict be in
10 that situation?

11 PROSPECTIVE JUROR NO. 787: Well, again, it all lies in,
12 you know, what's presented. And, you know, if I feel that they did
13 prove their case, showed the right evidence or whatever it may be,
14 pictures, videos, whatever, DNA, then, you know, if I felt that was
15 the verdict, if they proved it, I would believe it. If not, I wouldn't.

16 MR. SHAYGAN-FATEMI: If you had some doubts in this
17 case, would you consider those doubts?

18 PROSPECTIVE JUROR NO. 787: Again, I'd have to see
19 what evidence is shown, and then I'd have to make the decision
20 based on that.

21 MR. SHAYGAN-FATEMI: I appreciate your honesty in
22 front of this group of eyeballs staring at you. Thank you.

23 Ms. Tate.

24 PROSPECTIVE JUROR NO. 759: 759.

25 MR. SHAYGAN-FATEMI: Thank you, Ms. Tate. Good

1 morning.

2 PROSPECTIVE JUROR NO. 759: Good morning.

3 MR. SHAYGAN-FATEMI: Ms. Tate, you're going to -- if
4 you're selected on this jury, you're going to hear that people have
5 been shot. There are victims in this case. I think it's human nature
6 to feel sympathy for people that are shot. Do you think you would
7 feel too sympathetic in that you wouldn't be able to follow the law
8 given to you by Honorable Bluth?

9 PROSPECTIVE JUROR NO. 759: No.

10 MR. SHAYGAN-FATEMI: Is there anybody sitting here
11 right now that thinks that once they see photographs of blood, of a
12 bullet going through someone's hand, getting shot in the stomach,
13 hospital beds, agony on the face, that that will taint their judgment
14 in making -- following the law that's given to you by Honorable
15 Bluth?

16 Ms. Riendeau, am I pronouncing that properly?

17 PROSPECTIVE JUROR NO. 714: It's French. It's Riendeau.

18 MR. SHAYGAN-FATEMI: Oh, boy.

19 PROSPECTIVE JUROR NO. 714: It's okay. Everyone
20 slaughters it. It's fine.

21 MR. SHAYGAN-FATEMI: Oh, boy.

22 PROSPECTIVE JUROR NO. 714: I would have a hard time
23 with that, just as a parent and a grandmother. I would just -- I
24 would have a hard time, because that's somebody's son or
25 daughter. That's somebody's brother or sister. That's somebody's

1 family member that has loved ones in this world. So, yeah, I would
2 definitely make me think some kind of way, yes.

3 MR. SHAYGAN-FATEMI: Well, I appreciate your candor.
4 That's why we're asking these questions. Thank you.

5 Does anybody feel the way Ms. Riendeau -- is that correct?

6 PROSPECTIVE JUROR NO. 714: That's fine. Close
7 enough.

8 MR. SHAYGAN-FATEMI: I apologize. Does anybody
9 disagree with her? Disagree. Thank you, folks.

10 Let's shift the topic a little bit. Ms. Ricu?

11 PROSPECTIVE JUROR NO. 729: Uh-huh.

12 MR. SHAYGAN-FATEMI: Did I pronounce your name
13 properly?

14 PROSPECTIVE JUROR NO. 729: Yeah, that's correct.

15 MR. SHAYGAN-FATEMI: Thank you, ma'am.

16 Guns are a controversial topic. We see it in our politics,
17 they're controversial. How do you feel about guns?

18 PROSPECTIVE JUROR NO. 729: I own a few. So, yeah.

19 MR. SHAYGAN-FATEMI: So you're not going to be -- your
20 judgment in following the law that Honorable Bluth gives you is not
21 going to be clouded by the fact that there was a gun used in this
22 case?

23 PROSPECTIVE JUROR NO. 729: No.

24 MR. SHAYGAN-FATEMI: Okay. Does anybody feel
25 particularly strongly about a gun?

1 PROSPECTIVE JUROR NO. 714: I don't want to be that
2 person, but I do. Because I haven't -- I grew up around hunters and
3 a lot of guns. And my ex-husband was -- we had a lot of guns. And
4 nothing good ever came out of a gun. So yeah, I hate guns.

5 MR. SHAYGAN-FATEMI: I appreciate your candor. Thank
6 you.

7 Ms. Ricu, thank you, as well.

8 Mr. Mena-Luvera.

9 PROSPECTIVE JUROR NO. 733: Yes, sir. Badge
10 Number 733.

11 MR. SHAYGAN-FATEMI: Where do you sit?

12 PROSPECTIVE JUROR NO. 733: I'm doing well.

13 MR. SHAYGAN-FATEMI: I think everyone has figured out
14 by now, because of what Robson told you, I think Mr. Lexis had
15 touched on a little bit, race isn't an issue in this case. Is there
16 anything that you've heard so far with regards to race that thinks
17 you might not be able to be a fair juror in this case?

18 PROSPECTIVE JUROR NO. 733: Absolutely not.

19 MR. SHAYGAN-FATEMI: As you can see, as you're going
20 to learn, Ted has a lot of tattoos. And tattoos are something that, as
21 the days go on, they're more and more common in society, but they
22 can be controversial. Do you feel a particular way about tattoos?

23 PROSPECTIVE JUROR NO. 733: I do not.

24 MR. SHAYGAN-FATEMI: The fact that Ted is covered
25 head to toe in tattoos, you see on his face he has tattoos, that's

1 okay with you?

2 PROSPECTIVE JUROR NO. 733: Absolutely.

3 MR. SHAYGAN-FATEMI: Does anybody here have a
4 problem with tattoos?

5 Mr. Nevarez, if you would have raised your hand, there
6 would have been a problem.

7 PROSPECTIVE JUROR NO. 778: Yeah, that'd be bad.

8 MR. SHAYGAN-FATEMI: If you can hand the mic to
9 Mr. Nevarez, please. Thank you.

10 How are you, sir?

11 PROSPECTIVE JUROR NO. 778: Good, how about
12 yourself?

13 MR. SHAYGAN-FATEMI: Thank you for your candor
14 yesterday. I am good, thank you.

15 You're going to learn in this case that this shooting
16 happened in a really bad part of town. The fact that this happened
17 in a bad part of town, does that cloud your judgment at all in
18 following the law that Honorable Bluth is going to give you in this
19 case?

20 PROSPECTIVE JUROR NO. 778: No, not in any way.

21 MR. SHAYGAN-FATEMI: Is there anybody here that may
22 feel strongly about the fact that this happened in a less affluent part
23 of town?

24 PROSPECTIVE JUROR NO. 714: I live there. So no.

25 THE COURT: Can you put in the badge number,

1 Mr. Shaygan?

2 MR. SHAYGAN-FATEMI: The badge number for -- Your
3 Honor, I apologize, Mr. Nevarez, is 778. And Ms. Riendeau -- I have
4 great -- my last name is Shaygan-Fatemi. So you can imagine what
5 I also went through in life. I apologize.

6 714, Your Honor.

7 THE COURT: Thank you, Mr. Shaygan-Fatemi.

8 MR. SHAYGAN-FATEMI: Mr. Nevarez, changing the
9 subject matter a little bit. Ted has a right to testify in this case.
10 You're going to get a jury instruction from Honorable Bluth that
11 says something along the lines of he has a right not to testify, and if
12 he chooses not to testify, you can't hold that against him. Would
13 you hold that against him if he chose not to testify?

14 PROSPECTIVE JUROR NO. 778: No, definitely. Not if it's
15 his right.

16 MR. SHAYGAN-FATEMI: Is there anybody here that it's a
17 must that you hear from Ted in this case?

18 Is there anybody here that's going to hold it against Ted in
19 any way, zero out of 101, one out of 100, I'm going to hold it against
20 him if he chooses not to testify?

21 Almost done, folks. Almost done.

22 Ms. Bermudez.

23 PROSPECTIVE JUROR NO. 747: Yes.

24 MR. SHAYGAN-FATEMI: Juror 747. How are you doing
25 this morning?

1 PROSPECTIVE JUROR NO. 747: Good. How are you?

2 MR. SHAYGAN-FATEMI: I'm doing well. Thank you for
3 asking.

4 You heard the number of witnesses the State is planning
5 on calling.

6 PROSPECTIVE JUROR NO. 747: Uh-huh.

7 MR. SHAYGAN-FATEMI: There are going to be many
8 witnesses in this case, where Robson and I don't have a lot of
9 questions for them. Are you going to hold it against Ted if Robson
10 and I don't have a lot of questions for witnesses?

11 PROSPECTIVE JUROR NO. 747: No.

12 MR. SHAYGAN-FATEMI: Is there anybody that's going to
13 hold it against Robson and I for not asking a lot of questions during
14 this trial?

15 Is there anybody here that expects us, Robson and I, to
16 ask a lot of questions during this trial?

17 And the reason you don't expect that is because it's the
18 State's responsibility to prove this case, correct? Show of hands.

19 A moment of indulgence, Your Honor.

20 THE COURT: Yes, of course.

21 [Pause in proceedings.]

22 MR. SHAYGAN-FATEMI: Folks, in wrapping up here,
23 Mr. Lexis touched on a lot of subjects, I touched on a lot of subjects.
24 Honorable Bluth asked you a lot of questions. Is there anybody
25 here that feels the need to share something with all of us here that

1 hasn't been shared, that you think we should know about it? I want
2 the fairest jury possible, folks. No ands, if, or buts. I need people
3 that are going to follow the law that the judge gives. If you've
4 already made up your mind, I need to know about it.

5 I appreciate your time, folks. Thank you.

6 Thank you, Your Honor.

7 THE COURT: Do you pass the panel, Mr. Shaygan?

8 MR. SHAYGAN-FATEMI: I do, Your Honor. Thank you.

9 THE COURT: All right. Sounds good.

10 All right. So ladies and gentlemen, at this point in time --
11 thank you -- if you remember when I was reading instructions, we
12 talked about challenges for cause and peremptory challenges. So
13 at this point we are in the part of the proceedings where each side
14 is going to exercise what's referred to as their peremptory
15 challenges. So while they'll do that, you'll see the paper being
16 passed back and forth between the parties, and they are in the
17 process of actually selecting the jurors. So just stay where you're
18 seated, but feel free to talk amongst yourselves. This process takes
19 a little bit and they -- you have to stay in your seats, because they
20 have to be able to associate who you are with what you look like
21 and where you are seated. So you have to stay where you are. But
22 feel free to talk, read, whatever you'd like to do.

23 [Pause in proceedings.]

24 MR. SHAYGAN-FATEMI: Your Honor, can we approach?

25 THE COURT: Sure.

1 [Bench conference transcribed as follows.]

2 MR. SHAYGAN-FATEMI: Your Honor, I'm going to fall on
3 the sword on this. This is my fault. But there are a couple of jurors
4 that we had issues with.

5 THE COURT: Oh, okay.

6 MR. SHAYGAN-FATEMI: And when I said pass the panel, I
7 was under the impression we were going to go in the back. I didn't
8 realize that I should have challenged it right there.

9 THE COURT: Oh, okay.

10 MR. SHAYGAN-FATEMI: And so I know the State has
11 already picked one person, but before it got out of control, I wanted
12 to just address some obvious jurors and the Court can make a
13 ruling and then we can proceed.

14 THE COURT: Okay. So who do you want to address?

15 MR. SHAYGAN-FATEMI: The 714 --

16 THE COURT: What's the last name?

17 MR. SHAYGAN-FATEMI: -- Ms. Riendeau, the juror that
18 just said that she the graphic photos, she won't be able to be fair
19 because of the graphic photos. She's also the one that said I live in
20 that area, and yesterday was the one that -- just to refresh your
21 memory, that Dotty's --

22 THE COURT: Yeah.

23 MR. SHAYGAN-FATEMI: -- I see him at Dotty's. That's
24 one of them.

25 And the other witness, I thought Mr. Liu in the front, he

1 had an issue with the presumption of innocence. And I don't think
2 he could also be fair. So those would be two jurors that I'd ask the
3 Court to strike.

4 THE COURT: So with Mr. Liu, I just don't think he
5 understands what's going on, to be quite honest with you. Because
6 if you watch, when you say to, like, raise your hand, he
7 [indiscernible] make sure people's hands are being raised. Like, I
8 don't think -- so I'm going to ask him some fundamental questions
9 to make sure he understands.

10 MR. SHAYGAN-FATEMI: Okay. I appreciate that.

11 THE COURT: State, in regards to the -- or whatever her
12 name is?

13 MR. LEXIS: That's fine.

14 THE COURT: No, what do you -- you're okay with her --

15 MR. LEXIS: I'm okay with kicking her.

16 THE COURT: -- leaving? Okay.

17 All right. So let me speak to Mr. Liu first.

18 MR. HAUSER: But with regards to Mr. Liu, I believe that
19 he just needs to be explained a lot. Like you said, I don't think he --

20 THE COURT: Let me just try it, okay, really quick.

21 MR. HAUSER: Okay.

22 THE COURT: And if he still feels that way, then I agree, he
23 should be gone. I just think he's not understanding exactly what's
24 being said.

25 MR. SHAYGAN-FATEMI: Thank you.

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THE COURT: Okay? Thank you.

[End of bench conference.]

THE COURT: All right. So we're back on the record.

Mr. Liu, Badge Number 781 --

May I have the mic, please?

Hi, Mr. Liu. How are you?

PROSPECTIVE JUROR NO. 781: Good, how are you?

THE COURT: So I wanted to follow up with some questions in regards to some principles of the criminal justice system. Okay? And so one of those principles that we've been talking about states that no matter what courtroom you're in, no matter what part of the United States, a person who is charged with a crime, they are presumed innocent. All right? So as the defendant sits there, he is presumed innocent.

And the only way that that changes is if the State of Nevada proves beyond a reasonable doubt that he committed these crimes. Okay?

And so until the State proves to you that, he is presumed innocent. Does that make sense to you or no?

PROSPECTIVE JUROR NO. 781: That makes sense.

THE COURT: All right. So because the State hasn't presented any evidence, as the defendant sits there today, what is he, in your eyes?

PROSPECTIVE JUROR NO. 781: Innocent.

THE COURT: Okay. And so I just wanted to make sure

1 that you understood that, because when there was some back and
2 forth, I just wasn't sure if you -- either you didn't understand it or
3 maybe you didn't agree with it. And it's okay if you don't agree
4 with it. But you can't be a juror if you don't agree with it, if that
5 makes sense. Because everyone is entitled to the presumption of
6 innocence.

7 So there's an old saying that says if you do the choosing,
8 you do the proving. So if you choose to charge someone with a
9 crime, you also have to prove that that person did the crime. So I
10 just need to make sure that you understand the presumption of
11 innocence and that you agree to follow that.

12 PROSPECTIVE JUROR NO. 781: Yep.

13 THE COURT: Okay. Mr. Shaygan, did you have any
14 follow-up?

15 MR. SHAYGAN-FATEMI: Very briefly, Your Honor.

16 THE COURT: Yeah.

17 MR. SHAYGAN-FATEMI: I appreciate it.

18 THE COURT: Of course.

19 MR. SHAYGAN-FATEMI: Mr. Liu, yes, sir, nice to see you
20 again.

21 PROSPECTIVE JUROR NO. 781: Thank you.

22 MR. SHAYGAN-FATEMI: If Robson and I, my co-counsel,
23 decide right now, you know what, we don't want to do any work,
24 we're not going to ask a single question during this whole trial, are
25 you going to hold that against Robson and I?

1 PROSPECTIVE JUROR NO. 781: No.

2 MR. SHAYGAN-FATEMI: Do you think that Robson and I

3 need to show you anything in this case?

4 PROSPECTIVE JUROR NO. 781: No.

5 MR. SHAYGAN-FATEMI: If these two prosecutors don't

6 prove their case, what are you going to do?

7 PROSPECTIVE JUROR NO. 781: The prosecutor need to

8 prove the case. That's their job.

9 MR. SHAYGAN-FATEMI: So they need to prove

10 something in this case to you?

11 PROSPECTIVE JUROR NO. 781: I believe it's their job to

12 do that.

13 MR. SHAYGAN-FATEMI: I appreciate your time this

14 morning. Thank you for answering me honestly.

15 PROSPECTIVE JUROR NO. 781: Uh-huh.

16 MR. SHAYGAN-FATEMI: I'll pass the juror.

17 THE COURT: All right.

18 PROSPECTIVE JUROR NO. 781: Thank you.

19 MR. SHAYGAN-FATEMI: Thank you.

20 THE COURT: Thank you, sir.

21 All right. Badge Number 714, Gina Riendeau, you are

22 excused from service. Thank you so much. If you could go back

23 down to the third floor and let them know that you've been

24 excused.

25 PROSPECTIVE JUROR NO. 714: Okay.

1 THE COURT: Appreciate that.
2 And if the clerk could call the next juror please.
3 THE CLERK: Yes, Your Honor.
4 Next in Seat Number 7, Badge Number 801, William
5 Tucker.
6 THE COURT: Hi, Mr. Tucker.
7 PROSPECTIVE JUROR NO. 801: Hi.
8 THE COURT: How are you, sir?
9 PROSPECTIVE JUROR NO. 801: Good, and you?
10 THE COURT: May I have the microphone to Mr. Tucker,
11 please.
12 Mr. Tucker, yesterday did you hear my questions in
13 regards to jurors asking questions of witnesses within my
14 courtroom?
15 PROSPECTIVE JUROR NO. 801: Yes.
16 THE COURT: All right. And do you understand that there
17 may be occasions where you or another juror may write a question,
18 but because of evidentiary rules, I won't be able to ask it?
19 PROSPECTIVE JUROR NO. 801: Yeah.
20 THE COURT: I just need to make sure that you won't hold
21 it against either of the parties and think that they're hiding
22 something from you, and the only reason why it's not being asked
23 is because there's a legal reason; does that make sense?
24 PROSPECTIVE JUROR NO. 801: Yeah, it makes sense.
25 THE COURT: All right. And you won't hold it against

1 either of the parties?

2 PROSPECTIVE JUROR NO. 801: No.

3 THE COURT: All right. Thank you.

4 PROSPECTIVE JUROR NO. 801: You're welcome.

5 THE COURT: So under our system, certain principles
6 apply in every criminal trial. They are, number one, that the
7 charging document filed in this case is merely an accusation and is
8 not in any way evidence of guilt.

9 Number two, that the defendant is presumed innocent.

10 And number three, that the State has to prove that the
11 defendant committed these crimes beyond what's referred to as a
12 reasonable doubt, which I will define for you at the culmination of
13 this case.

14 Do you have any issues with any of those three
15 principles?

16 PROSPECTIVE JUROR NO. 801: No.

17 THE COURT: And do you believe in those three
18 principles?

19 PROSPECTIVE JUROR NO. 801: Yeah, I agree with them.

20 THE COURT: Okay. And would you have trouble
21 following the law that I instruct you on if you didn't agree with the
22 law?

23 PROSPECTIVE JUROR NO. 801: No.

24 THE COURT: How long have you lived in Clark County?

25 PROSPECTIVE JUROR NO. 801: My whole life, 28 years.

1 THE COURT: And how far did you go in school?
2 PROSPECTIVE JUROR NO. 801: High school.
3 THE COURT: Are you employed?
4 PROSPECTIVE JUROR NO. 801: Yes.
5 THE COURT: What do you do?
6 PROSPECTIVE JUROR NO. 801: UPS, graveyard.
7 THE COURT: Are you married, in a serious relationship,
8 single?
9 PROSPECTIVE JUROR NO. 801: Single.
10 THE COURT: And do you have any children?
11 PROSPECTIVE JUROR NO. 801: No.
12 THE COURT: You or anyone close to you ever been the
13 victim before?
14 PROSPECTIVE JUROR NO. 801: My cousin was murdered
15 a year ago.
16 THE COURT: Was that here?
17 PROSPECTIVE JUROR NO. 801: Yeah.
18 THE COURT: Where is -- first of all, was anyone caught?
19 PROSPECTIVE JUROR NO. 801: Yeah, the guy -- he's
20 actually going to trial next week, I believe.
21 THE COURT: What's the defendant's name?
22 PROSPECTIVE JUROR NO. 801: I don't know too much
23 about the name. Because it was -- I'm not too close to my cousin
24 after he kind of vanished a few years back and --
25 THE COURT: Okay. Would you mind giving me the name

1 of your cousin?

2 PROSPECTIVE JUROR NO. 801: Yeah, it would be
3 Christopher, and then the last name is Tucker.

4 THE COURT: And I apologize that we have to talk about
5 such sensitive things, and I am sorry for your loss.

6 PROSPECTIVE JUROR NO. 801: It's okay.

7 THE COURT: I just want to ask you a few follow-ups.

8 Was this a random homicide or it was amongst people
9 who knew one another?

10 PROSPECTIVE JUROR NO. 801: Him and his buddy went
11 to go sell a car and they were robbed and shot. He died, the other
12 guy survived that was selling the car with him.

13 THE COURT: So murder and attempt murder.

14 PROSPECTIVE JUROR NO. 801: Yeah.

15 THE COURT: All right. Have you followed the case at all?

16 PROSPECTIVE JUROR NO. 801: Not too much, no. They
17 just started going and getting the trial going, so.

18 THE COURT: All right.

19 PROSPECTIVE JUROR NO. 801: Yeah.

20 THE COURT: So the prosecutors that are here in this case,
21 while not the prosecutors of that homicide case, they still work
22 within the same office. Would you afford them any benefit or any --

23 PROSPECTIVE JUROR NO. 801: No.

24 THE COURT: -- positive treatment because they work for
25 that same office?

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PROSPECTIVE JUROR NO. 801: No.

THE COURT: Do you feel like law enforcement handled that investigation properly?

PROSPECTIVE JUROR NO. 801: Yeah, I -- yeah.

THE COURT: Do you feel like anything involving that case would affect your ability to be fair and impartial to both sides in this case?

PROSPECTIVE JUROR NO. 801: No.

THE COURT: Besides your cousin being murdered, you or anyone close to you -- anybody else been the victim of a crime?

PROSPECTIVE JUROR NO. 801: No.

THE COURT: Same question, but accused of a crime? You or anyone close to you been accused of a crime?

PROSPECTIVE JUROR NO. 801: When I was a minor.

THE COURT: Okay. And what were you accused of?

PROSPECTIVE JUROR NO. 801: Possession for marijuana, and then trespassing and battery.

THE COURT: Were those all at the same time or different?

PROSPECTIVE JUROR NO. 801: Different times.

THE COURT: Three different times or two?

PROSPECTIVE JUROR NO. 801: Three different times.

THE COURT: All right. How do you feel like you were treated with -- by law enforcement during that?

PROSPECTIVE JUROR NO. 801: I was treated fairly.

THE COURT: Once it got to the juvenile court system, did

1 you feel like you were treated fairly?

2 PROSPECTIVE JUROR NO. 801: Yeah.

3 THE COURT: Anything about any of those incidents that
4 you feel would affect you here?

5 PROSPECTIVE JUROR NO. 801: No.

6 THE COURT: Any other incidents where you or anyone
7 close to you has been accused of a crime?

8 PROSPECTIVE JUROR NO. 801: No.

9 THE COURT: Have you ever been a juror before?

10 PROSPECTIVE JUROR NO. 801: No.

11 THE COURT: Is there anything about the nature of this
12 case or anything about the facts you've heard thus far that you feel
13 would interfere with your ability to hear the case and to be fair?

14 PROSPECTIVE JUROR NO. 801: No.

15 THE COURT: And can you wait in forming your opinion
16 until the matter is submitted to you and your fellow jurors to
17 discuss?

18 PROSPECTIVE JUROR NO. 801: Yes.

19 THE COURT: And can you base that opinion solely on the
20 evidence and testimony that's presented here as a juror in this trial?

21 PROSPECTIVE JUROR NO. 801: Yes.

22 THE COURT: And you believe you can be fair to both
23 sides?

24 PROSPECTIVE JUROR NO. 801: Yeah.

25 THE COURT: All right. Thank you.

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State?

PROSPECTIVE JUROR NO. 801: Yep.

MR. LEXIS: Sir, did you hear my previous questions yesterday?

PROSPECTIVE JUROR NO. 801: Yeah, I heard some of them.

MR. LEXIS: Would you have answered those, any of those questions? Did any of them stick out?

PROSPECTIVE JUROR NO. 801: None of them stick out to me, no.

MR. LEXIS: Do you agree with the reasons these people gave on why people don't want to testify with regards to --

PROSPECTIVE JUROR NO. 801: Yeah, I could --

MR. LEXIS: -- afraid, retaliation, we could go on and on.

PROSPECTIVE JUROR NO. 801: Yeah, I heard.

MR. LEXIS: Did you hear what I was talking about with regards to, you know, if you don't like somebody, had it coming; did you hear that phrase, remember that phrase?

PROSPECTIVE JUROR NO. 801: Yeah, yeah. I remember that.

MR. LEXIS: Do you believe that they're also entitled to justice, as well?

PROSPECTIVE JUROR NO. 801: Yeah.

MR. LEXIS: Anything regarding the way you were raised, religion or anything like that, that would hinder your ability to cast

1 judgment upon the defendant in this case?

2 PROSPECTIVE JUROR NO. 801: No, no.

3 MR. LEXIS: Thank you.

4 Nothing further, Your Honor.

5 THE COURT: Mr. Shaygan.

6 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

7 Mr. Tucker, how are you, sir?

8 PROSPECTIVE JUROR NO. 801: Doing good, how are
9 you?

10 MR. SHAYGAN-FATEMI: Good. Remind me how long
11 have you been in Clark County?

12 PROSPECTIVE JUROR NO. 801: My whole life, 28 years.

13 MR. SHAYGAN-FATEMI: 28 years.

14 PROSPECTIVE JUROR NO. 801: Yep.

15 MR. SHAYGAN-FATEMI: Do you tend to side with law
16 enforcement?

17 PROSPECTIVE JUROR NO. 801: I tend to side with what's
18 right.

19 MR. SHAYGAN-FATEMI: With what's right?

20 PROSPECTIVE JUROR NO. 801: Yeah.

21 MR. SHAYGAN-FATEMI: Do you -- one of the questions
22 that I previously asked earlier this morning was because
23 Ms. Goodman and Mr. Lexis are prosecutors, will you tend to give
24 them more credibility than Mr. Robson and I, who are defense
25 attorneys?

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PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: Is there anything about you that you think we should know that hasn't come out yet already?

PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: As Ted sits here right now, what is your opinion of him?

PROSPECTIVE JUROR NO. 801: Innocent.

MR. SHAYGAN-FATEMI: His tattoo -- his facial tattoos, his arm tattoos, his demeanor, does it bother you?

PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: You know, Ted is innocent of these charges and so there are going to be times that he may react, because he's innocent, to something that he doesn't like hearing. You may see him frown his eyebrows at me. You may see Robson frown his eyebrows back at Ted. As my mother tells me, I'm not a wedding planner. Are you going to hold that against him?

PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: Are you going to hold that against Ted?

PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: That he may be animated?

PROSPECTIVE JUROR NO. 801: No.

MR. SHAYGAN-FATEMI: I appreciate you letting me talk to you with a tone. Thank you.

PROSPECTIVE JUROR NO. 801: Yeah, no problem.

1 MR. SHAYGAN-FATEMI: Thank you, Your Honor.
2 THE COURT: Yes. All right, can we continue on?
3 MR. SHAYGAN-FATEMI: Yes, we can, Your Honor. Thank
4 you.
5 THE COURT: All right. So you can go back to chatting.
6 [Pause in proceedings.]
7 [Bench conference transcribed as follows.]
8 MR. HAUSER: I wanted to clarify your ruling on the
9 alternates earlier. And I can share the list here. My fourth strike.
10 State thinks he's technically alternate right now. My impression is
11 he's not yet, because --
12 MS. GOODMAN: The last four seats are always the
13 alternates, because we have two preempts. So the State would
14 preempt, Defense would preempt. Would leave whoever's left in
15 those four seats.
16 THE COURT: So yeah, the -- so your Number 5 has to be
17 on the last four people.
18 MS. GOODMAN: Exactly.
19 THE COURT: But we --
20 MR. HAUSER: But my Number 4 can also be in that
21 group.
22 THE COURT: In what group?
23 MS. GOODMAN: Liu is in the fourth seat. Or in the first.
24 THE COURT: Oh [indiscernible].
25 MR. HAUSER: [Indiscernible.]

