

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVONTAE WHEELER,)	SUPREME COURT NO. 81374
)	
Appellant,)	
)	
vs.)	APPEAL
)	
STATE OF NEVADA,)	
)	
Respondent.)	
)	DISTRICT COURT NO. C-17-328587-3
)	
)	

APPELLANT'S APPENDIX

(VOL. 6 OF 14)

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1 PROSPECTIVE JUROR NO. 410: So.

2 THE COURT: I would agree with you, but what I need
3 is I need jurors that will commit to me, and the Court, and
4 the lawyers before we start that you will follow the law as
5 given to you by the Court, even if you disagree with it.

6 PROSPECTIVE JUROR NO. 410: Yeah, that's -- as I
7 stated, yes. As it tends to this particular case, absolutely,
8 100 percent.

9 THE COURT: Okay.

10 MR. PESCI: All right, I'm going to follow up.
11 Maybe the Judge will stop me, we'll see what happens. Let's
12 talk about Pandora's Box in a criminal context, right? Do you
13 have some strong feelings about criminal charges? Is that the
14 box we're talking about, or other ones, like this poor
15 gentleman who's been sued 29 times?

16 PROSPECTIVE JUROR NO. 410: Yeah, I don't think that
17 the charges are as harsh as they should be, or the
18 convictions, and what typically a convicted criminal -- for
19 either the time served, or --

20 MR. PESCI: Okay.

21 PROSPECTIVE JUROR NO. 410: -- the resulting
22 conviction, you know, parole, and -- no, I don't think that
23 it's harsh enough.

24 MR. PESCI: Okay. So that's a good point to bring
25 up. I appreciate it. And the Court has explained the jury is

1 not going to be involved in any way, shape, or form with the
2 actual sentencing portion, if we even were to get there. So
3 the jury's decision, the people that serve on this jury, will
4 only be as to guilt or someone being not guilty.

5 PROSPECTIVE JUROR NO. 410: Right.

6 MR. PESCI: So there won't be anything about
7 sentencing or time, things of that nature. Knowing that,
8 would that affect your ability to be fair and impartial?

9 PROSPECTIVE JUROR NO. 410: No.

10 MR. PESCI: Okay. Thank you very much, sir. Wanted
11 to also ask a question that seems a little bit out of left
12 field, and then we'll go to some specific people.

13 So, at times, you may see the prosecutors or maybe
14 even defense counsel sometimes on their cell phones, right?
15 In today's age, everybody seems to be on their cell phone. We
16 have to -- the prosecution, we have to kind of set up
17 witnesses. We got to try to line people up for tomorrow; the
18 day after. Sometimes we might be on our phones, trying to
19 tell witnesses, hey, we need you here, we need you then.

20 Is anybody going to have a problem if you see us on
21 our phones, to think that we're being -- you know, we're just
22 distracted, we're not paying attention, we don't care? Will
23 anybody have a problem with that?

24 PROSPECTIVE JUROR NO. 410: Not as long as I can be
25 on my phone, too.

1 MR. PESCI: Well, see, that's why I bring it up,
2 right? No, it's a legitimate point. No, seriously, because
3 you don't get to, right? During trial, during the sessions,
4 you don't. You get to when you go out. She's in charge of
5 whatever you get to do, right? But normally, it's when you
6 get out, you can get on your phone. You can't research, can't
7 do things like that, but if you got to call home and say, hey,
8 we're trying to coordinate. But we do. Like, the attorneys
9 can, and it's -- I mean, I was on it earlier because I'm
10 trying to set up witnesses for tomorrow. Those are the kinds
11 of things. Anybody have any problems with that, or problems
12 with the fact that you can't when we can? Anybody? Okay, all
13 right. Thank you very much.

14 Could you hand the microphone to your left? All
15 right. Mr. Casucci, your badge number?

16 PROSPECTIVE JUROR NO. 409: 409.

17 MR. PESCI: Thank you. You said you -- you said you
18 manage the poker room?

19 PROSPECTIVE JUROR NO. 409: I do. I run the poker
20 room at the Golden Nugget.

21 MR. PESCI: What does that entail? It's just
22 curiosity.

23 PROSPECTIVE JUROR NO. 409: I'm the shift manager in
24 the room, so I operate the games, run the games. If there's a
25 dispute on the games, I take care of it.

1 MR. PESCI: Okay. Do you supervise -- how many
2 people do you supervise?
3 PROSPECTIVE JUROR NO. 409: 15 at a time.
4 MR. PESCI: Okay. And on any given night, or
5 overall?
6 PROSPECTIVE JUROR NO. 409: I work the day shift,
7 and there's usually 15 dealers scheduled, and I coordinate the
8 dealers.
9 MR. PESCI: Do you ever have to work through any
10 disputes among those 15?
11 PROSPECTIVE JUROR NO. 409: Yeah.
12 MR. PESCI: Okay.
13 PROSPECTIVE JUROR NO. 409: Absolutely.
14 MR. PESCI: How do you go about that? What's your
15 -- what's your approach?
16 PROSPECTIVE JUROR NO. 409: I try and put myself in
17 everyone else's position, and try and be as fair as possible.
18 And I was a dealer once myself, so I've worked up my way
19 through the casino world, and I've been on the other side, so
20 I understand how it is. So I try and put myself in the other
21 person's position.
22 MR. PESCI: So you try to see their perspective.
23 And then, sometimes, however, are there conflicts such that it
24 can't be resolved just on what they tell you? Do you have to
25 make a judgment call between two points?

1 PROSPECTIVE JUROR NO. 409: Yes, I do have to make a
2 judgment call at times, and especially on the games itself,
3 not so much the employees. The employees --

4 MR. PESCI: Okay.

5 PROSPECTIVE JUROR NO. 409: -- then I would -- if
6 need be, I would go to HR or something like that. But if
7 there's a dispute on a game, then I do have the final say-so,
8 and I have to reason -- you know, listen to the facts and --

9 MR. PESCI: So would that be between maybe a dealer
10 and a patron or a customer?

11 PROSPECTIVE JUROR NO. 409: More between a player
12 and a player.

13 MR. PESCI: I'm sorry, I used the wrong words. A
14 player?

15 PROSPECTIVE JUROR NO. 409: Yeah.

16 MR. PESCI: Okay. And then, sometimes, can you come
17 to a decision, even though there might be conflicts of what
18 you're being told?

19 PROSPECTIVE JUROR NO. 409: Yes, there is. There's
20 times I can reason through, read between the lines of what I'm
21 -- what I'm hearing, and --

22 MR. PESCI: Gotcha. So you feel you're capable of
23 doing that kind of a thing?

24 PROSPECTIVE JUROR NO. 409: Absolutely.

25 MR. PESCI: All right, thank you very much. If you

1 could pass the microphone over two to Ms. Newcome. And I
2 apologize, I don't have your badge number written down.

3 PROSPECTIVE JUROR NO. 417: 417.

4 MR. PESCI: Thank you very much. Ma'am, you've
5 served on a jury before, and it was a criminal case, and there
6 was a verdict, correct?

7 PROSPECTIVE JUROR NO. 417: Yes.

8 MR. PESCI: All right. For all those that served on
9 a jury before, I'm going to probably ask you -- we're not
10 asking what the verdict is; just that you came to a verdict.
11 Was that here in Las Vegas?

12 PROSPECTIVE JUROR NO. 417: Yes.

13 MR. PESCI: Was it -- do you remember if it was in
14 this building?

15 PROSPECTIVE JUROR NO. 417: I think so.

16 MR. PESCI: Well, let me put it this way. I
17 apologize. How long ago was it? Because we used to be
18 further up the street, but that's just been --

19 PROSPECTIVE JUROR NO. 417: Yeah, because it doesn't
20 look the same.

21 MR. PESCI: Right.

22 PROSPECTIVE JUROR NO. 417: So that's why I was
23 trying -- I've been here forever. It may not have been in
24 this building.

25 MR. PESCI: That's okay. But --

1 PROSPECTIVE JUROR NO. 417: It's probably at least,
2 let's see, ten years ago maybe, or maybe even a little more.

3 MR. PESCI: All right. But do you remember, was it
4 the District Attorney's office, or was it the federal
5 government?

6 PROSPECTIVE JUROR NO. 417: No, I don't remember.

7 MR. PESCI: That's okay. And then, you remember you
8 went to a verdict, right? You actually went and --

9 PROSPECTIVE JUROR NO. 417: Yes.

10 MR. PESCI: -- deliberated? Do you remember
11 instructions being given to you by the Court?

12 PROSPECTIVE JUROR NO. 417: Yes.

13 MR. PESCI: It was ten years ago. Fair to say you
14 probably don't remember all those instructions?

15 PROSPECTIVE JUROR NO. 417: I took really good
16 notes. I still remember.

17 MR. PESCI: But if something pops back into your
18 mind, are you willing to accept the concept that the Court's
19 going to give you the instructions in this case, and those are
20 the only instructions you can use?

21 PROSPECTIVE JUROR NO. 417: For sure.

22 MR. PESCI: Okay, all right. Do you think you could
23 be fair to both sides in this case?

24 PROSPECTIVE JUROR NO. 417: I absolutely can.

25 MR. PESCI: All right, thank you very much, ma'am.

1 PROSPECTIVE JUROR NO. 417: You're welcome.

2 MR. PESCI: Could we pass the microphone over just
3 one to Mr. Bryan? Your badge number?

4 PROSPECTIVE JUROR NO. 420: 420.

5 MR. PESCI: Thank you very much. Maybe I wrote this
6 wrong. You studied biology, but you're a pilot?

7 PROSPECTIVE JUROR NO. 420: That's correct.

8 MR. PESCI: All right, how did that work?

9 PROSPECTIVE JUROR NO. 420: Well, when I got close
10 to graduating, I didn't really like my job prospects. So I
11 joined the Navy, and went to the Aviation Officer Candidate
12 School in Pensacola, and became a Navy pilot, and then I got
13 out and became an airline pilot.

14 MR. PESCI: How long were you in the Navy?

15 PROSPECTIVE JUROR NO. 420: About eight years, I
16 think, active duty, then another two on reserve.

17 MR. PESCI: Okay. In that time -- and that's part
18 of the reason why I asked. Did you ever have to serve in a
19 court-martial proceeding?

20 PROSPECTIVE JUROR NO. 420: No.

21 MR. PESCI: Okay. So never any experience with a
22 criminal or a court proceeding?

23 PROSPECTIVE JUROR NO. 420: No.

24 MR. PESCI: Okay. All right, thank you very much,
25 sir. Can you be fair to both sides?

1 PROSPECTIVE JUROR NO. 420: Yes.

2 MR. PESCI: Thank you very much. Could you pass the
3 microphone over one to Mr. Devargas, and your badge number?

4 PROSPECTIVE JUROR NO. 429: 429.

5 MR. PESCI: 429, thank you. Sir, you are a photo
6 journalist for the Las Vegas Sun. Are you assigned to a
7 specific -- is it division, or what's the right term?

8 PROSPECTIVE JUROR NO. 429: It's general news,
9 breaking news.

10 MR. PESCI: Okay.

11 PROSPECTIVE JUROR NO. 429: Yeah, I cover all sorts
12 of things from press events, to crime, to various news stories
13 throughout the --

14 MR. PESCI: Okay.

15 PROSPECTIVE JUROR NO. 429: -- Valley.

16 MR. PESCI: That was the point I wanted to focus on,
17 crime stories. Do you ever cover crime stories?

18 PROSPECTIVE JUROR NO. 429: Yes.

19 MR. PESCI: All right, here in this courthouse?

20 PROSPECTIVE JUROR NO. 429: Yes, I have. I've been
21 in the courtroom on several trials --

22 MR. PESCI: Okay.

23 PROSPECTIVE JUROR NO. 429: -- photographing and
24 documenting what's going on for the court case.

25 MR. PESCI: How long have you been doing this?

1 PROSPECTIVE JUROR NO. 429: Since 2010.

2 MR. PESCI: All right. And then, do you recall
3 anything about this case in the news, without any specifics if
4 you do?

5 PROSPECTIVE JUROR NO. 429: There are some things
6 that -- I mean, this -- you know, the -- yeah, there are --
7 it's a pretty big case.

8 MR. PESCI: All right.

9 PROSPECTIVE JUROR NO. 429: Yeah, there are some
10 details that I've worked with -- there's numerous journalists
11 in our company that are covering it already.

12 MR. PESCI: Okay. So do you think maybe your
13 company or your newspaper might have covered this particular
14 incident?

15 PROSPECTIVE JUROR NO. 429: I'm pretty sure they --
16 yeah, I know they have.

17 MR. PESCI: Do you know if you were involved in any
18 way, shape, or form in that?

19 PROSPECTIVE JUROR NO. 429: No. I know initially
20 images were supplied, like mugshots, things like that, of the
21 defendants. So I wasn't on the scene --

22 MR. PESCI: Okay.

23 PROSPECTIVE JUROR NO. 429: -- for this particular
24 one.

25 MR. PESCI: That's where I was going next --

1 PROSPECTIVE JUROR NO. 429: Yeah.
2 MR. PESCI: -- as far as if you ever went to a
3 scene. And can I interrupt you for just one second?
4 PROSPECTIVE JUROR NO. 429: Yes.
5 MR. PESCI: Judge, could we approach?
6 THE COURT: Sure.
7 (Bench conference)
8 MR. PESCI: Judge, I wanted to follow up, but I
9 didn't want to do it in front of everybody else. What I'm
10 concerned --
11 THE COURT: Yeah. Do you want me to excuse them --
12 MR. PESCI: Yeah.
13 THE COURT: -- and just do it outside the presence?
14 MR. RUGGEROLI: Thank you.
15 THE COURT: Okay.
16 (End of bench conference)
17 THE COURT: All right. At this time, Mr. Devargas,
18 I'm going to ask you to stay in the courtroom. I'm going to
19 excuse the panel for a short recess.
20 During this recess, you're admonished not to talk or
21 converse amongst yourselves or with anyone else on any subject
22 connected with this trial, or read, watch, or listen to any
23 report of or commentary on the trial, or any person connected
24 with this trial, by any medium of information, including,
25 without limitation, newspapers, television, the internet, or

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

3 Officer Hawkes will let you know when we're ready,
4 and you can come back in. Thank you very much.

5 THE MARSHAL: Thank you. All rise for the exiting
6 panel.

7 (Outside the presence of the prospective jurors)

8 (Within the presence of Prospective Juror No. 429)

9 THE COURT: Okay. The record will reflect that the
10 hearing is taking place outside the presence of the jury panel
11 with the exception of Christopher Devargas, Badge number 0429.
12 Mr. Pesci, you may continue with your voir dire.

13 MR. PESCI: Thank you, Judge. I was just asking if
14 I should put this in a position, because I felt like I was
15 kind of going in and out sometimes. So where would you like
16 me -- want me to just clip it here?

17 THE COURT RECORDER: If it will clip.

18 MR. PESCI: Yeah, not so much. No. We'll try that
19 and see. Just one second, sir. Sorry.

20 (Pause in the proceedings)

21 MR. PESCI: Does that work? Okay, thank you.

22 THE COURT: Thank you.

23 MR. PESCI: May I proceed, Your Honor?

24 THE COURT: Yes, thank you.

25 MR. PESCI: Okay. Sir, I apologize.

1 PROSPECTIVE JUROR NO. 429: Yeah.
2 MR. PESCI: We wanted to ask some follow-ups, or I
3 did, and --
4 PROSPECTIVE JUROR NO. 429: Okay.
5 MR. PESCI: -- some specific answers, we don't
6 necessarily want everyone to hear.
7 PROSPECTIVE JUROR NO. 429: Yeah, I understand that.
8 MR. PESCI: So that's why. So there's --
9 PROSPECTIVE JUROR NO. 429: Okay.
10 MR. PESCI: -- nothing you said that was wrong.
11 PROSPECTIVE JUROR NO. 429: Yeah.
12 MR. PESCI: It was just to try to get that. So if I
13 heard you correctly, you saw some photographs associated with
14 this case that you recall?
15 PROSPECTIVE JUROR NO. 429: Yes.
16 MR. PESCI: But you don't think you had anything to
17 do with it?
18 PROSPECTIVE JUROR NO. 429: No. I know for a fact I
19 wasn't called to be at the scene to take any photos.
20 MR. PESCI: Okay.
21 PROSPECTIVE JUROR NO. 429: I know initially there
22 were photos that were -- they were provided. Usually, if we
23 don't have a photographer to be there on the scene or
24 whatever, Metro will usually send the provided photos to all
25 of the news outlets, and that's what happened. I wasn't there

1 on this particular incident.

2 MR. PESCI: So if I'm understanding, Metro provided
3 to your newspaper --

4 PROSPECTIVE JUROR NO. 429: Yes.

5 MR. PESCI: -- some photographs?

6 PROSPECTIVE JUROR NO. 429: Yes.

7 MR. PESCI: Okay. And then, did you have any
8 interactions with those photographs or stories, if there were
9 any, written about this case?

10 PROSPECTIVE JUROR NO. 429: No, not with the stories
11 directly, but I work in the newsroom with the writers that
12 were writing those stories.

13 MR. PESCI: Okay.

14 PROSPECTIVE JUROR NO. 429: So it's -- it's very
15 common for -- you know, to talk about things that are going on
16 in the newsroom, especially when it pertains to stuff we could
17 be covering in the next few weeks or ongoing.

18 MR. PESCI: Absolutely, makes sense. That's why
19 we're trying to follow up, right?

20 PROSPECTIVE JUROR NO. 429: Yeah.

21 MR. PESCI: So do you recall if you had any of these
22 types of conversations about this particular case?

23 PROSPECTIVE JUROR NO. 429: It was quite a few years
24 ago.

25 MR. PESCI: So it's August of 2017.

1 PROSPECTIVE JUROR NO. 429: 2017. Yeah, I know that
2 was -- I mean, not specifics. I mean, it would -- usually,
3 anything that we talk about, I mean, we receive the same kind
4 of statements that the police would put out as far as facts on
5 things that they found; who, what, where, when, why, and all
6 that.

7 MR. PESCI: As you sit here today, any of those
8 facts you recall being exposed to or reading any of those on
9 this case?