1 THE COURT: Yeah. So we need to move him to a
2 [indiscernible].
3 MR. HAUSER: Got it. Okay.
4 THE COURT: So just put somebody else.
5 MR. HAUSER: Or we -- excellent.
6 THE COURT: Yeah.
7 [End of bench conference.]
8 [Pause in proceedings.]
9 THE COURT: All right. Parties approach, please.
10 [Bench conference transcribed as follows.]
11 MR. HAUSER: We waived our fourth. We just weren't
12 sure how to note it, so.
13 THE COURT: Yeah, that's okay.
14 MR. HAUSER: Yeah.
15 THE COURT: So which is [indiscernible], because I
16 actually never mind -- so I've never been in this situation, because
17 now we have 15 jurors. So we would just kick off the last person?
18 MR. HAUSER: I assume.
19 MS. GOODMAN: Oh.
20 THE COURT: Because they waived.
21 MS. GOODMAN: So --
22 THE COURT: Out of the 50 juror trials, I've never once
23 waived [indiscernible]. None of you have done anything wrong --
24 MR. HAUSER: No, I know.
25 THE COURT: -- but I'm just, like, I'm thinking that means

1 that the last person --

2 MR. HAUSER: You seat the 14 and then --

3 MS. GOODMAN: No, because I think what you would
4 have to do, since the loser of the last four for alternates, you
5 technically have to kick the last. Hold on.

6 So we waived the fourth. So we reserved the last four for
7 [indiscernible]. And the issue is it's -- do we kick the last
8 [indiscernible] juror or --

9 THE COURT: So we have 15 jurors right now. I've never
10 waived. [Indiscernible.]

11 MR. SHAYGAN-FATEMI: Oh, I've waived before. Just the
12 last four, the very last one's gone.

13 THE COURT: Of the alternates?

14 MR. HAUSER: Right?

15 MR. LEXIS: Yep. Sounds good.

16 THE COURT: Okay. So it'll be [indiscernible].

17 MR. HAUSER: Yes, ma'am.

18 THE COURT: Right?

19 MR. HAUSER: Would be the one kicked, yeah.

20 MR. SHAYGAN-FATEMI: That's how we have it
21 calculated, Your Honor.

22 THE COURT: [Indiscernible.]

23 MR. LEXIS: Yep.

24 THE COURT: Got it.

25 MR. LEXIS: Thank you.

1 THE COURT: Thank you.

2 [End of bench conference.]

3 THE COURT: All right. If you hear your name, please
4 stand up and move to the galley. Okay?

5 Badge Number 245, Gerardo Trejo; Badge Number 709,
6 Douglas Haynes; Badge Number 801, William Tucker; Badge
7 Number 718, Audreen Connors; Badge Number 719, Bobbieann
8 Howell; Badge Number 778, Rafael Nevarez; Badge Number 759,
9 Sherry Tate; Badge Number 781, William Liu; Badge Number 794,
10 Amanda Miller; and Badge Number 770, Chloe Gersten.

11 State, Defense, does everybody look right?

12 MR. HAUSER: Yes, Your Honor.

13 MR. LEXIS: Yes, Your Honor.

14 THE COURT: All right. So that means those of you seated
15 to my right, you are our jury.

16 And those of you in the galley, I appreciate so much you
17 being willing to serve and I'm grateful for the answers that you
18 gave and honesty and candor that you gave to the Court. But you
19 are not selected at this time, so you can go down to jury services
20 and let them know that you have been excused. I appreciate your
21 time, thank you very much.

22 [Balance of prospective jury panel excused at 12:17 p.m.]

23 THE COURT: And then parties approach, please.

24 [Bench conference transcribed as follows.]

25 THE COURT: So the instructions take a while to read, as

1 you know. You know what I mean, like the preliminary instructions.

2 MR. HAUSER: God, yeah.

3 THE COURT: Take, like, 15, 20 minutes. So do you guys
4 want to do instructions and openings and then go right into
5 witnesses? Or do you want to go instructions, and then lunch,
6 opening, witnesses, you tell me. It's not on me.

7 MR. LEXIS: How about instructions, then opening, then
8 break, and then we'll call witnesses.

9 THE COURT: Cool.

10 MR. HAUSER: I like to take a lunch break before I open.

11 THE COURT: Are you opening?

12 MR. HAUSER: Yeah, I am.

13 THE COURT: Okay.

14 MR. HAUSER: I appreciate it, Your Honor.

15 MS. GOODMAN: So we can -- do you want to do
16 instructions now?

17 THE COURT: Yeah, for sure.

18 MR. LEXIS: Let's do those.

19 MR. HAUSER: Yeah, yeah, yeah.

20 MS. GOODMAN: [Indiscernible].

21 THE COURT: All right.

22 MR. SHAYGAN-FATEMI: I appreciate it, Your Honor.

23 Thank you.

24 THE COURT: Very welcome.

25 MR. LEXIS: What time do you expect to start back up so I

1 can tell the witness.

2 THE COURT: Maybe -- I would tell them to be here
3 at 1:40, 1:45.

4 MR. LEXIS: Okay.

5 THE COURT: All right?

6 MR. LEXIS: Yeah, cool.

7 [End of bench conference.]

8 THE COURT: All right. So each of you in the back row,
9 would you slide over one seat.

10 And then would the two ladies in the second row, would
11 you guys slide back those seats. Oh, sorry, you need to stay in
12 order. That's okay.

13 All right. And then all of you just exactly the order you're
14 in, just go back.

15 And then my two ladies in the front, just stay in the order
16 that you're in, but feel free to sit wherever you'd like in that third
17 row behind you. But make sure that you can see the TV from where
18 you're sitting, because that'll be used throughout the trial. Okay?

19 All right. So ladies and gentlemen, what we're going to
20 do is I'm going to read the court instructions to you, which take a
21 little bit, just to let you know the procedure of the trial. And then
22 after that, we're going to take a lunch and we're going to come
23 back, roll right into opening statements and then into witnesses.
24 Okay?

25 So before we begin trial, for those who remain as jurors, I

1 want to let you know what you can expect in this case. What I will
2 now say is intended to serve as a general introduction to the trial of
3 this case, and it is not a substitute for the detailed instructions on
4 the law, which I will give you at the close of the case and before you
5 retire to consider your verdict.

6 First, we would like you to be as comfortable as possible
7 while you are here. If you have trouble hearing or seeing at any
8 time during the trial, please raise your hand as an indication. Also,
9 if you need to use the restroom, if you feel ill or if you have any
10 other problems, please also raise your hand as an indication.

11 I also encourage you to stand up and stretch between
12 witnesses or when the attorneys are discussing something up here
13 at the bench with me. You can also feel free to bring in water or
14 any other clear liquid, as long as it's not too disruptive when you're
15 drinking, when we're in court.

16 During trial, tomorrow we will start at 1:00, and then
17 Thursday and Friday, I have some hearings Thursday morning, but
18 I'm trying to get them done pretty early in the morning, so we'll
19 start probably about 9:00 or 9:30 on Thursday and Friday. And like I
20 stated, I generally like to conclude at 5:00 because so many people
21 have childcare issues. Is there anyone here who does have
22 childcare issues who needs to be out of here right at 5:00? Okay.
23 Good to know. Thank you.

24 So, generally, we break for lunch around 12:00 or 1:00,
25 and we take an hour lunch. And then I try to break every hour and a

1 half to two hours and give you a 15-minute break so you can stretch
2 your legs, go to the bathroom, get a drink of whatever or whatever
3 you want to drink, something to eat. If we are taking too long and
4 it's starting to -- you're starting to feel tired and you feel like you
5 need a break, just raise your hand. My marshal will come speak to
6 you. But I try to be attentive to make sure I'm reading you guys,
7 and I can usually tell when you're getting antsy and need a break.
8 All right?

9 So as you know, this is a criminal case commenced by the
10 State of Nevada, which I may sometimes refer to as the State,
11 against the defendant, Mr. Donko. This case is based on --

12 An information or an indictment, State?

13 MR. LEXIS: Information.

14 THE COURT: Amended information.

15 The clerk will now read the amended information to you
16 and the -- then state the plea of the defendant to that amended
17 information.

18 So Mr. Reed, please.

19 THE CLERK: Yes, Your Honor.

20 [Information read.]

21 THE COURT: Okay. Please understand that the amended
22 information that was just read by the clerk is simply a charge and
23 that it is not, in any sense, evidence of the allegations it contains.
24 The defendant has pled not guilty to the amended information.

25 The State therefore has a burden of proving each of the

1 essential elements of the amended information beyond a
2 reasonable doubt. As the defendant sits here now, he is not guilty.
3 The purpose of this trial is to determine whether the State will meet
4 that burden.

5 It is your primary responsibility as jurors to find and
6 determine the facts. Under our system of criminal procedure, you
7 are the sole judge of the facts. You are here to determine the facts
8 from the testimony you hear and other evidence, including exhibits
9 introduced in court. It is up to you to determine the inferences
10 which you feel may be properly drawn from the evidence.

11 Ladies and gentlemen, you must base your verdict solely
12 on the evidence presented in the courtroom and the instructions on
13 the law that I give you. To protect the integrity of the jury process,
14 it is very important that you do not do any independent research
15 about this case until the jury has reached a final decision.

16 You may not visit any location involved in this case; you
17 must not do any research or look up words, names, maps, or
18 anything else that may have anything to do with this case. This
19 includes reading the newspapers, watching television, or using a
20 computer, cell phone, the Internet, or any other means to get
21 information related to this case or the people and places involved in
22 this case. This applies whether you are in the courthouse, at home,
23 or anywhere else.

24 Additionally, until you are discharged from service, as a
25 juror you must not provide or receive any information about your

1 jury service to anyone, including friends, coworkers, and family
2 members. You may tell people that you have been picked for a jury
3 and how long the case will take. However, you must not give any
4 information about the case itself or the people involved in the case.

5 You must also warn people not to try to say anything to
6 you or write to you about your jury service or the case. This
7 includes face-to-face phone or computer communications.

8 In this age of electronic communication, I want to stress
9 that you must not use electronic devices or computers to research
10 or talk about this case, including Googling, tweeting, texting,
11 blogging, e-mailing, posting information on a website, or any other
12 means at all. All of us are depending on you to follow these rules
13 so that there will be a fair and lawful resolution of this case.

14 You may not declare to your fellow jurors any facts
15 relating to this case of your own knowledge, and if you discover
16 during the trial or after the jury has retired that you or any other
17 juror has personal knowledge of any witness or fact in controversy
18 in this case, you must disclose that information to me outside the
19 presence of the other jurors.

20 So what's important that you understand is that a lot of
21 the times jurors think they know, Hey, I can't talk to my family, I
22 can't talk to my friends. Right? That seems like pretty common
23 sense. What a lot of jurors don't realize is you can't even speak to
24 one another. So let's say some witness came in and, I don't know,
25 there was something interesting about that witness or you believe

1 that witness, you didn't believe that witness; when you're on
2 recess, you can't talk about the case even amongst one another. So
3 just make sure that you recognize that as well.

4 The trial begins with opening statements. The district
5 attorneys will make an opening statement if they so desire, which is
6 an outline to help you understand what the State expects to prove
7 in their case. Next, the defendant's attorney may, if they so desire,
8 make an opening statement, but they do not have to.

9 Opening statements serve as an introduction to the
10 evidence, which the party making the statement intends to prove,
11 but they are not evidence in and of themselves.

12 The presentation of evidence comes next. The State will
13 commence with its case in chief. This is the State's opportunity to
14 present its evidence. This consists of the calling of witnesses and
15 the production of physical items of evidence, such as documents
16 and/or photographs and the like.

17 Counsel for the defendant may cross-examine the State's
18 witnesses. Following the State's case in chief, the defendant may
19 present evidence and the district attorney may cross-examine the
20 defense witnesses. However, as I have said, the defendant is not
21 obligated to present any evidence.

22 Then comes rebuttal evidence. If the defendant presents
23 evidence, the State will have the opportunity to present rebuttal
24 evidence and then the defendant may have the opportunity to
25 present surrebuttal evidence.

1 The evidence in this case will consist of sworn testimony
2 of witnesses, all exhibits received in evidence, regardless of which
3 side introduces the evidence. If the attorneys on both sides
4 stipulate to the existence of a fact, you must, unless otherwise
5 instructed, accept the stipulation as evidence and regard that fact as
6 proved.

7 I may take judicial notice of certain facts or events. If I
8 take judicial notice of a fact or event, I will let you know and then
9 you must accept that fact as true.

10 In every case, there are two types of evidence. Those are
11 referred to as direct evidence and circumstantial evidence. Direct
12 evidence is testimony by a witness about what the person saw or
13 heard or did. Circumstantial evidence is testimony or exhibits
14 which are proof of a particular fact from which, if that fact is proven,
15 you can infer the existence of the second fact.

16 So let me give you an example of that. So when I'm
17 talking about direct evidence, let's say after court today you get into
18 your car and as you're driving, raindrops start to fall and you have
19 to use your wipers. You're seeing rain actually fall from the sky.
20 That's direct evidence. You are a witness to the direct evidence that
21 you see rain, it's falling, and you know it's true.

22 Circumstantial evidence is a little bit different.
23 Circumstantial evidence, you get in your car after you're in court,
24 and you get into your car after court, and you start seeing the
25 clouds forming and it starts to get gray and dark and gloomy.

1 And -- but it doesn't rain. And then you get into your house, you go
2 to bed. When you wake up in the morning, you go outside, there's
3 water all over your car, there's water all over your grass, there's
4 water running down the street. You didn't see it rain, right? But
5 when you look at all of those facts collectively, that's what's
6 referred to as circumstantial evidence that it did rain.

7 You may consider both direct and circumstantial evidence
8 in deciding this case. And the law permits you to give equal weight
9 to both types of evidence. But it is up to you to decide how weight
10 you would like to give each type.

11 The parties may sometimes make objections to some of
12 the testimony or other evidence. It is the duty of a lawyer to object
13 to evidence which he or she believes may not properly be offered,
14 and you should not be prejudiced in any way against the lawyer
15 who makes objections on behalf of the party he or she represents.

16 At times I may sustain objections or direct that you
17 disregard certain testimony or exhibits. You must not consider any
18 evidence to which an objection has been sustained or which I have
19 instructed you to disregard. You also must not consider anything
20 which you may have seen or heard when the court is not in session,
21 even if what you see or hear is said or done by one of the parties or
22 by one of the witnesses.

23 In considering the weight and value of the testimony of
24 any witness, you may take into consideration the appearance,
25 attitude, and behavior of the witness, the interests of the witness in

1 the outcome of the case, if any, the relation of the witness to the
2 defendant or the State, the inclination of the witness to speak
3 truthfully or not, and the probability or improbability of the
4 witness's statements and all of the facts and circumstances in
5 evidence. Thus, you may give the testimony of any witness just
6 such weight and value as you believe the testimony of the witness
7 is entitled to receive.

8 At the conclusion of the evidence, I will instruct you on the
9 law. You must not be concerned with the wisdom of any rule or
10 law stated in these instructions or the instructions that I will read to
11 you after the evidence is in.

12 Regardless of any opinion you may have as to what the
13 law ought to be, it would be a violation of your oath to base a
14 verdict upon any other view of the law than that given to you by the
15 Court.

16 Until the case is submitted to you, you must not discuss it
17 with anyone, even with your fellow jurors. After it is submitted to
18 you, you must discuss it only in the jury room with your fellow
19 jurors. It is important that you keep an open mind and not decide
20 any issue in the case until the entire case has been submitted to
21 you under instructions from me.

22 Again, if you discover during the course of the trial, that
23 you have personal knowledge of the facts of the case or that you
24 know one of the witness, please give a note to the marshal, who
25 will present it to me.

1 After the instructions have been read to you, each side
2 will have the opportunity to present closing arguments. What is
3 said in closing arguments, again, is not evidence, just like opening
4 statements are not evidence. The arguments are designed to
5 summarize and interpret the evidence while discussing with you
6 how to apply the law to the facts in the case.

7 Since the State has the burden of proving the defendant
8 guilty beyond a reasonable doubt, the State has right to open and
9 close the arguments. This means that the State will make a closing
10 argument, followed by closing arguments from the defense, and
11 then the State may make a rebuttal closing argument. After the
12 arguments have been completed, you will retire to deliberate on
13 your verdict.

14 During the trial, it may be necessary for me to confer with
15 the lawyers at the bench about questions of law or procedure that I
16 need to make a decision on. Sometimes you may be excused from
17 the courtroom for the same reason. I will try to limit these
18 interruptions as much as possible, but please understand if we take
19 a break, it is necessary and that we appreciate your patience.

20 So a lot of the times I'll excuse you guys for 15 minutes,
21 and then it'll be 20 minutes or 25 minutes. I was a juror and I know
22 it's frustrating. It's frustrating to be out there for longer than you
23 were told you were going to be out there. Just know when you're
24 out there, we're not in here having a good old time; we're actually
25 in here discussing legal matters and we're trying to make the

1 process go more quickly. So the more we can get done when
2 you're not in here, I promise you it's better for you. So try not to
3 get frustrated, I know how easily it can be. But just know that we're
4 working on the case while we're in here.

5 You will be given a badge to wear during your jury
6 service. Please wear the badge at all times while you're in the
7 courthouse or on a break. This badge lets everyone know that you
8 are a juror in this case. This is important, because during the
9 course of the trial, the attorneys for both sides and court personnel
10 other than the marshal are not permitted to talk to members of the
11 jury. By this, I mean not only can they not talk to you about the
12 case; they cannot speak to you at all, not even to ask the time of
13 day. The badge helps them to identify you as a juror. If someone
14 will not talk to you, please understand they are not being rude. To
15 ensure the absolute impartiality of the jury, the people involved in
16 the case are bound by ethics and law to avoid contact with jurors
17 until the case is decided.

18 Next to your seat, when you get back, you will find a
19 paper and pens for your use. You are free to take notes during the
20 trial if you wish, but please keep the notes to yourself until you and
21 your fellow jurors go to the jury room to decide the case. Do not let
22 note-taking distract you.

23 You also should rely on your own memory of what was
24 said, and not be overly influenced by the notes of other jurors. If
25 jurors have conflicting notes, you should not rely on the notes,

1 because the court recorder's record contains the complete and
2 authentic record of the trial.

3 I will probably type a lot of notes during trial; please do
4 not take this into consideration. If I begin to type during a witness's
5 testimony, you are not to consider that testimony more important
6 than any other testimony. In fact, you are not to consider anything I
7 say or do or anything during this trial that suggests that I am
8 inclined to favor the claims or position of any party. I'm required to
9 remain neutral. It would be wrong for you to conclude that
10 anything I say or do means I am for one side or another in trial.

11 Discussing and deciding the facts is your job alone. You'll
12 see me doing a lot of things up here. Sometimes I'm typing out
13 notes, sometimes I'm even working on the following days'
14 calendar, while also paying attention to the trial. So don't think that
15 anything I'm doing up here is -- matters one way or the other or
16 should influence you in any way.

17 Jurors, as I spoke to you about, are also allowed to ask
18 questions. The procedures require that you write your juror
19 number and question on a full sheet of paper and give it to the
20 marshal while the witness is still in the courtroom. The marshal
21 will then bring the question to me and I will call the parties to the
22 bench and we will discuss the question.

23 Questions must be factual in nature and designed to
24 clarify information already presented. If it's a proper question
25 under court rules, I'll ask it. If the evidence rules prevent me from

1 asking the question, then I won't ask it. If I don't ask a question, I'll
2 keep the question and explain after trial the purpose of the rule that
3 precluded me from asking it.

4 Please reserve your questions until the attorneys have
5 finished asking questions of the witness, as the attorneys will likely
6 ask your question.

7 Jurors must not place undue weight on the responses to
8 their questions or draw any conclusions because a question was
9 not asked. So if you do have a question, just make sure it's one
10 question per page and you'll have to sign your name and put your
11 juror number. So if you have multiple questions, use a sheet for
12 each question, please.

13 Finally, in fairness to the parties to this case, you should
14 keep an open mind throughout this trial, reaching your conclusion
15 only during your final deliberations after all the evidence is in and
16 you have heard the attorneys' closing arguments and my
17 instruction to you on the law.

18 So we will be back here in an hour, at 1:40, for opening
19 statements and the presentation of evidence.

20 Please remember that during the recess you're
21 admonished not to talk or converse among yourselves or with
22 anyone else on any subject connected to this trial or read, watch, or
23 listen to any report of or commentary on the trial of any person
24 connected with this trial by any medium of information, including,
25 without limitation to newspapers, television, the Internet, and radio,

1 or form or express any opinion on any subject connected with the
2 trial until the case is finally submitted to you.

3 I will see you in an hour and we'll get started. Thank you.

4 [Jury recessed at 12:37 p.m.]

5 THE COURT: All right. We're outside the presence of the
6 jury. So when they get back, I'll swear them in. I just don't like to
7 do it right before a break, because who knows what happens during
8 lunch, right? So I will swear them in and then we'll go right into
9 openings.

10 Anything outside the presence?

11 MS. GOODMAN: No, Your Honor. But we just -- we do
12 have our exhibits, if Defense would like to see them. And we have
13 them marked before we start. Other than that, no.

14 THE COURT: All right. Sounds good. Let's look through
15 those pictures, so I hate when we have to, like, when the jury just
16 sits there while everybody, like, goes through --

17 MR. HAUSER: Yes.

18 MS. GOODMAN: Yes.

19 THE COURT: -- one by ohne. So let's make sure that
20 that's done. And I'll see you guys back at 1:40. Okay?

21 MS. GOODMAN: Thank you.

22 MR. LEXIS: Thank you, Judge. Just another thing too.
23 Just -- we have this testimony, at the heart of this is a vehicle, a
24 stolen vehicle.

25 THE COURT: Okay.

1 MR. LEXIS: We're going to be referring to it as an
2 unregistered vehicle, since it's uncharged, the stolen vehicle. I
3 already went over that with Robson.

4 THE COURT: Okay.

5 MR. LEXIS: And, of course, if the defendant takes the
6 stand, his statements blow that open. So I have the person whose
7 vehicle it is on notice, and he's a noticed witness. But we'll only get
8 to that if he takes the stand and --

9 THE COURT: So --

10 MR. LEXIS: -- in the meantime, I'm going to be referring
11 to it as an unregistered vehicle, an unregistered license plate.

12 THE COURT: So talk to me about that, though. Why are
13 we referring -- I get why we have to use alternative language. But
14 why are we referring it to as unregistered versus just a vehicle? I
15 don't --

16 MR. HAUSER: It's a stipulation of the parties, Your Honor.

17 MR. LEXIS: Yes.

18 MR. HAUSER: With your permission.

19 THE COURT: Okay. All right. Sounds good to me.

20 MR. HAUSER: Thank you.

21 THE COURT: All right. I'll see you guys at 1:40. Okay?

22 MR. LEXIS: Appreciate it. Thank you, Judge.

23 [Court recessed at 12:39 p.m., until 1:43 p.m.]

24 [Outside the presence of the jury.]

25 THE COURT: All right. We're back on the record in

1 C-345584-1, State of Nevada versus Ted Michael Donko. Mr. Donko
2 is present, Mr. Shaygan and Mr. Hauser on his behalf. Both deputy
3 district attorneys are also present, Ms. Rose Goodman as well as
4 Mr. Lexis.

5 Marshal O'Kelley just making sure they are lined up.

6 Is everybody -- are we using electronics for opening?

7 MS. GOODMAN: No, Your Honor.

8 MR. HAUSER: Not for the defense, Your Honor.

9 THE COURT: Okay.

10 [Pause in proceedings.]

11 [Jury reconvened at 1:44 p.m.]

12 THE COURT: All right. Do both parties stipulate to the
13 presence of the jury?

14 MR. HAUSER: Yes, Judge.

15 MR. LEXIS: Yes, Your Honor.

16 THE COURT: Wonderful. All right. Ladies and
17 gentlemen, thank you for coming back. Welcome back. Hope you
18 had a good lunch.

19 We are going to administer the juror oath at this time. So
20 would you please stand and raise your right hand.

21 [Jury sworn.]

22 THE COURT: State, are you prepared to give your
23 opening statement at this point in time?

24 MS. GOODMAN: Yes, Your Honor.

25 THE COURT: All right. Please do so.

1 MS. GOODMAN: Thank you.

2 **OPENING STATEMENT FOR THE STATE**

3 MS. GOODMAN: Ladies and gentlemen, the facts of this
4 case are simple. On October 1st, 2019, you will hear that DeAndre
5 Woods, Fernando Espinoza, and Jonathan Sanchez were outside
6 of 56 North Linn Land, here in Las Vegas, Clark County, Nevada.

7 You're going to hear that they were helping DeAndre's
8 ex-girlfriend and occupant of that house, named Elaine, move some
9 miscellaneous furniture and things into a white pickup truck.

10 You're going to also hear and the evidence is going to
11 show that the defendant, Ted Donko, arrived in a older Toyota
12 Corolla at around -- right about 12:14 noon.

13 You're also going to hear that he arrived in the -- on the
14 passenger side, got out, and fired at least eight rounds, striking the
15 house, striking Jonathan on both -- both in the right and the left leg,
16 striking Fernando in the abdomen and in the arm, and almost
17 hitting DeAndre Woods.

18 Now, you're going to also hear that that same Toyota
19 Corolla that was in that -- involved in that shooting was found just a
20 couple of blocks away from the actual shooting. You're going to
21 hear that there's evidence that links Ted Donko to that same Toyota
22 Corolla, and you're also going to see that -- and you're also going to
23 hear that there is a red shirt that belongs to the defendant, along
24 the same path that was walked.

25 Now, ladies and gentlemen, you're going to hear from the

1 patrol officers, you're going to hear from the detectives in this case,
2 you're going to hear from crime scene analysts in this case. You're
3 also going to hear from witnesses.

4 And after everything that you hear, after all the evidence
5 that's presented, the State's going to ask you to use your common
6 sense and find the defendant guilty as charged. Thank you.

7 THE COURT: Defense, at this time would you like to make
8 an opening statement?

9 MR. SHAYGAN-FATEMI: Yes, Your Honor. Thank you.

10 **OPENING STATEMENT FOR THE DEFENDANT**

11 MR. SHAYGAN-FATEMI: A Mexican man with no tattoos
12 shot at these individuals. Not a white man covered in tattoos.

13 Good afternoon, folks. We are here this afternoon
14 because three people got shot, Jonathan Sanchez, Fernando
15 Espinoza, and DeAndre Woods. This is a case of mistaken identity.
16 Robson and I are very confident that you're going to see that very
17 quickly into this trial.

18 Honorable Bluth is going to give you the law that you
19 folks are going to use in this case. You're going to apply the facts
20 that you're going to hear in this case to that law. That's why the
21 facts of this case are so vitally important, folks.

22 So what are the facts? As each victim takes the stand in
23 this case, and I want you to remember this, folks, not a single one
24 of them can identify Ted with absolute certainty that he was the
25 shooter in this case. Two of them, Jonathan Sanchez, Fernando

1 Espinoza, can't identify anybody. They're going to get up here,
2 they're not going to know anything.

3 DeAndre Woods is going to get up here. He's not 100
4 percent sure that Ted is the shooter in this case. But DeAndre
5 Woods is 100 percent sure about certain things. He's 100 percent
6 sure that the shooter was Mexican. He's 100 percent sure the
7 shooter had no tattoos.

8 And if you haven't already figured it out, not because I'm
9 telling you, he's white and he's covered in tattoos. So odds are,
10 you're going to learn, that if the shooter was white and the shooter
11 had tattoos, somebody would say it. None of them said it. So as
12 you sit here in this trial, you're not going to hear anybody say that.

13 The prosecutors in this case, folks, are going to try to
14 hang their hat on the fact that there's some fingerprint evidence,
15 that there's some DNA evidence, you heard Ms. Goodman talk
16 about the red shirt. What she didn't mention to you is there were
17 eight cartridge cases from a gun recovered from the scene. They
18 were tested by a forensic laboratory technologist, and nothing
19 came back to Ted. So remember, we're telling you that, folks.

20 Something else the State didn't mention in their opening,
21 the red shirt that's found also contains somebody else's DNA.

22 I think as the trial goes on, the State's going to make you
23 wonder, well, why is Ted even in this area? Well, he lives in the
24 area, folks. So there's an absolute reason that this man is in that
25 area, if you haven't learned already, and you're going to see that

1 with your own eyes, not because I'm telling you.

2 Folks, I want you to remember this. The victims in this
3 case are victims. They're not 100 percent sure Ted is the shooter.
4 We don't know who the shooter is. We're 95 percent sure he's the
5 shooter. Yet the prosecutors who weren't there are 100 percent
6 sure he's the shooter. How is that possible?

7 Robson and I are absolutely confident, we hold our heads
8 up high, that you won't be able to convict Ted on mere suspicion
9 alone in this case.

10 I appreciate your time, folks.

11 Thank you so much, Your Honor.

12 THE COURT: Thank you.

13 State, are you ready to call your first witness?

14 MR. LEXIS: Yes. Could we just approach real quick?

15 [Bench conference transcribed as follows.]

16 MR. LEXIS: It's going to be a stipulation [indiscernible].
17 Judge, I just want [indiscernible].

18 [End of bench conference.]

19 MR. LEXIS: Your Honor, there will be more, but for now,
20 there's a stipulation for both parties 2 through 231 will be admitted
21 into evidence.

22 MR. HAUSER: That's correct, Judge.

23 THE COURT: All right. So the stipulation, then, those will
24 be admitted, please.

25 [State's Exhibit Nos. 2 through 231 admitted.]

1 MR. LEXIS: State calls Officer Hennig.

2 THE COURT: Thank you.

3 **ALAN HENNIG,**

4 [having been called as a witness and first duly sworn, testified as
5 follows:]

6 THE CLERK: Please state your complete name, spelling
7 both your first and last name for the record.

8 THE WITNESS: Alan Hennig, A-L-A-N, H-E-N-N-I-G.

9 THE CLERK: Thank you.

10 **DIRECT EXAMINATION**

11 BY MR. LEXIS:

12 Q Where do you work, sir?

13 A I work for the Las Vegas Metropolitan Police Department.
14 I'm currently --

15 Q How long have you worked there?

16 A Been there for 18 months.

17 Q Were you working on October 1st, 2019?

18 A I was.

19 Q In the capacity of a police officer?

20 A Yes, sir.

21 Q Were you on duty at around 12:14?

22 A I was.

23 Q At around 12:15, were you dispatched to a shooting at 56
24 North Linn Lane, here in Clark County?

25 A Yes, I was.

1 Q What were the details of the call?

2 A Details of the call was there was two victims that were
3 shot with apparent gunshot wounds. There was a gray silver
4 Toyota Corolla -- or, sorry, a gray Toyota Corolla that was last seen
5 heading eastbound on Charleston, leaving the scene.

6 Q Is there a description of the victims?

7 A There was. It was two Hispanic males, one was -- the
8 shooter was 5-11, wearing red, and the driver was wearing black.

9 Q Okay. So just to not get confused, I was asking about the
10 victims. You described --

11 A Oh, I'm sorry. The victims.

12 Q You described the suspects. You said the shooter,
13 around 5-11, Hispanic, wearing red, and the other one wearing
14 black; is that true?

15 A Yes, sir.

16 Q Okay. Now, did you -- when you arrived at this residence,
17 did you come in contact with the victim?

18 A I did. There was two males laying on the ground, one on
19 each side of the truck, with gunshot wounds.

20 Q You know where those gunshot wounds were?

21 A Yes. One victim was shot through the leg and the other
22 victim was shot through the hand and the stomach.

23 Q And you stated that they were laying near the truck?

24 A Yes.

25 Q I'm showing you State's Exhibit 9; do you recognize this,

1 sir?

2 A I do. That's the house and that's the truck.

3 Q Is this 56 North Linn Lane?

4 A Yes, sir.

5 Q And that white truck off to the left center, that's the truck
6 you're talking about?

7 A Yes, sir.

8 Q Okay. And both of these victims that were shot, where
9 were they laying again?

10 A One was to the right side of the truck in the driveway and
11 the other was on the left side of the truck in the driveway.

12 Q What else did you observe, sir?

13 A There was impact case -- impacts on the truck and the
14 garage, and there was eight shell casings in the street.

15 Q Showing you State's Exhibit 48; do you recognize that
16 picture, sir?

17 A Yes. That's the impacts into the truck.

18 Q And where particularly are they at?

19 A The driver side rear end of the truck.

20 Q Okay. I know you didn't place these green stickers here,
21 but is this an accurate description of where those holes were, those
22 two --

23 A Yes.

24 Q -- bullet holes? Okay.

25 A Yes.

1 Q Showing you State's Exhibit 53; sir, is that just a different
2 angle of the same truck?

3 A Correct.

4 Q State's 47; and just a different angle?

5 A Yes.

6 Q Showing you State's 77; what are we looking at here?

7 A Looking at the bottom of the garage door, the impact
8 there.

9 Q Okay. And again, I know you didn't put that green sticker
10 there, but is that true and correct representation of where you
11 observed the hole?

12 A Yes.

13 Q State's 90; what are we looking at here?

14 A Another impact on the right side of the garage door.

15 Q And again, is it down here pretty much in the middle of
16 the -- part of the door?

17 A Yes.

18 Q Now, you said you also saw shell casings in the street?

19 A Correct.

20 Q Showing you State's Exhibit 11; and, sir, is this the same
21 residence, 56 North Linn Lane?

22 A It is.

23 Q You see the truck there?

24 A Correct. Yes.

25 Q Again, sir, I know you didn't put these place markers in

1 the street there, those yellow things, but is that roughly where you
2 saw the shell casings when you arrived?

3 A It is.

4 Q After you observed this incident, dealt with the victims,
5 did you see if anybody else was around?

6 A There was the homeowners that were there, and then
7 there was some people at that AutoZone that were just kind of
8 standing around observing what we were doing and stuff.

9 Q Okay. That -- basically, the people around the home, wee
10 they cooperative?

11 A They were not cooperative at all.

12 Q Okay. Indicate why?

13 A They were afraid of retaliation.

14 MR. HAUSER: Objection. Speculation.

15 THE COURT: Sustained.

16 MR. HAUSER: Motion to Strike.

17 THE COURT: Granted.

18 BY MR. LEXIS:

19 Q You said they were hesitant to testify -- I mean to
20 cooperate?

21 A Yes, sir.

22 Q Tell me what were their -- what was their reaction, without
23 telling me what they were saying, what was their reaction when
24 you were speaking to them?

25 A They looked like they were scared and they were afraid.

1 Q Okay. Sir, I'm showing you State's Exhibit 2; is this a true
2 and correct representation of the neighborhood?

3 A Yes, it is.

4 Q Down in the corner, do you see where that marker says 56
5 North Linn Lane?

6 A I do.

7 Q Is that a true and correct representation of where --

8 A Yes.

9 Q -- the house of the shooting took place?

10 A Yes, sir.

11 Q Okay. Just a close-up view, again, that's where the shell
12 casings were in front of, as long -- as well as the truck where the
13 two victims laying in the street?

14 A Yes, sir.

15 Q Or in the driveway?

16 A Yes, sir.

17 Q Okay. After you dealt with the people around there, the
18 victims, saw the shell casings in the street, the holes in the truck
19 and in the garage, what did you do next?

20 A We taped off the scene, just preserved it for the detectives
21 to come.

22 Q So you stayed on the scene until, basically, detectives
23 came to -- and then handed it over to them?

24 A Yes, sir.

25 MR. LEXIS: No further questions, Your Honor.

1 THE COURT: All right. Mr. Hauser?

2 MR. HAUSER: Yes, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. HAUSER:

5 Q Good afternoon, Officer.

6 A Good afternoon.

7 Q So just a couple of questions for you. Could you describe
8 the description -- describe the description -- you talked about the
9 description that you got of the shooters; is that right?

10 A Correct.

11 Q You mentioned that to Mr. Lexis?

12 A Yes.

13 Q And the shooters were both described as Hispanic males,
14 right?

15 A Correct.

16 Q And you got that description from the people that were
17 present at the scene at the time you got there?

18 A We got it from the call itself, and then when we got there,
19 yes, sir.

20 Q From the call itself and through them when you got there.
21 There were Hispanic people at the scene when you arrived; is that
22 fair to say?

23 A Yes.

24 Q Two of the victims in this case are both Hispanic?

25 A Yes.

1 Q And from the description of the people at the scene, the
2 description you got was two Hispanic males?

3 A Yes.

4 MR. HAUSER: I have nothing further at this time.

5 THE COURT: Redirect?

6 **REDIRECT EXAMINATION**

7 BY MR. LEXIS:

8 Q Sir, just that description again, with regards to the two
9 Hispanic males, you also got a car description, the gray Toyota
10 Corolla?

11 A Yes, sir.

12 Q As well as the shooter being around 5-11, wearing red,
13 driver wearing black?

14 A Yes, sir.

15 Q Okay.

16 MR. LEXIS: Nothing further, Judge.

17 THE COURT: Recross?

18 MR. HAUSER: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, do you
20 have any questions for this officer? Showing no hands.

21 Thank you so much for your testimony, Officer. You are
22 excused. Please don't share your testimony with anyone else
23 involved in the case.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: All right. Thank you.

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State, next witness?

MR. LEXIS: Officer Corbett.

JAMES CORBETT,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: Officer James Corbett, J-A-M-E-S, C-O-R-B-E-T-T.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. LEXIS:

Q Where do you work, sir?

A Police officer Las Vegas Metropolitan Police Department.

Q How long have you worked there?

A Well over 20 years.

Q Where have you been over those 20 years as far as area of commands?

A Northeast Area Command for most.

Q On October 1st, 2019, were you working as a police officer?

A Yes, sir.

Q At around 12:14, did you assist in a call regarding a shooting at 56 North Linn Lane?

A Yes, sir.

1 Q What were the details of the call?

2 A Details were two subjects were shot and the suspects
3 were left -- were seen leaving in a gray Toyota Corolla with the
4 shooter wearing red, about 5-foot-11, and the drive wearing black.

5 Q That being two Hispanic male adults?

6 A Yes, sir.

7 Q Did you help assist in locating the suspect vehicle?

8 A Yes, sir. They tailed the area, came across a vehicle
9 matching the description of the suspect vehicle on White Cap at
10 Surf, it was parked along the south side of White Cap.

11 Q Okay. And was it -- did that come out to be an
12 unregistered gray or silver four-door Toyota Corolla?

13 A Yes, sir.

14 Q Was it in -- located in the same general neighborhood as
15 the shooting?

16 A Yes, sir.

17 Q Showing you State's Exhibit 3; do you see 56 North Linn
18 Lane located at the bottom part of this map --

19 A Yes, sir.

20 Q -- with a red dot?

21 A Yes, sir.

22 Q Is that a true and correct representation of the shooting
23 location, 56 North Linn Lane?

24 A Yeah, I didn't actually make it to the shooting location, but
25 that's where the call was supposed to be at.

1 Q Okay. Now, with regards to where the Toyota Corolla was
2 found, do you see the black dot in the middle of this?

3 A Yes, sir.

4 Q Going to zoom in. Is that roughly the location of where
5 you found the Toyota Corolla?

6 A Yes, sir.

7 Q That Toyota Corolla have a license plate on it?

8 A No, sir, it was unregistered.

9 Q Okay. Did you look inside?

10 A Yes, sir. Looked inside. There was no one inside the
11 vehicle. Did notice a round lying on the passenger floor.

12 Q Okay. When you say a round, was it an unspent round?

13 A Unspent round.

14 Q Showing you State's 206. But before I go there, sir, I'm
15 going to zoom out where -- as you can see where the Toyota
16 Corolla, you said, was found by yourself?

17 A Yes, sir.

18 Q Zooming out to where you could also see 56 North Linn
19 Lane, just a few blocks, fair to say?

20 A Yes, sir.

21 Q State's 206; recognize this vehicle, sir?

22 A Yes, sir. This is the vehicle I located on White Cap.

23 Q State's 207; is that just a different angle, sir?

24 A Yes, sir.

25 Q State's 208; again, is that the vehicle --

1 A Yes, sir.

2 Q -- no license plate? Is that a yes?

3 A Yes, sir.

4 Q Thank you.

5 Showing you State's 214; why is this picture significant,
6 sir?

7 A That's the unspent round that was lying on the passenger
8 floor.

9 Q Okay. That you observed while looking in it?

10 A Yes, sir.

11 Q Basically, is that the close-up of that round?

12 A Yes, sir.

13 Q So, sir, after you observed the suspect vehicle and the
14 unspent round inside, what did you do?

15 A Stayed there with the vehicle, preserving it, and detectives
16 eventually arrived, and I was relieved from that location.

17 Q Okay. So, basically, preserved the scene until crime scene
18 analysts and detectives arrived?

19 A Yes, sir.

20 MR. LEXIS: Nothing further, Judge.

21 THE COURT: Cross?

22 MR. SHAYGAN-FATEMI: A moment of indulgence, Your
23 Honor.

24 Officer, thank you for your time.

25 THE WITNESS: Yes, sir.

1 MR. SHAYGAN-FATEMI: No questions, Your Honor.
2 THE COURT: All right. Thank you.
3 MR. SHAYGAN-FATEMI: Thank you.
4 THE COURT: And so, Officer -- well, I should ask:
5 Ladies and gentlemen, any questions for this officer?
6 All right. So you're excused from your subpoena. Please
7 don't discuss your testimony with anyone else involved in the case.
8 Thank you for coming in today.
9 THE WITNESS: Yes, ma'am.
10 THE COURT: State, next witness?
11 MR. LEXIS: Officer Gadea.
12 **BERGMAN GADEA,**
13 [having been called as a witness and first duly sworn, testified as
14 follows:]
15 THE CLERK: Please state your complete name and spell
16 both your first and last name for the record.
17 THE WITNESS: My first name is Bergman, spelled
18 B-E-R-G-M-A-N, and my last name is Gadea, G-A-D-E-A.
19 THE CLERK: Thank you.
20 **DIRECT EXAMINATION**
21 BY MR. LEXIS:
22 Q Where do you work, sir?
23 A I work for the Las Vegas Metropolitan Police Department.
24 Q How long have you worked there?
25 A I've been employed for about six years.

1 Q What area command are you currently at?

2 A Currently assigned to the Northeast Area command.

3 Q On October 1st, 2019, were you working?

4 A I was.

5 Q At around 12:14, did you dispatch to a shooting call that
6 occurred at 56 North Linn Lane?

7 A Yes, sir.

8 Q What was the nature of the call?

9 A The details given to us were that a shooting had occurred
10 where two subjects had been struck. The suspect vehicle was
11 described as a silver Toyota Corolla. The occupant was described
12 as a Hispanic male, approximately 5-11, wearing a red shirt, and the
13 driver was described as a Hispanic male wearing a black shirt.

14 Q Specifically, the shooter being around 5-11, wearing red,
15 Hispanic, and a driver wearing black?

16 A That is correct.

17 Q When you got there, did you take on a role of trying to
18 locate evidence?

19 A That is correct. By the time I got there, there was already
20 units on scene. So I took on the role of canvassing the surrounding
21 streets to locate evidence.

22 Q Did you locate any evidence?

23 A I did. While I was driving near the neighborhoods, near
24 Big Sea and Sea Way, two small streets near the location of the
25 shooting, I located a red shirt on the side of the road.

1 Q Showing you State's Exhibit 4. Sir, at the bottom of this
2 map, do you see a red dot indicating 56 North Linn Lane?

3 A I do.

4 Q Is that a true and correct representation of that address?

5 A That is correct.

6 Q Also in the middle of this map, do you see a red dot
7 indicating red shirt?

8 A I see the dot, yes, sir.

9 Q Is that a true and correct representation of where you
10 observed that red shirt?

11 A Yes, sir, Big Sea and Sea Way.

12 Q Fair to say a few blocks from 56 North Linn Lane?

13 A A few blocks away, yes, sir.

14 Q Okay. How did this shirt appear to you?

15 A The shirt did not have any tire marks on it. It wasn't
16 flattened or wet; appeared to have just been laid there.

17 Q State's 228; is that true and correct representation of
18 where you observed that shirt --

19 A Yes, sir.

20 Q -- and its condition?

21 A Yes.

22 Q State's 229; is that just a different view, sir?

23 A Yes, sir.

24 Q 230, is this after somebody has expanded it out?

25 A Correct.

1 Q Okay. State's 225; is that a different -- just general
2 description, the cop car and the house it's in front of?

3 A Different angle, yes.

4 Q What's that, sir?

5 A Just a different angle. But it is, yes, sir.

6 Q Okay. State's 223 again, just a close-up of the address it's
7 located in front of?

8 A Correct.

9 Q Is that correct? Okay.

10 State's 224, again just a different angle, sir?

11 A Yes, sir.

12 Q State's 226, again, just notating where you found it?

13 A Yes, sir. Big Sea.

14 Q Big Sea and Sea Way?

15 A That is correct.

16 Q And again, sir, State's 4; that corresponds with Big Sea
17 and Sea Way here --

18 A Yes, sir.

19 Q -- both streets?

20 A The little streets.

21 Q All right. Where the red dot is, correct?

22 A Correct.

23 Q Okay. So after you located it, sir, what did you do?

24 A Once I located it, I broadcast it over the radio that I found
25 a red shirt. After making sure there was nobody else in -- around

1 the shirt, we stood by, we patrol officers stood by until detectives
2 and ID personnel showed up --

3 Q Okay.

4 A -- to process.

5 Q To, basically, preserve the scene until --

6 A Preserve the scene until detectives and CSA showed up.

7 MR. LEXIS: No further questions, Your Honor.

8 THE COURT: Defense?

9 MR. HAUSER: Officer, thank you for your time.

10 Judge, we have no questions for him.

11 THE COURT: Ladies and gentlemen of the jury, any
12 questions? All right.

13 Sir, you are excused from your subpoena. Please don't
14 share your testimony with anyone else involved in the case. Thank
15 you for coming. Have a great day.

16 THE WITNESS: Thank you.

17 MR. LEXIS: Judge, may we approach, please?

18 THE COURT: Yes.

19 [Bench conference transcribed as follows.]

20 MR. LEXIS: Judge, when we stipulated with all the
21 pictures, everything wasn't marked yet. So I just want to -- because
22 now the crime scene surveillance are coming on. I just want to
23 make sure we have all the pictures marked now, so we could put
24 them --

25 THE COURT: Yeah. Okay.

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[End of bench conference.]

THE COURT: Are you ready to call your next witness?

MS. GOODMAN: Yes, Your Honor. It's Jennifer Strumillo.

THE COURT: Okay.

JENNIFER STRUMILLO,

[having been called as a witness and first duly sworn, testified as follows:]

THE COURT: Thank you. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: Jennifer, J-E-N-N-I-F-E-R, Strumillo, S-T-R-U-M-I-L-L-O.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. GOODMAN:

Q Good afternoon.

A Good afternoon.

Q How are you employed?

A I'm a crime scene analyst 2 with the Las Vegas Metropolitan Police Department.

Q And how long have you been employed there?

A Oh, about three years.

Q And you said crime scene analyst number 2.

A Uh-huh.

Q Is there a difference between a crime scene analyst 1 and 2?

1 A Yes.

2 Q Okay.

3 A The crime scene analyst 1 typically is two years, and then
4 we progress to a crime scene analyst 2, where we're allowed to do
5 more complex scenes without supervision.

6 Q Okay. Now, do you have certain training and experience
7 that gets you to that level?

8 A Yes. I have a bachelor's in science for a physiological
9 science from UCLA. I also went through the LVMPD academy,
10 which is about three months, where we learn note-taking,
11 photography, report writing, diagramming, several forms of
12 evidence collection, such as latent print processing. We also learn
13 to recover DNA, trace evidence, document, shooting
14 documentation, bloodstain pattern -- spatter documentation.
15 Basically, anything that you would encounter in a crime scene.

16 Q Well, you've kind of already explained to them what your
17 responsibilities, but what's your main responsibility as a crime
18 scene analyst do?

19 A It's basically to document crime scenes and identify any
20 evidence and recover any evidence that might be useful.

21 Q Okay. And let's talk about recovering evidence. Is there
22 an event number that's assigned to each case that Las Vegas
23 Metropolitan Police Department has?

24 A Yes.

25 Q Okay. And can you tell us a little bit about that event

1 number?

2 A Typically, the first two numbers will correspond to the
3 year. The next two numbers will correspond to the month. And
4 then the last numbers of the event are typically assigned in order
5 sequentially, starting at the beginning of the year. So, for
6 example, 2002, 000, and then the following number would be, you
7 know, the one that actually corresponds to the events.

8 Q Okay. Now, impounding evidence, is that something that
9 you do within your role as the crime scene analyst?

10 A Yes, it is.

11 Q Okay. Can you explain to the ladies and gentlemen of the
12 jury kind of how you do that?

13 A So, typically, we would wear proper personal protective
14 equipment, we would put on gloves, masks, whatever we need,
15 before actually collecting anything. Before actually moving
16 anything, we always document, take notes, photos, whatever we
17 need to do.

18 Then once we're ready to pick up the evidence after we've
19 documented it, we'll place it in the proper container, such as a
20 paper bag. Typically, there'll be an inner package where we put our
21 event number, P number, initials, case identifying number, and item
22 number. And then -- and the date as well of the event.

23 And then we put it in another container. And on that
24 container, we'll put our evidence label.

25 Q Okay. Now, as a crime scene analyst 2, you're trained,

1 again, specifically to swab for DNA?

2 A Yes.

3 Q Collect latent print fingerprints?

4 A Yes.

5 Q Okay. Digital imaging?

6 A Yes.

7 Q Okay. Can you tell us a little bit about the digital imaging
8 process?

9 A Typically, we use DSLR cameras, so we adjust settings
10 accordingly. We're taught this in our academy. And then we
11 typically do an overall shot of where the location is. And then once
12 we identify items of evidence, we'll move a little closer, we'll do a
13 mid-range, and then we'll do kind of a close-up identification shot
14 with the items of evidence.

15 Q Okay. Now, when we talk about processing scenes, at
16 every scene that you respond to, is there always going to be DNA
17 evidence, fingerprint evidence, or just things that you can analyze
18 forensically?

19 A No, that's not always the case. Some scenes are -- can be
20 very different. Some cases we might not have much, we simply
21 document. But in other cases, we just kind of -- it depends on the
22 scene, really.

23 Q Okay. Now, when you -- let's talk about when you first
24 arrive on a scene, do you typically get briefed by patrol or the
25 detectives that are on scene?

1 A Yes, typically, that's the case.

2 Q Okay. And why is that?

3 A To gain any insight, any details of the event. It also helps
4 us with learning where we can look for evidence if we have a little
5 bit of details of what happened.

6 Q Okay. Now, I'm going to talk about -- draw your attention
7 to October 1st, 2019, at approximately 1:14 or so; did you respond
8 to a scene at 56 Linn Lane, here in Las Vegas, Clark County,
9 Nevada?

10 A Yes.

11 Q Okay. What was the nature of the call?

12 A It was a battery with a deadly weapon call, a shooting,
13 essentially.

14 Q Okay. Now, when you got to the scene, what was the first
15 thing that you did?

16 A The first thing I did is make contacts with officers and
17 detectives to get a brief.

18 Q Okay. After the briefing occurred, did you walk the scene?

19 A I did.

20 Q Okay. Did you observe a vehicle in the driveway?

21 A Yes.

22 Q All right. I'm going to show you State's Exhibit 9; is that
23 the 56 Linn Lane?

24 A Yes.

25 Q All right. And that is the white Ford pickup truck that's in

1 the front?

2 A Correct.

3 Q Okay. Now, when you first arrived on the scene in this
4 area over here by the fencing and the street, did you observe
5 anything?

6 A Yes. There were --

7 Q What did --

8 A -- eight cartridge cases.

9 Q Okay. And now your role of crime scene analyst, you
10 mark things of evidentiary nature; is that correct?

11 A Yes.

12 Q Okay. Showing you State's Exhibit 11; what are those
13 little yellow placards?

14 A Those are our markers that we use, that way we can
15 distinguish between different evidence, especially when they look
16 kind of the same. We can see where each item was in the photo.

17 Q Okay. And it looks as though you have 1 through 8; what
18 would that indicate?

19 A Those would be the cartridge cases that are marked.

20 Q Okay. And now in your experience both as a crime scene
21 analyst 2 and working for the Las Vegas Metropolitan Police
22 Department, you're aware of how firearms work?

23 A Yes.

24 Q Okay. And are you familiar with the difference between,
25 let's say, a cartridge, a cartridge case, a casing, bullet, bullet

1 fragment?

2 A Yes.

3 Q Okay. Can you explain to the ladies and of the -- ladies
4 and gentlemen of the jury kind of the difference between all those
5 phrases?

6 A Yeah. So, essentially, the cartridge itself, it's the
7 complete -- the complete round of ammunition. So typically, one
8 thinks of a bullet, you know, you put bullets in the gun. It's actually
9 the cartridges that you're loading. The cartridge itself contains the
10 case, the cartridge case, primer, powder, and the actual bullet,
11 which is the projectile. So only the bullet will travel through the
12 barrel and reach its target.

13 The actual cartridge case, however, just gets thrown out,
14 basically, of the ejection port at the top of the slide, and it'll land a
15 little bit closer, whereas the bullet will actually go to the target and
16 strike the target.

17 Q Okay. So what we're seeing here in this picture are the
18 casings?

19 A The -- yes. The cartridge cases.

20 Q Okay. And then showing you State's Exhibit 12; looks like
21 this is 1 through 7; is that correct?

22 A Yes.

23 Q And then State's Exhibit 13; 8's kind of a little bit further
24 away?

25 A Yes.

1 Q Okay. And what -- let's talk about State's Exhibit 14, it's
2 marked 1 and 2, correct?

3 A Correct.

4 Q And again, you kind of explain that digital imaging
5 process where you do something from a far view, mid-range, and
6 close-up; is that correct?

7 A Correct.

8 Q Fair to say that maybe everything in this stack isn't going
9 to be every single picture that you take -- that you took that day?

10 A Yes.

11 Q Okay. So showing you State's Exhibit 15; is that the first
12 casing?

13 A It is.

14 Q All right. Now, I'm going to show you State's Exhibit 16;
15 what are we looking at here?

16 A That would be the head stamp of the cartridge case.

17 Q Okay. And what's a head stamp?

18 A It's, basically, the back of the cartridge case. When you
19 load them up, the head stamp is the part, basically, on the top of
20 the cartridge case that the firing pin actually hits.

21 Q Okay. And what -- it has a little label up there, is that
22 correct?

23 A Yes.

24 Q Okay. What's the label of that piece?

25 A It would be Winn 40 S&W, that would be the head stamp.

1 Q The head stamp.

2 A Legally.

3 Q And the head stamp is unique to every single cartridge?

4 A It is for -- yes, for manufacturers. So all of these actually
5 have the same head stamp, but the actual, you know, head stamp
6 would be the same in this case. They're not always the same,
7 though.

8 Q Okay. What would it -- the fact that every single one of
9 these head stamps are the same, what would that indicate to you?