10 PROSPECTIVE JUROR NO. 429: Yeah, no. I had --
11 because, you know, I always have to kind of read what it is
12 that we're doing. There are -- yeah, there are details about
13 allegations and things that were published in the story --

14 MR. PESCI: Okay.

15 PROSPECTIVE JUROR NO. 429: -- based off of the
16 facts that we were --

17 MR. PESCI: Given?

18 PROSPECTIVE JUROR NO. 429: -- given on our
19 reporting.

20 MR. PESCI: Do you think that would affect your
21 ability in this case? And here's why I'm asking that
22 question: because the only thing you can -- you, if you're a
23 juror --

24 PROSPECTIVE JUROR NO. 429: Um-hum.

25 MR. PESCI: -- and your fellow jurors, can make a

1 decision on is the testimony that comes from the witness stand
2 and the evidence in this case.

3 PROSPECTIVE JUROR NO. 429: Yeah.

4 MR. PESCI: And so, if you saw, or heard, or were
5 exposed to something else, you have to completely disregard
6 that and only make a decision based on this evidence.

7 PROSPECTIVE JUROR NO. 429: Yes, no, I --

8 MR. PESCI: Is that something you think you could
9 do?

10 PROSPECTIVE JUROR NO. 429: Yeah, I understand. And
11 also too, with -- you know, with our reporting and everything,
12 we don't -- we're not producing opinion pieces on what we
13 think could have happened or what happened. I mean, we report
14 on facts that were provided to us.

15 MR. PESCI: Right.

16 PROSPECTIVE JUROR NO. 429: So I'm assuming that a
17 lot of the facts that I'm going to be hearing here are -- you
18 know, they're not opinions on what were -- what was going to
19 happen. It's all basically the facts and details.

20 MR. PESCI: And so, those facts and details, will
21 you be able to disregard those and set those aside, and just
22 make your decision based on this case?

23 PROSPECTIVE JUROR NO. 429: Yeah, I'm open to hear
24 from start to finish the facts provided to me to make a
25 decision based off of that.

1 MR. PESCI: All right. And I think you said you
2 served in the Army in college?

3 PROSPECTIVE JUROR NO. 429: I served in the Army
4 when I graduated from high school --

5 MR. PESCI: Okay.

6 PROSPECTIVE JUROR NO. 429: -- for four years.

7 MR. PESCI: Same question as the other veteran. Did
8 you ever serve in a court-martial in any way?

9 PROSPECTIVE JUROR NO. 429: No.

10 MR. PESCI: Okay. And Judge, just because
11 everybody's already out, should we turn it over to them to ask
12 about the media questions?

13 THE COURT: I want to ask him a couple questions --

14 MR. PESCI: Okay, sorry.

15 THE COURT: -- and I'll see if the defense does.
16 You understand, if you're selected to serve on this panel,
17 that you cannot communicate with anyone about the facts and
18 circumstances of this case, including your fellow jurors,
19 until you go back to deliberate upon your verdict? Do you
20 understand that?

21 PROSPECTIVE JUROR NO. 429: Yes. I do understand
22 that.

23 THE COURT: So if you were to go back to the
24 newsroom or work, you would not be able to talk about this
25 case. You understand that?

1 PROSPECTIVE JUROR NO. 429: Yes, I do understand.

2 THE COURT: You could tell your friends, your fellow
3 coworkers, and your family that you were a juror in a criminal
4 case, but you could not tell them anything else about this
5 case. Do you understand that?

6 PROSPECTIVE JUROR NO. 429: Yes, I do.

7 THE COURT: And you understood -- you understand you
8 can't do any independent research about this case?

9 PROSPECTIVE JUROR NO. 429: Yes, I do understand
10 that.

11 THE COURT: And we don't have to worry about you
12 doing any of that?

13 PROSPECTIVE JUROR NO. 429: No.

14 THE COURT: Okay. Mr. Sanft, do you have any voir
15 dire?

16 MR. SANFT: Yes, Your Honor.

17 THE COURT: Go ahead.

18 MR. SANFT: Mr. Devargas, just --

19 PROSPECTIVE JUROR NO. 429: Yes.

20 MR. SANFT: -- a couple quick questions. What do
21 you recall specifically about what you believe this case is
22 about?

23 PROSPECTIVE JUROR NO. 429: I recall -- I know there
24 was -- there was -- a robbery. I know it had aspects to do
25 with social media. Yeah, the details, I mean, it's -- like I

1 said, it was quite a while ago, a few years ago. I don't know
2 the exact details.

3 MR. SANFT: All right. And at the time when you
4 were working as a photo journalist, that was specifically for
5 the Sun?

6 PROSPECTIVE JUROR NO. 429: Yes.

7 MR. SANFT: And your title at that particular point,
8 were you just one of the beat photo journalists, or did you
9 have a supervisory position over other photo journalists at
10 the Sun?

11 PROSPECTIVE JUROR NO. 429: No, I'm one of the
12 staff. Yeah, I'm not a supervisor position. I'm one of the
13 beat photographers.

14 MR. SANFT: Okay.

15 PROSPECTIVE JUROR NO. 429: Yeah.

16 MR. SANFT: And during the time that you have been
17 working for the Sun, did you at any point ever appear in court
18 to take pictures on this case?

19 PROSPECTIVE JUROR NO. 429: Not on this case.

20 MR. SANFT: Okay, but would it be fair to say that
21 it would be one of the things potentially you could have done
22 as a beat photographer for --

23 PROSPECTIVE JUROR NO. 429: Oh, yeah. Yeah, and
24 I've done it for other cases; arraignments, and hearings, and
25 other cases like that, I have.

1 MR. SANFT: Okay, I have no further questions.
2 PROSPECTIVE JUROR NO. 429: Okay.
3 MR. SANFT: Thank you, Your Honor.
4 THE COURT: Mr. Ruggeroli?
5 MR. RUGGEROLI: Thank you, Judge. Good afternoon,
6 Mr. Devargas. Right now, assuming that nobody else has the
7 experience and had the opportunity to view the materials that
8 you're talking about --
9 PROSPECTIVE JUROR NO. 429: Um-hum.
10 MR. RUGGEROLI: -- you would agree that you are very
11 much in a different position than every single other
12 prospective juror on this panel, correct?
13 PROSPECTIVE JUROR NO. 429: I would say a slight --
14 yeah, a slight difference.
15 MR. RUGGEROLI: Because you're familiar, at least
16 generally speaking, with specific information that was
17 provided from Metro to your news organization, correct?
18 PROSPECTIVE JUROR NO. 429: Yes, but only
19 information that was also published to the public. So what I
20 saw and what was reported on is the same thing that anybody
21 reading the newspaper would have seen --
22 MR. RUGGEROLI: Okay.
23 PROSPECTIVE JUROR NO. 429: -- or read.
24 MR. RUGGEROLI: And I'm glad you're going to clarify
25 that, if you wouldn't mind. Are there things that you might

1 have seen from Metro that got filtered by an editor or some
2 other person within a news organization that did not make it
3 into what was provided to the general public in the papers?

4 PROSPECTIVE JUROR NO. 429: No, nothing that I have
5 -- I've seen.

6 MR. RUGGEROLI: But you are familiar with some
7 specifics that you did learn on the job?

8 PROSPECTIVE JUROR NO. 429: Yes.

9 MR. RUGGEROLI: Okay. These photographs that you
10 said that you saw, you viewed -- what are they, like pool
11 photos?

12 PROSPECTIVE JUROR NO. 429: Yeah, usually the same
13 thing -- they'll -- booking photos. Yeah, usually -- I
14 believe, on these ones, I think that's all we really had were
15 bookings of the defendants. Booking images.

16 MR. RUGGEROLI: And you also mentioned social media.
17 So you have some understanding of some information regarding
18 that as well?

19 PROSPECTIVE JUROR NO. 429: Yeah, of the overall
20 story of what was involved.

21 MR. RUGGEROLI: So it is fair to say that, coming
22 into this case, you've already got some understanding about
23 the allegations in the case?

24 PROSPECTIVE JUROR NO. 429: Like I said, it would be
25 as much as anybody who read the stories that we put on. It's

1 just, I have a little more exposure to it because I'm
2 surrounded by the people that write those stories, and we talk
3 about what we're doing from day to day, and it might be
4 something that I might have to jump in and cover on. So I --
5 we all are kind of up to speed on what -- what's going on
6 throughout the week.

7 MR. RUGGEROLI: You mentioned that this, to you, is
8 not a subject of opinion; it was more a fact-based
9 presentation or article?

10 PROSPECTIVE JUROR NO. 429: Yeah. It was basically
11 going off the police report; going off any briefings that
12 Metro might have done to update. I don't even remember how
13 long we covered this for. I know there was at least maybe two
14 or three, and we had two or three different stories published
15 on it, at least two different reporters that currently
16 actually aren't with the Sun anymore, but. So it's something
17 we talked about, along with other outlets in the city.

18 MR. RUGGEROLI: Okay. When you say "we," does that
19 include you?

20 PROSPECTIVE JUROR NO. 429: I say "we" as the
21 organization of the Las Vegas Sun.

22 MR. RUGGEROLI: And would you agree that, when you
23 say "we," it could be applied to -- you would agree that you
24 feel that the facts that were presented by your corporation,
25 the company, the "we" would stand behind the truth of those

1 facts?

2 PROSPECTIVE JUROR NO. 429: Yeah, I mean, I'd like
3 to say we are an honest -- yeah, honest news organization that
4 sticks to the code of journalism.

5 MR. RUGGEROLI: Would you also agree with me then
6 that the whole point of this trial though is very different,
7 because you would be asked to set aside everything you've
8 already professionally adopted as fact --

9 PROSPECTIVE JUROR NO. 429: Yeah.

10 MR. RUGGEROLI: -- in order to re-judge what you've
11 already personally, as an employee, made a commitment to
12 standing behind? Do you understand my concern?

13 PROSPECTIVE JUROR NO. 429: Yes, no, I do understand
14 your concern there.

15 MR. RUGGEROLI: If you were Mr. Wheeler, would you
16 be comfortable having 12 people like you sitting in judgment
17 of you on this trial?

18 PROSPECTIVE JUROR NO. 429: No, yeah, I could
19 understand the concern, and wondering if I'm coming in here
20 with already a predetermined, you know --

21 MR. RUGGEROLI: About the facts?

22 PROSPECTIVE JUROR NO. 429: -- opinion about the
23 facts and everything.

24 MR. RUGGEROLI: Right.

25 PROSPECTIVE JUROR NO. 429: Yeah.

1 MR. RUGGEROLI: Do you think that you'd be better
2 served on a civil jury or something that isn't -- something
3 that really came within your proximity in this particular
4 unique position that you have?

5 PROSPECTIVE JUROR NO. 429: No, I mean, like I said,
6 I understand the concern, and I understand where there are --
7 there could be a potential for a conflict of interest, as you
8 see it.

9 MR. RUGGEROLI: Let me ask you this. Some of the
10 information that you might remember at a later point during
11 this trial might not be admissible evidence in the trial. And
12 because of that, do you think that you can commit to being
13 able to say, I won't -- I will block everything out of my
14 head, even if I realize it during the trial that, oh my gosh,
15 there's this fact, and now we're deliberating, and it wasn't
16 brought up, and you know, somebody's saying something from the
17 stand, but I remember that that wasn't what was stated based
18 on the materials that were in the paper?

19 PROSPECTIVE JUROR NO. 429: Yeah. Like I said, I
20 could understand your concern, but I'm -- I can say, you know,
21 that I -- I will stick to the facts and stay with whatever is
22 presented here in this courtroom. I know from here is where
23 everything kind of starts as far as presentation of fact and
24 development of opinion on this.

25 MR. RUGGEROLI: Thank you, Judge. I have no

1 questions right now.

2 THE COURT: Okay. We can bring the panel back in.

3 MR. PESCI: Judge, I apologize. Can I just jump in

4 really fast before we do that?

5 THE COURT: Yeah, absolutely.

6 MR. PESCI: There was one of the jurors that I

7 wanted to ask questions about that I think would be better

8 outside the presence of everybody else. So when this

9 gentleman steps out, can I --

10 THE COURT: Sure.

11 MR. PESCI: -- can I ask about that?

12 THE COURT: Sure. Mr. Devargas, if you just don't

13 mind going outside --

14 PROSPECTIVE JUROR NO. 429: Sure.

15 THE COURT: -- and joining your other jurors. I

16 just ask that you don't discuss with your fellow jurors

17 anything that we've discussed in here, and if anyone insists

18 on speaking to you about what we talked about outside their

19 presence, can you please make that fact known to me by

20 contacting the Marshal immediately?

21 PROSPECTIVE JUROR NO. 429: Yes, absolutely.

22 THE COURT: Thank you, and thank you very much for

23 being here and answering our questions. If you don't mind

24 stepping out, Officer Hawkes will let you know when we are

25 ready. Who --

1 MR. RUGGEROLI: Judge, prior to the next witness,
2 may I make a record?

3 (Outside the presence of Prospective Juror No. 429)

4 THE COURT: Okay. The record will reflect that Mr.
5 Devargas has left the courtroom, and this hearing is
6 continuing to take place outside the presence of the jury
7 panel.

8 MR. RUGGEROLI: Thank you, Your Honor. If I may, I
9 don't know logistically if this would be the time to move to
10 strike for cause. I would like --

11 THE COURT: Go ahead.

12 MR. RUGGEROLI: -- to address that. Thank you, Your
13 Honor. Judge, he certainly did not say, "I can't be fair."
14 He definitely said that he will do everything he can to follow
15 the law and put the information that he has received on the
16 side. But Judge, I think this is a unique situation where
17 we've got an individual that has special access. And although
18 he believes right now that everything he saw was just what was
19 already put in the paper, I think it's very possible that the
20 pool photos were not all included, and that he would have had
21 access to things that puts him in a --

22 THE COURT: He doesn't even appear to me to have a
23 good grasp of the facts in this matter.

24 MR. RUGGEROLI: Well, we didn't go --

25 THE COURT: I mean, I'm not sure he actually does --

1 MR. RUGGEROLI: Yeah.

2 THE COURT: -- recall anything.

3 MR. RUGGEROLI: I didn't want to ask him
4 specifically, you know, did you -- do you know that there are
5 other allegations of other unrelated cases. So we didn't go
6 into specifics intentionally.

7 THE COURT: Yeah, but he was asked, and he didn't
8 give a lot of information about what he knew. I'm not
9 convinced he even knows anything about this case.

10 MR. RUGGEROLI: Yeah. So I'd just move to strike
11 him for cause. I don't think, given this special knowledge,
12 he's similarly situated. And because of the uniqueness of
13 having access to information that I would say I don't think
14 the general public has, he should not be a part of this jury,
15 and I've made my record then, Judge.

16 MR. PESCI: Judge, he repeatedly said that he
17 doesn't remember anything specific. He kept talking about
18 specifics; he doesn't remember that. He says that he doesn't
19 know any more than anybody else who reads the newspaper, and
20 he has unequivocally told Your Honor that he will make his
21 decision based on the evidence in this case and not something
22 that he might have heard or saw before, so we object.

23 THE COURT: Mr. Sanft, I just wonder if you want to
24 join in, or if you have a position.

25 MR. SANFT: I'll join in with Mr. Ruggeroli on this

1 issue. But just for the record, I did ask him specifically as
2 to what he recalled specifically on this case, and the answer
3 he gave was -- could have applied in any case; that it was
4 something to do with a robbery and there was social media
5 involved.

6 THE COURT: Right.

7 MR. SANFT: I mean --

8 THE COURT: And that's about the gist of what I got.

9 MR. SANFT: Right. So I don't know necessarily if
10 he would have been -- if he had specific information on this
11 case. My concern was -- initially was that somehow he called
12 back and said, hey, can you run this name or that name of
13 these individuals that were here, and found out some
14 information from his friends over at the Sun, and then had
15 that information in his head, but I don't know if he did or
16 not.

17 I just think, out of an abundance of caution -- and
18 the reason why I'm joining with Mr. Ruggeroli is because of
19 the fact that he does have access that other people
20 necessarily wouldn't necessarily have with regards to details
21 of stuff that they did during the course of their
22 investigation, or maybe made court appearances where they were
23 here. I don't remember the media being here for any of those,
24 but that would be the reason why I would join in with Mr.
25 Ruggeroli on this issue.

1 THE COURT: Okay. At this time, I'm going to deny
2 the challenge for cause. Who is the next person you want to
3 bring in?

4 MR. PESCI: Judge, I was going to ask your opinion.
5 477, Mr. Bandics, he said at one point that he thought he
6 might have seen the defendants before, and I just don't know
7 where on earth that could go.

8 THE COURT: Okay.

9 MR. PESCI: And so I thought it might not be good to
10 do that in front of everybody.

11 THE COURT: Okay, Mr. Bandics.

12 MR. PESCI: I don't know defense counsel's position.

13 MR. SANFT: We would agree with that, Your Honor,
14 and ask for the same thing as well.

15 THE COURT: Okay. Will you bring in Mr. Bandics?
16 And he is Badge number 0477, Cavan Bandics.

17 (Within the presence of Prospective Juror No. 477)

18 THE MARSHAL: You can just go straight ahead to the
19 podium.

20 THE COURT: Okay. The record will reflect that Mr.
21 Cavan Bandics -- you can go right there to the podium -- is
22 present in the courtroom, and that this hearing is taking
23 place outside the presence of the other jurors.

24 Mr. Bandics, you indicated to me when I was
25 questioning you earlier that you may recognize one or both of

1 the defendants?

2 PROSPECTIVE JUROR NO. 477: Yes, that's correct.

3 THE COURT: Okay. Do you recognize one; do you
4 recognize both?

5 PROSPECTIVE JUROR NO. 477: I think both.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 477: Yeah.

8 THE COURT: And where do you think you recognize
9 them from?

10 PROSPECTIVE JUROR NO. 477: I think school.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 477: I went to Foothill High
13 School.