10 A That it probably came from the same ammunition, round
11 of ammunition that it was loaded.

12 Q Okay. I'm going to show you State's Exhibit 18; what are
13 we looking at here?

14 A That's the second cartridge case.

15 Q Okay. And again, State's Exhibit 19; again, is that another
16 head stamp of the second casing?

17 A That's correct.

18 Q Okay. Drawing your attention to State's Exhibit 20; is that
19 just 3 and 4?

20 A Yes.

21 Q Which would indicate the third and fourth casings found?

22 A Yes. Yes.

23 Q Okay. Showing you State's Exhibit 21; close-up of 3?

24 A That's correct.

25 Q State's Exhibit 22; again, matching head stamp?

1 A Yes.

2 Q All right. Going to show you State's Exhibit 24; is that just

3 the four casing?

4 A That's correct.

5 Q Okay. I know this might be a little redundant. State's

6 Exhibit 26; fifth casing?

7 A Yes.

8 Q Same head stamp?

9 A Yes.

10 Q State's Exhibit 28; is that the sixth casing?

11 A Yes.

12 Q State's Exhibit 29; head stamp of six?

13 A Correct.

14 Q Matching head stamp?

15 A Yes.

16 Q State's Exhibit 31; is that the seventh casing?

17 A Yes.

18 Q Matching head stamp?

19 A Correct.

20 Q State's Exhibit 33; eighth casing?

21 A Yes.

22 Q Matching head stamp?

23 A Yes.

24 Q All right. Let's go move on a little bit to the actual scene

25 that you walked. All right. Let's talk about State's Exhibit 34.

1 Now, as you enter the driveway, was that -- is that
2 apparent blood that's to the center of the driveway?

3 A Yes.

4 Q Okay. Again, State's Exhibit 35; is that one of those
5 mid-range photos?

6 A That's correct.

7 Q State's Exhibit 41, again, kind of a close-up of that
8 apparent bloodstain?

9 A Yes.

10 Q State's Exhibit 45; is that a closer view of that cardboard
11 or wooded board there to the right of that -- to the left of that fence?

12 A Yes.

13 Q Now, State's Exhibit 46; what are we looking at here?

14 A That's a close-up of the garage for Unit 56.

15 Q Okay. And we'll talk more about that chair in front of it,
16 but did you observe anything with that chair?

17 A Yes. It appeared to have defects on it. It was damaged, it
18 was broken. So I did mark them later.

19 Q Okay. We'll get there. There's a lot to go through.

20 State's Exhibit 47; what are we looking at here?

21 A That's the vehicle and -- with the bullet holes to the driver
22 side.

23 Q Okay. And let's talk about this group of photos. When
24 you are walking the scene and when you're documenting, you're
25 documenting at this point the impacts from the bullet?

1 A Yes.

2 Q Okay. So you saw apparent -- the three apparent bullet
3 holes inside -- on the side of that truck?

4 A Yes.

5 Q Okay. And then State's -- show you State's Exhibit 53. All
6 right. Now, are you the one that actually marked those?

7 A I am.

8 Q Okay. And how do you mark them?

9 A So, typically, with bullet holes, we mark them
10 sequentially. We'll start with letters, we'll go A, B, C. If there
11 appears to be a corresponding defect or hole, we'll start numbering
12 with numbers, so we'll put a number next to the letter. So we'll go
13 A1, A2, for the following sequence. And then we just continue until
14 we get to double letters, triple letters, depends on what we have on
15 scene.

16 Q Okay. So those are either marked A, B, C, or A1, or B1?

17 A Yes. In this case, they would be marked A1, E1, you know,
18 if it continues. If it seems like there's a continuation of the path,
19 then it'll be B2, depending on what it is.

20 Q Okay. I'm going to show you State's Exhibit 51; is that a
21 close-up of one of those bullet impacts?

22 A Yes.

23 Q Okay. State -- showing you 52; another close-up?

24 A Yes.

25 Q I'm going to show you State's Exhibit 54; now, that's

1 labeled B2?

2 A Correct.

3 Q And that would indicate on State's Exhibit 56 -- so the first
4 green label that's up top there, if that's B1 -- oh, I'm sorry. I don't
5 think I have them marked here. Would that trajectory of B1 and B2,
6 what would that indicate?

7 A So we could actually see through the taillight that we
8 could see the hole that -- where B1 was. So we determine that B1
9 was on the driver side of the bed, whereas B2, we called B2 the
10 actual taillight damage, because it looked like it went through.

11 Q Okay.

12 A So that's what that would indicate. C2 would be the
13 continuation of C1.

14 Q Again, the trajectory of the bullet?

15 A Yes.

16 Q Okay. Showing you just State's Exhibit 55, C1; just a
17 close-up of that -- another bullet impact?

18 A Yes.

19 Q 57, which is for C2; and again, that's just the trajectory of
20 what you believe the trajectory of that bullet impact was?

21 A Yes.

22 Q All right. Now I'll show you State's Exhibit 58; over here
23 on the left-hand corner where it's a little impact of the wood, what
24 did you observe there?

25 A That appeared to be also a bullet hole in the wood.

1 Q Okay. State's Exhibit 59, just a close-up of that?

2 A [No audible response.]

3 Q Is that correct?

4 A Yes.

5 Q Okay.

6 A Yes. Sorry.

7 Q And that's marked in D1?

8 A Correct.

9 Q Okay. And now this white pick-up truck, State's

10 Exhibit 61; it just had miscellaneous furniture and objects inside the

11 back of that pick-up truck?

12 A Yes.

13 Q Okay. State's Exhibit 62, just a different angle of that?

14 A Correct.

15 Q Okay. Now, State's Exhibit 63; we just looking at the other

16 side of that truck?

17 A Yes.

18 Q Okay. State's Exhibit 64; another view?

19 A Correct.

20 Q State's Exhibit 65; what are we looking at there?

21 A We're looking the area of the driveway that's north to --

22 north of the truck.

23 Q Okay. And State's Exhibit 66; closer view?

24 A Yes.

25 Q All right. State's Exhibit 67; let's talk about that chair. So

1 you said that the chair had defects on it, what did you believe those
2 defects to be?

3 A They were consistent with possible continuation of the
4 bullet holes, basically, or the bullets. The way the damage -- there's
5 pieces -- there were pieces of plastic all over the driveway,
6 including in the north side of the driveway. So it was something
7 very -- with a lot of velocity. So determined the damage, there's an
8 area of damage on the top of the seat there at the front.

9 Q Oh, I'm going to stop you there.

10 68 -- State's Exhibit 68; is that where you're talking about,
11 where it's marked?

12 A Yes. So I went ahead and labeled, as well, accordingly.

13 Q Okay. And State's Exhibit 69, close-up of that?

14 A Correct.

15 Q State's Exhibit 70, we get closer?

16 A Yes.

17 Q State's Exhibit 71, which is labeled F1?

18 A Correct.

19 Q This is just a different impact?

20 A Different area of damage, correct.

21 Q Okay. State's Exhibit 72; a close-up of that?

22 A Yes.

23 Q State's Exhibit 73, another mark there on the other side of
24 the chair?

25 A Correct.

1 Q State's Exhibit 74; just different view?

2 A Yes.

3 Q State's Exhibit 75; closer view?

4 A Yes.

5 Q Okay. Let's talk about State's 76; what are we looking at

6 here?

7 A So that's the view of the garage, the garage -- the bay

8 door for the garage.

9 Q Okay. And what's marked there on the center left?

10 A That would be one of the bullet holes.

11 Q Okay. State's Exhibit 77; is that a closer-up of that bullet

12 hole?

13 A Correct.

14 Q State's Exhibit 78; even closer one?

15 A Yes.

16 Q Okay. State's Exhibit 79; even closer?

17 A Yes.

18 Q Okay. Now, let's say -- let's talk about State's 80. It looks

19 as though in the very center, here right where I'm pointing here,

20 there's another mark that's indicated by the green tape. What are

21 we looking at there?

22 A It's actually kind of hard to see.

23 Q Oh, I'm sorry.

24 A There were -- there was --

25 Q Let me just show you the closer angles.

1 A Okay.

2 Q State's 81, that's a closer angle, and that is also clothing
3 that was found on scene?

4 A Correct.

5 Q All right. We'll talk about that in a second.
6 State's 82 is behind that board, or up -- I'm sorry, closer
7 version of that board.

8 83, is that the front of that same board?

9 A Yes.

10 Q Okay. State's Exhibit 84, what are we looking at there?

11 A We're looking at another bullet hole.

12 Q Okay. State's Exhibit 85; closer-up version?

13 A Yes.

14 Q State's 86, you can -- back of that board?

15 A Correct.

16 Q Page 87, even closer?

17 A Yes.

18 Q Okay. State's Exhibit 90; what are we looking at here?

19 A We're looking at the garage again, and another bullet
20 hole.

21 Q So there's a total of two impacts at the garage door?

22 A Yes.

23 Q Okay. Different locations, correct?

24 A Yes.

25 Q Okay. State's Exhibit 91; closer version of that?

1 A Yes.

2 Q State's 92, even closer?

3 A Yes.

4 Q All right. Now, did you attempt to go inside of the garage
5 to see where, if you can find bullet fragments?

6 A Yes, we did.

7 Q Okay. What happened when you tried to do that?

8 A We couldn't -- we didn't have the key to the garage bay
9 door, so we used a side door. There appeared to be too many
10 items in the way, so we couldn't actually access the interior of the
11 door.

12 Q Okay. So you were able to actually go look for the bullet
13 fragments or any of the dead bullets that had penetrated that
14 garage door?

15 A Correct.

16 Q Okay. Let's talk about the clothing that you found on
17 scene, okay? State's Exhibit 94; what are we looking at here?

18 A That would be the clothing north of the vehicle on the
19 driveway.

20 Q Okay. State's Exhibit 96; did you actually unfold this shirt
21 and lay it out that way?

22 A Yes.

23 Q Okay. And what did it appear to be?

24 A A shirt with apparent blood and defects.

25 Q Okay. Was this -- would it be medically cut?

1 A Yes.

2 Q Okay. Now, State's Exhibit 97. Now, do you actually label
3 the clothing as well for potential impacts?

4 A We typically mark them and -- with a scale. Our markers
5 have scales so that we can actually see how big something is in a
6 photo. So this would be a -- one of my labels with a scale. I don't --
7 I didn't actually mark them.

8 Q Okay. So State's 100; is that an example of you marking
9 one of those as -- with a scale?

10 A Yes.

11 Q Okay. State's Exhibit 101 -- or, I'm sorry, 102; is that just
12 the back of that shirt?

13 A Yes.

14 Q Sorry.

15 A Yeah, that's better.

16 Q Okay. Now, with that blue shirt, did you also find a white
17 tank top?

18 A Yes.

19 Q Okay. Showing you State's 103; is that that white tank
20 top?

21 A That's correct.

22 Q All right. And again, this white tank top, showing you 104,
23 was also marked the same way?

24 A Yes.

25 Q Okay. And then you also took close-ups of the indicators

1 in these -- case, correct?

2 A Correct.

3 Q Okay. All right. You also found different -- more clothing
4 on the other side of the truck?

5 A That's correct.

6 Q Okay. Showing you State's 110; where I'm pointing here
7 to the right by the cardboard, is that -- are those a pair -- oh, might
8 help if you see it, huh? Zooming out. Over here, near the chain
9 linked fence, is that -- or were those shorts that were found on
10 scene?

11 A I think they're -- I have more photos to show you.

12 Q Oh, you do?

13 A Yeah.

14 Q Let me show you State's 111.

15 A It's just hard to see on the screen.

16 Q Gotcha. State's 113.

17 A Yeah.

18 Q Does that help?

19 A Yeah, I think that helps a little bit.

20 Q Okay. All right. Now, there's some scissors to the side of
21 that. What do those scissors indicate?

22 A Those are typically used by medical personnel to cut the
23 clothing.

24 Q Okay. So State's Exhibit 14, which is a closer version of
25 that, those are medically -- those are medical scissors that are used

1 to medically cut the clothing?

2 A Yes.

3 Q Okay. And do you know why they medically cut the
4 clothing?

5 A Typically, it's because of the injury -- it's to access the
6 injuries quickly. That's particularly why they do it.

7 Q Okay. State's Exhibit 115, just -- did you flatten out those
8 shorts?

9 A Yes.

10 Q And again, with the shorts, State's 116, you also marked
11 those similar to the other clothing that we saw?

12 A That's correct.

13 Q Okay. Now, along with the shorts, let me show you
14 State's Exhibit -- I'm sorry, 122. Back side of those shorts?

15 A Yes.

16 Q And what are those -- what is that covered in?

17 A Apparent blood.

18 Q Okay. State's Exhibit 112, another article of clothing?

19 A Yes.

20 Q Okay. You also recovered clothing from somebody on
21 scene; is that correct?

22 A That's correct.

23 Q Okay. And did you identify that individual as well?

24 A Yes.

25 Q Okay. I'm going to show you State's Exhibit 126; did you

1 identify this individual here?

2 A Yes.

3 Q And who did you identify that individual as?

4 A I believe his first name was DeAndre, I don't have the
5 report. That might help with a name.

6 Q DeAndre Woods, would you dispute it?

7 A Yes, that would be correct.

8 Q Is that it?

9 A Thank you.

10 Q Okay. DeAndre Woods, and he's holding a pair of
11 sweatpants?

12 A Yes.

13 Q Okay. State's Exhibit 127; and you impounded those
14 sweatpants, correct?

15 A Correct.

16 Q Okay. And again, 128, just another view of that -- those
17 sweatpants?

18 A [No audible response.]

19 Q Is that a yes? I'm sorry.

20 A Yes.

21 Q Okay. Now, showing you State's Exhibit 129; we talked
22 about the garage, and you tried to enter the garage, but there was
23 too many things in there. Is that -- is that an accurate
24 representation of what the garage looked like that day?

25 A Yes.

1 Q Okay. Now, along with the casings, you documenting the
2 actual bullet impacts, you impounding -- and you impounded all
3 these clothings, is that correct?

4 A They were impounded.

5 Q I'm sorry, yes.

6 You also found bullet fragments?

7 A In the driveway?

8 Q Yeah, just on the scene?

9 A On scene, yes.

10 Q Okay. So showing you State's Exhibit 130, and since
11 they're not marked, you might not -- what are we looking at here?

12 A That would be the north -- the driveway north of the
13 vehicle.

14 Q Okay. Let me see if I can find unmarked for you.

15 And is this where you found the bullet -- the actual bullet
16 fragments?

17 A Yeah, we found -- yes. We found some underneath the
18 vehicle, as well as north of the vehicle on the driveway.

19 Q Okay. Showing you State's Exhibit Number 134; that
20 placard ending with a 9 on it, does that indicate where the bullet
21 fragment was found?

22 A Yes, that was one of them.

23 Q Okay. Now, I'm showing you State's Exhibit 135. Again,
24 bullet fragment?

25 A Yes.

1 Q Close-up? Okay.

2 Showing you State's 137; was that another bullet
3 fragment that was found?

4 A Correct. That was a metal fragment that was underneath
5 the vehicle.

6 Q Okay. Showing you State's Exhibit 139. Now, you also
7 found one in a bed of the truck; is that correct?

8 A Correct.

9 Q Okay. So showing you State's Exhibit 139; what are we
10 looking at here?

11 A That would be the bed of the truck and I'm taking a photo
12 to kind of then orient where we found the bullet.

13 Q Okay. Showing you State's Exhibit 41; again, another
14 placard?

15 A Correct.

16 Q Okay. State's 142, close-up?

17 A Yes.

18 Q State's Exhibit 143; were you just showing what that
19 looked -- appeared -- how it looked that day?

20 A Yes.

21 Q Okay. State's Exhibit 144; different view of that?

22 A Correct.

23 Q Showing you State's Exhibit 145; did you also find another
24 one by this chain-link fence?

25 A Yes.

1 Q Okay. I'm showing you State's 146; just a close-up?

2 A Correct.

3 Q State's 147, where you laid the placard?

4 A Yes.

5 Q Showing you State's 148, closer view?

6 A Yes.

7 Q Showing you State's Exhibit 149; this a different close-up

8 view?

9 A Yes.

10 Q Okay. Now, we talked about you're trained for recovering

11 DNA, you're trained for recovering latent fingerprints. With the

12 casings that you find -- found that were labeled 1 through 8, did

13 you, in fact, swab those for DNA?

14 A No, I did not.

15 Q Did you try to find latent fingerprints on those?

16 A No.

17 Q And why is that?

18 A It's our policy, it's department policy for this type of call.

19 It's typically -- we don't get great results from touch DNA.

20 Typically, touch DNA, the best surfaces to get that, you know, from

21 evidence is anything that's abrasive that'll actually slough off some

22 of the skin cells, those are the -- typically the best surfaces.

23 Anything like a cartridge case or anything that's, you know, if you

24 think about the way the firearm is fired, what it goes through,

25 typically we won't get very great results from that. So that's why

1 we actually do not latent fingerprint process those or, you know,
2 swab them for touch DNA.

3 Q Okay. Fair to say, when it travels through the gun, it's
4 going to probably burn off --

5 A Yeah.

6 Q -- anything that would be evidentiary -- of evidentiary
7 value?

8 A Yes.

9 Q Okay.

10 MS. GOODMAN: And I pass the witness, Your Honor.

11 THE COURT: All right. Defense.

12 MR. HAUSER: Thank you, Judge.

13 May I approach the clerk?

14 THE COURT: Yes, please do.

15 MR. HAUSER: Thank you, Judge. May I proceed?

16 THE COURT: Please.

17 **CROSS-EXAMINATION**

18 BY MR. HAUSER:

19 Q Good afternoon.

20 A Good afternoon.

21 Q Just wanted to ask you a couple of questions about the
22 photos that you took and some of the policies that just talked about.

23 A Okay.

24 Q You said it was not the department's policy to look for
25 touch DNA on bullet fragments; is that right?

1 A For the -- on bullet fragments? I'm sorry.

2 Q The stuff that recovered from the scene in this case.

3 A Typically, for this type of a case, no, it is not.

4 Q Okay. Is there a type of case you would try and do that
5 on?

6 A Perhaps on homicides, if we don't have any other types of
7 evidence, but not all of them. It's actually very, very restricted
8 because of, typically, we don't get results -- good results from them
9 statistically in the past.

10 Q Okay. But it's certainly not impossible to test these
11 things?

12 A It's not impossible to test anything, truly. But we do not
13 get great results from it, typically. So we -- the department -- it's
14 department policy on these types of calls to not do so.

15 Q All right. I'm going to show you some more photos. And
16 honestly, I kind of got lost in those photos you just did.

17 A Uh-huh.

18 Q I've got a couple of my own. I think you'll be able to
19 identify, so I'm going to show you what's been marked and entered
20 as Defense G.

21 THE COURT: Oh, can we -- are those stipulated to?
22 Because I don't have them as stipulated to.

23 MR. HAUSER: Oh, I'm sorry. I thought we put those on
24 the record.

25 THE COURT: No, that's all right.

1 MR. HAUSER: Yes, Judge. I believe the State and I have
2 stipulated that the defense exhibits are also admitted.

3 MS. GOODMAN: That's correct, Your Honor.

4 THE COURT: All right. And what letters are those?

5 MR. HAUSER: We have A through G.

6 THE COURT: All right. So pursuant to stipulation by the
7 parties, A through G will be stipulated to and admitted, and
8 permission to publish granted.

9 [Defendant's Exhibit Nos. A through G admitted.]

10 MR. HAUSER: Thank you, Judge. I apologize.

11 THE COURT: No, not -- no worries.

12 BY MR. HAUSER:

13 Q All right. This is Defense G. Does this a photo you took?

14 A Yes.

15 Q All right. You may have seen this one already. I'm also
16 going to show you this one, which is marked and admitted as
17 Defense E. What are the cans you see in this picture?

18 A There were cans, alcohol drink cans on the driveway.

19 Q Okay. Are they open?

20 A Yes.

21 Q Did you see how many of them there were?

22 A I do not recall how many. There -- they were in my
23 photos.

24 Q How many do you think you see in this photo?

25 A I see about three in there.

1 Q How about the one in the bag in the back there?

2 A Yeah, it's hard to see --

3 Q Same kind of thing?

4 A -- on this one.

5 Q And then one under the cardboard, maybe next to the

6 bag?

7 A Possibly. It's hard to see on my photo.

8 Q All right. But those are cans of alcohol, right?

9 A Yes.

10 Q Do you know what type of alcohol?

11 A Hurricane, I believe. But I would have to --

12 Q And what is a hurricane?

13 A Honestly, I'm not too familiar with those.

14 Q All right. If I said malt liquor, would you have a reason to

15 doubt it?

16 A Honestly, I don't, no.

17 Q That's okay. That's all right. It's not the thing you're an

18 expert in, I understand.

19 You didn't document the car that was found in this case,

20 did you?

21 A No, I --

22 Q That was another CSA?

23 A -- documented the outside and the items in the bed of the

24 truck. But I did not see impacts going into the vehicle, so typically,

25 if I were to have seen impacts, then I would have probably

1 documented the interior of the vehicle.

2 THE COURT: Sorry, are we talking about --

3 MR. HAUSER: Yes.

4 THE COURT: Can you clarify?

5 MR. HAUSER: I can clarify that.

6 THE COURT: Thank you.

7 BY MR. HAUSER:

8 Q And that's my fault, I asked the wrong question.

9 You only investigated the scene at 56 North Linn, right?

10 A Correct.

11 Q You weren't called on to document a car a block or two
12 away?

13 A No, sir.

14 Q That was someone else's responsibility?

15 A Yes.

16 Q Okay.

17 MR. HAUSER: Brief indulgence, Your Honor.

18 THE COURT: Yeah.

19 MR. HAUSER: I have nothing further at this time. Thank
20 you.

21 THE COURT: All right. Anything on redirect?

22 MS. GOODMAN: No, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury, any
24 questions? All right.

25 Ma'am, thank you so much for your testimony today, you

1 are excused. Please don't share your testimony with anyone else
2 involved in the trial.

3 THE WITNESS: Okay. Great. Thank you.

4 THE COURT: All right. Thank you so much.

5 State, next witness?

6 MR. LEXIS: Cathryn All.

7 **CATHRYN ALL,**

8 [having been called as a witness and first duly sworn, testified as
9 follows:]

10 THE CLERK: Thank you. You may be seated. Please state
11 your complete name, spelling both your first and last name for the
12 record.

13 THE WITNESS: Cathryn All, C-A-T-H-R-Y-N, A-L-L.

14 THE CLERK: Thank you.

15 **DIRECT EXAMINATION**

16 BY MR. LEXIS:

17 Q Ma'am, where do you live?

18 A 5675 Big Sea Street, Las Vegas, Nevada.

19 Q Okay. Do you own that home?

20 A Yes, sir.

21 Q Do you have a video surveillance system?

22 A Yes, sir.

23 Q On October 1st, 2019, was it operating properly?

24 A Yes, sir.

25 Q Did detectives come that day and ask you to review some

1 video surveillance?

2 A Yes, sir.

3 Q And did you hand over a piece of your video surveillance?

4 A Yes, sir.

5 Q Did you review that video surveillance prior to coming
6 into court today?

7 A Yes, sir.

8 MR. LEXIS: May I approach, Judge?

9 THE COURT: Yes.

10 BY MR. LEXIS:

11 Q Ma'am, I'm showing you what has been marked as State's
12 Proposed Exhibit 1; was that a true and correct copy of the video
13 surveillance --

14 A Yes, sir.

15 Q -- disc that was reviewed by you?

16 A Yes, sir.

17 MR. LEXIS: Your Honor, I move to admit State's Proposed
18 Exhibit 1.

19 THE COURT: Defense?

20 MR. SHAYGAN-FATEMI: No objections, Your Honor.

21 THE COURT: All right. It'll be admitted.

22 [State's Exhibit No. 1 admitted.]

23 BY MR. LEXIS:

24 Q Ma'am, I'm showing you what has been marked as
25 State's 5; do you see that red dot in the middle of the screen,

1 ma'am?

2 A Yes, sir.

3 Q Where it says 5675 Big Sea Street?

4 A Yes, sir.

5 Q Is that a true and correct representation of your property?

6 A Yes, sir.

7 Q And the video surveillance system that you turned over to
8 detectives that day, what way does that camera face?

9 A It faces to the east.

10 Q Okay. Let's zoom in. So to the right; is that correct?

11 A It would face to the right.

12 Q And if it faces to the right, it would capture -- does it
13 capture, basically, the area of the street on the other side?

14 A It does.

15 MR. LEXIS: Judge, this is State's Exhibit 1.

16 THE COURT: Okay.

17 [Video played.]

18 BY MR. LEXIS:

19 Q Again, that's a true and correct representation of the angle
20 from your camera?

21 A Yes, sir.

22 Q And that was your backyard?

23 A Yes, sir.

24 Q And then you saw an individual walk by on the other side
25 with a red shirt?

1 A Correct.

2 Q Do you know around what time that was taken?

3 A It was approximately 12:15 in the afternoon.

4 Q Okay.

5 MR. LEXIS: Nothing further, Judge.

6 THE COURT: Anything from the defense?

7 MR. SHAYGAN-FATEMI: No, Your Honor. Thank you.

8 THE COURT: All right. Anything from my jury?

9 All right. If you wouldn't mind writing your question

10 down, signing it, and putting your badge number, please.

11 And you are Juror Number 8.

12 [Bench conference transcribed as follows.]

13 THE COURT: I just want you to [indiscernible].

14 MR. LEXIS: Oh. Okay.

15 THE COURT: The one we just [indiscernible].

16 MR. HAUSER: Yep. I remember. I think once was

17 enough. I think we're good here.

18 [End of bench conference.]

19 THE COURT: Wait, sorry. Defense, can you come up?

20 [Bench conference transcribed as follows.]

21 THE COURT: I just have to match it [indiscernible]

22 objection. I just have to [indiscernible] objection.

23 MR. HAUSER: You know, given the fact that the jury gets

24 the evidence in the back, there's no objection from us on that one.

25 MR. SHAYGAN-FATEMI: No, no. Not at all.

1 THE COURT: Okay.

2 MR. LEXIS: And, Judge, maybe I would ask for you to
3 remind them too, that they're going to get the evidence.

4 THE COURT: Sure.

5 [End of bench conference.]

6 THE COURT: All right. So we're going to replay the video
7 one more time. And then also, just know that when you go back to
8 deliberate, you will get everything and you can go through
9 everything as many times as you want. We're going to play it
10 again, but I just wanted to make you aware that once you get back
11 there and deliberate, you'll get everything back there to go through.
12 Okay?

13 So could you just play it again, please.

14 MR. LEXIS: Yes, ma'am.

15 [Video played.]

16 THE COURT: Any other questions?

17 Any follow-up questions, counsel?

18 MR. LEXIS: Yeah.

19 **DIRECT EXAMINATION (CONT.)**

20 BY MR. LEXIS:

21 Q Ma'am, that was on October 1st, 2019, at
22 approximately 12:15?

23 A Yes, sir.

24 MR. LEXIS: Nothing further, Judge.

25 THE COURT: Defense?

1 MR. SHAYGAN-FATEMI: No, Your Honor. Thank you.

2 THE COURT: All right. Ma'am, thank you so much for
3 coming in today. You are released from your subpoena. Just
4 please don't share your testimony with anyone else involved in the
5 case. Okay?

6 THE WITNESS: Yes, ma'am.

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

8 THE WITNESS: Thank you.

9 THE COURT: State?

10 MS. GOODMAN: And, Your Honor, State's going to call
11 Printing Analyst Grover.

12 **BRADLEY GROVER,**

13 [having been called as a witness and first duly sworn, testified as
14 follows:]

15 THE CLERK: Thank you. You may be seated. Please state
16 your complete name, spelling both your first and last name for the
17 record.

18 THE WITNESS: Bradley Grover, B-R-A-D-L-E-Y,
19 G-R-O-V-E-R.

20 **DIRECT EXAMINATION**

21 **BY MS. GOODMAN:**

22 Q Good afternoon.

23 A Good afternoon.

24 Q How are you employed?

25 A I am a senior crime scene analyst with the Las Vegas

1 Metropolitan Police Department.

2 Q Okay. And how long have you been employed in that
3 capacity?

4 A In April it will be 25 years.

5 Q 25 years. Okay. And what, if any, do you have in training
6 experience to get you to that level?

7 A Well, I have my Bachelor of Science degree in Biology
8 from the University of Nevada, Las Vegas. I began my employment
9 with Metro in April of 1995, at which time I had 40 hours of
10 in-service training, followed by three months of field training with
11 the senior crime scene analyst.