14 THE COURT: Okay. And you believe that they both
15 attended your high school?

16 PROSPECTIVE JUROR NO. 477: Yeah, I think so. Yeah.

17 THE COURT: Okay, but you're not really sure?

18 PROSPECTIVE JUROR NO. 477: Yeah, because, I mean,
19 there's a lot of kids, so I don't remember everyone.

20 THE COURT: Sure, like thousands, probably --

21 PROSPECTIVE JUROR NO. 477: Yeah.

22 THE COURT: -- right?

23 PROSPECTIVE JUROR NO. 477: Yeah.

24 THE COURT: Okay. When did you graduate?

25 PROSPECTIVE JUROR NO. 477: I'm 23 right now, and I

1 graduated when I was 18, so.

2 THE COURT: Do you remember what year?

3 PROSPECTIVE JUROR NO. 477: 2014, I think.

4 THE COURT: 2014? Okay, but even if it was true
5 that you recognize one or both from being in your high school,
6 would that affect your ability in any way to be a fair and
7 impartial juror?

8 PROSPECTIVE JUROR NO. 477: No, I don't think it
9 would.

10 THE COURT: Okay. Do you ever remember talking to
11 either one of them, or having a class with either one of them?

12 PROSPECTIVE JUROR NO. 477: No, I don't think so.

13 THE COURT: Okay. Does the State have any follow
14 up?

15 MR. PESCI: No, thank you.

16 THE COURT: Mr. Sanft?

17 MR. SANFT: Just one question, Your Honor.

18 THE COURT: You bet.

19 MR. SANFT: Sir, what -- what is it that makes you
20 think that you recognize my client, Mr. Robertson, who's over
21 here to the left?

22 PROSPECTIVE JUROR NO. 477: Just their faces. Just
23 feel like I've seen them before.

24 MR. SANFT: Okay.

25 PROSPECTIVE JUROR NO. 477: That's the only thing.

1 MR. SANFT: All right. Anything -- like, anything
2 that stands out in terms of extracurricular activities, or
3 classes, or anything like that that may trigger this in your
4 head?

5 PROSPECTIVE JUROR NO. 477: I mean, no, I wasn't
6 much into extracurricular, so the only thing I could think of
7 is school.

8 MR. SANFT: Okay, thank you. No further questions,
9 Your Honor.

10 THE COURT: Mr. Ruggeroli?

11 MR. RUGGEROLI: Thank you, Judge. Just briefly.
12 Mr. Bandics?

13 PROSPECTIVE JUROR NO. 477: Yeah.

14 MR. RUGGEROLI: Was that experience -- would that
15 have been limited to high school, or you think you may have
16 seen my client, Mr. Wheeler, at some point after high school?

17 PROSPECTIVE JUROR NO. 477: I mean, maybe, because
18 I've lived here all my life. So, I mean, this -- in a way,
19 this town's kind of small in the sense that, I mean, I --
20 sometimes I see other high school kids all the time just
21 around the city just randomly, so.

22 MR. RUGGEROLI: What part of town, if you wouldn't
23 mind telling me major cross-streets, would you say?

24 PROSPECTIVE JUROR NO. 477: I mean --

25 THE COURT: What part of town do you live in, is

1 what I think he's asking.

2 PROSPECTIVE JUROR NO. 477: I live in Henderson

3 right now.

4 MR. RUGGEROLI: Okay.

5 THE COURT: Okay.

6 MR. RUGGEROLI: You're just trying to be helpful,

7 "Hey, I might know these gentlemen or --

8 PROSPECTIVE JUROR NO. 477: Yeah.

9 MR. RUGGEROLI: -- one or the other"; is that right?

10 PROSPECTIVE JUROR NO. 477: Yes.

11 MR. RUGGEROLI: But there's nothing in terms of a

12 memory that you have that's either a really positive memory or

13 really negative memory specifically?

14 PROSPECTIVE JUROR NO. 477: No, just --

15 MR. RUGGEROLI: Okay.

16 PROSPECTIVE JUROR NO. 477: -- nervous.

17 MR. RUGGEROLI: You're just trying to be helpful, "I

18 might know them"?

19 PROSPECTIVE JUROR NO. 477: Yeah.

20 MR. RUGGEROLI: But you also may be mistaken?

21 PROSPECTIVE JUROR NO. 477: Yeah.

22 MR. RUGGEROLI: Okay.

23 PROSPECTIVE JUROR NO. 477: I could be, because --

24 MR. RUGGEROLI: Okay.

25 PROSPECTIVE JUROR NO. 477: Yeah, I'd say.

1 MR. RUGGEROLI: Thank you, Judge. I have nothing
2 further.
3 THE COURT: Okay. Mr. Bandics, thank you very much.
4 If you don't mind stepping outside.
5 PROSPECTIVE JUROR NO. 477: Okay.
6 (Outside the presence of Prospective Juror No. 477)
7 THE COURT: Okay. The record will reflect that Mr.
8 Bandics has left the courtroom. Any objection to him
9 continuing with us?
10 MR. PESCI: Not from the State.
11 MR. SANFT: No, Your Honor.
12 MR. RUGGEROLI: No, Your Honor.
13 THE COURT: Okay. It's 5:00 o'clock, so what I
14 think I'll do is we'll bring the panel back in, and there's
15 some I'm going to excuse for the evening and -- so we can --
16 we can start at 8:30?
17 MR. SANFT: Yes, Your Honor.
18 MR. RUGGEROLI: Yes, Your Honor, I'm --
19 THE COURT: Really? Everybody will be okay?
20 MR. RUGGEROLI: My cases are being covered, so I
21 should be here at 8:30, Judge.
22 THE COURT: Okay.
23 MR. RUGGEROLI: Thank you.
24 THE COURT: No, that's awesome. Okay.
25 THE MARSHAL: Do you want me to read them the

1 admonishment in the hallway, or --

2 THE COURT: Well, no, I was just going to have you
3 bring them all in --

4 THE MARSHAL: Okay.

5 THE COURT: -- because I'm going to read names, I'm
6 going to -- I won't make them come back tomorrow.

7 (Pause in the proceedings)

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

10 (Within the presence of the prospective jurors)

11 THE COURT: State stipulates to the presence of the
12 panel?

13 MR. PESCI: Yes, Your Honor.

14 THE COURT: And the defense?

15 MR. SANFT: Yes, Your Honor.

16 THE COURT: Mr. Ruggeroli?

17 MR. RUGGEROLI: Yes, Your Honor.

18 THE MARSHAL: Please be seated.

19 THE COURT: Thank you. Thank you very much. At
20 this time, ladies and gentlemen, we are going to conclude for
21 the evening. I just need to give you further instructions so
22 you'll know what to do tomorrow.

23 I'm going to ask, unless I call your name -- I'm
24 going to read a list of names. Unless I call your name, you
25 need to be here tomorrow morning at 8:30. You can come

1 straight up to the 14th floor, at which time, Officer Hawkes
2 will greet you, and he will bring you in for us to continue
3 with our voir dire.

4 I'm going to read some names. If your name is read,
5 if you just don't mind staying after I excuse the panel. Ana
6 Carias, Samantha Levine, Sang Lee, Austin Pan, Francis Gamboa,
7 Dennis Rorabaugh, Kristine Gallardo, Sophie Champion, Luis
8 Ovalles, Dawn Nerdin, Selene Moreno, Joseph Campling, Valerie
9 Musial, Drew McCarthy, and Priscilla Schonacher. Other than
10 that, we will be in recess until tomorrow morning at 8:30.

11 During this recess, you're admonished not to talk or
12 converse amongst yourselves or with anyone else on any subject
13 connected with this trial, or read, watch, or listen to any
14 report of or commentary on the trial, or any person connected
15 with this trial, by any medium of information, including,
16 without limitation, newspapers, television, the internet, or
17 radio, or form or express any opinion on any subject connected
18 with this trial until the case is finally submitted to you.

19 Thank you very much, and we're in recess.

20 THE MARSHAL: Thank you. All rise for the exiting
21 jury, please. Jurors.

22 THE COURT: Officer Hawkes, you have the microphone?

23 THE MARSHAL: Yes, ma'am.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 596: Excuse me, Judge. If

1 your name was called, what do you do?
2 THE COURT: Just hang out here --
3 PROSPECTIVE JUROR NO. 596: Okay.
4 THE COURT: -- just for a moment.
5 PROSPECTIVE JUROR NO. 596: If your name wasn't
6 called, you got to be here tomorrow?
7 THE COURT: That's correct; I called your name
8 though.
9 (Outside the presence of the prospective jurors)
10 THE COURT: All right. At this time, Ana Carias,
11 you're excused. Okay. Samantha Levine, you're excused. Mr.
12 Lee, Sang Lee, you're excused. Austin Pan, you're excused.
13 Francis Gamboa, you're excused. Dennis Rorabaugh, you're
14 excused. Kristine Gallardo? Kristine Gallardo, you're
15 excused. Sophie Champion, you're excused. Luis Ovalles?
16 Luis Ovalles, you're excused. Dawn Nerdin? Ms. Nerdin,
17 you're excused.
18 PROSPECTIVE JUROR NO. 538: Thank you.
19 THE COURT: Selene Moreno, you're excused. Joseph
20 Campling? Joseph Campling, you're excused. Valerie Musial,
21 you're excused. Mr. McCarthy, you're excused. And
22 Priscilla --
23 PROSPECTIVE JUROR NO. 597: Schonacher.
24 THE COURT: Schonacher. Sorry, I had a hard time --
25 PROSPECTIVE JUROR NO. 597: No, you're fine

1 (indiscernible).
2 THE COURT: -- reading my own handwriting. Thank
3 you.
4 (Pause in the proceedings)
5 MR. BROOKS: Your Honor?
6 THE COURT: See you tomorrow morning.
7 MR. BROOKS: Judge?
8 THE COURT: Yeah, yeah.
9 MR. BROOKS: Did you write the absent note for the
10 lady who has an exam tomorrow?
11 THE COURT: I mean, I'm -- she didn't stay. I'm
12 happy to do it. Will you go out and ask Hawkes? Hawkes?
13 THE MARSHAL: Yes, ma'am.
14 THE COURT: Remember there was that juror that had
15 an exam tomorrow and she wondered if I would give her an
16 excuse?
17 THE MARSHAL: Oh, she's long gone. She didn't even
18 say anything.
19 THE COURT: Okay. Well, we just have to remember
20 tomorrow if she --
21 THE MARSHAL: Yes, ma'am.
22 THE COURT: -- needs something so I can provide that
23 to her.
24 THE MARSHAL: I'll remind Pam in the morning.
25 THE COURT: Okay, thank you.

1 (Court recessed at 5:06 P.M., until Wednesday,
2 February 12, 2020, at 9:15 A.M.)

3 * * * * *

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

Julie Lord

JULIE LORD, TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 11, 2020**

C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

February 11, 2020 10:30 AM Jackson v Denno Hearing

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
Giancarlo Pesci	Attorney for Plaintiff
James J. Ruggeroli	Attorney for Defendant
Parker Brooks	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Parties invoked the exclusionary rule. COURT SO ORDERED.

Ryan Jaeger SWORN and TESTIFIED. State submitted. Mr. Ruggeroli argued in support of the Defendant's Motion to Suppress. COURT FINDS the Defendant's statement was made freely and voluntarily and ORDERED, Motion DENIED; Defense can continue to argue this matter in front of the Jury Panel.

CUSTODY

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-17-328587-3
)	DEPT NO. XII
vs.)	
)	
DAVONTAE AMARRI WHEELER,)	TRANSCRIPT OF
)	PROCEEDINGS
<u>Defendant.</u>)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 11, 2020

RE: JACKSON V DENNO HEARING

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney PARKER P. BROOKS, ESQ. Deputy District Attorney
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FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.
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FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
--------------------------	------------------------

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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RYAN JAEGER

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1 LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 11, 2020, 10:43 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Davontae Wheeler,
4 C328587.

5 (Pause in the proceedings.)

6 THE COURT: And Mr. Wheeler is present. He's in
7 custody.

8 Good morning.

9 THE DEFENDANT: Good morning to you.

10 THE COURT: And will the attorneys make their
11 appearances.

12 MR. PESCI: Giancarlo Pesci.

13 MR. BROOKS: Parker Brooks.

14 MR. PESCI: On behalf of the State.

15 MR. RUGGEROLI: Good morning, Your Honor. James
16 Ruggeroli, Bar Number 7891, on behalf of Mr. Wheeler.

17 THE COURT: Okay. And all are ready to go?

18 MR. PESCI: Yes, Your Honor.

19 MR. RUGGEROLI: Yes, Judge.

20 THE COURT: Okay. Is the State ready to call their
21 first witness?

22 MR. PESCI: Yes, Judge.

23 THE COURT: Okay. Go ahead.

24 MR. BROOKS: Your Honor, the State calls Detective
25 Ryan Jaeger.

JD Reporting, Inc.

1 MR. RUGGEROLI: And, Judge, I don't see anybody, but
2 I did invoke the exclusionary rule, please.

3 THE COURT: Okay. Are there any -- any other
4 witnesses in the courtroom?

5 (No audible response.)

6 THE COURT: Okay. I'm assuming -- is there any
7 other -- are there any other detectives that will testify?

8 MR. PESCI: No.

9 THE COURT: Just this one?

10 MR. PESCI: Correct.

11 THE COURT: Okay.

12 MR. PESCI: I don't know as far as these witnesses if
13 the defense is intending on calling them, and so we're invoking
14 the exclusionary rule.

15 THE COURT: Will you just check and make sure --

16 MR. RUGGEROLI: Yes.

17 THE COURT: -- none of your witnesses are here.

18 MR. RUGGEROLI: None on behalf of Mr. Wheeler, and I
19 don't intend to call any of those witnesses for this hearing.

20 THE COURT: Okay. Thank you.

21 MR. PESCI: Well, wait a second, Judge. If they're
22 intending on being called at all, the State would ask them to
23 be removed.

24 MR. RUGGEROLI: I'm not intending on calling them at
25 all. I don't know who any of them are.

1 THE COURT: Okay. All right. Go ahead. You can
2 swear the witness.

3 RYAN JAEGER

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

6 THE CLERK: You may be seated. Please state and
7 spell your first and last name for the record.

8 THE WITNESS: My first name is Ryan, R-y-a-n; last
9 name of Jaeger, J-a-e-g-e-r.

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MR. BROOKS:

13 Q Detective, how are you employed?

14 A Currently I'm employed as a detective with the Las
15 Vegas Metropolitan Police Department assigned to the homicide
16 section.

17 Q How long have you been with homicide?

18 A I've been with homicide just over three years.

19 Q I want to turn your attention to August 15th, 2017.
20 Were you working that day?

21 A I was.

22 Q Do you recall an interview that brings us here to
23 court for this hearing today?

24 A I do.

25 Q Is that interview in reference to LVMPD Event Number

JD Reporting, Inc.

1 170809-0029?

2 A It was.

3 THE COURT: Okay. I just want the record to reflect
4 that Mr. Sanft is present in the courtroom now as well. Okay.

5 We just started.

6 MR. SANFT: Yes, Your Honor. Thank you.

7 THE COURT: Thank you.

8 BY MR. BROOKS:

9 Q Detective, if you could just briefly give me some of
10 the background on the investigation as we got to the point of
11 the interview that brings us here today.

12 A We had a homicide and a robbery that occurred at 5536
13 Dewey Avenue. There was an individual checking his mail and
14 was shot and killed inside of -- in front of his residence.

15 Q And was that on August 9th, 2017?

16 A It was.

17 Q So the interview we're discussing on August 15, 2017,
18 that's a few days later?

19 A That's correct.

20 Q Have you been working the case and investigating up
21 to this point?

22 A Yes.

23 Q Is it one suspect in this case, or were there
24 multiple?

25 A There was multiple.

1 Q Do you recognize someone here in court today that you
2 came in contact with on August 15th?

3 A I do.

4 Q Could you point to him and identify an article of
5 clothing he's wearing.

6 A Davontae Wheeler. He's got the long-sleeve white
7 button-up shirt and black slacks and black dress shoes.

8 MR. BROOKS: Your Honor, let the record reflect
9 identification of the defendant.

10 THE COURT: So reflected.

11 BY MR. BROOKS:

12 Q So, Detective, was Mr. Wheeler one of the last people
13 taken into custody on this event?

14 A He was.

15 Q I want to now turn to your interaction with
16 Mr. Wheeler. How does it start?

17 A Mr. Wheeler is brought to the LVMPD headquarters to
18 the interview rooms, and the first time I meet him is in one of
19 the interview suites at headquarters.

20 Q Could you give us a description on what, like, one of
21 those interview suites looks like.

22 A It's a small office. It's got a table. The table is
23 bolted to the floor. There's -- on the table there's metal
24 hooks to where we can handcuff the people we're interviewing to
25 the metal hooks. It's kind of a small room, a little bit

1 bigger than a closet.

2 Q Was Mr. Wheeler in custody?

3 A Yes, he was.

4 Q Was he handcuffed?

5 A Yes, he was.

6 Q Do you recall what time you met Mr. Wheeler in that
7 room?

8 A I believe around 6:30 in the afternoon.

9 Q Would 5:22 p.m. sound correct?

10 A That's it.

11 Q Who else was in the interview room?

12 A Detective Hoffman.

13 Q And later on during the course of the interview does
14 someone else come in?

15 A Detective Dosch comes in.

16 Q Is it you who speaks primarily during this?

17 A Yes.

18 Q Are you in it the whole time?

19 A Yes.

20 Q So when you first start, do you give kind of like an
21 introduction of yourself and get some details from
22 Mr. Wheeler --

23 A Yes.

24 Q -- identifying who he is?

25 A First I want to know who I'm talking to, and then I

1 let -- I introduced myself so he knows who I'm speaking with or
2 who he's speaking with.

3 Q After you do that, do you do something else?

4 A I advised him of his rights.

5 Q In this particular case, do you remember how you did
6 that?

7 A I kind of asked him if he knew what his rights were.
8 It's kind of an icebreaker. A lot of people watch TV, and they
9 see it on TV, and everyone kind of has an idea of what their
10 rights are. I asked him if he knew what his rights were, and
11 then I pulled out our rights advisement card, and I advised him
12 his rights right off the card.

13 Q When you asked him if he knows his rights, does he
14 recite to you?

15 A He was pretty close, yes.

16 Q Pretty close?

17 A Yes.

18 Q And then even after he recites Miranda rights almost
19 verbatim, do you read them off a card?

20 A Yes. To make it official, I read it right off the
21 card.

22 Q Does he indicate he understands?

23 A Yes.

24 Q At that point in time does he speak with you?

25 A Yes.

1 Q What's the initial part of this discussion about?

2 A The initial part of the discussion is I'm telling him
3 that I'm doing an investigation about a group of four
4 individuals that were seen with handguns at a gas station.

5 Q Do you show him anything?

6 A We have pictures from the surveillance footage from
7 the gas station that we show him.

8 Q How does that conversation go?

9 A I asked him if he recognizes anyone in the pictures,
10 and we go through the pictures. I even ask him if he
11 recognizes this good looking guy here, and he says he does not.

12 Q And "this good looking guy here" in the pictures, is
13 he pictured in that surveillance photo?

14 A Yes.

15 Q But he refused to recognize himself?

16 A Yes.

17 Q For the entirety of the 2 hours and 39 minutes?

18 A Yes.

19 Q And during -- I want to split the interview up into
20 three parts, okay. So like the first part, second part and the
21 last part that Detective Dosch speaks more than you. Is that
22 okay?

23 A That's fine.

24 Q That first part, that 54 minutes, who spends most of
25 that time talking? Is it you, or is it Mr. Wheeler?

1 A I would say it's me.

2 Q And is Mr. Wheeler engaged with you?

3 A Yes, very much so.

4 Q And during that entire first portion of this
5 interview, what's his story, and what's his relating of events
6 to you?

7 A His relation of the events is he's picked up at his
8 house by some people that he met off of Facebook, and he wants
9 to negotiate buying a handgun from them. He needs change to
10 purchase the handgun. So he initially tries to go to a
11 7-Eleven to get the change, but the cops are at that 7-Eleven.
12 So they drive to another gas station that's about 15 minutes
13 away. He's not sure what that gas station is. The deal kind
14 of falls apart. They can't agree on a price for the handgun.
15 So he gets out of the vehicle and takes a bus home.

16 Q Now, during that first part of the discussion with
17 you, is it fair to say that initially he says he doesn't own a
18 gun?

19 A That's correct.

20 Q Then later on he admits he lies, and he does own a
21 gun?

22 A That's correct.

23 MR. RUGGEROLI: And, Judge, I'm going to admit (sic)
24 to the term "lie."

25 THE COURT: Overruled.

1 BY MR. BROOKS:

2 Q Sometimes throughout that first session, isn't it
3 even Mr. Wheeler who uses the word "lie"?

4 A Yes.

5 Q And apologizes to you for lying?

6 A Yes.

7 Q But once he admits that he actually owns a gun, does
8 he tell you what caliber that is?

9 A He first tells me that it's either a 9 or a 40.

10 Q But specifically do you ask him about a different
11 caliber?

12 A I do.

13 Q What caliber was that?

14 A I asked him about -- at the crime scene we found .45
15 caliber spent cartridge cases. So I asked him about a .45
16 caliber.

17 Q And what's his response to that?

18 A That he doesn't have one.

19 Q Do you ask him questions about his Facebook account?

20 A I do.

21 Q Do you ask him what his name is on Facebook.

22 A He first says that his name is his name, Davontae
23 Wheeler.

24 Q During this do you also ask him if he has a street
25 name and use other words for others?

1 A I do. I asked him about the street name Saatchi
2 [phonetic].

3 Q Initially does he acknowledge that's his name?

4 A He denies that's his name.

5 Q Why were you asking him about the name Saatchi?

6 A There was a Facebook account that we discovered in
7 the investigation that went under that name, that his picture
8 was -- his face was on.

9 Q Subsequently do you do a search warrant to Facebook?

10 A That's correct.

11 Q Do you find out that is Davontae Wheeler's name on
12 Facebook?

13 A Yes.

14 Q But at that point in time he's not admitting to that?

15 A That's correct.

16 Q Is -- initially, in this first section, is
17 Mr. Wheeler acknowledging any of the other three men in the
18 photograph?

19 A He knows one of the men as DJ wearing the green
20 shirt, and that was the person he was negotiating the purchase
21 of the handgun with.

22 Q Did you know that person to be Demario [phonetic]?

23 A I did.

24 Q Loftin [phonetic] Robinson?

25 A I did.

1 Q Did you ask him if he knows DJ's younger brother?

2 A I did.

3 Q Does he say he does?

4 A At first he denies knowing DJ's younger brother.

5 Q Do you ask him who the other person pictured in all
6 black is?

7 A I do.

8 Q Does he acknowledge knowing who that is initially?

9 A Not at first.

10 Q And that all black person, did you know that to be
11 Raekwon Robertson?

12 A Well, he was wearing all black, yes. That was
13 Raekwon.

14 Q So after this, let's -- that first 54 minutes, do you
15 leave the room?

16 A We gave him a break because it's an hour. So then I
17 leave the room.

18 Q You leave the room for how long? Do you know?

19 A Roughly 10 minutes.

20 Q Would from 6:15p.m. to 6:30 p.m. sound about right?

21 A That would be about right.

22 Q During that first portion of the transcript before
23 you leave the room, I actually wanted to ask you two more
24 questions. Do you recall whether Mr. Wheeler mentioned whether
25 he was a good student or an honor roll student?

1 A He did.

2 Q So he at one point claimed he was an honor roll
3 student?

4 A Yes.

5 Q And is he engaging and rather eloquent during the
6 period of time?

7 A Oh, very much so.

8 Q I want to talk to you -- will you tell me what the
9 difference between, like, monster versus mistake is.

10 A So a theme that you use during an interview is you
11 try to describe someone as a hideous, absolute monster, some
12 cold-blooded killer that is just out to kill someone to feel
13 what it feels like just for the satisfaction of killing
14 someone.

15 And then you go and you kind of minimize the monster,
16 and you go into a theme of the reason that pencils have erasers
17 is to fix mistakes. Mistakes are always different than someone
18 just being a cold-blooded killer.

19 Q And is this an investigation technique that you use?

20 A Yes.

21 Q Did you use it during this first portion of the
22 interview?

23 A I did.

24 Q At times does Mr. Wheeler accept and start using your
25 verbiage, like monster?

1 A He does.

2 Q But still does he admit having to do anything with
3 this photo or this incident?

4 A He does not.

5 Q When you first use the word murder that you're
6 investigating, do you recall Mr. Wheeler, how he transitions?

7 A He was shocked by that term, and he was physically
8 drawn, like kind of recoiled back to where he understood the
9 seriousness of the conversation.

10 Q Now, during that second portion of the interview, you
11 leave and come back in after 15 minutes. Do you have a
12 different tone?

13 A I do.

14 Q Why and what for?

15 A A little bit more aggressive because, the first way,
16 it's just not working.

17 Q And so that first 54 minutes, do you kind of let
18 Mr. Wheeler just talk and tell his story?

19 A Yes.

20 Q And you don't really confront him too much?

21 A No.

22 Q That second portion when you come back in, do you, as
23 soon as he starts talking about a story, start confronting him
24 with three or four facts that you're aware of?

25 A Yes.

1 Q All right. And why? What are you doing?

2 A The reason that we do that is we want him to know
3 that there's some questions that we know the answers to, and
4 there's others that we don't. If I can't trust his answer on
5 something that I know the answer to as far as what he goes by
6 on Facebook and who his friends are, how am I supposed to trust
7 his answer on a question I don't know the answer to? So we hit
8 him with the facts that we know and the answers that he's
9 giving.

10 Q The clothing that you had already found at the house?

11 A That's correct.

12 Q Some of the people that you had already spoken to?

13 A That's correct.

14 Q Does Mr. Wheeler continue to not recognize himself in
15 the surveillance footage?

16 A That's correct.

17 Q Does he continue to not recognize or know the other
18 people involved?

19 A Other than DJ.

20 Q Does he insist he's never discharged his gun?

21 A At first, yes.

22 Q And so during that second portion, do you ever coerce
23 him in to admitting to this murder?

24 A No.

25 MR. RUGGEROLI: Judge, I'm going to object to

1 "coerce" as a legal conclusion.

2 THE COURT: Yeah. Sustained.

3 BY MR. BROOKS:

4 Q Do you ever force him in to admitting about this
5 murder?

6 A No.

7 Q Does he ever admit anything about the murder?

8 A He never admitted anything about the murder.

9 Q Do you ever hit him?

10 A No.

11 Q Do you leave him locked in the room for hours and not
12 come back?

13 A I mean, he's in the room for two and a half hours
14 probably, a little over two and a half hours, but I'm in the
15 room with him.

16 Q So that is the time of the interview?

17 A Yes.

18 Q Was he deprived of going to the bathroom? Did he ask
19 to go to the bathroom, and you didn't let him?

20 A No.

21 Q At the end of this interview, does he ask to go to
22 the bathroom, and you actually let him?

23 A Yes.

24 Q Midway through, do you bring him something?

25 A We bring him a bottle of water.

1 Q Was Mr. Wheeler -- are you familiar with the effects
2 that someone would be on if they were on ecstasy?

3 A Yes.

4 Q Was Mr. Wheeler exhibiting any of these signs?

5 A No.

6 Q During this third portion of the interview that
7 Detective Dosch speaks more, why, why switch set up?

8 A He actually had more information. While I was in the
9 interview, Detective Dosch was speaking to the other members of
10 our team and actually getting more information, more facts to
11 confront Mr. Wheeler with.

12 Q Does Detective Dosch ever force him to admit to
13 anything?

14 A No.

15 Q Does he ever hit him?

16 A No.

17 Q Is it fair to say that during the course of the
18 interview Mr. Wheeler engages back, sometimes using aggressive
19 language and gives it to you as much as he takes your
20 questioning?

21 A Yes.

22 MR. BROOKS: Nothing further, Your Honor.

23 THE COURT: Cross-examination.

24 MR. RUGGEROLI: Thank you, Judge.

25 / / /

CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Good morning, Detective.

A Good morning.

Q How long have you been with Metro total?

A Coming up on 23 years.

Q Okay. So the last three are homicide?

A That's correct.

Q And then prior to that?

A Prior to homicide I was on the Force Investigation Team where we did the criminal aspect for all officer-involved shootings and in-custody deaths and any uses of force that result in substantial injury.

Q How long was your time on that force?

A About three years.

Q Three years. And then prior to that?

A Prior to that I spent eight years in the Sex Crimes Division where I was responsible for investigating. I did adult sexual assault, and then for a couple of years I did juvenile sex abuse. And then when I left there, I was back doing the adult sexual assault investigations.

Q And how many years was that total?

A Eight.

Q Okay. And then before that?

A Before that I was in patrol at Northeast Area

JD Reporting, Inc.

1 Command, and then before that I was in the traffic section
2 where we investigated car accidents and DUIs. And before
3 traffic I was Downtown Area Command. And before Downtown Area
4 Command, I was Southeast Area Command.

5 Q Okay. Did you go to the academy?

6 A I did.

7 Q And at the academy did you receive specific training
8 on interrogations?

9 A In the academy, it's very brief. The academy is more
10 patrol oriented, so first responder oriented. It's very brief,
11 but, yes.

12 Q And did you receive -- and I'm going to stay with the
13 academy for a minute. Did you receive instruction on how to
14 administer Miranda rights?

15 A We did.

16 Q Okay. After leaving, it sounds like you may have
17 received some additional training specifically regarding
18 interrogation. So what type of training and when did you
19 receive training regarding interrogation --

20 A As far as interview techniques, I was one of the few
21 people certified in the child-forensic interview. I went
22 through First Witness and Cornerstone. It's basically
23 open-ended questions. The Reid Technique -- I know I'm missing
24 one -- as far as interviews, that's it.

25 Q Okay. You mentioned the interview techniques, and

1 you've been certified in some form of child interview; correct?

2 A That's correct.

3 Q Okay. What type of training have you received
4 regarding interview tactics or the utilization of the themes,
5 as you called it during direct examination?

6 A The, themes, a lot of it is on-the-job training where
7 you sit in the thousands and thousands of interviews that I've
8 done. You kind of figure out what works and what doesn't. On
9 TV everyone likes to think that it's best just to threaten and
10 scream, and really that's not effective communication. The
11 best way is just like we're talking. You know, you're there to
12 try to elicit some facts.

13 Q So you've done many, many interviews?

14 A Yes.

15 Q And you mentioned that a lot of your understanding
16 and experience in utilizing themes is what you refer to as
17 on-the-job training?

18 A That's correct.

19 Q What type of manual would you resort to to help you
20 understand specific guidelines or principles that are part of
21 Metro's policy regarding interviews?

22 A As far as Metro's policy on interview --

23 Q Yes.

24 A -- they have just the advisements of their rights and
25 I guess prisoner transport would be the main policies on it.

1 Q When you're doing the on-the-job training for the
2 interviews, do you have a supervising officer, sergeant or
3 other detective that's observing you to give you critique about
4 what is permissible and not permissible?

5 A Yes.

6 Q And how often would that happen where you would be
7 told something that you did during these interviews was
8 inappropriate or not permissible under policy or guidelines?

9 THE COURT: Okay. I'm not sure what purpose that is.
10 I mean, we're here on a motion to suppress this statement in
11 this case.

12 MR. RUGGEROLI: Right.

13 THE COURT: Do you believe this is relevant?

14 MR. RUGGEROLI: I do.

15 THE COURT: Make an offer of proof then.

16 MR. RUGGEROLI: The basis is that the themes that he
17 indicated on direct that he utilized are not a part of any
18 training that he received through Metro and that in this
19 particular case the strategy that he utilized is not
20 permissible, and it certainly would have exceeded the scope of
21 anything that the department sanctions or authorizes. So I'm
22 trying to establish the foundation or where his understanding
23 of the parameters are.

24 THE COURT: Okay. Thank you.

25 / / /

1 BY MR. RUGGEROLI:

2 Q So in your experience and training, who has drawn a
3 line for what is permissible and what is not permissible?

4 A So the training is constant. A lot with police work
5 it changes with the times. So what you can do last year you
6 can't do this year, and you can probably do it again next year.
7 So I think it's inaccurate by saying the techniques that I use
8 are not approved by LVMPD.

9 Every interview that we do we have someone monitoring
10 the interview to critique us. The only way you can get better
11 at something is to know what works and what doesn't. If you
12 get something that doesn't work, that goes back to the section,
13 and they look at it and say here's why this didn't work; and if
14 you get something that does work, that also goes back to the
15 section. So it's a constant training. There's no manual
16 saying what you can and can't do, per se.

17 Q So if there's no manual -- you were asked a question
18 specifically about whether or not you, quote, unquote, hit
19 Mr. Wheeler; correct?

20 A That's correct.

21 Q Is there any documentation that you could refer to
22 that would say hitting a suspect during an interview is
23 impermissible and against policy?

24 A Our use of force policy.

25 Q Okay. So there is a written use of force policy?

1 A Yes.

2 Q And what are the parameters on the use of force
3 policy regarding hitting?

4 MR. PESCI: Judge, objection. Relevance.

5 THE COURT: I know. Again, there aren't any
6 allegations of that in this case?

7 MR. RUGGEROLI: Well, there will be because there's
8 going to be touching, and I --

9 THE COURT: Okay. Touching to me is different. So
10 why don't you go with touching because I know you're alleging
11 there was touching, but there's no allegations of hitting,
12 punching, using force. So I would just like you to --

13 MR. RUGGEROLI: I could clarify the terms.

14 BY MR. RUGGEROLI:

15 Q How would you define hitting?

16 A Well, I mean, like a punch, a slap, kicking, any
17 strike would be hitting.

18 Q And those would be --

19 A With the intent to harm.

20 Q Those would be impermissible according to the use of
21 force policy?

22 A Yes.

23 Q What about forcefully poking somebody in the
24 forehead?

25 A I don't know if poking is covered. I'm trying to

1 think of our use of force policy, but poking someone in the
2 forehead would be counterproductive, and it --

3 Q But is there a specific criteria that we could look
4 at and see whether or not a certain type of touching --

5 A Well, in the use of force policy, poking is not
6 mentioned.

7 Q All right. The concept of force though, what would
8 that mean to you in terms of your interpretation of what would
9 be permissible during an interview and what wouldn't be?

10 A Well, force would be any action taken upon someone
11 with the intent to hurt them.

12 Q What about intent to intimidate?

13 A I don't get the question.

14 Q Well, you said that the lying, according to your
15 interpretation of what Metro's use of force policy is that if
16 the individual questioning had an intent to hurt, and I
17 understand that, but what if the individual has an intent not
18 necessarily to hurt, but an intent to intimidate, to elicit a
19 statement?

20 A Yeah. I don't know how I could prove intent.

21 Q Well -- you mentioned intent. So that's why I'm
22 following up on that. The specifics of this interview I'll get
23 to in one second, but you're relying on your understanding
24 essentially of the use of force policy for Metro; is that
25 correct?

1 A That's correct.

2 Q Okay. So you do have some training on the job
3 regarding Miranda; correct?

4 A That's correct.

5 Q And tactics and strategies generally?

6 A That's correct.

7 Q How about utilizing lies to the suspect?

8 A That's correct, yes.

9 Q Now, is that something that's written, or is that
10 something that's not defined?

11 A So that's actually written. The only thing we can't
12 do is make up evidence. Like we couldn't bring a bag in and
13 say I have this evidence right here and this evidence here. We
14 couldn't manufacture evidence, but as a technique, if we're
15 lied to, we can reverberate that back.

16 Q And can I just clarify. When you use the term in
17 this context "evidence," are you referring to physical
18 evidence, or are you also --

19 A Physical evidence.

20 Q Okay. What about statements by other people?

21 A Statements by other people you could use.

22 Q Okay. How about using verbal threats?

23 A No, I could not like -- specify, like say tell me
24 this or I'm going to beat you up?

25 Q Right.

1 A No, we could not do that.

2 Q What about terms of verbal abuse or some type of
3 derogatory statements?

4 A No.

5 Q Now, you did mention that you do start with a theme
6 where you call the suspect or you use a term monster; is that
7 correct?

8 A That's correct.

9 Q Have you received any specific training on that, or
10 is that something that you've kind of come about through your
11 on-the-job training?