12 During my first year of employment, I completed the
13 American Institute of Applied Science Forensic Science course.
14 Since that time, I've attended numerous and various classes,
15 courses, and seminars related to crime scene investigation.

16 Q Okay. And you have responded on numerous scenes with
17 Las Vegas Metropolitan Police Department?

18 A Yes.

19 Q Right? Okay.

20 A Very numerous.

21 Q All right. And what are your main responsible --
22 responsibilities as a senior crime scene analyst?

23 A Well, we respond to crime scenes, we document the crime
24 scene using notes, photography, reports, and diagrams when
25 necessary. We identify, collect, and preserve evidence, process for

1 fingerprints, and other duties that may be required.

2 Q Okay. When you first arrive on scene, do you get briefed
3 by patrol or detectives?

4 A Yes, I do.

5 Q Okay. And why is that?

6 A The basically let upward know why we're there and what's
7 going on and just kind of give us a synopsis of what they're looking
8 for and why we're there.

9 Q Fair to say you need kind of direction on what to process
10 on scene?

11 A Yes.

12 Q Okay. Let's talk about you mentioned latent fingerprints.

13 A Yes.

14 Q How would you go about collecting latent fingerprints?

15 A Well, if I can give you a little bit of backstory on
16 fingerprints --

17 Q Absolutely.

18 A -- fingerprints, the word -- okay. We refer to them as
19 latent fingerprints. A fingerprint is an impression of the friction skin
20 on the tips of your fingers. Usually, you're depositing a residue,
21 which is comprised of water, salt, amino acids, and oils. In this
22 particular case, I used a method where I used a conventional
23 powder, which is made up of carbon, lampblack, which is very fine
24 black powder which is very sensitive to moisture. I apply that with
25 a fine bristle brush. The powder will then adhere to the moisture

1 that may be there from the fingerprint making it visible.

2 At that point, I will then take a piece of adhesive tape, put
3 it over the fingerprint, smooth it down, I will give it a number,
4 record the location, take a photograph of it to show where it was
5 lifted from. I will then take that adhesive tape, put it onto a
6 blank 3-by-5 card. I will add a label to it which has all the pertinent
7 information specifically to that case.

8 That gets -- that then gets put into a package that is also
9 labeled. That package is sealed and put into a locked box that the
10 latent print examiner has -- only has access to.

11 Q Okay. Now, you talked about -- a little bit about the
12 background and things behind fingerprints.

13 A Yes.

14 Q Now, is -- everything we touch, is that going to leave a
15 fingerprint -- a latent print behind?

16 A Not necessarily.

17 Q Okay. And why is that?

18 A It depends on the surface. Some surfaces are better for --
19 they're more conducive to accepting fingerprints, sometime -- if
20 you've ever had your fingerprints rolled, you know that they hold
21 your hand very carefully and they methodically will roll your prints.
22 When you're handling stuff, you're not always going up and doing
23 that sort of thing. Sometimes there's a lot of motion involved. You
24 may be sweating. You -- your hands may be dry. There's a lot of
25 factors that affect whether a fingerprint is deposited or not.

1 Q Okay. Now, you also -- do you swab for DNA as well?

2 A Yes, we do.

3 Q Okay. And how would you do that?

4 A Depending on what the surface is or what it is that we're
5 swabbing, we usually use a sterile cotton tip swab with a drop of
6 distilled water on it. We'll then swab that surface. That has a cap
7 that can be sealed onto it. That is placed in a package that is also
8 sealed. And we put a evidence seal on it and then that gets picked
9 up by evidence custodians later.

10 Q Okay. Now, we -- the process of putting this evidence in
11 the package and putting it in the vault, is that typically known as
12 impounding evidence?

13 A Yes.

14 Q Okay. Now, we impound evidence, do you do that by an
15 event number?

16 A Yes.

17 Q And each event number, each event has its unique event
18 number?

19 A Yes.

20 Q Okay. Let's talk about the event that we're here for today,
21 on October 1st, 2019, did you respond to a location of 5677 White
22 Cap?

23 A Yes, I did.

24 Q Okay. Now, what was the nature of that call that you
25 responded to?

1 A The information I had was that there had been a shooting
2 and that there was a vehicle that was potentially involved that had
3 been located. I was also given information that around the corner
4 there was a red colored shirt in the street, or in the gutter, that was
5 potentially related also.

6 Q Okay. And now did you -- were you made aware of where
7 the shooting occurred?

8 A I believe I was, but I never responded to that location.

9 Q Okay. I'm showing you State's Exhibit 3; do you see
10 where that marked Toyota Corolla is there?

11 A Yes, I do.

12 Q Is that in front of that 5677 White Cap?

13 A Yes, it is.

14 Q Okay. And you responded to the car scene first, correct?

15 A Yes.

16 Q Okay. State's Exhibit 205; is that the mailbox of that
17 address?

18 A Yes. That's -- we usually try to take a location photo to
19 show where we're at.

20 Q Okay. Showing you State's Exhibit 206; what do we see
21 here?

22 A This is a, like, a gray colored Toyota.

23 Q And that was the Toyota that was the subject of the
24 suspect vehicle?

25 A That's what I was told.

1 Q Okay. State's Exhibit 207; another angle?
2 A That's another angle.
3 Q Now, was the passenger side window rolled down when
4 you arrived?
5 A Yes.
6 Q Okay. Showing you State's Exhibit 208; again, different
7 angle?
8 A Yes.
9 Q No license plate on the back of that vehicle?
10 A Correct.
11 Q Showing you State's 209; different angle?
12 A Yes, it is.
13 Q 210, again, different angle?
14 A Yes. And kind of showing where it's at in relation to that
15 house.
16 Q Okay. Showing you 211; what is that?
17 A That is the VIN number.
18 Q Okay. 212, is that a picture of the passenger side?
19 A [No audible response.]
20 Q All right. Showing you State's Exhibit 213; what are we
21 looking at here?
22 A This is a picture of the right front floorboard.
23 Q Okay. I'm going to show you 214; is that a close-up view?
24 A Yes, it is.
25 Q Okay. What are we looking at there?

1 A Can I still draw on this?

2 Q Oh, yes.

3 A So --

4 THE COURT: So it's a little different.

5 THE WITNESS: Do I have to use the mouse?

6 THE COURT: Yes.

7 THE WITNESS: Okay.

8 THE COURT: Press -- go down to the red pencil.

9 THE WITNESS: Okay.

10 THE COURT: And click on it.

11 THE WITNESS: All right.

12 THE COURT: And then now you can go where you want.

13 THE WITNESS: Okay. So right there is a cartridge.

14 BY MS. GOODMAN:

15 Q Okay. Now, just so we're familiar, so we're all on the

16 same page, when you say cartridge, what do you mean?

17 A A cartridge is, basically, a full round of ammunition and

18 it's comprised of the cartridge case, which holds the projectile or

19 the bullet and the gunpowder.

20 Q Okay. So that -- we can also refer to it as an unspent

21 round?

22 A Yes.

23 Q Okay.

24 A It's a full round of ammunition that has not been fired yet.

25 Q All right. Perfect.

1 Now looking --

2 THE COURT: And Ms. Goodman -- sorry, Ms. Goodman,
3 would you just put on the record where CSA Grover marked?

4 MS. GOODMAN: Oh, yes, Your Honor. It's in the very
5 middle -- dab in the middle of that picture.

6 And, Your Honor, some courtrooms have a -- like, they
7 take a photo of the record. Do we not do that here either?

8 THE COURT: I don't even know -- take a photo? Oh, it's in
9 there. Okay. Great.

10 MS. GOODMAN: Okay.

11 THE COURT: Okay. Thanks. Thank you.

12 MS. GOODMAN: I just wanted to make sure. I made that
13 mistake once.

14 THE COURT: Thank you.

15 MS. GOODMAN: Okay.

16 BY MS. GOODMAN:

17 Q State's Exhibit 2 -- oh, now, in order to clear it, if you kind
18 of toggle that mouse. And see that little arrow?

19 A This one right here?

20 THE COURT: Yes.

21 BY MS. GOODMAN:

22 Q Yes. Go ahead, push that, and that clears it. Thank you.

23 A Okay.

24 Q Okay. State's Exhibit 215; what are we looking at here?

25 A That's just a closer shot with scale.

1 Q Okay.

2 A Of that same cartridge.

3 Q Now, did you impound that?

4 A I did.

5 Q Did that have a head stamp?

6 A Yes, it did.

7 Q And what was that head -- what did that head stamp say?

8 A That was Win 40 S&W.

9 Q Okay. Showing you State's Exhibit 216; what are we

10 looking at here?

11 A This is a photo of, like, the steering column and ignition

12 area.

13 Q Okay. State's Exhibit 217; what are we looking at there?

14 A This is between the front seats and -- should I draw on

15 this?

16 Q Oh, yes.

17 A And right in here was a license plate in between those

18 seats.

19 Q Okay. In this --

20 A Between the left front seat and the center console.

21 Q Okay. And you just circled and identified the very middle

22 of the picture, correct?

23 A Yes.

24 Q Okay. Showing you State's Exhibit 218; is that the front --

25 is that license plate that was found?

1 A Yes, it is.

2 Q Okay. Now, let's talk about this license plate for a second.
3 Now, did you process that license plate for anything of an
4 evidentiary nature?

5 A Yes. I processed it for fingerprints.

6 Q Okay. And why did you specifically process the license
7 plate for fingerprints?

8 A Most likely because it's a good surface to recover
9 fingerprints.

10 Q Okay. And there was no license plate outside of the
11 vehicle, correct?

12 A Correct.

13 Q Okay. So this was found inside the vehicle?

14 A Yes.

15 Q And you processed that for latent fingerprints?

16 A Yes, I did.

17 Q All right. And when you say good surface, why does
18 specifically make a good surface?

19 A Well, hard, smooth, nonporous surfaces tend to be the
20 best. This was kind of a painted metal, which is also -- tends to be a
21 good surface.

22 Q Okay. Now, did you also process the vehicle for latent
23 prints?

24 A I did.

25 Q Okay. Whereabouts did you find -- whereabouts did you

1 process for latent prints on the vehicle?

2 A I processed the interior and exteriors left front and right
3 front doors, the roof over those doors, the windshield, just exterior
4 of those doors, as well.

5 Q Okay. Now, would you call those surfaces good surfaces
6 or okay surfaces?

7 A Typically, yes.

8 Q Okay.

9 A Painted metal is --

10 Q Can you tell us what -- are you familiar with AFIS?

11 A I am.

12 Q Okay. And what is AFIS?

13 A AFIS stands for Automated Fingerprint Identification
14 System. And that is a system that the latent print examiners, they
15 can scan fingerprints that we recover into the system and it has a
16 huge database of fingerprints in there. So it can be searching -- so
17 it helps reduce manpower so that it can look through this database
18 and find a potential match. If there is a match, then a human being,
19 an actual examiner, has to go back and look at that and make a
20 comparison and determine if it's an identification or not.

21 Q Okay. Now, all latent prints recovered equal, should we
22 say?

23 A No.

24 Q Okay. And why is that?

25 A Well, like I said earlier, you don't always leave really good

1 fingerprints. A lot of times we recover, like, small pieces of them.
2 In order to be eligible for AFIS, you have to have a considerable
3 amount. I don't know the exact requirements, I'm not a latent print
4 examiner. But there has to be a certain amount of detail visible for
5 them to be able to put it into the AFIS system. If it's just a partial
6 fingerprint, then that has to be looked at by a human.

7 Q Okay. Is that what we refer to as AFIS suitable prints?

8 A Yes, the ones that go into AFIS.

9 Q Yes. Okay.

10 Showing you State's Exhibit 219; is that just the back seat
11 of the vehicle?

12 A Yeah, that's just another view of the interior of the vehicle.

13 Q Okay. Showing you 220; just another close-up?

14 A Yeah, I guess it's closer. Closer than the previous image.

15 Q Okay. 221, what are we looking at here?

16 A I believe this is in the trunk.

17 Q Okay. Of that Toyota?

18 A Yes.

19 Q Okay. And again, State's Exhibit 222?

20 A Another view of the trunk.

21 Q Okay. Let's talk about the cartridge that you found inside
22 the vehicle. What was the head stamp again?

23 A WIN 40 S&W.

24 Q Okay. There was just not picture-taking -- taken of the
25 actual head stamp?

1 A Correct.

2 Q Okay. It's showing you again State's 215; now, did you
3 process this cartridge for any evidentiary -- anything for evidentiary
4 value?

5 A I swabbed it for DNA.

6 Q Okay. Why did you do that?

7 A Well, we no longer process them for fingerprints. There's
8 a long history, many years ago we used to process those for
9 fingerprints. A large study was done and found out that it was
10 pretty much a waste of time, because we rarely ever got a
11 fingerprint on a cartridge or cartridge cases. Recently, we have
12 started a study where we are swabbing certain cartridge cases and
13 cartridges for possible DNA to see if that's worth -- you know,
14 worthwhile doing.

15 Q Okay. And are you guys finding positive results that
16 you're finding DNA on these?

17 A Not that I'm aware of.

18 Q Okay. So do you believe that you're probably not going to
19 be swabbing these cartridges for DNA in the future?

20 A That's not up to me, but I would say there's a potential for
21 that.

22 Q Okay. You also mentioned that up the street a little bit,
23 you -- the patrol -- or detectives that told you that there was a red
24 shirt found?

25 A Yes.

1 Q Okay. Did you respond to that scene?

2 A I did.

3 Q Showing you again State's Exhibit 3. Okay. And
4 whereabouts did you respond to? Can you can mark it.

5 A Great. Right about here. Oops. It's kind of a bigger circle
6 than I -- that's the general area.

7 Q Okay. Showing you State's Exhibit 226. Oop, can you
8 just --

9 A Are you ready to clear that?

10 Q Yeah.

11 A Sorry.

12 Q Okay. What -- are those just the cross-streets?

13 A That's the cross-street where that --

14 Q Okay.

15 A -- was located.

16 Q Showing you State's 223; is that the address there?

17 A Yes.

18 Q Okay. Showing you 224; and with that little mark, can you
19 kind of identify where that red shirt was located?

20 A It's kind of dark in this picture, but right in this area was
21 where that red shirt was found.

22 Q Thank you.

23 All right. State's Exhibit 225; again, just a --

24 A That's another view of that.

25 Q -- different view? Okay.

1 Now, when you initially found the shirt, showing you
2 State's 228, is that the condition that you found it in?

3 A Yes.

4 Q Okay. Not flattened at all?

5 A No.

6 Q No tire marks on it?

7 A No.

8 Q Was it wet?

9 A Not that I recall.

10 Q Okay. Did it appear to be really weathered?

11 A No, not really.

12 Q Okay. Showing you State's 229; again, is that just a
13 closer-up version of the shirt?

14 A Yes.

15 Q Okay. State's 230, and you actually laid that out like that?

16 A I just -- yeah, I spread it out to get a --

17 Q Okay. And State's Exhibit 231.

18 A -- better view of it.

19 Q Just the collar of that shirt?

20 A Yes.

21 Q Okay. And the t-shirt -- this t-shirt was impounded under
22 the same protocol that you explained earlier?

23 A Yes.

24 Q Okay. All right.

25 MS. GOODMAN: I pass the witness, Your Honor.

1 THE COURT: All right.

2 MR. HAUSER: May I proceed, Your Honor?

3 THE COURT: Yes.

4 **CROSS-EXAMINATION**

5 BY MR. HAUSER:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Just a couple of questions for you. Just wanted to
9 reiterate some of the points I think you already made. You did, in
10 fact, pull the fingerprints in this case?

11 A I did.

12 Q You're not the person that runs that test?

13 A No, I am no.

14 Q So you don't know what the results were?

15 A I don't.

16 Q You were just responsible for making sure they get the
17 information they need?

18 A Correct.

19 Q And that's what you did here?

20 A Yes.

21 Q So in this case, I believe you said you pulled the
22 fingerprints off of the doors of the car?

23 A I recovered latent prints on the exterior of the right front
24 and left front doors, and the license plate, I believe.

25 Q And the license plate? All right.

1 Now, you were looking for prints in more places than that,
2 of course.

3 A Mostly just around the front seat area is what I was
4 concentrating on.

5 Q Was it a -- if you recall the inside of the car, was it a metal
6 door handle or a plastic door handle?

7 A I don't recall.

8 Q But if it was metal, would you try and test that?

9 A I probably would, yes.

10 Q And you would have done that in this case had you had
11 the opportunity?

12 A Probably so.

13 Q Okay. If there's anything metal in the front seat, you're
14 going to try and test that?

15 A It depends on if I think it's -- if there -- can potentially get a
16 fingerprint off it.

17 Q But you're not going to leave any stone unturned if you
18 have the chance to do so, right?

19 A Potentially not. Hopefully not.

20 Q Yeah. No, you're not trying to leave out fingerprints?

21 A No.

22 Q You're trying to get as much evidence as possible?

23 A Typically, yes.

24 Q That's your job?

25 A Yes.

1 Q Okay. I just wanted to go over where the license plate
2 exactly was. I think the State may have just showed you this, but
3 this is Defense Exhibit F. What are we looking at here?

4 A This is the license plate between the left front seat and the
5 center console.

6 Q All right. And I know you said it wasn't attached to the car
7 earlier. We're really not attaching it to anything, right? It's just kind
8 of stuffed between the seats?

9 A It's just -- yeah, it's just stuck between the seats.

10 Q Kind of like you do with one of those wind -- what is it, like
11 the windshield covers?

12 A Sure.

13 Q Stuff it right down there so you can use it when it's
14 sunny?

15 A Yes.

16 Q That kind of location, right?

17 A Correct.

18 Q Ish.

19 A Correct statement.

20 Q Maybe you don't do that.

21 A Yeah.

22 Q Maybe that's just me, I don't know.

23 A I can see somebody doing that.

24 Q And you did mention, Officer, that you swabbed the bullet
25 that you found in there for DNA, right?

1 A Yes.

2 Q And that's not a spent cartridge in this case?

3 A No.

4 Q That's a live bullet?

5 A That's a live round.

6 Q So it wouldn't have gone through the barrel of the gun,

7 presumably?

8 A Sure. Yes, that's --

9 Q It didn't get fired?

10 A It did not get fired.

11 Q Right. So there wouldn't be any issues with the gun

12 eliminating the evidence that might have been on that bullet?

13 A Yeah. No, there would not be an issue with that.

14 Q Thank you very much. I appreciate it.

15 A You're welcome.

16 MR. HAUSER: I'm all set, Judge.

17 THE COURT: All right. Redirect?

18 MS. GOODMAN: No, Your Honor.

19 THE COURT: All right. CSA Grover, you are released

20 from your subpoena. Just please don't talk to anybody else who

21 may be involved in the case. And thank you for coming in --

22 actually, sorry. I should have asked them first.

23 Do you guys have any questions for CSA Grover?

24 All right. Thank you, sir. You are excused.

25 THE WITNESS: Thank you, Your Honor.

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THE COURT: State?

MS. GOODMAN: Your Honor, the State would call CSA Morrison.

MAELEEN MORRISON,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: First name is Maeleen, M-A-E-L-E-E-N, last name Morrison, M-O-R-R-I-S-O-N.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. GOODMAN:

Q Good afternoon. How are you employed?

A I'm currently employed with Las Vegas Metropolitan Police Department as a crime scene analyst.

Q Okay. And how long have you been employed in that capacity?

A A little over two and a half years.

Q Okay. And do you have any training and experience to qualify you for that position?

A Yes. I have my bachelor's in biology, I also attended the Crime Scene Academy for three months and crime scene field training for three months, as well.

1 Q Okay. And in your field training, what do you typically
2 learn?

3 A In field training, it's putting everything from the academy,
4 but in real-life scenarios. So we respond with our field trainers to
5 mostly property calls.

6 Q Okay. And what are your main responsibilities as a crime
7 scene analyst?

8 A Our main responsibilities are to respond to crime scenes
9 and to document the crime scenes as they are. So we do
10 photography, notes that we turn into a report later on, collect
11 evidence, and then sometimes process for latent prints.

12 Q Okay. And fair to say if there is a victim that got
13 transported to the hospital, that you would also respond to that
14 scene?

15 A Correct.

16 Q Okay. Now, we do -- I'm going to start -- I'm going to talk
17 to you about this specific case on October 1st, 2019; were you
18 assigned under Event Number 191000002219 to respond to UMC
19 Trauma?

20 A Yes.

21 Q Okay. What was the nature of that call?

22 A It was two victims that were transported from a shooting.

23 Q Okay. What was the first thing that you did when you
24 arrived in UMC Trauma?

25 A I met with the officer who had more details than I did, that

1 there were two victims. I got their information. I believe one was in
2 CAT scan on my arrival and the other was in a trauma bay.

3 Q Okay. Now, I'm going to show you State's Exhibit 151;
4 does that indicate a UMC Bay 7?

5 A Yes.

6 Q Okay. Showing you State's 150; is this one of those
7 individuals that you had gone to UMC to see?

8 A Yes.

9 Q Okay. And did you identify that individual?

10 A I believe that was Mr. Espinoza.

11 Q Okay. Fernando Espinoza?

12 A Yes.

13 Q All right. And showing you State's Exhibit 152. Okay.
14 Now, when you arrived on scene, what are we looking -- or what
15 are looking at in this picture?

16 A So this is just a above-view of him. He was in the gurney
17 with a blanket over him and he had injuries to his hand and
18 abdomen.

19 Q And showing you State's Exhibit 154; just a picture of his
20 legs there that's covered under his blankets?

21 A Yes.

22 Q Okay. State's Exhibit 155, is that Mr. Espinoza?

23 A Yes.

24 Q Showing you State's 156; what are we looking at here?

25 A His hand again.

1 Q Okay. Showing you State's 157?

2 A It's a closer view of his hand and then the injury on his
3 wrist.

4 Q Okay. And then State's 158?

5 A Just a closer-up view of the wrist.

6 Q Okay. Showing you State's 159.

7 A That's --

8 Q What are you doing here in this photo?

9 A So we use our scale, we photo injuries with and without
10 our scales so we can see the approximate size of it.

11 Q Okay. And showing you State's 160; what are we looking
12 at here?

13 A Those are injuries to his abdomen and they're marked
14 with tape and paperclips placed by medical staff.

15 Q Okay. Showing you State's 161; a little closer?

16 A Yes.

17 Q Okay. Showing you State's 162 --

18 A That's --

19 Q -- a little closer?

20 A Yes.

21 Q Okay. Now, and you said that paperclip was placed there
22 by medical staff?

23 A Yes.

24 Q Okay. State's Exhibit 163; again, are you measuring that
25 with the scale?

1 A Yes.

2 Q Okay. Showing you State's 164; what are we looking at

3 here?

4 A That's the other side, so that's his left side.

5 Q Okay. State's 165, closer angle?

6 A Yep.

7 Q All right. State's 166, again, just measuring that, correct?

8 A Correct.

9 Q Now, I'm going to show you State's 181; what are we

10 looking at here?

11 A That's Bay 8.

12 Q Okay. State's 180?

13 A And then that is Mr. Sanchez-Loza in Bed 8.

14 Q Okay. And that's Jonathan Sanchez-Loza?

15 A Correct.

16 Q All right. Showing you State's 182; is that Mr. Sanchez?

17 A Yes.

18 Q And showing you State's 183; is that just of his feet?

19 A Yes.

20 Q Covered in blankets; is that correct?

21 A Yes.

22 Q Okay. 185, is that Mr. Sanchez's face?

23 A Yes.

24 Q Okay. Now, documenting Mr. Sanchez's injuries, showing

25 you 186; what are we looking at there?

1 A That's his outer thigh.

2 Q Showing you State's 187; what are we looking at there?

3 A Just a closer view of that same injury.

4 Q Okay. And showing you State's 188; are you just

5 measuring that?

6 A Yes.

7 Q Okay. Showing you State's 190; what are we looking at

8 here?

9 A There was a splint and, like, a traction device to his lower

10 leg.

11 Q Okay. Showing you State's 191; what are we looking at

12 here?

13 A There were injuries to the inside of his thighs and they're

14 also marked with paper clips from medical staff.

15 Q Okay. State's Exhibit 192; closer angle?

16 A Yes.

17 Q State's 193, are you scale -- are you just putting that to

18 scale?

19 A Yes.

20 Q Showing you State's 184; what are we looking at here?

21 A The other thigh with the tape and paperclip.

22 Q Okay. Again, State's 195; just a closer version?

23 A Yes.

24 Q State's 196, what are you doing there?

25 A And then same with the scale.

1 Q Showing you State's 172; what are we looking at there?
2 A His lower leg, it had some bruising.
3 Q Okay. 173, closer angle?
4 A Correct.
5 Q State's 174, what are you doing there?
6 A With the scale of the same injury.
7 Q State's 175, what are we looking at here?
8 A The top of his knee.
9 Q Okay. And why did you take that photo?
10 A I believe there -- that's a scar or an injury.
11 Q Okay. And start with State's 177, you just scaling that?
12 A Yes.
13 Q Okay. And again, State's 170; what are we looking at
14 here?
15 A Just a little skin abrasion.
16 Q Okay. And State's 167, what are we looking at here?
17 A His lower leg.
18 Q Okay. Now, did Mr. Sanchez also have property in the
19 hospital bag?
20 A Yes.
21 Q Showing you 197; is that it there?
22 A Yes.
23 Q Okay. Showing you State's 178; the same -- is that just
24 more of his property?
25 A Yes, it's shoes and shirts.

1 Q Okay.

2 A I can't recall completely.

3 Q No weapons were found in there, correct?

4 A No.

5 Q Okay. Going to show you State's 198; what are we
6 looking at here?

7 A Within one of the items of clothing, there was a small
8 black plastic piece. In the earlier details of the call, it came out as a
9 drive-by shooting, and so I wasn't -- it resembled an interior piece
10 of a car to me. So I collected it.

11 Q Okay. Now, you actually -- you went to the scene at 56
12 North Linn Lane; is that correct?

13 A Afterwards, yes.

14 Q After documenting that scene?

15 A Yes.

16 Q Okay. And what did you learn this fragment to be?

17 A Like a patio stacking chair was shot on the scene, and it
18 resembled that, with the black outside and the white interior.

19 Q Okay. So it's, like, a plastic piece --

20 A Uh-huh.

21 Q -- probably -- most likely going to the chair?

22 A Yes.

23 Q Okay.

24 MS. GOODMAN: And, Your Honor, no further questions
25 for this witness.

1 THE COURT: Defense?

2 MR. HAUSER: Thank you for your time, Officer.

3 We have no questions, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, any

5 questions from the jury? All right.

6 Thank you so much, ma'am.

7 THE WITNESS: Thank you.

8 THE COURT: You're excused from your subpoena. Please

9 don't share your testimony with anyone involved in the case.

10 Thanks so much.

11 THE WITNESS: Thank you.

12 MR. LEXIS: Judge, can we approach?

13 THE COURT: Yep.

14 [Bench conference transcribed as follows.]

15 MR. LEXIS: With openings and seven witnesses, I thought

16 it was going to take longer. So we're good.

17 THE COURT: So if we start tomorrow at 1:00 --

18 MR. LEXIS: We're going to send you our jury instructions

19 today.

20 THE COURT: Okay. How many witnesses should we line

21 up for tomorrow?

22 MR. LEXIS: Those are going to be the --

23 THE COURT: The lengthy one, like --

24 MR. LEXIS: [Indiscernible.]

25 MR. HAUSER: The ones we actually cross.

1 MR. LEXIS: If we did a -- I thought we did the best we can.

2 THE COURT: So go slowly?

3 MR. LEXIS: Yes, I'm going to have the latent print and
4 DNA on standby tomorrow.

5 THE COURT: Okay.

6 MR. LEXIS: And then we'll have the remaining
7 substantive witnesses [indiscernible].

8 THE COURT: Okay. So 1:00?

9 MR. LEXIS: Yes.

10 MR. HAUSER: Sounds good.

11 MR. SHAYGAN-FATEMI: Judge, when do you want the
12 jury instructions?

13 THE COURT: Just as soon as you can get them to me,
14 usually. I like them --

15 MR. HAUSER: Okay. Appreciate it.

16 [End of bench conference.]

17 THE COURT: All right. We're actually moving more
18 quickly than we anticipated, which is good for you all. So we are
19 going to break for the evening. We'll come back tomorrow at 1:00.
20 And we're right on schedule, if not ahead of schedule. So don't
21 worry about the timing of that. All right?

22 So during this recess you're admonished not to talk or
23 converse among yourselves or with anyone else on any subject
24 connected to this trial or read, watch, or listen to any report of or
25 commentary on the trial of any person connected with this trial by

1 any medium of information, including, without limitation to
2 newspapers, television, the Internet, and radio, or form or express
3 any opinion on any subject connected with the trial until the case is
4 finally submitted to you.

5 Thank you so much. If you could make sure and leave
6 your notepads where you sit, those don't go home with you. And
7 I'll see you back here at 1:00, after my criminal calendar. Thank
8 you.

9 [Jury recessed at 3:32 p.m.]

10 THE COURT: All right. You guys, we're outside the
11 presence of the jury. Is there anything anyone needs to bring up?

12 MS. GOODMAN: Your Honor, the State, as I was going
13 through State's 179 and 168, I noticed that the social security card
14 of Jonathan Sanchez as well as the hospital wristband that shows
15 the date of birth -- because State's going to be withdrawing 168
16 and 179 at this time, just because it's personally identifying
17 information of the victims.

18 THE COURT: All right. Those will be withdrawn. I think
19 it's improper.

20 MR. HAUSER: We're not going to object to that. That just
21 seems polite.

22 THE COURT: Yeah.

23 [State's Exhibit Nos. 168 and 179 withdrawn.]

24 THE COURT: All right. Anything else?

25 MS. GOODMAN: No, Your Honor.

1 THE COURT: All right. Sounds good. We'll see you guys
2 tomorrow.

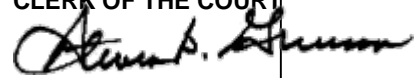
3 MS. GOODMAN: Thank you.

4 [Court recessed at 3:33 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability.

24 
25 Shawna Ortega, CET*562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	
)	Case No. C-19-345584-1
vs.)	
)	Department VI
TED MICHAEL DONKO,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 12, 2020

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – PART I – DAY 3 OF 4**

APPEARANCES:

For the Plaintiff(s):	CHAD N. LEXIS, ESQ. LAURA ROSE GOODMAN, ESQ. (Deputy District Attorneys)
-----------------------	--

For the Defendant(s):	ROBSON M. HAUSER, ESQ. KAMBIZ SHAYGAN-FATEMI, ESQ. (Deputy Public Defenders)
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RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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For the State:
No Exhibits Offered.

For the Defendant:
No Exhibits Offered.

1 **LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 12, 2020**

2 [Proceeding commenced at 1:12 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. Okay. Good afternoon,
6 everybody. We're on the record in C-345584-1, State of Nevada
7 versus Ted Michael Donko. Mr. Donko is present with his attorneys,
8 Mr. Hauser, as well as Mr. Shaygan. Both deputy district attorneys,
9 Ms. Rose Goodman, Mr. Lexis are also present. The jury is lined
10 up.

11 Is there anything you guys would like to put on the record
12 before we bring the jury in?

13 MR. SHAYGAN-FATEMI: No, Your Honor.

14 THE COURT: All right.

15 MR. LEXIS: Judge, just that there's -- the first two
16 witnesses, the DNA and latent print expert, and the two exhibits are
17 stipulated to. It's State's 232 and State's 230.

18 THE COURT: Sounds good.

19 MR. SHAYGAN-FATEMI: Your Honor, actually, one quick
20 thing from the defense. I did e-mail Your Honor's law clerk the
21 proposed jury instructions from the defense, both with and without
22 citations.

23 THE COURT: Cool. Thank you.

24 MR. SHAYGAN-FATEMI: I want to apologize to the Court,
25 when I e-mailed them, something formatting-wise, maybe a couple

1 of returns on one to bring the --

2 THE COURT: Oh.

3 MR. SHAYGAN-FATEMI: It was a little bit of formatting. I
4 just want to apologize.

5 THE COURT: No worries. We'll format it. We'll get it.

6 MR. SHAYGAN-FATEMI: I appreciate it.

7 THE COURT: All right.

8 MR. SHAYGAN-FATEMI: Thank you.

9 THE COURT: Yeah.

10 Okay. Bring them in, please. Thank you.

11 [Jury reconvened at 1:14 p.m.]

12 THE COURT: All right. Good afternoon, ladies and
13 gentlemen. Welcome back. We are on the record in C-345584-1,
14 State of Nevada versus Ted Michael Donko. Mr. Donko is here,
15 present, with both of his attorneys, Mr. Shaygan and Mr. Hauser.
16 Both deputy district attorneys are also present, Ms. Rose Goodman
17 as well as Mr. Lexis.

18 State, next witness?

19 MR. LEXIS: State calls Allison Rubino.

20 THE COURT: Okay. And I should also put on the record,
21 do both parties stipulate to the presence of the jury?

22 MR. LEXIS: Yes, Your Honor.

23 MR. HAUSER: Yes, Your Honor.

24 THE COURT: Thank you.

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ALLISON RUBINO,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: My name is Allison Rubino, A-L-L-I-S-O-N, R-U-B-I-N-O.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. LEXIS:

Q Where do you work, ma'am?

A I am a forensic scientist in the biology DNA detail of the Las Vegas Metropolitan Police Department Forensic Laboratory.

Q And how long have you worked there?

A I've been there since January of 2014, so just over six years now.

Q Can you tell the jury about your training and experience, on how you got there?

A I have -- for my education, I have a Bachelor's of Science and Biochemistry from the University of Scranton in Pennsylvania. And I have a Master's of Science and Forensic Science from the University of New Haven in Connecticut.

Prior to working here in Las Vegas, I was a forensic scientist at the Armed Forces DNA Identification Laboratory in

1 Dover, Delaware. I was there for about a year and a half. And
2 before that, I was a research associate and forensic scientist at the
3 Suffolk County Crime Laboratory in Hauppauge, New York.

4 When I got here to Las Vegas, before I became an analyst,
5 I went through a rigorous training program that just involved
6 working all the samples that we would routinely encounter in the
7 field and do the work that's in association with our procedures and
8 protocols at the lab. That training also involved a series of written
9 and oral exams and culminated at the end, you -- a mock case, a
10 mock competency case. And that also involved a mock court,
11 before being released to independent case work.

12 Q Can you explain to the jury what is DNA?

13 A DNA, it stands for deoxyribonucleic acid. It's a compound
14 that's found in nearly every cell within our body. And it contains all
15 of the information that make us into the individuals that we are,
16 from our hair color, our eye color, numbers of fingers and toes we
17 have, the size of our organs, things like that.

18 Our DNA is inherited, which means we get half of our
19 DNA from our mother and half of our DNA from our father. No two
20 people are really known to have the same DNA with the exception
21 of identical twins, identical triplets, identical siblings, things like
22 that.

23 Q How is DNA analysis performed?

24 A So the first step in the DNA process is extraction. And
25 that just means we're isolating the DNA from all of the other stuff

1 within the sample. So let's say, for example, we have a swab and
2 we're trying to remove the DNA from a swab. We want to take the
3 DNA from all of the other cellular material we don't need. And we
4 also want to get it off of the swab. So we're trying to end the
5 process with just the DNA.

6 Once we've isolated it, we do what's called a
7 quantification process. And that was simply just finding out how
8 much DNA is present in that sample. We then take a portion of that
9 sample and put it in something like a DNA copy machine, where
10 we'll make millions and millions of copies of different parts of that
11 DNA.

12 It then gets put into an instrument and it goes through this
13 instrument and crosses through this little window that has a camera
14 attached to it. And that camera's going to take little snapshots of all
15 the little pieces of DNA as they travel. All of those little snapshots
16 get compiled into a software program and that software program
17 generates kind of a chart that we look at and that we see at the end
18 as a DNA profile that we use for interpretation.

19 Q Can you talk about some of the factors that come into play
20 when leaving DNA behind?

21 A So if we're talking about leaving DNA behind, one thing is
22 the source of DNA. Some sources of DNA -- some sources are
23 better source -- are better for DNA than others. Body fluids are, for
24 example, blood, semen, saliva, things like that.

25 The other type of DNA sometimes we encounter routinely

1 or people talk about is called touch DNA or transfer DNA. And
2 that's something that occurs when someone comes into contact
3 with someone or something else. So, for example, opening the
4 door to your house and turning the doorknob, potentially you could
5 be leaving DNA behind there. Or something like your clothing. So
6 as you sit, you have your collar that rubs up against your neck, your
7 cuffs that rub against your forearms, you could be leaving DNA
8 behind there too.

9 Q So I've been up here touching this podium today; is it
10 possible for me to leave behind a viable amount of DNA for you to
11 analyze?

12 A It's possible.

13 Q Okay. Is it also possible for me not to leave a viable
14 amount of DNA on this podium for you to test?

15 A That's also possible.

16 Q So it depends?

17 A Correct.

18 Q It's no guarantee?

19 A Correct.

20 Q Can you explain what a single source profile is as
21 opposed to a mixture?

22 A So, generally, when we're looking at evidence samples,
23 we first want to determine how many people could be in this
24 profile. If we call something single source, that means it's one
25 person. One person contributed to that sample. If we deem

1 something as mixture, that means more than one person is a part
2 of this DNA profile.

3 Q How about a contributor, what does that mean?

4 A A contributor are just the number of people. So when I
5 report out a certain number of contributors to a DNA profile, if I say
6 there's one contributor, that means it's a single source profile. If I
7 use any other number, 2, 3, 4, that means it's a mixture DNA profile.

8 Q And again, ma'am, you can't say for sure that just one
9 person touched it? If you come back with the one contributor, you
10 can't say for sure one person touched it; it could be more. It just
11 means that person -- those other people didn't leave a viable
12 amount of DNA behind on that article?

13 A Based on that profile, I can only determine the most likely
14 number of contributors to a profile.

15 Q Okay. Can you explain what a reference standard is?

16 A A reference standard is a sample of DNA that has a known
17 source. So it comes in a package that is documented with an
18 individual's name, so that way when any comparisons, if they can
19 be made to any evidence samples, we have a direct documentation
20 that this particular sample came from this particular person that we
21 can use for comparisons.

22 Q The case that you were subpoenaed to be here on today,
23 with Event Number 191000002219, were you -- was there a standard
24 produced?

25 A Yes.

1 Q And was that one Ted Donko?

2 A Yes.

3 Q Now, were you able to perform some data analysis on a
4 red shirt in order to determine if DNA was found?

5 A Yes.

6 Q Okay. And what were your conclusions?

7 A So for this particular item, the red shirt, it was a swabbing
8 from the interior neckline and the armpit areas. And I obtained a
9 mixture DNA profile that I deemed to be of two contributors. At
10 least one of those contributors was male.

11 Q Okay. And were you able to have any results with regards
12 to Ted Donko?

13 A Yeah.

14 Q The reference standard?

15 A Yes. Ted Donko was deemed as individually included as a
16 part of this mixture DNA profile.

17 Q And can you talk about the probability?

18 A So when we establish that someone's individually
19 included, we also report out a statistical probability. So the
20 probability of observing this mixture DNA profile is at least 13.6
21 octillion times more likely if the DNA profile originated from Ted
22 Donko and one unknown random contributor than if it originated
23 from two unknown random contributors.

24 Q Ma'am, I'm showing you State's 233; do you recognize
25 this document, ma'am?

1 A Yes.

2 Q Okay. Let's focus in first on the lab item number, 10
3 and 10.1. Again, at the top here, we're dealing with a red shirt,
4 correct?

5 A Yes.

6 Q And particularly swabbing the inner neck area and inner
7 armpit area --

8 A Yes.

9 Q -- correct? And I take it from your initial comments earlier
10 that would probably be a good area to swab due to somebody
11 sweating?

12 A Yes. We think about, like, a t-shirt, it's really rubbing up
13 against your collar and neck area really well. Also, the armpit is
14 rubbing up against your inner arm, kind of your side, and just like
15 normal sweating during the day. Sweat is a good vehicle for skin
16 cells, so we deem those sometimes as really good spots if we want
17 to look for someone who may have worn a particular item.

18 Q Okay. And then, again, as you stated earlier, the next
19 item, ma'am, on this sheet is, basically, your reference standard
20 was for a Ted Donko, correct?

21 A Yes.

22 Q Okay. Let's move down to your conclusions.

23 Again, Lab Item 11 was your DNA profile of Ted Donko.

24 Then moving -- let me zoom in -- down to Lab Item 10.1,
25 which is a swabbing of the inner neck area or inner armpit area of

1 the red shirt. Number of contributors, you put two, at least one
2 male; can you explain that?

3 A So I -- like I said before, that DNA profile I deemed as a
4 mixture of two contributors. When we talk about a male
5 contributor being present, at the locations that we test for, there are
6 two that -- two locations that can give us indications of a male
7 being present. One is a location called a amelogenin, and it's a sex
8 determining location.

9 There are only two options. XX is a female, and an XY is
10 a male. So when there is a Y present at that location, for us, that's
11 indication that at least one male is there.

12 A second location that we can look at is a male specific
13 location. And if there's a peak there, that also gives us the notion
14 that a male is present.

15 Q Okay. So on this one, you put two that talk about --
16 there's two viable amounts of DNA on this shirt?

17 A Two contributors, yes.

18 Q Can you go down to proximate mixture proportions; what
19 are we talking about there?

20 A So when we -- so when we're breaking down the DNA
21 profile, when I'm putting it through an interpretation software, it
22 gives us the approximate, I guess, a numerical association as to
23 how much of DNA is from one contributor and how much of DNA is
24 from another contributor, kind of on a percentage. And that really
25 is just a reflection of that profile as a whole.

1 So in this particular item, the -- it was deemed that one
2 contributor had 99 percent of it, and one contributor had 1 percent
3 of it.

4 Q Okay. And do you know which one had the 99 one and
5 which one has the 1?

6 A Yes.

7 Q Okay. How?

8 A I know just from --

9 Q Okay. So which one?

10 A -- knowing the case.

11 Q Which one?

12 A Ted Donko is the 99 percent.

13 Q Okay. And again, let's go to the last line where it says:
14 Individual included, Ted Donko, which you said as far as a mixture
15 is he was the 91 -- 99, the other individual as being the 1. And you
16 said 13.8 octillion?

17 A 13.6.

18 Q Sorry, point-6. And that's a 10 -- basically 27 zeroes?

19 A Yes. So if you were to move that decimal place over one,
20 you would have 136 followed by 26 zeroes.

21 Q Okay. And lastly, this is it, ma'am, can you just read the
22 part of that sentence right there, explain it to us afterward?

23 A Okay. The probability of observing this mixture DNA
24 profile is at least 13.6 octillion times more likely if it originated from
25 Ted Donko and one unknown random contributor than if it

originated from two unknown random contributors.

So the statistic that we used, it's called a likelihood ratio. And this likelihood ratio compares two different conclusions that you could have for this DNA profile. So on the one hand, the one conclusion is that this is a mixture of Ted Donko and one unknown random contributor. The other conclusion is that it's two unknown random contributors in a population.

And what it is, is a mathematical comparison. So kind of like a fraction. You have one number on top, one number on the bottom. And so one conclusion goes on the top, one conclusion goes on the bottom. And the results of that is that likelihood ratio.

MR. LEXIS: No further questions, Your Honor.

THE COURT: Mr. Hauser.

MR. HAUSER: Thank you.

CROSS-EXAMINATION

BY MR. HAUSER:

Q Good afternoon.

A Good afternoon.

Q Just a couple of questions for you. Did you say 27 zeroes?

A 26.

Q 26, I'm sorry. Seems like a lot of zeroes.

A Yes.

Q So you're saying the odds are pretty good that's Ted's DNA on the shirt?

A I'm saying that the probability of observing the DNA

1 profile is 13.6 octillion times more likely if it originated from Ted
2 Donko and one unknown random contributor than if it originated
3 from two unknown random contributors.

4 Q Sure. So you found at least one other source of DNA on
5 that shirt?

6 A Based on my interpretation, there was one other
7 contributor.

8 Q And that contributor also had the DNA in the neck or the
9 armpit area, right?

10 A In that sample, yes.

11 Q And the -- because those are the areas you tested?

12 A Correct.

13 Q Those are good areas to find DNA?

14 A Correct.

15 Q DNA's not the only test you could run on a shirt like this,
16 right?

17 A Correct.

18 Q You could test it for gunshot residue?

19 A From the DNA standpoint, we wouldn't. For us, when it --
20 when we're looking at a particular item, in our request we're given
21 some information as to maybe what someone's looking for,
22 whether it's wearer, if it's an individual involved in a case's shirt,
23 someone's bleeding; we can do all of those biologically related
24 testing and DNA analysis. Gunshot residue is out of the purview of
25 my work.

1 Q You know what, that's my fault. Let me clarify that: It is
2 possible to test a shirt for gunshot residue even if that's not
3 something you personally would do?

4 A It's possible.

5 Q Do you have any idea if it was done in this case?

6 A I do not.

7 Q You were just there for DNA?

8 A Correct.

9 Q And we're not able to identify that other contributor,
10 right?

11 A No other reference standard was requested for this case.

12 Q Of course. And you could only deal with what you're
13 given?

14 A Correct.

15 Q You weren't able to narrow down that unknown
16 contributor to any particular race or gender?

17 A We don't do that, no.

18 Q So it's possible that that other contributor could be a
19 Hispanic man?

20 A I would have no idea.

21 Q And so to be fair, we can't rule it out, right?

22 A Correct.

23 Q Thank you very much, ma'am.

24 MR. HAUSER: I have nothing further at this time, Your
25 Honor.

1 THE COURT: Okay. Anything on redirect?
2 MR. LEXIS: Thank you. Real briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 BY MR. LEXIS:

5 Q Ma'am, again, Defense counsel talks about contributors.
6 That mixture profile was out of 100, 99 to 1, correct?

7 A Correct.

8 Q 99 being Ted Donko?

9 A He was associated with that contributor, yes.

10 MR. LEXIS: Nothing further.

11 THE COURT: Anything based on that?

12 MR. HAUSER: No, thank you.

13 Oh, I'm sorry. Brief indulgence, Judge.

14 [Pause in proceedings.]

15 MR. HAUSER: Nothing further, Your Honor.

16 THE COURT: Ladies and gentlemen, do any members of
17 the jury have any questions for Ms. Rubino? Showing no hands.

18 Ms. Rubino, you're excused from your subpoena. Just
19 please don't share your testimony with anyone else involved in the
20 case.

21 THE WITNESS: Thank you.

22 THE COURT: State, next witness?

23 MS. GOODMAN: State calls Kathryn Aoyama.

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KATHRYN AOYAMA,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: Kathryn Aoyama, K-A-T-H-R-Y-N, A-O-Y-A-M-A.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. GOODMAN:

Q Good afternoon. Where and how are you employed?

A I'm employed by the Las Vegas Metropolitan Police Department, specifically in the forensic laboratory, as a forensic scientist.

Q Okay. And how long have you been employed as a forensic scientist?

A Approximately -- or nearly 13 years. It'll be 13 years in May. Or not May, but March.

Q And this is a latent print section?

A Yes. That is the only forensic work that I've done.

Q Okay. And what is your training and experience as it relates to latent print examination?

A I successfully complete a year-and-a-half training program in which I was taught different aspects of latent print comparisons

1 and development. I -- we are competency tested along the way.
2 And until we're finally released to do case work under the
3 supervision of a seasoned analyst. And I have been doing
4 independent case work for approximately 10, 11 -- 11 and a half
5 years, maybe.

6 Q Fair enough.

7 A Can't do math.

8 Q All right. As a forensic scientist in the latent print unit,
9 what are your duties?

10 A I analyze latent lift cards that are submitted by personnel
11 in the field. So our crime scene analysts, patrol service
12 representatives, anyone who goes out and dusts and collects for --
13 searching for comparable latent prints. And if I find comparable
14 latent prints on those lift cards, I proceed to compare them to
15 known individuals that I'm asked to compare.

16 And in cases where there are -- there was evidence
17 impounded, I've also been trained in the development and recovery
18 of -- pardon me, the development and recovery of latent prints
19 when I process items of evidence.

20 And in those cases where latent print cards are submitted,
21 but there are no persons of interest, then we can also utilize AFIS,
22 the Automated Fingerprint Identification System, which is just a
23 database of known finger and palm prints, in an attempt to identify
24 those latent prints and provide investigative leads for our
25 detectives.

1 Q Okay. And do you do any testing or training to stay
2 current with your current job?

3 A We're proficiency tested yearly. So an external company
4 sends us a test in which they provide us latent prints and known
5 prints. And it's -- and we have to compare those and either identify
6 or exclude them as the source of those latent prints. So we go
7 through that testing yearly.

8 Q Okay.

9 A And we also attend conferences and do some trainings
10 throughout the year.

11 Q And have you testified previously in Clark County in the
12 area of latent prints or fingerprint examination?

13 A I have. I have testified over 50 times in Clark County in
14 grand jury justice court, district courts, and also federally, in the
15 federal district court.

16 Q Okay. Now, would you please explain to us what the
17 definition of a latent print is?

18 A So a little bit of background. If you look at your hands,
19 you'll notice that on the palm side of your hands, your skin is
20 textured. There are fine lines, creases as you open and close your
21 hands, those heavier lines are known as creases, where your hands
22 bend. And we refer to those lines as friction ridges. So those
23 friction ridges, well, you can follow along and they either bifurcate,
24 like a split in the road, so they split in two, or they can end. So we
25 refer to those as bifurcations and ridge endings.

1 And that relationship of those minutiae and the ridge flow
2 is what allows us to compare latent prints to known prints. So
3 when I'm referring to a latent print, we're talking about an
4 unintentional transfer of the information that's on the palm side of
5 your hand, from the base of your palm to the tips of your fingers,
6 onto another surface.

7 And we commonly refer to latent prints as those prints
8 where you don't know the source, and how much of that
9 robustness, how much information is actually transferred depends
10 on a lot of factors, like how much residue, what the environmental
11 conditions are and such. So it's basically a latent print is an
12 unintentional transfer of that information from your hands. You
13 also have friction ridge skin on the soles of your feet. So it's that
14 transfer of information by way of residue, oils, whatever medium
15 might be on your hands or feet, onto another surface.

16 And it's called latent because it's, at first glance, unseen
17 by the naked eye. But then with chemical or powder processing, it
18 becomes visible.

19 Q You touched on it a little bit, but how does this differ from
20 known or exemplar prints?

21 A So when I refer to known or exemplar print, it is a
22 recording of the friction ridge skin, hands or feet, where the identity
23 of the person donating those prints are known.

24 Q Okay. Now, will you leave a print on anything that you
25 touch?

1 A Not necessarily. I started to explain earlier that the
2 amount of information transferred onto another surface is very
3 dependent on different factors. The first being how receptive is that
4 surface. So I touched my clothes in several places while getting
5 dressed today for court. And if I chemically process my clothes, I
6 probably won't find a lot of latent prints to compare to even my
7 own fingerprints, because the cloth itself is very porous. There's a
8 tight weave, so maybe if I had a substance on my fingers to -- a
9 heavy amount of substance to transfer onto my clothing, I might be
10 able to develop, but it is unlikely.

11 And likewise, a smooth, nonporous surface, like a drinking
12 glass, is a more receptive surface. It doesn't soak into the material,
13 it stays on the surface. And, again, depending on how much
14 residue is present is how much information will transfer onto that
15 surface.

16 It also depends on the size of the surface itself. If I touch a
17 paperclip all day long, because it's very small and the surface itself
18 is tiny, even if I do leave some residue on the paperclip, it wouldn't
19 be enough information to identify or exclude anyone as having left
20 that information on the paperclip.

21 And environmental factors do factor in. We have some
22 pretty torrential rainstorms when it does rain, so if you touch the
23 outside of your car when you get in that car, and it starts to rain,
24 and you had a good amount of residue on your hands, you may
25 have transferred a print. But when that torrential rainfall starts, it

1 may just wash it away. So it just clearly depends on several
2 different factors.

3 Q Okay. Now, on the occasion that you do leave a latent
4 print behind on a surface, will it always be comparable?

5 A No. Like I said, how you touch a surface, because your
6 hand -- your skin is very elastic and you're able to mould it onto
7 another surface, if I touch the tip of my finger to the surface of this
8 desk, I may transfer some friction ridge detail. But, say, when I
9 powdered and lifted it, I only had three straight lines. Then that
10 would not be enough information. A latent print is present, but
11 that's not enough information to compare and render a conclusion
12 of identification or exclusion.

13 Q Okay. So if the latent print is suitable for comparison,
14 what does that exactly mean?

15 A It means that there's enough information present in the
16 latent print that allows me to compare that to a known individual.
17 So if it's a finger of those specific details, the ridge endings,
18 bifurcations, in the latent print that are located where I would
19 expect to see them in the known, is how I conduct those
20 comparisons side by side. And then if that information is not there,
21 then I can exclude them. If it is there, I investigate further, looking
22 for more minutiae to either come to a determination of
23 identification or exclude -- exclusion.

24 Q Okay. So how do you go about comparing a latent print
25 with exemplar print?

1 A So the latent prints, again, I'm evaluating those lift cards
2 that are submitted for comparable -- comparison quality latent
3 prints. And then taking known prints, so either those known prints
4 that were collected by the crime scene analysts or that are in our
5 database that we have access to, I can print those out and then a
6 side-by-side comparison, looking for those minutiae in a specific
7 area and where I would expect to see them in the known print.

8 Q Okay. Now, let's talk about this event that you're
9 subpoenaed here for today. In this case, under
10 Event 191000002219, you were ultimately asked to compare known
11 individuals to a submitted latent print; is that correct?

12 A No. In this case, there were no known subjects to
13 compare in this case. So we were asked to do administrative AFIS,
14 which is the workflow where we have no subjects to compare, so
15 we're looking for those higher quality prints to search our AFIS
16 databases. Because when we search AFIS, the Automated
17 Fingerprint Identification System, again, it is a database of known
18 finger and palm prints. And it's like doing, like, say -- it's like doing
19 a Google search for a blue truck; you'll get a better candidate list of
20 your search the more information you have and you -- the more
21 you present it in a cohesive manner.

22 So I'm not looking for minutiae all over the print; I'm
23 looking for a subsection of minutiae that are in a cohesive area to
24 search the database. And the more cohesive area, the more
25 minutiae, the more refined my candidate list will be.

1 So it's like Google searching a blue truck. You can Google
2 search blue truck and you may not get anything of what you
3 wanted in the first hundred candidates of the list. But the more
4 specific you are, 2012, blue Toyota Tundra, two door, flatbed with a
5 cover, you're going to get a better candidate list.

6 Q Okay. So in the administrative AFIS, what's -- you -- and
7 you touched a little bit on it, but what's the exact workflow of that
8 type of case?

9 A So in that workflow, there are no subjects, no persons of
10 interest, to compare. So we scan through the lift cards that were
11 submitted to the laboratory. And I'm looking for those higher
12 quality prints, prints where there's not a whole lot of distortion or
13 movement or smudging. So we're looking for those higher quality
14 clear prints that we can search through a database to make the
15 search more effective. Because you can search anything in AFIS, as
16 long as you have three minutiae, but it's not going to be a very
17 effective search.