12 A When I took the linguistic statement analysis class,
13 they used the term for sex abuse investigations as monster
14 because it's -- it's more of a politically correct term, but it
15 still puts this image in someone's head of, oh, I don't want to
16 be a monster. So then from the monster you kind of minimize
17 that, and you go into the pencils have racers and the mistakes.
18 So I guess if monster is a derogatory term, I guess you could
19 use monster.

20 Q Okay. The murder in this case happened in the late
21 hours of August 8th, 2017, in the early morning hours of August
22 9th; right?

23 A We got the 9-1-1 call I think at midnight 10.

24 Q All right.

25 A On the 9th.

1 Q And you were one of the lead detectives?

2 A I was the lead detective, yes.

3 Q And you had information prior to ever even meeting
4 with Mr. Wheeler about a jogger that had written a license
5 plate?

6 A That's correct.

7 Q And you guys followed up with that, or another
8 detective followed up, which led you to the Short Line Express?

9 A That's correct.

10 Q And that led you to surveillance video?

11 A That's correct.

12 Q And then the surveillance video and the license plate
13 led you to the car?

14 A That's correct.

15 Q And eventually it led you to other suspects?

16 A Yes.

17 Q And they led you to Mr. Wheeler?

18 A Yes.

19 Q And so you were aware that Mr. Wheeler was taken into
20 custody pursuant to a execution of a warrant on August 15th
21 just not very much time later --

22 A Yes.

23 Q -- 2017; correct?

24 A Yes.

25 Q You had information that during the execution of that

1 warrant that he had hurt his head because when he was taken
2 into custody officers struck him in the head; correct?

3 A I believe during the interview I ask him if he's
4 okay, and I asked him about the injury on his head.

5 Q And he told you that, Officers grabbed me and slammed
6 me against the wall?

7 A Yes.

8 Q And you were able to observe an injury on his was it
9 his forehead or what part of his head?

10 A I think it was his forehead.

11 Q Did you ask him, or did you find out if he had
12 received any evaluation from medics prior to your interview?

13 A I did not.

14 Q Did you ask him if he was injured?

15 A I did.

16 Q As a result of that blow to the head?

17 A Well, the blow to the head would mean that he's
18 injured; right?

19 Q Okay. Other than the superficial wound.

20 A Okay. I asked him if he was okay. I mean, he didn't
21 seem like he was injured injured. I mean, he had a scratch on
22 his forehead, and I asked him about it.

23 Q And do you know if he had any treatment for that at
24 all?

25 A I do not.

1 Q Prior to seeing him?

2 A I do not.

3 Q You also --

4 A I don't think he did. I mean, he would've been
5 transported from there to headquarters.

6 Q You also were asked if you were aware of any drugs
7 that he might have been on at the time of the interview.

8 A Yes.

9 Q Have you received training in drug recognition?

10 A I have.

11 Q When was that?

12 A 1999 or 2000 when I was in the traffic section.

13 Q Fair to say things have probably progressed?

14 A They've very drastically changed, but telling if
15 someone is intoxicated kind of remains the same.

16 Q Would it be fair to say that looking at his physical
17 demeanor and things of that nature, deciding whether or not he
18 was on drugs was probably not the most prioritized issue at the
19 time of this interview?

20 A No. I mean, it didn't -- he didn't appear to be
21 intoxicated.

22 Q Mr. Wheeler at the time of the interview was 22 years
23 old; correct?

24 A 22 or 23. I'd have to look at his date of birth.
25 You have it there. I don't know if you're trying to --

1 Q I'm not.

2 A Yeah. In his early 20s. Yes.

3 Q Thank you. Now, you knew that he had made mention
4 about being a student, but you were also aware that he had not
5 completed his education; is that correct?

6 A I think we discussed it in our interview, yes.

7 Q You did read him his Miranda rights?

8 A Yes.

9 Q But you did not discuss at any point during this
10 interview any other specific rights other than Miranda that he
11 may have had?

12 A What other rights?

13 Q That's my point. You discussed Miranda in terms of
14 rights, but you didn't discuss any other rights?

15 A That's correct.

16 Q Were you aware of how long he had been awake in total
17 prior to the interview?

18 A I was not.

19 Q And were you aware of the last time he had eaten
20 prior to the interview?

21 A I was not.

22 Q Now, you were actually involved in interviewing a
23 number of other individuals involved in this case, suspects and
24 lay witnesses?

25 A That's correct.

1 Q It's not an uncommon theme for you to talk in the
2 beginning of a number of these interviews about -- I think you
3 would refer to it as an icebreaker; right?

4 A That's correct.

5 Q Miranda is an icebreaker or can be?

6 A It can be.

7 Q But saying, hey, we're not here to hurt you is an
8 icebreaker?

9 A Yes.

10 Q I'm not going to tell you you're a monster in some of
11 the interviews?

12 A Yes.

13 Q In Mr. Wheeler's case, you did refer to him as a
14 monster a number of times; correct?

15 A That's correct.

16 Q You also agree that you lied about the decedent
17 victim in this case about having an autistic sister?

18 A No, that was true. His sister was there.

19 Q Okay. But how she found him?

20 A No, that's how she found him.

21 Q Is that documented in any of your reports?

22 A I don't know if she was interviewed.

23 Q Okay.

24 A Because of how she -- but the whole family rushed
25 outside. Like they even woke the grandfather up to -- and the

1 whole family was there prior to medical arriving.

2 Q Okay. The specific part about the sister though,
3 you're not aware of any reports that you made specifically
4 mentioning that?

5 A No.

6 Q But you did bring that up --

7 A Yes.

8 Q -- during this --

9 A Yes.

10 Q Okay. You did refer to Mr. Wheeler as a heartless
11 monster?

12 A Yes.

13 Q You did claim that Mr. Wheeler did not have a soul?

14 A Yes.

15 Q You did claim that Mr. Wheeler was a heartless prick?

16 A Yes.

17 Q And you had --

18 A Was that me or Dosch? I don't -- if --

19 Q And that's a good point. There were some statements
20 made by a total of three --

21 A Yeah. I think I will be Q. Hoffman would be Q2.

22 And then Detective Dosch would be Q3 to read the transcript.

23 And it goes by the order that people are asking questions.

24 Q And you were asked on direct about essentially three
25 stages of this interview; is that correct?

1 A That's correct.

2 Q Stage I essentially would be up until the point of
3 the 15-minute interview -- or excuse me, 15-minute break?

4 A Break, yes.

5 Q What happened in the room during that break?

6 A Which room?

7 Q The 15-minute break.

8 A Well, we -- I left the room.

9 Q Okay. And so you left Mr. Wheeler alone?

10 A That's correct.

11 Q This was being audio-video recorded as well?

12 A Yes.

13 Q And is that through a device that's installed, or is
14 that a camera that's just actually placed?

15 A So in the interview rooms, in that interview room,
16 there's actually two cameras and a microphone. And then I
17 bring my own audio recorder in because you always want
18 redundancy if the -- sometimes the department's surveillance
19 equipment it just runs and runs and runs and runs, and it can
20 be unreliable. So I always bring my audio recorder in so worse
21 case scenario we still have a audio recording of the interview.

22 Q Now, the 15-minute break happened at approximately --

23 MR. RUGGEROLI: And I'm going to just ask you to
24 advance this to 6:15. That could be approximately on page 39
25 for the State so that we're aware of --

1 BY MR. RUGGEROLI:

2 Q Is it your testimony that your strategy of utilizing
3 these terms only happened before that break?

4 A I don't -- ask that again.

5 Q Is it your testimony that your strategy and theme in
6 utilizing these concepts, monster, have no soul, things of that
7 nature, are you testifying that that only happened in
8 Section 1?

9 A It would have happened probably in Section 2.

10 Q Okay. Would it surprise you to learn that it
11 happened throughout the entire interview?

12 A No.

13 Q Okay. So --

14 A So -- it's a 150-page transcript.

15 Q Right.

16 A To know page for page without it in front of me is --

17 Q Right. So I think the suggestion may have been by
18 the State that when you use these terms they were intended at a
19 specific portion of the interview to elicit based on a theme
20 further statements?

21 A Yes.

22 Q Okay. But if you use them throughout the entire
23 interview, then it's really not divided up, you used these
24 statements throughout the entire interview?

25 A I don't think throughout the entire interview. I

1 didn't start the interview out on page 1 by calling him a
2 monster. I mean, we would have to get a baseline and get him
3 to tell his version.

4 Q Okay. You have no reason to believe that on page 28
5 you refer to him as a monster?

6 A Well, that's page 28. So that's not what happened.

7 Q Okay. I'm going to go through them individually.

8 A Okay. Yeah.

9 Q No reason --

10 MR. PESCI: Judge, I apologize. I'm going to make an
11 objection. Do you have a copy of this transcript?

12 THE COURT: I do.

13 MR. PESCI: Do you have the actual DVD? I don't know
14 why this detective is having to answer questions that are in
15 the actual evidence. This should be streamlined to those
16 things that somehow somehow are not before you already in
17 evidence or else we're really wasting everyone's time.

18 MR. RUGGEROLI: Well --

19 THE COURT: I mean, I tend to agree because I do have
20 the benefit of it.

21 MR. RUGGEROLI: Okay.

22 THE COURT: And so --

23 MR. RUGGEROLI: As long as Your Honor is aware. Then
24 we understand that I would go through each of the questions.

25 THE COURT: That's fine.

1 MR. RUGGEROLI: But Your Honor is already aware of
2 that.

3 THE COURT: Uh-huh.

4 MR. RUGGEROLI: Thank you.

5 BY MR. RUGGEROLI:

6 Q Okay. Leaving the verbal statements and getting into
7 instances of physical contact, okay?

8 A Okay.

9 Q There were several instances where you made physical
10 contact or Detective Hoffman or Detective Dosch; correct?

11 A Like hand on the shoulder? Like you'd have to show
12 me what because I -- I'm not a poker. Like if I put my hand on
13 someone's shoulder or on the arm to try to bring someone down.
14 So if you're asking me, then no, I would have -- it would be
15 counterproductive --

16 Q Did you read the transcript?

17 A I did.

18 Q Did you view the video?

19 A I have viewed the video, but -- I mean, it's two
20 hours.

21 Q Correct. And you're not able to give us any specific
22 instruction regarding guidelines not involving hitting, but in
23 terms of physical contact?

24 A No.

25 MR. RUGGEROLI: And, Judge, rather than go through

1 the instances, since you were made aware --

2 THE COURT: Sure.

3 MR. RUGGEROLI: In our briefing and for Mr. Wheeler's
4 edification, I specify the exact time on the video --

5 THE COURT: You did.

6 MR. RUGGEROLI: -- of these physical instances. So
7 rather than going through each one individually with the
8 detective, they'll just be noted. And I'd refer the Court to
9 it.

10 THE COURT: Thank you.

11 MR. RUGGEROLI: Thank you, Your Honor. I have no
12 further questions.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Detective Jaeger, I want to talk first about this
17 kind of like touching stuff. At some point during the
18 interview do you ask Mr. Wheeler have we laid hands on you?

19 A Yes.

20 Q And do you recall exactly what his statement was?

21 A No.

22 Q Would it be fair to say that on page 73 of the
23 transcript Mr. Wheeler says, I'm getting attacked for something
24 I didn't even do. I kept everything a hundred.

25 And then that's when you asked that question, Have we

1 laid hands on you?

2 To which he responds, no, not like that as in my
3 safety; as in the fact that you're trying to tell me I did
4 something you -- you --

5 And then you continue with the interview?

6 A That's correct.

7 Q Why did you ask that question, Have we laid hands on
8 you?

9 A Well, if he's upset and thinks we hit him and we
10 haven't, that's important. I mean, we can't -- you just can't
11 because of our use of force policy, you can't hit people in
12 interviews.

13 Q And when Mr. Wheeler answers, No, not in my safety,
14 but he used the word attacking, was that signifying to you that
15 you're accusing him of something?

16 A Yes.

17 Q But not physically attacking?

18 A We're not physically attacking him. We're attacking
19 his memory of the events.

20 Q Do you remember the question you had information that
21 he was struck in the head? Do you remember that question?

22 A Yes.

23 Q And you got that information from the person who gave
24 you nothing but inconsistencies for the first hour of this
25 interview?

1 A That's correct.

2 Q Oh, okay.

3 Do you remember that question did you discuss any
4 additional rights?

5 A That's correct.

6 Q Are you a constitutional scholar?

7 A I am not.

8 Q Do you have a law degree?

9 A I do not.

10 Q Okay. So do you frequently give advice on
11 constitutional rights other than reading someone their Miranda
12 warnings?

13 A I do not.

14 Q Do you remember the question how long was Mr. Wheeler
15 awake at this point?

16 A I mean, it was in the evening when we picked him up,
17 but I would have no idea.

18 Q Was it 5:00 p.m.?

19 A Yes.

20 Q So like the end of a workday for some people?

21 A That's correct.

22 Q Not 2:00 a.m.?

23 A No.

24 Q And do you remember the questions about you not
25 having documented the autistic sister?

1 A That's correct.

2 Q Would it be fair to say you sort of documented it
3 during this interview when you were asking Mr. Wheeler about
4 it?

5 A That's correct.

6 Q Lastly, were you aware of a Review-Journal, Las Vegas
7 Review-Journal article --

8 MR. RUGGEROLI: Judge, I'm going to object to beyond
9 the scope of cross.

10 THE COURT: Yeah. Why would we have to ask the
11 detective about something in the RJ?

12 MR. BROOKS: It was a jailhouse interview with
13 Mr. Wheeler, and I was just going to ask him one of the
14 statements. It's not -- it doesn't go towards this -- well, it
15 goes towards the hearing, but not towards anything with the
16 trial.

17 THE COURT: Okay. I'll allow it.

18 MR. RUGGEROLI: Just so the objection is noted that
19 it's beyond the scope of cross.

20 THE COURT: Okay. Mr. Wheeler gave an interview?

21 MR. BROOKS: Yes. Yes.

22 THE COURT: Okay. Go ahead.

23 THE WITNESS: Yes, I --

24 BY MR. BROOKS:

25 Q During a jailhouse interview, it's a -- the Las Vegas

1 Review-Journal article that we discussed,

2 During a jailhouse interview Thursday,
3 22-year-old Davontae Wheeler told the
4 Las Vegas Review-Journal that detectives
5 continued to interrogate him about the
6 killing after he asked for an attorney.

7 Now, Mr. Jaeger, my question is not whether
8 Mr. Wheeler lied or whether the Review-Journal person lied, but
9 at any point did you continue to investigate -- interrogate
10 this man after he asked for an attorney?

11 A No.

12 Q And that would be in the transcript; correct?

13 A Yes. It would be in the transcripts, on the audio
14 recording, and on the video recording.

15 Q And fair to say that in this article it also says
16 another time that he continued to ask for an attorney?

17 A That's correct.

18 MR. BROOKS: Thank you. Nothing further.

19 MR. RUGGEROLI: And just in terms of any offered for
20 the truth of the matter asserted, I'm objecting to hearsay, and
21 it's not something that they can establish. I understand that
22 he's responding to it, but I would continue the objection for
23 those other reasons.

24 THE COURT: Sure. And there was nothing like that in
25 your motion either. There were no allegations.

1 MR. RUGGEROLI: Correct.

2 THE COURT: That he asked for a lawyer.

3 MR. RUGGEROLI: Correct.

4 THE COURT: And that police did not stop
5 interrogating him.

6 MR. RUGGEROLI: Correct.

7 THE COURT: Okay.

8 MR. RUGGEROLI: Thank you, Judge.

9 THE COURT: Any recross?

10 MR. RUGGEROLI: Just briefly.

11 RECROSS-EXAMINATION

12 BY MR. RUGGEROLI:

13 Q Detective, is it your testimony then that there will
14 be no indication of any touching that was intended or maybe
15 viewed as intimidating of Mr. Wheeler by any of the three
16 detectives during that interview?

17 A Well, I can't say that because I don't know how it
18 would be viewed.

19 Q Okay.

20 A If you're saying that he was poked, the video will
21 show that.

22 Q I'm asking you in your opinion.

23 A If I poked him or --

24 Q No. Any type of touching that would either be
25 impermissible or intended to intimidate, you're saying that --

JD Reporting, Inc.

1 A Impermissible, yes.

2 Q -- that that does not exist on that video?

3 A That's correct.

4 MR. RUGGEROLI: Okay. I have nothing further, Judge.

5 THE COURT: Okay. Anything else for this detective?

6 MR. BROOKS: No, Your Honor.

7 THE COURT: Okay. Thank you very much for your
8 testimony here today. You may step down.

9 And can this detective be excused?

10 MR. PESCI: From the State, yes.

11 THE COURT: Can he --

12 MR. RUGGEROLI: Yes, Your Honor.

13 THE COURT: Okay. Thank you very much for being
14 here.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Okay. Do you have any witnesses?

17 MR. RUGGEROLI: Judge, thank you. I do want to just
18 make a record that Mr. Wheeler and I have discussed this
19 thoroughly, and we do not have any witnesses.

20 THE COURT: Okay. Then I'll listen to both sides in
21 closing argument.

22 Does the State want to go first?

23 MR. BROOKS: We'll submit it, Your Honor.

24 THE COURT: Okay.

25 **CLOSING ARGUMENT FOR THE DEFENSE**

1 MR. RUGGEROLI: Thank you, Judge. Your Honor, I know
2 that you're aware of the specifics that I had put in the
3 motion. If I may just make a quick listing of that for the
4 record.

5 We're not going through this with the detective, but
6 in total, and that's our argument, that based on the law and
7 especially the Pissama [phonetic] case, when you look at
8 everything and the devices, the tactics, the themes that were
9 utilized here, when you add the verbal statements and titles
10 that were given to Mr. Wheeler, and then you couple them with
11 the physical contact, which I didn't go through specifically,
12 it is our argument that those tactics in total over -- were
13 Mr. Wheeler's will and that his statements were not the product
14 of a voluntary decision, specifically when you look at the
15 physical touching.