18 Q Okay. Now, if you find potential matches, what are the
19 next steps?

20 A If, in the candidate list, I find a potential match, it gives me
21 an identification number that I print the known exemplars from, and
22 then compare the finger it thinks is a potential match to the latent
23 print. And then make a determination of identification, and then I'll
24 issue a report.

25 Q Okay. Now, before you actually issue a report, are there

1 any reviews in your work that take place prior?

2 A Any identifications or exclusions that are determined by
3 the analysts and reported out, they're reviewed by another analyst
4 that is trained to competency. And so they review, making sure you
5 followed all the SOPs, making your identifications or exclusions are
6 sound.

7 Q Okay. And in this case, you did, in fact, issue a report; is
8 that correct?

9 A I did.

10 Q Okay. I'm going to show you State's 232; is that the report
11 that you issued in this case?

12 A It is.

13 Q Okay. And what was your determination?

14 A Of the nine lift cards that were submitted to the
15 laboratory, there was only one lift card that had an AFIS quality
16 print on it. And you'll see, it says Q8. As part of our workflow, we
17 open up the packet, make sure that if there are -- it says that there
18 are nine lift cards in it, then there are nine lift cards in the package.
19 And then I number and initial each lift card.

20 So in this case, there were nine lift cards. They were -- I
21 initialed and labeled them Q1 through Q9. But Q8 was the only lift
22 card that had an AFIS quality print on it, the higher quality prints
23 that I was speaking about before. And it was determined that when
24 I searched the database, the --

25 THE COURT: I'm so sorry. I don't mean to interrupt.

1 But would you mind coming for a second, all of you.
2 MS. GOODMAN: Okay.
3 THE COURT: And would you mind bringing the card.
4 MS. GOODMAN: Yes.
5 [Bench conference transcribed as follows.]
6 THE COURT: It says the only known prints are archived of
7 the [indiscernible] 2016 known.
8 MR. HAUSER: It's a lot.
9 MS. GOODMAN: Yeah.
10 THE COURT: So, I mean, if you guys are okay with it, it's
11 fine. Otherwise, you're going to have to doctor it.
12 MS. GOODMAN: I need to bring in -- and I won't put it
13 back up there.
14 THE COURT: Okay.
15 MS. GOODMAN: And we can redact --
16 THE COURT: I just caught it --
17 MR. HAUSER: Just redact that line.
18 THE COURT: -- [indiscernible], you know what I mean?
19 MS. GOODMAN: Yeah.
20 THE COURT: It's low on the [indiscernible]. But I
21 [indiscernible].
22 MR. HAUSER: No, I agree. We can redact that line and
23 then -- I don't think she's going to -- she's done this before.
24 THE COURT: Okay. She's -- okay. All right. So you'll
25 figure out the [indiscernible] and just don't put [indiscernible].

1 MR. HAUSER: Okay.

2 MR. SHAYGAN-FATEMI: Thank you.

3 MR. HAUSER: Sure. Thank you, Judge.

4 [End of bench conference.]

5 BY MS. GOODMAN:

6 Q Sorry. Okay. So you -- continue from where you left off.

7 A Okay. Are you --

8 Q Which is -- let me refresh my recollection. I believe you
9 were talking about the simple prints. You talked about the Q8,
10 which is what you labeled the card, which is the lift card that was
11 submitted to you and you were going through the process of how it
12 was bagged. Do you want to start from there, maybe?

13 A Sure. So when only one lift card had a -- an AFIS quality
14 print on it that I could search the database. And I searched the
15 database and came up with a match to the left middle finger of Ted
16 Donko.

17 Q Okay. And the other eight lifts there did not meet the
18 search criteria for AFIS?

19 A The other eight lift cards might have comparison quality
20 prints on them, but not necessarily AFIS quality prints. So we're
21 looking for the higher quality prints that are more -- they have
22 better clarity, they have -- it's easy to see which area of the finger or
23 palm it's from, so you know the orientation, you know the source.

24 Just like I was saying before, you could leave an
25 impression of the tip of your finger. Well, say you left an

1 impression of the tip of your finger above the core and the core just
2 being the center of the print. You might just see a rainbow of
3 ridges that bifurcate or end. That's not necessarily the most
4 effective latent print to search in the AFIS database. You could
5 search it, but it may not be the most effective use of the tools. It's
6 just like using Google to search for a blue truck when you have
7 something specific in mind.

8 Q Okay. And in this specific case, there was that second
9 reviewer; is that correct?

10 A Yes.

11 Q Okay.

12 A My work is technically reviewed. So it goes through
13 verification of any identifications or exclusions and also a review of
14 my -- how I proceeded in the case, if I followed all of our operating
15 procedures. And then it's administratively reviewed for grammar
16 and such.

17 Q All right. Thank you for your testimony today.

18 MS. GOODMAN: I'll pass the witness, Your Honor.

19 THE COURT: Mr. Hauser.

20 MR. HAUSER: Thank you, Judge.

21 **CROSS-EXAMINATION**

22 BY MR. HAUSER:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Just a couple of follow-up questions about the fingerprint

1 analysis you conducted. They tried to give you latent prints from a
2 variety of areas on the car in this case, correct?

3 A I don't know specifically where all the other lift cards are
4 from, because the only one I document is the one that has the AFIS
5 quality print on it.

6 Q Got it. But had there been an AFIS quality print anywhere
7 else, you would have documented those?

8 A Yes, I would have.

9 Q Okay. So any other fingerprints in the case, we don't
10 know where those would have come from?

11 A I'm unaware of where they might be. Because, again, the
12 only documentation I do is the location of the lift card from where
13 I'm reporting. So that's the -- Q8 was the only lift card I reported
14 on, and therefore that's the only information that I have.

15 Q Got it. So you weren't able to test -- and you may say you
16 don't know -- any fingerprints from the car doors in this case?

17 A No. There might be comparable prints, but I did not do
18 any analysis on any other fingerprints or palm prints in the case
19 that might --

20 Q Nothing off of bullet casings or unfired bullets?

21 A No. As a lab policy, the latent print unit does not do
22 analysis on bullets or fired cases.

23 Q So we have no idea if a Hispanic male left any other
24 fingerprints in this case?

25 A The only thing I can testify to is the identification that I

1 made in this case.

2 Q Certainly. And that was from one print that you found,
3 right?

4 A Correct.

5 Q Or that was collected for you?

6 A Yes.

7 Q And that fingerprint was on a license plate, right?

8 A Yes.

9 Q And that license plate wasn't on the back of the car, right?

10 A I believe it was found between the seat and the center
11 console.

12 Q Right. It was between the driver seat and the center
13 console, tucked inside, right?

14 A According to the crime scene analyst, yes.

15 Q I appreciate your time today.

16 MR. HAUSER: Thank you, Your Honor. I have nothing
17 further.

18 THE COURT: Redirect?

19 MS. GOODMAN: No, Your Honor.

20 THE COURT: Ma'am, thank you so much for your
21 testimony today.

22 Do any members of the jury have any questions?

23 Can the parties approach, please.

24 [Bench conference transcribed as follows.]

25 MR. LEXIS: Okay.

1 MR. HAUSER: Yeah.

2 MR. LEXIS: It's fine.

3 THE COURT: Okay.

4 [End of bench conference.]

5 THE COURT: Ma'am, is there any sort of probability
6 related to how likely the match is?

7 THE WITNESS: No. We don't have a model currently that
8 we can use to give probability statements like they do in DNA.

9 THE COURT: State, follow-up?

10 MS. GOODMAN: Just briefly, Your Honor.

11 **FURTHER EXAMINATION**

12 BY MS. GOODMAN:

13 Q Can you explain to the ladies and gentlemen of the jury
14 how unique a fingerprint is?

15 A So when I was explaining about the friction ridges, the
16 ridge endings, bifurcation, and that how they relate to each other,
17 it's those features that collectively appear from the base of your
18 palms to your fingertips, soles of your feet from your toes to your
19 heels. And what you possess is highly discriminating. And it --
20 what -- it's what differentiates, actually, twins from each other.
21 Because twins may have the same DNA, but they have different
22 finger and palm prints.

23 And that information that you have, that you carry around
24 with yourself all day long, that doesn't change unless there's some
25 sort of disease or permanent injury. Like I tried to cut my finger, so

1 I cut it deep enough to where when it healed, there's a void or a
2 scar where it used to be all connected, nice and pretty. So that void
3 or that scar is now a permanent part of my record.

4 MS. GOODMAN: Nothing else, Your Honor. Thank you.

5 THE COURT: Mr. Hauser?

6 MR. HAUSER: Just one, just to follow-up.

7 THE COURT: Okay.

8 **FURTHER EXAMINATION**

9 BY MR. HAUSER:

10 Q Ma'am, I just wanted to reiterate, that was a no -- there's
11 no way to tell us the probability of a match?

12 A No, there's not. We currently do not have a model that we
13 can use to generate a probability.

14 Q Okay. I appreciate it.

15 MR. HAUSER: Nothing further, Your Honor.

16 THE COURT: Anything else from the jury?

17 All right. Ma'am, you're excused from your subpoena.
18 Please don't share your testimony with anyone else involved with
19 the case. And you're excused. Thank you.

20 State?

21 MS. GOODMAN: State calls Fernando Espinoza.

22 **FERNANDO ESPINOZA,**

23 [having been called as a witness and first duly sworn, testified as
24 follows:]

25 THE CLERK: Thank you. You may be seated. Please state

1 your complete name, spelling both your first and last name for the
2 record.

3 THE WITNESS: Fernando Espinoza.

4 THE CLERK: Can you spell that for us, sir?

5 THE WITNESS: F-E-R-N-A-N-D-O.

6 THE CLERK: Last name?

7 THE WITNESS: E-S-P-I-N-O-Z-A.

8 THE CLERK: Thank you.

9 THE COURT: Mr. Espinoza, good afternoon, sir. Would
10 you mind pulling up just a little bit closer? That black box in front
11 of you is a microphone. And so if you could talk a little bit louder,
12 and that way it'll pick up. Okay? Thank you, sir.

13 **DIRECT EXAMINATION**

14 BY MS. GOODMAN:

15 Q Good afternoon, Mr. Espinoza. I'm going to get
16 something a little bit personal out of the way first, okay? You were
17 convicted of attempt larceny from a person on April 21st, 2010; is
18 that correct?

19 A Correct.

20 Q Okay. I'm going to cut to the chase, okay? Did you get
21 shot on October 1st, 2019?

22 A Yes.

23 Q Okay. And where did you get shot?

24 A My abdomen and my hand.

25 Q Okay. Do you remember what you were doing at -- right

1 before you got shot?

2 A Moving some furniture.

3 Q Okay. And did you have your brother's Ford white pickup
4 truck?

5 A Yes.

6 Q Okay. Do you remember what happened right before you
7 got shot?

8 A Well, I just seen some people I was talking to, helping.
9 They were -- I just seen them arguing and that's about it, really.

10 Q Okay. Was the argument violent?

11 A No.

12 Q Okay. Did you feel anything right before you got shot?

13 A Just, like, somebody pushed me or something.

14 Q Okay. Do you know if that was a human that even pushed
15 you?

16 A No.

17 Q You don't know? Do you know who pushed you?

18 A No.

19 Q Could that have been a bullet that pushed you?

20 A Maybe.

21 Q Okay. Do you remember what happened after you got
22 shot?

23 A No, not really.

24 Q Do you remember waking up in the hospital?

25 A Yeah.

1 Q Okay. How long were you in the hospital for?

2 A From October to, like, November.

3 Q Okay. And I see that you have something on your wrist
4 and your arm. Can you hold your right arm up for the ladies and
5 gentlemen of the jury.

6 MS. GOODMAN: And just for the record, Your Honor, the
7 witness is holding his right arm, it appears to be bandaged.

8 Q What is that bandage from?

9 A From the bullet wound.

10 Q Okay. Did you just have surgery on that?

11 A Yeah.

12 Q Okay. Do you have any scarring underneath that?

13 A Yeah.

14 Q Okay. Can you kind of turn your hand to show the ladies
15 and gentlemen of the jury, palm out, if you can. Can you even raise
16 it that high?

17 MS. GOODMAN: I'm sorry, Your Honor.

18 Q And can you lift back your bandage -- can --

19 MS. GOODMAN: And, Your Honor, may I approach the
20 witness?

21 THE COURT: Yeah.

22 BY MS. GOODMAN:

23 Q Okay. So it appears that there's a scar from the middle of
24 your hand down to the bottom of your -- the top of your wrist?

25 A Yeah.

1 Q Okay. Thank you, Mr. Espinoza.
2 Now, you also got shot in your abdomen; is that correct?
3 A Yeah.
4 Q Okay. Do you have scars from that?
5 A [No audible response.]
6 Q Okay.
7 A Yeah.
8 Q And where are your scars?
9 A In my stomach.
10 Q Okay. And I hate to do this to you, but can you stand up
11 and show the ladies and gentlemen of the jury those scars?
12 A [Witness complies.]
13 MS. GOODMAN: And, Your Honor, just for the record,
14 there is -- he's pointing to the left side of his abdomen.
15 Q And you have another one on your right side?
16 A Yeah.
17 Q Okay.
18 MS. GOODMAN: And, Your Honor, just for the record, the
19 witness is lifting up his shirt to show the right side of his abdomen
20 to the jury.
21 THE COURT: Okay.
22 BY MS. GOODMAN:
23 Q Okay. Mr. Espinoza, do you recall talking to the detectives
24 at the hospital?
25 A No.

1 Q Okay. Do you recall talking to them about this incident?

2 A No.

3 Q Okay. Do you -- before you were shot, do you recall an
4 older Toyota pull up to the house?

5 A No.

6 Q Okay. Do you recall the passenger coming out of that
7 Toyota?

8 A No.

9 Q Okay. Do you recall the passenger saying something
10 about Shorty?

11 A No.

12 Q Do you -- did you see the person who shot you?

13 A No.

14 Q Okay. Now, during this entire process, have you been on
15 painkillers and a lot of medication?

16 A Yeah.

17 Q Okay. Are you still currently taking that medication?

18 A Yeah.

19 Q And fair to say you don't want to be here testifying to this
20 today?

21 A No.

22 Q Okay.

23 THE COURT: Sorry. It's fair to say to that? Or you don't?

24 THE WITNESS: I don't.

25 THE COURT: You don't.

1 THE WITNESS: I wasn't going to come.
2 THE COURT: You weren't going to come?
3 THE WITNESS: No.
4 THE COURT: Okay. Sorry. Go ahead.
5 MS. GOODMAN: No, that's okay.
6 BY MS. GOODMAN:
7 Q Do you -- is the only reason why you are here because
8 you were under the State subpoena?
9 A Yes.
10 Q Okay. Why don't you want to testify today?
11 A Because, I mean, I wasn't brought up that way. I mean,
12 never been in court like this.
13 Q Okay.
14 MS. GOODMAN: All right. Your Honor, I'll pass the
15 witness.
16 THE COURT: Okay. Mr. Shaygan.
17 MR. SHAYGAN-FATEMI: Thank you.
18 **CROSS-EXAMINATION**
19 BY MR. SHAYGAN-FATEMI:
20 Q How are you, sir?
21 A Good.
22 Q I'm going to ask you a few questions this morning -- or
23 this afternoon, I should say. If you don't understand what I'm
24 asking you, just let me know and I'll rephrase the question. Okay?
25 A All right.

1 Q On the day you were shot, you were at 56 Linn Lane?
2 A I don't know the address.
3 Q You don't remember the address?
4 A No.
5 Q You said you were there with some people?
6 A Yes.
7 Q Okay. And did you know a Jonathan Sanchez?
8 A No.
9 Q Okay. And you do not remember seeing an older Toyota
10 that day, correct?
11 A Correct.
12 Q And you do not recall seeing Ted Donko on that day,
13 correct?
14 A Correct.
15 Q In fact, the only other time that you've seen Ted Donko is
16 when you came to court on December 18th, correct?
17 A Correct.
18 Q And you were -- Ms. Rose asked you about going to a
19 hospital after getting shot, correct?
20 A What?
21 Q Forgive me, that was a bad question.
22 You went to the hospital after getting shot, correct?
23 A Correct.
24 Q And you do not remember speaking to a detective at the
25 hospital, correct?

1 A Correct.

2 MR. SHAYGAN-FATEMI: Your Honor, a moment of

3 indulgence.

4 Your Honor, we have no further questions. Thank you.

5 THE COURT: Sure.

6 Redirect?

7 MS. GOODMAN: No, Your Honor.

8 THE COURT: Ladies and gentlemen, any questions from

9 the jury?

10 MR. SHAYGAN-FATEMI: Your Honor, may we briefly

11 approach?

12 THE COURT: Sure.

13 [Bench conference transcribed as follows.]

14 MR. SHAYGAN-FATEMI: My client wants to speak with

15 us. He is requesting a recess. I don't know if the Court could

16 accommodate. I just don't want any sort of incidents.

17 MR. HAUSER: We know it's not convenient.

18 THE COURT: [Indiscernible] recess again.

19 MR. HAUSER: I believe he would like new attorneys.

20 THE COURT: What [indiscernible].

21 MR. LEXIS: I don't think I'd ever said that, Judge.

22 THE COURT: Okay.

23 MR. LEXIS: Mr. Sanchez.

24 THE COURT RECORDER: I can't hear him.

25 MR. LEXIS: Chad Lexis. Another witness that was there.

1 THE COURT: Let's get [indiscernible] question in, then go
2 on recess.

3 MR. SHAYGAN-FATEMI: Okay. Thank you.

4 MS. GOODMAN: You want to -- we can --

5 MR. LEXIS: Let's take care of this witness and then --

6 MS. GOODMAN: No, that's what I mean. We're going to
7 release this witness and then take a break.

8 MR. SHAYGAN-FATEMI: That's fine with us.

9 MS. GOODMAN: Okay.

10 MR. SHAYGAN-FATEMI: Yeah?

11 MR. LEXIS: Yeah. Okay.

12 THE COURT: Stay here, though, for the question.

13 MS. GOODMAN: No.

14 THE COURT: No, we have a juror question.

15 MS. GOODMAN: Oh.

16 THE COURT: Can I -- if -- can I get the question?

17 MR. HAUSER: I think he'd say I don't know.

18 MR. LEXIS: Yes.

19 MR. HAUSER: I think we know the answer.

20 [End of bench conference.]

21 THE COURT: All right. Sir, were you facing the area
22 where the shots came from or was your back towards the shooter?

23 THE WITNESS: No, I was putting the furniture, facing,
24 like, towards the street.

25 THE COURT: So you were -- if that's the street where the

1 shots came from, you were looking towards the street?

2 THE WITNESS: I don't know where they came from. I
3 just -- I was walking, putting the furniture in the back of the truck.

4 THE COURT: Okay. But your body was facing -- and your
5 body and your face were facing the street, but you're not sure
6 which way the shots came from; is that right?

7 THE WITNESS: That's right.

8 THE COURT: Okay. Any follow-up?

9 MS. GOODMAN: No, Your Honor.

10 MR. SHAYGAN-FATEMI: Not from the defense, Your
11 Honor.

12 THE COURT: Any other further questions? All right.

13 Sir, thank you for your testimony today, you are excused.
14 Please do not share your testimony with anyone else involved in
15 the case.

16 THE WITNESS: All right.

17 THE COURT: Thank you.

18 All right. Ladies and gentlemen, we are going to take a
19 short recess.

20 During the recess you're admonished not to talk or
21 converse among yourselves or with anyone else on any subject
22 connected to this trial or read, watch, or listen to any report of or
23 commentary on the trial of any person connected with this trial by
24 any medium of information, including, without limitation to
25 newspapers, television, the Internet, and radio, or form or express

1 any opinion on any subject connected with this matter until the
2 matter is finally submitted to you.

3 If you could be out front at 2:25, please.

4 [Jury recessed at 2:12 p.m.]

5 THE COURT: All right. We are outside the presence of the
6 jury.

7 MR. SHAYGAN-FATEMI: Your Honor, a brief moment of
8 indulgence.

9 THE COURT: All righty.

10 We're going to go off.

11 THE DEFENDANT: May I speak to you for a minute, Miss?

12 THE COURT: Talk to your attorneys.

13 THE DEFENDANT: All right.

14 THE COURT: I'm going to get a drink of water and then
15 we'll come back.

16 THE DEFENDANT: Okay.

17 [Court recessed at 2:13 p.m., until 2:19 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: We are back on the record in C-345584-1,
20 State of Nevada versus Ted Michael Donko. He is present. All
21 attorneys present.

22 MR. HAUSER: I believe Mr. Donko would like to address
23 the Court about potentially representing himself.

24 THE COURT: Okay.

25 THE DEFENDANT: I don't want to represent -- I just want

1 them to fight for me, Your Honor. They're not bringing up the fact
2 that he's a gang member, a Hispanic gang member, and that two
3 Mexicans with no tattoos and no facial hair did the shooting, you
4 know what I mean? And they're not -- I feel like they're not -- I feel
5 like it's -- this is getting pushed on for me to get act out in court,
6 you know, so I could show them that I'm guilty.

7 THE COURT: Okay.

8 THE DEFENDANT: And I'm not. They're not asking
9 questions that I'm asking him to ask.

10 THE COURT: Okay.

11 THE DEFENDANT: Okay. I got a whole list here of
12 questions that I would like them to ask them. Okay?

13 THE COURT: So just so you know, they can't -- that man
14 couldn't have been asked about being a gang member. That's not
15 allowable by the rule.

16 THE DEFENDANT: Why am I allowed -- if I take the stand,
17 why am I allowed to be asked if I'm a felon?

18 THE COURT: Well, did you hear him get asked if he was a
19 felon?

20 THE DEFENDANT: Yes. Yes, I did.

21 THE COURT: Okay. So that's different than being a gang
22 member.

23 THE DEFENDANT: And another thing, ma'am, if you look
24 at this -- my case should have been dismissed a long time ago due
25 to the simple fact if you look at my lineup picture, okay?

1 THE COURT: Uh-huh.

2 THE DEFENDANT: It says two Hispanic males with no
3 tattoos and no facial hair. All these gentlemen have facial hair and
4 look between the age of 40. Not 20. I'm the only one right here that
5 looks 20 years old.

6 THE COURT: Okay. But that's not what we're here --
7 we're here on trial. So we're way past that point. So what we're
8 talking about now is, is you want your attorneys to do things that
9 the law doesn't allow them to do. So they can't bring up that he is
10 a gang member.

11 THE DEFENDANT: No, I understand that part.

12 THE COURT: And he said, I didn't see -- I mean, what that
13 witness just did, if your attorneys would have poked --

14 THE DEFENDANT: I don't think it's funny --

15 THE COURT: Hold on, my turn.

16 THE DEFENDANT: -- that she's laughing, Your Honor. I'm
17 sorry.

18 THE COURT: If your attorneys would have poked him,
19 what happens with people like that is if your attorneys poke them,
20 he starts to poke back. And you don't want him poking back on
21 you. So --

22 THE DEFENDANT: What -- why? I didn't do it.

23 THE COURT: Okay. But in case he thinks you did, then --
24 so you don't want them poking at him. What he did for you, he
25 said, I didn't see the guy. I don't know who did this to me. I don't

1 want to be here. What more do you want them to do?

2 THE DEFENDANT: But she also brought up the fact,
3 ma'am, it's because it's -- he's -- because he doesn't want to snitch.
4 So they're bringing it up as if he's doing it because he doesn't want
5 to testify. You know what I mean? It's still him guilt towards me,
6 you know what I mean? And them laughing back and forth, it's,
7 like, this is my life we're talking about.

8 THE COURT: Okay.

9 THE DEFENDANT: You know what I mean? 30-plus years
10 in prison, you know what I mean, for something that I didn't do.
11 Okay, yeah, there's DNA on a shirt eight houses down from the
12 crime scene. I have a car in front of my house that's filled with
13 clothes, and my clothes, because my mom kicked me out.

14 THE COURT: Okay.

15 THE DEFENDANT: Okay? They found a license -- a
16 fingerprint. If you check my record, I was working at -- over there
17 by Smiley Road at the Pick A Part. I touch millions of license plates.

18 THE COURT: Okay. But what do you want them to do
19 that they --

20 THE DEFENDANT: No fingerprint on the vehicle that did
21 the shooting, there was no firearm.

22 THE COURT: Okay. But all of that, we've already
23 established. So what is it you want them to do that they haven't
24 done?

25 THE DEFENDANT: It has not been established, ma'am,

1 that there's no firearm. It's not established that I am the -- nothing
2 has been established. All is being said is that they're fighting on
3 their defense harder than they are for mine. And I'm the one that's
4 supposed to be proven -- and, you know what I mean, innocent.

5 THE COURT: All right.

6 THE DEFENDANT: Where's my -- how am I going to prove
7 I'm innocent if there's no questions getting asked on my behalf?

8 THE COURT: You're not --

9 THE DEFENDANT: You understand what I'm saying?

10 THE COURT: Not really.

11 THE DEFENDANT: I got to -- look, I got millions of
12 questions here, like, Wes said he has never heard of Shorty. But
13 earlier in the discovery states that he does, he just didn't want to
14 say, because he doesn't have problems.

15 I got -- all the way from the police report, how could I have
16 been in that vehicle the day prior to the shooting when that vehicle
17 was reported 10/1, the day of the shooting, and the guy had the car
18 till 7:00 a.m.? So how could I have come in that car the day before
19 the shooting, and the male was Hispanic that owns that car. Just --
20 do you see what I'm saying?

21 THE COURT: Not really, because who do you want them
22 to ask those questions to?

23 THE DEFENDANT: I just want it to be brought up. That's
24 all. I don't want this to continue going on and nothing be brought
25 up and me get frustrated in the courtroom, Your Honor.

1 THE COURT: Okay. Well, first of all, you're in control of
2 your actions, so not anything that happens, don't say it's pushing
3 you to do something. Because if you act out, there's going to be
4 repercussions. So don't say if they do this, then I'm going to do
5 this. No.

6 THE DEFENDANT: No, I understand. Look, I understand.

7 THE COURT: So here's the thing, you want them to do
8 things that haven't even come up yet. They're not going to bring
9 that up to some guy who doesn't even know what's going on. So
10 they're your attorneys. If you wish to represent yourself, I will go
11 through the *Faretta* canvass with you, and I respect that right.

12 But these are your attorneys. So they are in charge of
13 trial. And they are in charge of trial strategy. So they aren't going
14 to ask every question you deem appropriate, because number one,
15 some of those questions aren't allowed by law. And number two,
16 as a trial strategy, it may be smart not to ask some of those
17 questions. So you're just going to have to trust in them. If you
18 don't trust in them, then you have the ability to represent yourself,
19 and that's always up to you.

20 THE DEFENDANT: And how does that work, me
21 representing myself? Because I did -- I got eight hours -- I do --
22 went to the law library, looked up a bunch of stuff about my case.

23 THE COURT: Uh-huh.

24 THE DEFENDANT: About the facts that they need to have.
25 And it's -- at first and in the discovery say a male with red shirt and

1 khaki shorts, then a male with a red shirt with black pants. It's -- I
2 shouldn't even -- I don't even know why I had to have a jury trial. It
3 should have got thrown out at prelim.

4 THE COURT: Well, it didn't, though, right? So --

5 THE DEFENDANT: Because of one person saying he's 95
6 percent sure that I'm the one that did it, but then mixes his story up
7 throughout the whole discovery.

8 THE COURT: And I'm sure your attorneys will address
9 that when that witness gets on the stand. But you want them to do
10 stuff with a person that isn't even, you know, responsible for any of
11 that. So when you say how does it work, how it works is -- I mean,
12 it's -- you represent yourself. You work as the attorney. You ask
13 the questions.

14 THE DEFENDANT: Can I ask you one question?

15 THE COURT: Uh-huh.

16 THE DEFENDANT: This is -- what -- I'm obviously not 5-6,
17 the height of 5-6 and 150 pounds.

18 THE COURT: Okay.

19 THE DEFENDANT: Okay. What's -- the guy, the only one
20 that pointed me out states that the male that did this shooting
21 is 5-6, 5-5, 150 pounds.

22 THE COURT: Okay.

23 THE DEFENDANT: Okay. I obviously don't wear a 4X
24 t-shirt. Okay. And there would be GSR on that t-shirt if I fired off
25 eight rounds.

1 THE COURT: Okay. Did there -- was there GSR testing
2 done?

3 THE DEFENDANT: No. But why wouldn't there be GSR
4 testing done?

5 THE COURT: I think that your attorney brought that up,
6 right?

7 THE DEFENDANT: No. They didn't bring up the fact that
8 there was -- why wasn't there no GSR. All that was asked, is it
9 recommended to do it.

10 THE COURT: Right. But --

11 THE DEFENDANT: This is a attempt murder charge --
12 attempt murder case, ma'am, where a firearm has been discharged.
13 And I think -- this is my life we're talking about it -- I think any -- any
14 test should be available to prove my innocence.

15 THE COURT: Right. And they asked the -- either the crime
16 scene analyst or I know they asked the DNA lady in regards to if
17 that testing was done.

18 So here's the thing, if you don't like how it's going and
19 you feel like you could do a better job, I'm happy to provide you
20 with the questions that I have to ask you if you want to represent
21 yourself. Otherwise, we're moving forward with these two --

22 THE DEFENDANT: I'll wait till we go on with Woods, and
23 then I'll make that decision then.

24 THE COURT: Okay. All righty.

25 Bring in the jury, please.

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[Jury reconvened at 2:26 p.m.]

THE COURT: Do both parties stipulate to the presence of the jury?

MS. GOODMAN: Yes, Your Honor.

MR. HAUSER: Yes, Your Honor.

THE COURT: All right. Wonderful. Thank you. Okay. State, next witness.

MS. GOODMAN: State calls Jonathan Sanchez.

JONATHAN SANCHEZ-LOZA,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: Jonathan Sanchez-Loza, J-O-N-A-T-H-A-N, S-A-N-C-H-E-Z-L-O-Z-A.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. GOODMAN:

Q Good afternoon. May I draw your attention to October 1st, 2019. What were you -- where were you at that morning?

A Home.

Q Okay. Was that at 104 Linn Lane?

A Yes.

1 Q Okay. At about 11:30 or so, what happened?
2 A I got a phone call.
3 Q From who?
4 A Fernando.
5 Q Okay. And did he ask -- without telling me what he said,
6 did you end up going to 56 North Linn Lane?
7 A Yes.
8 Q Okay. And did you go there with Fernando and a Chuck?
9 A No. He was already there.
10 Q Okay. So you went there?
11 A Yes.
12 Q Okay. And were -- why were you there?
13 A To remove trash to take to the dump.
14 Q Okay. Now, do you recall who was there with you?
15 A Fernando, Gilbert, DeAndre, and the owner of the house.
16 Q Okay. And who is Fernando to you?
17 A Just a friend around the block.
18 Q Okay. Do you have a nickname? Is it Johnny?
19 A Yeah, they call me that.
20 Q Okay. Real name Jonathan?
21 A Yes.
22 Q Nicknamed Jonathan -- Johnny. All right.
23 So I'm going to show you this picture, okay, State's
24 Exhibit 34; was that the house you were at?
25 A Yes.

1 Q Okay. The white truck that you were moving furniture
2 into?
3 A Yes.
4 Q Okay. Now, at about 12:00 p.m. or so, did anything spark
5 your attention?
6 A Somebody saying, Hey, where's Shorty?
7 Q Okay. Did you look over to see what it was?
8 A Yes.
9 Q Okay. What did you see?
10 A I turned around, I seen a Toyota and a gun pointed at me.
11 Q Okay. And what happened after that?
12 A I got shot.
13 Q Okay. Now, where were you standing in relation to this
14 picture? And I'm -- see, there's a mouse on the counter there.
15 A Uh-huh.
16 Q And can you just --
17 A The red?
18 THE COURT: The red. Yeah.
19 BY MS. GOODMAN:
20 Q The red.
21 THE COURT: And then you can use it however you want.
22 MS. GOODMAN: Thank you, Your Honor.
23 BY MS. GOODMAN:
24 Q All right. Can you mark where you were standing at the
25 time you got shot?

1 A [Witness complies.]

2 Q Okay. And where was Fernando?

3 A He was behind the truck.

4 Q Okay. He was behind the truck?

5 A Yeah.

6 Q Okay. And now, if you could do me a favor, take that
7 mouse --

8 MS. GOODMAN: And just for the record, Your Honor,
9 where the red mark is, to the center of the white truck, to the side
10 where the apparent blood is.

11 Q And go ahead and take the mouse, and see that arrow
12 button?

13 THE COURT: It's right here. Go down again.

14 MS. GOODMAN: That's okay.

15 Oh, Your Honor, may I approach?

16 THE COURT: Yeah.

17 BY MS. GOODMAN:

18 Q All right. We move it around, this little arrow button just
19 clears it. Okay?

20 A Uh-huh.

21 Q There we go. Okay.

22 So after you got shot, did you drop to the ground?

23 A Yes.

24 Q Okay. Did you see anything after you dropped to the
25 ground?

1 A Well, after I was laying there?

2 Q Yes.

3 A From underneath the truck, I could see Fernando fall in the

4 back of the truck.

5 Q Okay. Now, did you get a good look at the shooter?

6 A No.

7 Q Why is that?

8 A His gun was in front of his face.

9 Q Okay. How many rounds did you hear?

10 A About 10.

11 Q Okay. Did you see the car after that?

12 A No.

13 Q All right. What did you do after you were on the ground?

14 A Well, when I first got shot, I pulled my phone out, called

15 my uncle to tell him what happened.

16 Q Okay.

17 A After that, just in and out of conscious.

18 Q Okay. And your uncle lives with you up the street?

19 A Yes.

20 Q Okay. And the next thing you remember, is it waking up

21 in the hospital?

22 A I remember here and there, like, in the ambulance and

23 stuff. But, yeah, waking up in the hospital.

24 Q Okay. And where, exactly, were you shot?

25 A In my right thigh, exit my right thigh, hit my left thigh.

1 Bullet's still lodged in my left leg.

2 Q Okay. So you've still got a bullet in you?

3 A Right.

4 Q All right. And I notice that you walk with a cane?

5 A Yes.

6 Q Is that a result of this shooting?

7 A Yes.

8 Q Okay. Now, how long were you in the house before?

9 A Six days.

10 Q Okay. Did you have surgery --

11 A Yes.

12 Q -- for your legs? Okay.

13 A One leg.

14 Q And you still are suffering here today?

15 A Yes.

16 Q And do you have scars?

17 A Yes.

18 Q Not to mention the bullet's still in your other leg?

19 A Yes.

20 Q Okay. I'm going to ask you to kind of step up, and as long
21 as you could -- or you have the ability to do so, can you come and --

22 THE COURT: And, Your Honor, may I have permission to
23 have the witness just step down to have the jury see those injuries?

24 Q And, Mr. Sanchez, if you could just step down. And do
25 you need help? Okay.

1 Again, I know it might be a little uncomfortable, but could
2 you please unbutton your pants and kind of show where your
3 injuries are?

4 THE COURT: Can we approach?

5 MS. GOODMAN: Oh, I'm sorry. Yes.

6 [Bench conference transcribed as follows.]

7 MR. SHAYGAN-FATEMI: We stipulated to a --

8 THE COURT: Yeah, I'm just going --

9 MR. SHAYGAN-FATEMI: -- ton of hospital photos. I don't
10 know why he needs to unbutton his pants.

11 THE COURT: He is literally shaking.

12 MS. GOODMAN: Yeah.

13 THE COURT: And I do not want him -- [indiscernible] to
14 pull down his pants. I thought he was going to [indiscernible]. I
15 thought he was going down. And he's walking with a cane. I think
16 SBH has probably been --

17 MS. GOODMAN: That's fine, Your Honor.

18 THE COURT: I mean, I just-- first of all, I don't think
19 anybody's arguing that it's not SBH, right?

20 MR. HAUSER: I can promise Your Honor I will never say
21 that. I'm closing and I'm not doing that.

22 MS. GOODMAN: No, that's fine, Your Honor. Just --

23 MR. SHAYGAN-FATEMI: We were going to object in a
24 moment. Your Honor got out in front of it. So.

25 MR. HAUSER: Yeah, I appreciate it.

1 THE COURT: All right. Great. Thanks.

2 [End of bench conference.]

3 THE COURT: You can come back up, sir.

4 BY MS. GOODMAN:

5 Q Mr. Sanchez, I know that you're nervous. So we're just
6 going to move on, okay?

7 A Okay.

8 Q All right. Now, when you looked back, did you see -- did
9 you see -- you said you saw a Toyota?

10 A Yes.

11 Q What did it look like?

12 A Older model.

13 Q Okay. And did you see the person come out of the
14 passenger side?

15 A No, I didn't see him.

16 Q Okay. Did you believe that it was the passenger who
17 shot?

18 A Yes.

19 Q And how did you know that? Or why did you think that?

20 A The passenger door was open.

21 Q Okay.

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

23 THE COURT: Mr. Shaygan.

24 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

25 ///

1 **CROSS-EXAMINATION**

2 BY MR. SHAYGAN-FATEMI:

3 Q Good afternoon, sir.

4 A Hello.

5 Q Just to be clear, you just testified that you do know
6 Fernando?

7 A Yes.

8 Q And you said Fernando was a friend from around the
9 block, correct?

10 A Correct.

11 Q And, actually, called you on that -- on the day you were
12 shot, correct?

13 A Yes.

14 Q Just so no one is confused, you did not get a good look at
15 the shooter, correct?

16 A No, I didn't.

17 Q So you have no idea who it was that shot you, correct?

18 A No.

19 THE COURT: Correct?

20 MR. SHAYGAN-FATEMI: Thank you, Your Honor. I could
21 rephrase it.

22 THE COURT: Yeah, rephrase it. It's so tricky with that.

23 BY MR. SHAYGAN-FATEMI:

24 Q You don't know who -- yes or no, you don't know who
25 shot you?

1 A No, I don't.

2 Q Thank you.

3 And outside of a court date of December 18th, you've
4 never seen that man before in your life, correct?

5 A Correct.

6 Q Thank you for your time.

7 MR. SHAYGAN-FATEMI: Your Honor, I have nothing
8 further.

9 THE COURT: Okay. State?

10 MS. GOODMAN: No, Your Honor. I have no redirect.
11 Thank you.

12 THE COURT: Ladies and gentlemen, any questions?
13 Okay.

14 Parties approach.

15 [Bench conference transcribed as follows.]

16 MR. HAUSER: It's one of those I think we don't tell
17 anybody.

18 [End of bench conference.]

19 THE COURT: Sir, do you remember anything regarding
20 what the shooter was wearing?

21 THE WITNESS: No, I don't.

22 THE COURT: The answer was: No, I don't.

23 Any follow-up?

24 MS. GOODMAN: No, Your Honor.

25 MR. SHAYGAN-FATEMI: No, Your Honor.

1 THE COURT: All right. Sir, thank you so much for coming
2 in today. You are excused from your subpoena. Please don't share
3 your testimony with anyone else involved in the case.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: Thank you.

6 MR. LEXIS: Could we approach, Judge?

7 THE COURT: Yep.

8 [Bench conference transcribed as follows.]

9 MR. LEXIS: So we're going to need a break, because we
10 have definitely -- one's on his way. We're -- problems with the
11 other, like, I'm going to get you somebody here. He should have
12 been here. He assured me. That's who I've been going back and
13 forth with. And then the other one should be on the way to --

14 THE COURT: So how long do you need?

15 MR. LEXIS: What time is it now?

16 THE COURT: 2:20.

17 MR. LEXIS: Maybe come back at 3:20.

18 THE COURT: So long?

19 MR. LEXIS: I know, Judge. I'm trying to move them.

20 THE COURT: Who are these people?

21 MR. LEXIS: [Indiscernible.]

22 THE COURT: All -- both of them?

23 MR. LEXIS: Uh-huh.

24 THE COURT: Oh, my gosh.

25 MR. LEXIS: But we're going to be done tomorrow. I can

1 assure you, we can go with the jury instructions.

2 THE COURT: I'm a bad -- don't worry.

3 MR. LEXIS: And I can assure you, we're going to be all
4 done tomorrow. We're going to have our lead detective tomorrow,
5 but we should have it -- we're trying to get another witness for
6 tomorrow. But we're going to be done. But if we could please start
7 at 9:00, we're going to be -- we're going to rest it by noon.

8 MR. HAUSER: If Mr. Shaygan, and I are still the attorneys,
9 I believe that's correct. But I can't promise that.

10 THE COURT: Okay. All right. So -- okay. Okay. Got it.

11 [End of bench conference.]

12 THE COURT: All right. So we're having some
13 transportation issues. I promise you we're still ahead of schedule,
14 so don't stress out about that. But we're going to take a pretty
15 good afternoon recess. And then we won't break again for the rest
16 of the day. So feel free to go down and get a snack or get
17 something to drink, because we're not going to come back
18 until 3:20.

19 During the recess you're admonished not to talk or
20 converse among yourselves or with anyone else on any subject
21 connected to this trial or read, watch, or listen to any report of or
22 commentary on the trial of any person connected with this trial by
23 any medium of information, including, without limitation to
24 newspapers, television, the Internet, and radio, or form or express
25 any opinion on any subject connected with the trial until the case is

1 finally submitted to you.

2 I will see you at 3:20.

3 [Jury recessed at 2:41 p.m.]

4 THE COURT: All right. So we will be in recess then
5 until 3:20. We can go off.

6 [Court recessed at 2:42 p.m., until 3:27 p.m.]

7 [Outside the presence of the jury.]

8 THE COURT: All right. We're back on the record is
9 C-345584-1, State of Nevada versus Ted Michael Donko. Mr. Donko
10 is present with Mr. Hauser and Mr. Shaygan on his behalf. Both
11 deputy district attorneys, Ms. Rose Goodman as well as Mr. Lexis,
12 are present.

13 Are we ready to go?

14 MR. LEXIS: We have a witness for the occasion.

15 THE COURT: Well, that's a start.

16 MR. HAUSER: Sounds good.

17 THE COURT: All right. Let's bring them in.

18 [Jury reconvened at 3:28 p.m.]

19 THE COURT: Welcome back, ladies and gentlemen.
20 Thank you for your patience. We are back on the record. Do both
21 parties stipulate to the presence of the jury?

22 MS. GOODMAN: Yes, Your Honor.

23 MR. LEXIS: Yes, Your Honor.

24 MR. HAUSER: Yes, Your Honor.

25 THE COURT: All right. State, next witness.

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MR. LEXIS: State calls Genaro Ramos.

GENARO RAMOS,

[having been called as a witness and first duly sworn, testified as follows:]

THE CLERK: Thank you. You may be seated. Please state your complete name, spelling both your first and last name for the record.

THE WITNESS: It's Genaro Ramos. My name?

THE CLERK: Yes. Can you spell that for us, please?

THE WITNESS: It's G-E-N-A-R-O --

THE COURT: I'm sorry. Start over, please.

THE WITNESS: My name?

THE COURT: Yeah.

THE WITNESS: Is -- spelling?

THE COURT: Yes, please.

THE WITNESS: Is G-E-N-A-R-O, R-A-M-O-S.

THE CLERK: Thank you.

THE COURT: Thank you.

THE WITNESS: Welcome.

DIRECT EXAMINATION

BY MR. LEXIS:

- Q Sir, around October 1st, 2019, what were you doing?
- A I was working on my mom's car.
- Q Okay. And where at?
- A 5617 White Cap Street.

1 Q That was at around noon?

2 A Yes.

3 Q Showing you State's 7; do you see White Cap Street here
4 in the middle?

5 A Yeah.

6 Q The middle of --

7 A I see it.

8 Q Is that true?

9 A Yes.

10 Q Is that true and correct representation of that
11 neighborhood?

12 A Yeah.

13 Q Okay. That blue mark right there, the White Cap, is that
14 approximately your mom's house?

15 A Yes, that was my mom's.

16 Q That's your mom's house, sir?

17 A Yeah.

18 Q Okay. What, if anything, did you hear around 12:15?

19 A Gunshots.

20 Q Around how many, sir?

21 A Between 8 to 10.

22 Q Okay. What, if anything, did you notice after that?

23 A Fast car coming on the street --

24 Q Okay.

25 A -- that caught my attention.

1 Q How long after?

2 A A couple minutes.

3 Q Okay. So a couple minutes after the gunshots, the car and
4 the way it was speeding --

5 A Yeah.

6 Q -- caught your attention?

7 A Yeah.

8 Q Okay. Can you describe that in detail?

9 A It was a Toyota Corolla, gold, sand color, between '93
10 or '98.

11 Q Okay. So older model?

12 A Yeah.

13 Q And, particularly, what caught your attention, you said,
14 was the speed, so were you -- did you hear it coming?

15 A Yeah, I hear the car on the corner of the street.

16 Q Okay. What did the car eventually do, sir?

17 A He was driving fast and then he got dropped by a couple
18 houses on Linn Street.

19 THE COURT: If you want to use that -- the mouse, you
20 can --

21 THE WITNESS: Oh, I so I can scoot them --

22 THE COURT: Yeah. Hit the red -- use the mouse and then
23 the that red pencil.

24 THE WITNESS: Okay.

25 THE COURT: All right.

1 THE WITNESS: There. Yeah, this is Linn Street, and then
2 this is where the car drove off, right in this area.

3 THE COURT: Where it says Toyota Corolla?

4 THE WITNESS: Yeah.

5 BY MR. LEXIS:

6 Q Okay. What, if anything, did you see after that car
7 stopped?

8 A I see a guy in the guy, one person.

9 Q One person? And what did that person do?

10 A He looked suspicious.

11 Q Why did he look suspicious, sir?

12 A He was looking around and then searching off his waist
13 and then his buckets.

14 MR. LEXIS: Okay. Let the record reflect the witness is
15 grabbing his waist, pocket area.

16 THE WITNESS: Uh-huh. Yeah, like --

17 BY MR. LEXIS:

18 Q Repeatedly? Did he do that repeatedly, sir?

19 A Yeah, a couple, several times. Yeah.

20 Q Okay. Did he go -- ever go back to the car?

21 A He tried to come back, yeah. And then after that he start
22 running or walking on Surf Lane.

23 Q Okay. So --

24 A North --

25 Q -- you said --

1 A North on Surf Lane.

2 Q -- on Surf Lane?

3 A Yeah.

4 Q So could you go ahead and draw -- okay. And what

5 direction was he going on Surf Lane?

6 A Going north.

7 Q Okay.

8 A Yeah, because -- hold on. This is north. Yeah. He start --

9 Q Okay. So you've seen --

10 A It's okay.

11 Q -- initially see him at the vehicle marked Toyota Corolla,

12 and then you see him going north where that next red dot is,

13 correct?

14 A Yeah. Yeah, the Surf Lane street, yeah.

15 Q Okay. What, if anything else, was he doing suspicious?

16 A That's all I see after that. Then I -- but I see that, like, he

17 was wearing a red shirt.

18 Q Okay.

19 A Uh-huh.

20 Q Can you describe the person?

21 A He's white male in his 30s.

22 Q Okay. And you said he was wearing a red shirt?

23 A Red shirt, yeah.

24 Q Was he looking around at all?

25 A When he got off of the car, yeah, he start -- he was looking

1 around. But I didn't see him after that when I see when -- the -- he
2 was on Surf Lane, I didn't see him after that.

3 Q As he's looking around, is he -- that's as -- that's while
4 he's grabbing his pockets and everything?

5 A Uh-huh.

6 Q Okay.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yeah.

9 THE COURT: Okay.

10 BY MR. LEXIS:

11 Q Did a detective -- you eventually talked to police in the
12 area --

13 A Yeah.

14 Q -- is that true? Did you go to them?

15 A To the officers.

16 Q Yes.

17 A To the police? Yeah, I did.

18 Q Okay. And is that due to the suspicious nature that you
19 saw?

20 A Yes.

21 Q Did they eventually take you to a vehicle?

22 A Yes.

23 Q And was it that Toyota Corolla?

24 A Yes, it was the same car that I saw.

25 Q Showing you State's 209; is that a true and accurate

1 representation of the Toyota Corolla you saw that day?

2 A Yeah, that's the car.

3 Q Okay.

4 MR. LEXIS: Nothing further, Your Honor.

5 THE COURT: Does --

6 MR. HAUSER: Brief indulgence, Judge.

7 THE COURT: Sure.

8 **CROSS-EXAMINATION**

9 BY MR. HAUSER:

10 Q Good afternoon, sir.

11 A Good afternoon, how are you.

12 Q Oh, I'm well. Thank you for asking.

13 A Thank you.

14 Q The police never asked you to look at a series of pictures
15 in this case, did they?

16 A No, they didn't.

17 Q When you talked about the car coming up Linn Lane; is
18 that right?

19 A Yeah.

20 Q Which direction was the car coming up Linn?

21 A Can we go back to the map or --

22 Q No, yeah, let's see if we can pull it back up.

23 He's a lot better at this than me, so go ahead.

24 A Yeah --

25 THE COURT: Do you what to -- sorry.

1 MR. HAUSER: Oh, I get -- you're right, Judge. My
2 apologies.

3 That's State's Exhibit 7.

4 THE COURT: And could you zoom in?

5 MR. HAUSER: I can try.

6 THE COURT: There should be some arrows.

7 MR. HAUSER: Sure are.

8 THE COURT: There you go.

9 MR. HAUSER: Look at all that. All right. Let's try and do
10 that.

11 BY MR. HAUSER:

12 Q Okay. So you showed us the car coming toward the top
13 of that picture, right?

14 A Is it okay if I use this?

15 Q Up Linn Lane?

16 THE COURT: Yeah, of course. Just hit the red button.
17 There you go.

18 THE WITNESS: Yeah, you see the car when he was
19 coming in this corner, because I was over here at my mom's house
20 working.

21 BY MR. HAUSER:

22 Q So you didn't see a car on Linn at all?

23 A No, the car was dropped of on -- close to Linn Street over
24 here, where the car is --

25 Q The car was close --

1 A -- over here. Yeah.

2 Q -- to Linn.

3 A To Linn.

4 Q Okay. You didn't see the car drive up Linn Street?

5 A Oh, Linn Street? No, I didn't. But he was driving on White

6 Cap Street.

7 Q Got it.

8 A And the car was --

9 Q And the car was speeding?

10 A Yes.

11 Q You described the man that got out as a white man in

12 his 30s?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q I'm sorry, we record everything here, it's very natural to

17 say uh-huh. We always have to say yes or no.

18 A Okay.

19 Q Happens all the time.

20 A I got it.

21 Q Was there anyone else in the car?

22 A No, he was only there, the guy -- the male person.

23 Q Okay. Did you see any firearms?

24 A No, I didn't.

25 Q I appreciate your time, sir. Thank you very much?

1 A No problem.

2 THE COURT: State?

3 MR. LEXIS: Sure.

4 **REDIRECT EXAMINATION**

5 BY MR. LEXIS:

6 Q I know Defense counsel asked you, but I just want to be
7 clear.

8 A Yeah.

9 Q When you saw him going north on Surf Lane --

10 A Yes.

11 Q -- is that when you lost track of him?

12 A Yeah.

13 Q Okay.

14 MR. LEXIS: Court's indulgence.

15 Nothing further, Judge.

16 THE COURT: Anything based on that?

17 MR. HAUSER: No, Your Honor.

18 THE COURT: Ladies and gentlemen, any questions from
19 the jury?

20 [Bench conference transcribed as follows.]

21 MR. HAUSER: Yep. It's all clear.

22 [End of bench conference.]

23 THE COURT: Sir, did the person you saw leaving the
24 vehicle have any tattoos?

25 THE WITNESS: I didn't pay attention to that, no.

1 THE COURT: Okay. State?

2 **FURTHER EXAMINATION**

3 BY MR. LEXIS:

4 Q But do you know if he had his red shirt on, sir?

5 A A red shirt on? Yeah. He did.

6 MR. LEXIS: Nothing further.

7 THE COURT: Mr. Hauser?

8 MR. HAUSER: I have no follow-up, Judge.

9 THE COURT: Any other following questions from the
10 jury?

11 Sir thank you, so much for coming in today. You are
12 released from your subpoena. But please do not discuss your
13 testimony with anyone else involved in the case.

14 THE WITNESS: Okay.

15 THE COURT: All right? Thank you very much.

16 THE WITNESS: Yeah, you're welcome. Thank you.

17 THE COURT: State?

18 MS. GOODMAN: State's going to call DeAndre Woods.

19 **DeANDRE WOODS,**

20 [having been called as a witness and first duly sworn, testified as
21 follows:]

22 THE CLERK: Thank you. Please have a seat. Could you
23 please state your complete name, spelling your first and last name
24 for the record.

25 THE WITNESS: My name's DeAndre Woods. It's

1 D-e-A-N-D-R-E, W-O-O-D-S.

2 THE CLERK: Thank you.

3 THE COURT: Mr. Woods, before we get started, can you
4 do a few things? Would you mind putting your phone on silent or
5 turning it off completely, and that way we won't have any
6 disruptions.

7 THE WITNESS: Okay.

8 THE COURT: Thank you. And then also, you'll notice the
9 microphone that is sitting in front of you. If you wouldn't mind
10 scooting up a little bit closer and keeping your voice up, and that
11 way we'll be able to hear you throughout the courtroom. Okay?

12 THE WITNESS: Okay.

13 THE COURT: Thank you so much. I appreciate that.

14 **DIRECT EXAMINATION**

15 BY MS. GOODMAN:

16 Q Did you get that on silent, DeAndre?

17 A No, I'm turning it off.

18 Q Okay. Good.

19 A Can you hear me now.

20 Q Yes, we're good. All right.

21 Good afternoon, Mr. Woods.

22 A Hi.

23 Q I'm going to bring you to a date of September 30th, 2019.
24 Okay?

25 A Okay.

1 Q Do you recall that date?

2 A Yeah.

3 Q Okay. What happened on that date?

4 A Too young mens came up to me, one dude had a black
5 shirt and one dude had a red shirt.

6 Q Okay. And did they ask you if you knew somebody
7 named Shorty?

8 A Yes.

9 Q Okay. Where were you at?

10 A I was sitting in the front of my ex-girlfriend's house in a
11 chair, a black chair.

12 Q Okay. And that was 56 Linn Lane?

13 A Yeah.

14 Q Okay. What happened after that?

15 A I told him I didn't know who Shorty was.

16 Q Okay. Now, the first -- you said there was two gentlemen,
17 right?

18 A Yes.

19 Q Okay. What did the first one look like?

20 A The first one looked like a little short, you know, a little
21 skinnier. And the second one was bigger. And he's in this room.

22 Q He's in this room?

23 A Yeah.

24 Q Okay. Can you please point that person out and identify
25 an article of clothing he or she is wearing?

1 A He got a blue tie, blue shirt, that's him.

2 MS. GOODMAN: Okay. And, Your Honor, may the record
3 reflect identification of Defendant.

4 THE COURT: It will.

5 BY MS. GOODMAN:

6 Q Okay. So they come and they -- and the -- who you
7 identified as the defendant, they asked about Shorty, and then do
8 they leave?

9 A Yeah, they left right away.

10 Q Okay. And you first described them at -- you described
11 that individual as what?

12 A A Mexican.

13 Q Okay. And what -- do you remember the height that you
14 gave?

15 A Like, 5-8, 5-11, and the second one --

16 [Ringing phone interruption.]

17 THE WITNESS: My bad. My bad.

18 BY MS. GOODMAN:

19 Q That's okay.

20 A My bad.

21 Q Is it off now?

22 A No, it just turned right back on.

23 Q Okay.

24 A It will not ring, I hope.

25 THE COURT: Did it just turn itself back on?

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TED MICHAEL DONKO,) No. 81075
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 9 day of December 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY /s/ Rachel Howard
Employee, Clark County Public Defender's Office