16 And I asked the detective, you know, where are the
17 guidelines, where is the line that's to be drawn. He didn't
18 really have one. Hitting I think is one, but in terms of a
19 source of training that Metro receives, this sounds like it's
20 more on the job, which unfortunately leaves it in Your Honor's
21 hands to decide what is over the line and what is not. I would
22 suggest to you that this interrogation in total went over that
23 line.

24 The detectives were aware that Mr. Wheeler was
25 brought in after being injured. He testified, the detective,

1 that there was an injury on Mr. Wheeler's head. He didn't see
2 if it had been treated. He didn't know the extent of the
3 injury. There was a question about whether he's okay, but that
4 was the starting point, and this interrogation, this
5 questioning should not have continued without that having been
6 looked into first.

7 They did read Miranda rights, but then they started
8 off with this assault of verbal statements which are not, as
9 the detective indicated, well, we want to know if you're a
10 monster. It was statements, you are a monster, and I'm not
11 going to belabor this, but I did want to document for the
12 record specifically what the statements were because it was not
13 innocuous. These were intentional verbal assaults against
14 Mr. Wheeler's character: Heartless monster; have no soul;
15 heartless prick; the detective indicated, We have no time for
16 inhumans like Mr. Wheeler; derogatory -- derogatorily referred
17 to Mr. Wheeler as son. I'd point out that Mr. Wheeler is an
18 African American. The detective is not.

19 Mr. Wheeler was again referred to as having no soul,
20 being a piece of garbage. They claim that Mr. Wheeler's
21 conscience was so perverted -- and this is at the end of
22 page 147 -- that he did not know right from wrong.

23 In terms of the physical contact, Judge, we don't
24 have an instance of slamming in the face or punching, but we
25 have a pattern of what I would argue is impermissible physical

1 contact that was specifically designed to intimidate
2 Mr. Wheeler in to making statements. They poked Mr. Wheeler on
3 the upper arm and shoulder. They touched him on the back and
4 shoulder multiple times. They physically touched the side of
5 his head and forehead. They got close and up in his face
6 during the questioning. They gripped Mr. Wheeler's shoulder
7 and pointed fingers in his face. They grabbed his forearm and
8 patted him on the back in a manner that I don't think is you're
9 a good person, Judge.

10 And so when you look at the case law, you add up the
11 evidence of Mr. Wheeler's youth -- he did not complete his
12 education. We did claim that he was on ecstasy. I know
13 there's no evidence of that because of the lack of witnesses;
14 however, the detectives did not follow-up and is sure, Though I
15 am trained in drug recognition, I did not administer any actual
16 observations. We have that, but they didn't go further. They
17 don't know when he ate. They don't know how long before the
18 interview he had slept.

19 Based on all of these things, Judge, the overall
20 method, we are arguing, undermines the fair application of
21 Mr. Wheeler's Miranda rights. And based on that, these
22 statements should be determined to be involuntarily --
23 involuntary and ultimately inadmissible.

24 THE COURT: Thank you.

25 Anything else from the State?

1 MR. BROOKS: No, Your Honor.

2 THE COURT: Okay. At this time I'm going to deny the
3 motion to suppress, make a finding that the statement was
4 freely, voluntarily and intelligently made for purposes of
5 going in front of the jury panel. Obviously the jury will have
6 the right to make that determination. So the defense will be
7 permitted to continue to argue that in front of the jury panel.

8 MR. RUGGEROLI: Thank you, Judge.

9 THE COURT: I'm just making the preliminary finding
10 that they can hear it.

11 MR. RUGGEROLI: And, Judge, I don't know if the
12 State -- I did put it in the motion, I believe, that if they
13 intended to have the transcript or a recording, there are a
14 number of portions that would be inadmissible. I don't know if
15 they have something -- I haven't reviewed anything -- that has
16 redactions.

17 THE COURT: Well, yeah, I would hope before they
18 go --

19 I mean, are you going to try to introduce the entire
20 statement? And if so, I mean, I've never had it where they
21 haven't showed you and given you an opportunity to object.

22 MR. PESCI: If we get there, we'll cross that bridge
23 as far as redactions.

24 MR. RUGGEROLI: Thank you, Judge.

25 THE COURT: Okay. Obviously they'll make sure you

1 can make any objections.

2 MR. RUGGEROLI: Thank you, Your Honor.

3 THE COURT: Okay. So 1:00 o'clock; right?

4 MR. PESCI: Judge, I'm not sure. Is Mr. Sanft here?

5 CORRECTION OFFICER: Yeah, he's talking to his
6 client.

7 MR. PESCI: Is the codefendant here? Because maybe
8 we could handle some housekeeping issues.

9 THE COURT: Absolutely. I didn't know the
10 codefendant was in there too.

11 Excellent. Sure. So then at 1:00 o'clock we can
12 just go into jury selection. I'd love it.

13 And, Mr. Sanft, your client is Mr. Robertson?

14 MR. SANFT: Robertson, Your Honor, that is correct.

15 THE COURT: And Mr. Robertson is present, and he's in
16 custody.

17 The State wanted to, I guess, go through some
18 housekeeping issues.

19 MR. SANFT: Yes, Your Honor. I just want to make
20 sure I make a record that I'm here today on behalf of my client
21 who's present in custody.

22 THE COURT: Thank you.

23 MR. PESCI: Thank you. So, Your Honor, we have filed
24 an Amended Superseding Indictment. Unfortunately, I think I
25 only brought four copies. So I've given one to defense

1 counsel's table. I'll leave the other one here.

2 So based on the previous motion that you granted, one
3 that the State did not oppose, the first few counts have been
4 taken out.

5 THE COURT: Right.

6 MR. PESCI: And so what is now before Your Honor and
7 will be before the jury is just the conspiracy to commit
8 robbery, the attempt robbery with use and the murder with use
9 of a deadly weapon. So I wanted to make a record of that. And
10 defense counsel has been provided with a copy of that.

11 MR. SANFT: That is correct, Your Honor.

12 THE COURT: Okay. So it's Counts 5 through 7 are
13 just in the Superseding Indictment, and there's no objection to
14 them filing it?

15 MR. SANFT: No, Your Honor.

16 THE COURT: Okay.

17 MR. PESCI: Secondarily, we're trying to line up
18 witnesses. So we were going to ask if Your Honor can provide
19 us maybe the schedule as far as when we think we're going to
20 start throughout the week. And if you can't do that now,
21 that's fine, we'll pick it up later.

22 THE COURT: No. I can give you a sketch.

23 THE CLERK: So Wednesday we'll start at 8:30.
24 Thursday we will start at 10:30. This Friday we'll start at
25 8:30.

1 MR. PESCI: And that's good. We can tackle next
2 week.

3 THE COURT: Okay.

4 MR. PESCI: We're just trying to figure out
5 witnesses. That's very helpful. Thank you.

6 THE COURT: Okay.

7 MR. PESCI: And the other thing is, Your Honor, the
8 defense has asked for the transcripts to be produced for the
9 entry of plea of the codefendant. As of right now, I don't
10 have it. I don't know that anybody has it. So I guess I'm
11 kind of requesting that again for --

12 THE COURT: Does the transcript exist?

13 MR. PESCI: No. In fact, we've submitted an order.

14 THE COURT: So it's never been prepared?

15 MR. PESCI: I don't know if it has. I believe we
16 submitted an order.

17 THE COURT: Okay.

18 MR. PESCI: And so I don't think it's done yet. And
19 so, but I think --

20 THE COURT: When did you submit the order? Just
21 recently?

22 MR. PESCI: I don't know exactly. I'll check with my
23 secretary, I apologize. I think we did a week or two ago, but
24 I don't think that's done yet, and so I think defense --
25 because they're the ones that asked for it. I think that they

1 want that.

2 THE COURT: Okay. But you gave them a copy of the
3 agreement -- the guilty plea agreement --

4 MR. PESCI: Yes.

5 THE COURT: -- and the agreement to testify?

6 MR. PESCI: Yes. Subsequent to that, Mr. Ruggeroli
7 asked me for the transcripts. I said I didn't have it. I said
8 that's something that has to be ordered from the Court.

9 THE COURT: Okay.

10 MR. PESCI: Speaking of the guilty plea agreement, I
11 asked for a copy today from the Court of this file because it's
12 filed under seal. The reason being I need to take it, and then
13 I need to alter it in order to excise the portion pursuant to
14 the case law about truthfulness. And so I've been provided a
15 copy of that. Defense counsel already has that. But I needed
16 a file-stamped version. So that way we can go in and make it
17 look like that portion is not in the agreement to testify.

18 THE COURT: Sure.

19 MR. PESCI: And then we have been approached by some
20 of our witnesses indicating -- more specifically one that's
21 indicated that he's been subpoenaed by the defense, but
22 unfortunately the day that the subpoena has ordered him to
23 appear is a holiday, which is Monday. So I wanted to address
24 that with the defense and the Court because I told the witness
25 that you have to comply with the subpoena; however, complying

1 with that would be rather problematic because it was for the
2 17th, which is a holiday.

3 THE COURT: Who subpoenaed him?

4 MR. RUGGEROLI: That would probably be us, Judge.
5 And I didn't speak directly with Mr. Pesci about this. If they
6 intend to call him, then I think it clarifies this, but we
7 certainly wanted him under subpoena, and that was just an error
8 made on our part about the date.

9 THE COURT: Okay. Well, when do want him here?

10 MR. RUGGEROLI: Well, if they're not going to call
11 him --

12 MR. PESCI: To answer their question, we are going to
13 call him.

14 THE COURT: Okay.

15 MR. RUGGEROLI: We'll give him another subpoena with
16 a different date, but it looks like it will be moot. We just
17 want to make sure that we do have him under subpoena just in
18 case.

19 THE COURT: Okay. You have him under subpoena
20 though?

21 MR. PESCI: Yes, Your Honor.

22 Is everyone comfortable with us telling that witness
23 he does not have to come on Monday, the 17th?

24 MR. RUGGEROLI: Absolutely.

25 THE COURT: Absolutely.

1 MR. PESCI: Okay. All right. And then the last
2 thing, I don't know whether there can be any agreements. What
3 I have here is a stipulation and order for waiver of penalty.

4 THE COURT: Okay.

5 MR. PESCI: Defense can review that and decide
6 collectively if they want to do that or not. I would ask that
7 we make that decision before we start at 1:00 today --

8 THE COURT: Right.

9 MR. PESCI: -- I think you're bringing them in.
10 Because it changes how we pick this jury.

11 THE COURT: Right. I just need to know prior to jury
12 selection.

13 MR. SANFT: Yes, Your Honor.

14 THE COURT: So because if they're going to do -- if
15 they're potentially going to be a panel on a penalty hearing,
16 then we have to ask them certain questions.

17 MR. SANFT: Yes, Your Honor. I've spoken with my
18 client, Mr. Robertson, and he's indicated to me today he would
19 waive his penalty hearing.

20 THE COURT: Okay.

21 MR. RUGGEROLI: Judge, I've actually spoken
22 extensively with Mr. Wheeler about this issue and with my
23 investigator, and at this time, I would like till at least
24 1:00 to finalize this. At this time he is not inclined to
25 waive.

1 THE COURT: Okay. All right. I just need to know
2 before we start at 1:00 o'clock. Okay.

3 MR. RUGGEROLI: Thank you.

4 MR. PESCI: Okay. Then lastly, I'm not sure if this
5 is just one witness. As far as any stipulations that we can
6 have to kind of cut down the witnesses, the custodian of
7 records from the DMV, we're trying to set up whether they have
8 to come in or not for the registration for the Grand Marquis.

9 Or is defense counsel willing to stipulate to at
10 least the documents, so its admission, so we don't have to
11 bring in a custodian of records for that? Think about that,
12 and then decide it later so we can try to cut some witnesses
13 out.

14 MR. SANFT: We'll speak with the State with regards
15 to these witnesses, Your Honor. I don't think we necessarily
16 have to go on the record right now, but we will talk about it.

17 THE COURT: Okay.

18 / / /

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23 / / /

24 / / /

25 / / /

1 MR. PESCI: And with that I think we're good.

2 THE COURT: Anything else?

3 All right. We'll see you all at 1:00 o'clock.

4 (Proceedings recessed at 11:38 a.m.)

5 -oOo-

6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the audio/video proceedings in the above-entitled
8 case.

9

10

Dana L. Williams

11

Dana L. Williams
Transcriber

12

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25

ORIGINAL

1 IND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

FEB 11 2020
BY, HALY PANNOLLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-17-328587-2&3

DEPT NO: XII

12 RAEKWON SETREY ROBERTSON,
13 aka, Raekwon Robertson, #8252804
14 DAVONTAE AMARRI WHEELER,
15 #5909081

Defendant(s).

AMENDED
SUPERSEDING
INDICTMENT

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant(s) above named, RAEKWON SETREY ROBERTSON, aka, Raekwon
19 Robertson, and DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury
20 of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS
21 200.380, 199.480 - NOC 50147); ATTEMPT ROBBERY WITH USE OF A DEADLY
22 WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and
23 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010,
24 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State of
25 Nevada, on or about August 9, 2017, as follows:

26 ///

27 ///

C-17-328587-3
SIND
Superseding Indictment
4900888



1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
3 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
4 or about August 9, 2017, willfully, unlawfully, and feloniously conspire with each other and/or
5 unknown co-conspirators to commit a robbery, by the Defendants and/or unknown co-
6 conspirators committing the acts as set forth in Count 6, said acts being incorporated by this
7 reference as though fully set forth herein.

8 COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

9 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
10 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
11 or about August 9, 2017, willfully, unlawfully, and feloniously attempt to take personal
12 property, to wit: U.S. Currency and/or property, from the person of GABRIEL
13 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
14 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
15 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
16 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under
17 one or more of the following principles of criminal liability, to wit: (1) by directly committing
18 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that
19 this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
20 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
21 commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
22 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
23 and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or
24 DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
25 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

26 ///

27 ///

28 ///

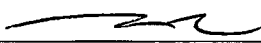
1 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

2 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
3 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
4 or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill
5 GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm,
6 by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing having
7 been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or
8 attempted perpetration of a robbery, the Defendants being criminally liable under one or more
9 of the following principles of criminal liability, to wit: (1) by directly committing this crime;
10 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime
11 be committed, by counseling, encouraging, hiring, commanding, inducing, and/or otherwise
12 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit murder
13 and/or robbery; Defendants and/or unknown co-conspirators aiding or abetting and/or
14 conspiring by Defendants and/or unknown co-conspirators acting in concert throughout.

15 DATED this 12 day of February, 2020.

16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 Nevada Bar #001565

19 BY


20 GIANCARLO PESCI
21 Chief Deputy District Attorney
22 Nevada Bar #007135

23 ENDORSEMENT: A True Bill
24
25

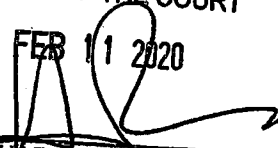
26 Foreperson, Clark County Grand Jury
27

28 Names of Witnesses and testifying before the Grand Jury:

1 CODY, LORA – LVMPD #7294
2 DOSCH, MITCHELL – LVMPD #7907
3 FLETCHER, SHAWN – LVMPD #5221
4 JAEGER, RYAN – LVMPD #5587
5 LESTER, ANYA, LVMPD
6 MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
7 NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
8 RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
9 SIMMS, DR. LARY – ME#0002
10 SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV
11 SPEAS, WILLIAM – LVMPD #5228
12 STEIN, AGNES – FIESTA DISCOUNT MARKET-7010 W. CHARLESTON BLVD, LV NV
13 TAPAY, GLEZZELLE, LVMPD #15709
14 Additional Witnesses known to the District Attorney at time of filing the Indictment:
15 CHARLTON, NOREEN – LVMPD #13572
16 CUSTODIAN OF RECORDS - CCDC
17 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS
18 CUSTODIAN OF RECORDS - LVMPD RECORDS
19 CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV
20 ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
21
22
23
24
25 17BGJ017A-C/17F14369A-C/mc - GJ
26 LVMPD EV#1708024571; 1708090029
27 (TK3)
28

1 **SAO**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

FEB 11 2020
BY, 
HALY PANNULLO, DEPUTY

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

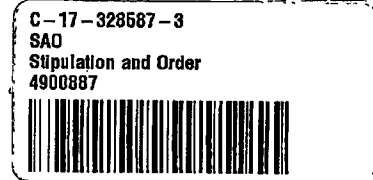
11 **-vs-**

12 **RAEKWON SETREY ROBERTSON,**
13 **#8252804**
14 **DAVONTAE AMARRI WHEELER**
15 **#5909081**

CASE NO: C-17-328587-23

DEPT NO: XII

16 **Defendants.**



17 **STIPULATION AND ORDER**

18 **COMES NOW, the Defendants, RAEKWON SETREY ROBERTSON, by and through**
19 **his counsel, MICHAEL SANFT, and DAVONTAE AMARRI WHEELER, by and through**
20 **his counsel, JAMES RUGGEROLI, the State of Nevada, by and through GIANCARLO**
21 **PESCI, Chief Deputy District Attorney, and pursuant to NRS 175.552(2), hereby agree and**
22 **stipulate to the following:**

- 23 1. **Should the jury in the above-captioned case return a verdict of guilty on**
24 **any offense, including First Degree Murder, the parties hereby waive the**
25 **penalty hearing before the jury as normally required under NRS**
26 **175.552(1)(a);**
27 2. **Pursuant to NRS 175.552(2), all parties agree that the sentence on any**
28 **charge for which the Defendant may be convicted shall be imposed by**
this Honorable Court after a pre-sentence investigation is conducted by
the Department of Parole and Probation;
3. **That as a result of the foregoing, counsel shall not discuss or mention the**
issue of penalty or punishment in the voir dire, opening statements or

1 closing arguments, or otherwise discuss the nature of penalty or
2 punishment at any time before the jury.

3 DATED this 11 day of February 2020.

4 ATTORNEY FOR DEFENDANT

CLARK COUNTY DISTRICT
ATTORNEY

5 BY:

6 MICHAEL SANFT
7 Attorney for Defendant
8 Raekwon Setrey Robertosn
Nevada Bar #00 8245

BY:

GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135

9 Raekwon Robertosn
10 RAEKWON SETREY ROBERTSON

11 ATTORNEY FOR DEFENDANT

CLARK COUNTY DISTRICT
ATTORNEY

12 BY:

13 JAMES RUGGEROLI
14 Attorney for Defendant
15 Davontae Amarri Wheeler
16 Nevada Bar #007891

BY:

GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135

17 DAVONTAE AMARRI WHEELER
18

19 IT IS SO ORDERED.
20
21

22 District Judge
23
24 DISTRICT JUDGE
25
26 2.11.2020
27
28

gp/MVU

1 JURL

2 ORIGINAL

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

3 FEB 12 2020

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 BY,  HALY PANNULLO, DEPUTY

7 State of Nevada

CASE NO.: C-17-328587-2

C-17-328587-3

8 Vs

DEPARTMENT 12

9 RAEKWON ROBERTSON;
DAVONTAE WHEELER

10 JURY LIST

11 1. VITO CASUCCI

8. LISA COOK

12 2. SHARON MORRISON

9. MARKDELAN DEPERIO

13 3. ARIA FLORES-VIRGEN

10. CAESAR CASTRO

14 4. SUZANNE QUINN

11. ANGELA SEGURA

15 5. CAMILLE ESTRELLA

12. MARIA MORENO

16 6. DANILO RODRIGUEZ

13. ROBERTA BELL

17 7. JONATHAN SALAZAR

14. COLIN RANDALL

18 ALTERNATES

19 SECRET FROM ABOVE

20 C-17-328587-3
21 JURL
22 Jury List
23 4900889



25 1354

Steven D. Grierson

1 **ROC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
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11 Attorney for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,
15
16 Plaintiff,

17 -vs-

CASE NO: C-17-328587-3

18 DAVONTAE WHEELER #5909081,
19
20 Defendant.

DEPT NO: XII

21 RECEIPT OF COPY

22 RECEIPT OF COPY of the above and foregoing USB drive containing all available
23 CDRs and phone records for phone numbers 702-338-4380, 702-619-7426, 702-801-0516,
24 and 702-934-4851, and cell phone extractions for one Samsung SM-J700 T1, one ZTE Z981
25 ZMax, one LG D415, one LG LS676, and one Galaxy S7 Edge totaling 21 GB is hereby
26 acknowledged this 12 day of Feb, 2020.

27 JAMES RUGGEROLI
28 ATTORNEY FOR DEFENDANT

BY *R. Ruggieri*

601 S. Seventh St.
Las Vegas, Nevada 89101

17F14369C jn/MVU

JURL

ORIGINAL

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

FEB 14 2020

DISTRICT COURT

CLARK COUNTY, NEVADA

BY, HALY BANNULO, DEPUTY

State of Nevada

CASE NO.: C-17-328587-2

C-17-328587-3

Vs

DEPARTMENT 12

RAEKWON ROBERTSON;
DAVONTAE WHEELER

AMENDED JURY LIST

- | | |
|-----------------------|----------------------|
| 1. VITO CASUCCI | 8. LISA COOK |
| 2. SHARON MORRISON | 9. MARKDELAN DEPERIO |
| 3. ARIA FLORES-VIRGEN | 10. ROBERTA BELL |
| 4. SUZANNE QUINN | 11. ANGELA SEGURA |
| 5. CAMILLE ESTRELLA | 12. MARIA MORENO |
| 6. DANILO RODRIGUEZ | 13. |
| 7. JONATHAN SALAZAR | 14. COLIN RANDALL |

ALTERNATES

SECRET FROM ABOVE

C-17-328587-3
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Amended Jury List
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JURL

ORIGINAL

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FEB 19 2020

BY, HALY PANNULLO, DEPUTY

State of Nevada

CASE NO.: C-17-328587-2
C-17-328587-3

Vs

DEPARTMENT 12

RAEKWON ROBERTSON;
DAVONTAE WHEELER

SECOND AMENDED JURY LIST

- | | |
|-----------------------|----------------------|
| 1. VITO CASUCCI | 8. LISA COOK |
| 2. SHARON MORRISON | 9. MARKDELAN DEPERIO |
| 3. ARIA FLORES-VIRGEN | 10. ROBERTA BELL |
| 4. SUZANNE QUINN | 11. ANGELA SEGURA |
| 5. CAMILLE ESTRELLA | 12. MARIA MORENO |
| 6. DANILO RODRIGUEZ | 13. |
| 7. JONATHAN SALAZAR | |

ALTERNATES

14. COLIN RANDALL

C-17-328587-3
AJUR
Amended Jury List
4900891



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2-19-20

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ORIGINAL

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

FEB 19 2020

BY, HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAEKWON SETREY ROBERTSON,
DAVONTAE WHEELER,

Defendant.

CASE NO: C-17-328587-2
C-17-328587-3

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-17-328587-3
INST
Instructions to the Jury
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Indictment is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an amended Indictment that on or about August 9, 2017,
5 the Defendants committed the offenses of Conspiracy to Commit Robbery, Attempt Robbery
6 with Use of a Deadly Weapon, Murder with Use of a Deadly Weapon. It is the duty of the
7 jury to apply the rules of law contained in these instructions to the facts of the case and
8 determine whether or not each Defendant is guilty of the offenses charged.

9 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

10 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
11 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
12 or about August 9, 2017, willfully, unlawfully, and feloniously conspire with each other
13 and/or unknown co-conspirators to commit a robbery, by the Defendants and/or unknown
14 co-conspirators committing the acts as set forth in Count 2, said acts being incorporated by
15 this reference as though fully set forth herein.

16 COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

17 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
18 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
19 or about August 9, 2017, willfully, unlawfully, and feloniously attempt to take personal
20 property, to wit: U.S. Currency and/or property, from the person of GABRIEL
21 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
22 without the consent and against the will of GABRIEL VALENZUELA, by pointing a
23 firearm at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or
24 property, with use of a deadly weapon, to wit: a firearm, the Defendants being criminally
25 liable under one or more of the following principles of criminal liability, to wit: (1) by
26 directly committing this crime; and/or (2) by aiding or abetting in the commission of this
27 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
28 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)

1 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
2 DAVONTAE AMARRI WHEELER, and/or DEMARIO LOFTON-ROBINSON and/or
3 DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-
4 conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO
5 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
6 and/or unknown co-conspirators acting in concert throughout.

7 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

8 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
9 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
10 or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill
11 GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm,
12 by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing
13 having been (1) willful, deliberate, and premeditated, and/or (2) committed during the
14 perpetration or attempted perpetration of a robbery, the Defendants being criminally liable
15 under one or more of the following principles of criminal liability, to wit: (1) by directly
16 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
17 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
18 inducing, and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
19 conspiracy to commit murder and/or robbery; Defendants and/or unknown co-conspirators
20 aiding or abetting and/or conspiring by Defendants and/or unknown co-conspirators acting in
21 concert throughout.

22 It is the duty of the jury to apply the rules of law contained in these instructions to the
23 facts of the case and determine whether or not each Defendant is guilty of one or more of the
24 offenses charged.

25 Each charge and the evidence pertaining to it should be considered separately. The
26 fact you may find a defendant guilty or not guilty as to one of the offenses charged should
27 not control your verdict as to any other offense charged.
28

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1
2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State of Nevada the burden of proving beyond a reasonable doubt every
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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2 You are here to determine whether the State of Nevada has met its burden of proof
3 from the evidence in the case. You are not called upon to return a verdict as to any other
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt
5 of either or both of the Defendants, you should so find, even though you may believe one or
6 more persons are also guilty.
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1
2 You have heard testimony from DeShawn Robinson who was previously charged
3 with Conspiracy to Commit Robbery, Attempt Robbery with Use of a Deadly Weapon, and
4 Murder with Use of a Deadly Weapon. The testimony was given in exchange for his charges
5 being reduced to Conspiracy to Commit Robbery and Attempt Robbery with Use of a
6 Deadly Weapon. This is a benefit to a person sentenced. Because DeShawn Robinson will
7 not be sentenced until after the trial of Raekwon Robertson, Davontae Wheeler, and Demario
8 Lofton-Robinson there are possible related pressures upon him when he testified. You may
9 consider these factors and the possible related pressures in determining his credibility and
10 the extent to which they influenced his testimony. You should view his testimony with
11 greater caution than that of other witnesses.

INSTRUCTION NO. 10

The fact that a witness has entered a plea to a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

1
2 A conviction shall not be had on the testimony of an accomplice unless the
3 accomplice is corroborated by other evidence which in itself and without the aid of the
4 testimony of the accomplice tends to connect the defendant with the commission of the
5 offense and the corroboration shall not be sufficient if it merely shows the commission of the
6 offense or the circumstances thereof. An accomplice is hereby defined as one who is liable
7 for prosecution for the identical offenses charged against the defendants on trial in the cause
8 in which the testimony of the accomplice is given.

9 You are instructed that DeShawn Robinson is an accomplice. However, it is not
10 necessary that the corroborating evidence be sufficient in itself to establish every element of
11 the offense charged or that it corroborate every fact to which the accomplice testifies.
12 Evidence to corroborate accomplice testimony does not suffice if it merely casts grave
13 suspicion on the defendant. Further, where the connecting evidence shows no more than an
14 opportunity to commit a crime, simply proves suspicion, or it equally supports a reasonable
15 explanation pointing toward innocent conduct on the part of the defendant, the evidence is to
16 be deemed insufficient.

17 In determining whether an accomplice has been corroborated, you must first assume
18 the testimony of the accomplice has been removed from the case. You must then determine
19 whether there is sufficient evidence which tends to connect the defendant with the
20 commission of the offense. If there is not sufficient independent evidence which tends to
21 connect the defendant with the commission of the offense the testimony of the accomplice is
22 not corroborated. If there is such sufficient independent evidence, which you believe, then
23 the testimony of the accomplice is corroborated.
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The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or introducing any evidence. It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify.

Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 13

Any person who conspires to commit robbery is guilty of Conspiracy to Commit Robbery.

1
2 An act done with intent to commit a crime, and tending but failing to accomplish it, is
3 an attempt to commit that crime.

4 The elements of an attempt to commit a crime are:

- 5 1. The intent to commit the crime;
6 2. The performance of some act towards its commission; and
7 3. The failure to consummate its commission.

8 In determining whether or not such an act was done, it is necessary to distinguish
9 between mere preparation, on the one hand, and the actual commencement of the doing of
10 the criminal deed, on the other. Mere preparation, which may consist of planning the offense
11 or of devising, obtaining or arranging the means for its commission, is not sufficient to
12 constitute an attempt; but acts of a person who intends to commit a crime will constitute an
13 attempt where they themselves clearly indicate a certain, unambiguous intent to commit that
14 specific crime, and, in themselves, are an immediate step in the present execution of the
15 criminal design, the progress of which would be completed unless interrupted by some
16 circumstance not intended in the original design.

17 When a person has once done things which constitute an attempt to commit a crime,
18 he cannot avoid responsibility by failing to proceed further to commit that crime, either by
19 reason of voluntarily abandoning his purpose or because he was prevented or interfered with
20 in completing the crime.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property;
2. To prevent or overcome resistance to the taking of the property; or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Personal property is "in the presence" of a person, in respect to robbery, when it is within the person's reach, inspection, observation or control, and the person could, if not prevented by intimidation or threat of violence, retain possession of the property.

INSTRUCTION NO. 16

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be affected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 19

Murder of the First Degree is murder which is (1) perpetrated by any kind of willful, deliberate and premeditated killing; or (2) committed in the perpetration or attempted perpetration of any robbery.

INSTRUCTION NO. 20

The State is not required to present direct evidence of a Defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

1
2 Murder of the first degree is murder which is perpetrated by means of any kind of
3 willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation,
4 and premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
20 that the act constituting the killing has been preceded by and has been the result of
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.
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The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

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2 There is a kind of murder which carries with it conclusive evidence of premeditation
3 and malice aforethought. This class of first degree murder is a killing committed in the
4 perpetration or attempted perpetration of a robbery. Therefore, a killing which is committed
5 in the perpetration or attempted perpetration of a robbery is deemed to be Murder of the First
6 Degree, whether the killing was intentional or unintentional or accidental. This is called the
7 Felony-Murder Rule.

8 The intent to perpetrate or attempt to perpetrate robbery must be proven beyond a
9 reasonable doubt.

10 For the purposes of the Felony-Murder Rule, the intent to commit the robbery must
11 have arisen before or during the conduct resulting in death. However, in determining
12 whether the Defendant had the requisite intent to commit robbery before or during the
13 killing, you may infer that intent from the Defendant's actions during and immediately after
14 the killing. There is no Felony-Murder where the robbery occurs as an afterthought
15 following the killing.
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1 All murder which is not Murder of the First Degree is Murder of the Second Degree.
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3 Murder of the Second Degree is Murder with malice aforethought, but without the admixture
4 of premeditation and deliberation.
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2 You are instructed that if you find that the State has established that the defendant has
3 committed First Degree Murder you shall select First Degree Murder as your verdict. The
4 crime of First Degree Murder includes the crime of Second Degree Murder. You may find
5 the defendant guilty of Second Degree Murder if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
7 murder of the first degree, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of second degree murder.

10 If you are convinced beyond a reasonable doubt that the crime of murder has been
11 committed by the defendant, but you have a reasonable doubt whether such murder was of
12 the first or of the second degree, you must give the defendant the benefit of that doubt and
13 return a verdict of murder of the second degree.
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2 You are instructed that if you find a Defendant guilty of Attempt Robbery, or 1st or
3 2nd Degree Murder, you must also determine whether or not a deadly weapon was used in the
4 commission of this crime.

5 If you find beyond a reasonable doubt that a deadly weapon was used in the
6 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
7 "With Use of a Deadly Weapon".

8 If, however, you find that a deadly weapon was not used in the commission of such an
9 offense, but you find that it was committed, then you shall return the appropriate guilty
10 verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a "deadly weapon."

1
2 In order to "use" a deadly weapon, there need not be conduct which actually produces
3 harm but only conduct which produces a fear of harm or force by means or display of the
4 deadly weapon in aiding the commission of the crime.

5 An unarmed offender "uses" a deadly weapon when the unarmed offender is liable as
6 a principal for the offense that is sought to be enhanced, another principal to the offense is
7 armed with and uses a deadly weapon in the commission of the offense, and the unarmed
8 offender had knowledge of the use of the deadly weapon.

9 The State is not required to have recovered the deadly weapon used in an alleged
10 crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon
11 was used in the commission of the crime.

1
2 Conspiracy is an agreement or mutual understanding between two or more persons to
3 commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in
4 the commission of the specific crime agreed to. The crime is the agreement to do something
5 unlawful; it does not matter whether it was successful or not. It is not necessary in proving a
6 conspiracy to show a meeting of the alleged conspirators or the making of an express or
7 formal agreement. The formation and existence of a conspiracy may be inferred from all
8 circumstances tending to show the common intent and may be proved in the same way as
9 any other fact may be proved, either by direct testimony of the fact or by circumstantial
10 evidence, or by both direct and circumstantial evidence.

11 A conspiracy to commit a crime does not end upon the completion of the crime. The
12 conspiracy continues until the co-conspirators have successfully gotten away and concealed
13 the crime. In order to find the defendant criminally liable for acts of another conspirator,
14 pursuant to a conspiracy to the crimes of Attempt Robbery with Use of a Deadly Weapon
15 and First Degree Murder with Use of a Deadly Weapon, you must find that the defendant
16 possessed the specific intent to commit those specific crimes.

17 Murder in the second degree may be a general intent crime. As such, Defendants may
18 be liable under conspiracy theory and/or aiding and abetting for murder of the second degree
19 for acts committed by a co-conspirator if the killing is one of the reasonably foreseeable
20 consequences of the object of the conspiracy.
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2 Whenever a conspiracy exists, and a defendant was one of the members of the
3 conspiracy, then the statements and the acts by any person likewise a member of the
4 conspiracy may be considered by the jury as evidence in the case as to that defendant found
5 to have been a member, even though the statements and acts may have occurred in the
6 absence and without the knowledge of that defendant, provided such statements and acts
7 were knowingly made and done during the continuance of such conspiracy, and in
8 furtherance of some object or purpose of the conspiracy.
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy. The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators.

In order to find a defendant criminally liable for acts of another conspirator pursuant to a conspiracy to the crimes of Attempt Robbery with Use of a Deadly Weapon and First Degree Murder with Use of a Deadly Weapon you must find that the defendant possessed the specific intent to commit those specific crimes.

Murder in the Second Degree is a general intent crime, therefore defendants may be held liable under a conspiracy theory of liability if the killing is one of the reasonably foreseeable consequences of the object of the conspiracy.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offence charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

For the defendant to be held accountable under the "aiding and abetting" principle of criminal liability in this case he must have specifically intended that the crimes of Attempt Robbery with use of a Deadly Weapon and First Degree Murder with Use of a Deadly Weapon be committed.

For the Defendants to be held accountable under an aiding and abetting principle of criminal liability as to Second Degree Murder, the killing must be a reasonably foreseeable consequence.

Mere presence at or near the scene of the crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense as an aider and abettor unless you find beyond a reasonable doubt that a defendant was a participant and not merely a knowing spectator.

Your verdict must be unanimous. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the defendant committed the charged crime.

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give her opinion as to any matter in which she is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind such inferences should not
7 be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.

INSTRUCTION NO. 36

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to each Defendant.

During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.

You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.

When you retire to consider your verdict, you must first select one of your member to act as foreperson who will preside over your deliberation, and will be your spokesperson in court.

During your deliberation, you will have all the exhibits admitted into evidence, these written instructions, and forms of verdict prepared for your convenience.

Your verdict must be unanimous. As soon as you agree upon a verdict, the foreperson shall sign and date the verdict form and return with it to this room.

INSTRUCTION NO. 39

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between each Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

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

FEB 24 2020

DISTRICT COURT
CLARK COUNTY, NEVADA

BY, HALY PANNULLO, DEPUTY

THE STATE OF NEVADA,
Plaintiff,
-vs-
DAVONTAE WHEELER,
Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

VERDICT

We, the jury in the above entitled case, find the Defendant DAVONTAE WHEELER,
as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY, *(please check the
appropriate box, select only one)*

☒ Guilty of Conspiracy to Commit Robbery

☐ Not Guilty

COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON,
(please check the appropriate box, select only one)

☐ Guilty of Attempt Robbery with Use of a Deadly Weapon

☐ Guilty of Attempt Robbery

☒ Not Guilty

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C-17-328587-3
VER
Verdict
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2-24-20

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COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON, *(please check the appropriate box, select only one)*

- ☐ Guilty of First Degree Murder with Use of a Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon
- ☒ Guilty of Second Degree Murder
- ☐ Not Guilty

DATED this 24 day of February, 2020



FOREPERSON

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 12, 2020**

C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

February 12, 2020 08:30 AM Jury Trial

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
Giancarlo Pesci	Attorney for Plaintiff
James J. Ruggeroli	Attorney for Defendant
Parker Brooks	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Michael Sanft, Esq., present on behalf of Co-Defendant.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS:

Mr. Ruggeroli moved to strike the panel and made record of Batson Challenge. Matter argued by counsel. Mr. Ruggeroli requested an Evidentiary Hearing. COURT SO ORDERED. Court made record of calculations. Stated objected to Evidentiary Hearing. Mariah Witt SWORN and TESTIFIED. COURT ORDERED, Motion to Strike Jury Venire DENIED.

PROSPECTIVE JURORS PRESENT:

Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS:

Mr. Sanft requested the Court consider challenge under Batson. Arguments by counsel. Mr. Ruggeroli joined Mr. Sanft's requested. COURT ORDERED, request DENIED and made the determination that there is no showing made as to the first step of analysis.

JURY PRESENT:

Jury selected.

COURT ORDERED, trial CONTINUED.

Steven D. Grierson

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
)	CASE NO. C-17-328587-3
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
AND DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 12, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 2**

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 12, 2020, 9:15 A.M.

2 (Outside the presence of the prospective jurors)

3 THE MARSHAL: Come to order. Court is now in
4 session.

5 THE COURT: Okay. The record will reflect that the
6 hearing is taking place outside --

7 THE MARSHAL: Thank you, everyone. Please be
8 seated.

9 THE COURT: -- the presence of the jury panel. We
10 do have a full panel here now, but I was told there's
11 something outside the presence.

12 MR. RUGGEROLI: Yes, Your Honor.

13 Judge, we're going to move to strike the venire
14 panel based on the underrepresentation of African-Americans.

15 THE COURT: After a full day of selection?

16 MR. RUGGEROLI: Well, Judge, at the end of
17 yesterday, I did speak to my client. I'm not aware of a
18 strict timeliness provision, but I am bringing this to the
19 Court's attention this morning --

20 THE COURT: Okay.

21 MR. RUGGEROLI: -- after doing some research. It is
22 accurate, of course, that we were provided with the jury list.
23 The list indicates that there are three African-Americans, but
24 I believe that there are only two present on the panel because
25 one did not appear.

1 So there are 60 prospective jurors as a part of the
2 panel as a whole. Had there been three African-Americans, it
3 would have been 5 percent. So we're down to two; it's below
4 that. And so, based on the Buchanan v. State, Judge, the
5 Court in Nevada though has already ruled that African-
6 Americans are a distinct group.

7 THE COURT: They're a distinct group.

8 MR. RUGGEROLI: Correct. And in this particular
9 instance, Judge, 2 out of 60 is a sufficient enough number
10 that we are arguing that it was under-representative.

11 THE COURT: Okay.

12 MR. RUGGEROLI: As far as the third prong --

13 THE COURT: And so have you -- and you understand,
14 in determining that, the test that our Supreme Court uses?

15 MR. RUGGEROLI: For the --

16 THE COURT: The comparative disparity and the
17 distinctive -- the distinct -- I think it's a comparative
18 analysis. Yes.

19 MR. RUGGEROLI: Yeah.

20 THE COURT: The comparative disparity.

21 MR. RUGGEROLI: To calculate the absolute and
22 comparative disparities, Judge.

23 THE COURT: There you go.

24 MR. RUGGEROLI: I don't have the exact numbers. I
25 would just point out, in the Morgan case -- and that's 416

1 P.3d 212; it's a 2018 Nevada Supreme Court opinion. In that
2 case, the panel was 45 members, there were three African-
3 Americans. The Court in that case calculated a comparative
4 disparity of 43.2 percent.

5 In this particular instance, because we've only got
6 2 of 60 -- and again, I didn't do the math -- I verified with
7 Mr. Wheeler this morning, and I made the State aware that we
8 were going to raise this issue. I believe that Mr. Sanft is
9 going to join as well.

10 But based on that analysis, Judge, I do think the
11 numbers would comport with the standard of being collectively
12 of 50 percent or more, and so we would have
13 underrepresentation based on those numbers, Judge.

14 MR. PESCI: Sure. Mr. Sanft, are you joining?

15 MR. SANFT: Yes, I'm joining, Your Honor.

16 THE COURT: Okay.

17 MR. PESCI: Okay. Your Honor, first and foremost,
18 what you pointed out at the very beginning is absolutely
19 essential. This is a day late and a dollar short, and here's
20 why: what are we going to do to address this now?

21 We have, by my count, released 17 people, none of
22 which have been objected to by the defense, including one
23 individual who didn't even step in the courtroom, which is I
24 think Miles Ealy, Badge number 533, who, when you look at it,
25 he lists race, "Other race"; ethnicity, "Non-Hispanic Latino."

1 We don't know what he is. He never even walked in the room
2 because, as I understand it, he had pink eye.

3 THE COURT: That's correct.

4 MR. PESCI: Right. So if you're going to make an
5 objection like this, you have to do it in a timely fashion so
6 we have everybody here to be able to do these calculations.
7 How do we do the calculations when 17 people out of the 60
8 have been taken out, and 17 that no one from the defense
9 objected to? So the numbers are all askew now because we
10 don't even know.

11 He talked about how, per the information we got from
12 the Jury Commissioner, there are three African-Americans. He
13 says that he saw two, so are we presupposing then the race of
14 an individual? We don't know for sure. Some people will
15 identify as one thing, and they won't as another. We don't
16 know.

17 That's the quandary of this. I'm just going to say
18 on the record -- it will haunt me later on in front of the
19 Supreme Court -- that's the craziness of this Batson challenge
20 analysis, is that we're supposed to look into the crowd and
21 assess ethnicity, which, by the way, we're not supposed to
22 consider when we're making these decisions, and then figure
23 out, okay, is this person African-American? Are they
24 Hispanic? Are they Polynesian? What are they?

25 And then we've been in court, Your Honor, where

1 we've had people from the defense asking Your Honor to ask the
2 jurors, right?

3 THE COURT: Yeah, and I won't do it.

4 MR. PESCI: Exactly, right. And then, guess what.
5 You remember in that case when you said that, but you provided
6 the opportunity for the defense? Not the ones here. They
7 wouldn't ask. They wouldn't ask, right? Because no one wants
8 to tick people off and say, what are you? Understandably,
9 people don't react well when these kinds of questions are
10 asked.

11 So going back to it, I don't know how we can do the
12 third prong that we've been told to do via the case law,
13 because 17 people are no longer in this. What were they? We
14 don't know for sure, right? And so this is late, it's
15 untimely. It needs to be done at the front end of this. And
16 the comparative analysis also, we're going to -- I'm going to
17 turn over to Mr. Brooks.

18 THE COURT: I mean, can we do that analysis based on
19 the paperwork that we got?

20 MR. PESCI: Well, I don't know, because like the
21 individual that I just said that had the pink eye, he put --

22 THE COURT: Right.

23 MR. PESCI: -- "Other" and "Unknown." So without
24 him being present to be able to ask those questions -- and
25 thankfully, I'm very grateful that we don't have pink eye in

1 the courtroom right now.

2 THE COURT: Right.

3 MR. PESCI: But we don't have him to be able to do
4 that. And I've argued in other cases when they argued
5 structural error that we should just bring jurors back, and
6 the Supreme Court told me, no, you can't do that. So I really
7 don't know how we're supposed to recreate it since they told
8 us you couldn't in other cases.

9 MR. BROOKS: So, Judge, I don't know how first you
10 go from three to two, even though the sheet says three. And
11 so you've randomly chosen -- Mr. Ruggeroli's randomly chosen
12 Mr. Ealy, who lists "Other," and then somehow --

13 MR. RUGGEROLI: Judge, I object. It's a female. We
14 have --

15 MR. BROOKS: Oh.

16 MR. RUGGEROLI: I'm not randomly, but the jury list
17 itself says that there are a total of three; two female, one
18 male. So that's not accurate --

19 MR. BROOKS: So --

20 MR. RUGGEROLI: -- that I'm randomly selecting a
21 male.

22 MR. BROOKS: Okay, sorry, I thought that was Mr.
23 Ealy. But moreover, you can't use 60 as the number that we're
24 doing this analysis on because 12 are listed as "Other." And
25 if you see on United States v. Hernandez-Estrada, other courts

1 have held that courts should avoid distorting the numbers, and
2 anyone whose racial identification is unknown should be
3 excluded from the calculation.

4 So right here, you have a motion that's brought in
5 front of you by someone who hasn't done the calculations and
6 just wants to use the 60, when really, 48 needs to be used.
7 You've been provided no numbers as far as the most recent
8 census. So let's assume that African-Americans in the most
9 recent census was approximately 12.8. Let's round that --

10 THE COURT: Well, was it? Is that the accurate
11 number?

12 MR. BROOKS: Well, the defense hasn't actually made
13 this argument, but I'm --

14 THE COURT: Right. I mean, I believe they have to
15 make a prima facie showing. That is correct.

16 MR. BROOKS: And so, let's say they were to actually
17 use 12.8, which would have been the number.

18 THE COURT: Okay.

19 MR. BROOKS: 12.8 then out of 48 should have come to
20 about 6.2, but you can't have 2.24 humans, so let's put that
21 at 7. There were three. 3 divided by 7, when doing the
22 absolute disparity analysis, would get us to approximately 42
23 percent, which is under 50. And just to clarify what I did
24 there, essentially, I took 7, subtracted 3, which is what we
25 had, got an absolute disparity of 3.24. And then, when I had

1 that, did the division by the number that we should have had.
2 So I mean, that's kind of what I've done here on a backhand
3 calculation.

4 THE COURT: Okay. So basically, you're contending
5 they haven't met the second prong; they haven't made a prima
6 facie showing?

7 MR. BROOKS: I mean, I think the biggest issue is
8 Mr. Pesci's comment, which is it's a day late, but I'm trying
9 to do this analysis just real quickly with the limited stuff
10 we have. I would have taken more time, had I known. So
11 that's all I wanted to add with regard to that.

12 THE COURT: Okay, because it's my concern that you
13 haven't made a prima facie showing.

14 MR. RUGGEROLI: Yeah. Just briefly --

15 THE COURT: I mean, we have Morgan; we have the
16 Valentine case.

17 MR. RUGGEROLI: Yeah. Just briefly, Judge. In the
18 Morgan case, I don't believe that stands for the proposition
19 that there is a timeliness requirement at all. I didn't hear
20 the State provide you with any authority. That's just an
21 argument. I think it makes sense, but it's --

22 THE COURT: Well, of course it makes sense --

23 MR. RUGGEROLI: But it's --

24 THE COURT: -- so we don't spend a day and waste
25 everybody's time picking a jury if the Court -- if it's a

1 righteous challenge, you know? So can you challenge the
2 cross-section after we have a jury impaneled --

3 MR. RUGGEROLI: Well --

4 THE COURT: -- and we've already gone to trial? I
5 mean, it doesn't make sense.

6 MR. RUGGEROLI: We don't have that though. What we
7 have is, in the Morgan case, it was 45 panel members, and at
8 that time, Clark County apparently had 11.8 percent African-
9 Americans. I do think it's higher, over 12 percent, at this
10 point. There were three people -- three African-Americans on
11 that panel, and that, the Court held, was not sufficient
12 enough. I don't have the exact number for the disparity, but
13 in this particular case, because it's 60 -- we use the 60
14 number for the panel that is present. That's the group that
15 we're selecting from. Out of this panel --

16 THE COURT: Even though there's 12 people that have
17 said, "Other"?

18 MR. RUGGEROLI: Okay, I'm looking specifically at
19 African-American because that's the distinctive group. And so
20 based on --

21 THE COURT: Right, but those 12 people that say
22 "Other," I mean, we don't know their race, correct?

23 MR. RUGGEROLI: I agree with that. I am specifying
24 this specifically to African-Americans because that is the
25 group that the court, especially in Morgan, has said, "We're

1 recognizing this as a distinct group." If there were three on
2 this panel -- and I don't think that there are. I think that
3 there's only two, because it's -- this Race Report that we've
4 been provided says that two were female, and one were male.
5 So I'm just looking at the numbers, and I don't believe that
6 there are two females out of the 60.

7 If there had been three, it was only 5 percent of
8 this panel. So our argument, Judge, is that this is an
9 important issue. Of course it causes frustrations, but this
10 particular portion of the law --

11 THE COURT: Listen, I don't have any problem. I get
12 these challenges all the time.

13 MR. RUGGEROLI: Yes.

14 THE COURT: But I've never had one after a day of
15 jury selection.

16 MR. RUGGEROLI: I understand. I do think in the
17 Morgan case -- and I was just trying to look back to make
18 sure. But I think that they went -- they may have raised the
19 issue the first day, but they didn't finalize their argument,
20 and I think it did go into the second day.

21 Nevertheless, I'm not aware of a specific timeliness
22 provision that requires us to make the motion the moment the
23 panel comes in. In a perfect world, I would have preferred to
24 raise this sooner, but Judge, here's where we're at today and
25 this is the record that we're making. So we are moving to

1 strike based on the under --

2 THE COURT: But you haven't done any of the
3 calculations for me to even make a determination. You haven't
4 done the comparative disparity, the absolute disparity,
5 because according to the State, you haven't made a prima facie
6 showing. So I'll give you an opportunity to do that.

7 MR. RUGGEROLI: Okay.

8 THE COURT: But I believe that you have to comply --

9 MR. RUGGEROLI: Even if the number were 3 out of
10 60, the percentage is 5 percent, and that's not enough to
11 represent the collective whole of our community, which should
12 be 12 or more percent.

13 THE COURT: So what's the absolute disparity?

14 MR. RUGGEROLI: I don't have that --

15 THE COURT: I mean, I'm just --

16 MR. RUGGEROLI: I know.

17 THE COURT: -- being honest, I'm not a math person.

18 MR. RUGGEROLI: Correct, and that's one of the --

19 THE COURT: I'm just not.

20 MR. RUGGEROLI: I agree, and neither am I, Judge. I
21 would just say that it's enough over the mark that 5 percent
22 would be greater than the 50 percent disparity.

23 THE COURT: Okay, and then how about the third step?
24 I mean, are you contending you're entitled to an evidentiary
25 hearing? I mean, what are your allegations as to the

1 underrepresentation is due to systematic exclusion of the
2 group in jury selection?

3 MR. RUGGEROLI: That this is a particular issue that
4 the Clerk -- I don't have something that I can say, this is
5 exactly what they did. I can tell you that, systematically
6 speaking, overall, there should be policies and procedures in
7 place that don't lead to where we're at, where there is
8 underrepresentation.

9 And when you add all of the cases together, I would
10 argue that this is a problem that is recurring enough to where
11 it is systematic. There should be something in place. It
12 wouldn't be the defense's burden to establish what that policy
13 is, what that procedure actually is --

14 THE COURT: Well, you have to make allegations to
15 entitle you to an evidentiary hearing.

16 MR. RUGGEROLI: Well, I'm saying that the notion of
17 systematic is based on this issue coming up repetitively in
18 jury pools in this county that are underrepresentative. It's
19 just -- I'm saying that it basically is something that Your
20 Honor can take notice of.

21 THE COURT: Okay, and are you familiar with the
22 Valentine case that came out in December?

23 MR. RUGGEROLI: Judge, I did not reference that.

24 THE COURT: Okay, because I'm just -- it doesn't
25 appear to me as though -- I mean, it sounds like you're making

1 general allegations and nothing specific.

2 MR. PESCI: The tough thing -- if I could, Your
3 Honor -- is that, as you pointed out, Valentine is the most
4 recent conversation about this, and it's really nebulous as to
5 what is a prima facie case. What they said was -- in that
6 case, I believe they said it was -- did they say it was not?
7 I can't remember. But like, the problem is, we don't know for
8 sure what is a prima facie case and what isn't.

9 So I appreciate what you just said, which is, what's
10 your remedy; what are you asking for? And so, I feel like
11 you're providing him that remedy, and I'm not sure if they're
12 taking it, because to me, the remedy per that case is we get
13 the Jury Commissioner in here and you have to ask questions,
14 assuming he actually made the prima facie case, which the
15 State's not conceding, right? So is that the remedy that's
16 requested?

17 THE COURT: That's what I'm asking.

18 MR. RUGGEROLI: Yes, Judge.

19 THE COURT: You're requesting an evidentiary
20 hearing?

21 MR. RUGGEROLI: Here's the thing.

22 THE COURT: I mean, this is why you should do it in
23 the beginning, because now I have a jury panel out there --

24 MR. RUGGEROLI: I understand.

25 THE COURT: -- that's now going to sit, and I have

1 to get the Jury Commissioner up here.

2 MR. RUGGEROLI: Correct.

3 THE COURT: So if that's what you're asking --

4 MR. RUGGEROLI: It is.

5 THE COURT: Get the Jury Commissioner up. Let me

6 know when she's here.

7 THE MARSHAL: Yes, ma'am.

8 THE CLERK: I'll e-mail her. Well, do you want me

9 to call? I'll call.

10 THE MARSHAL: Do you want me to call her?

11 THE CLERK: I'll call.

12 (Off the record at 9:30 A.M. until 9:49 A.M.)

13 (Outside the presence of the prospective jurors)

14 THE MARSHAL: Please come to order. Court is now

15 back in session.

16 THE COURT: Okay. The record will reflect that the

17 hearing is continuing to take place outside the presence of

18 the jury panel.

19 So I had a few minutes to do these calculations, and

20 I used the entire jury panel, 60. And in the Morgan case,

21 they used 11.8 percent. Since no one has told me what it is

22 in Clark County, I'm going to use 12 percent. So I come up

23 with an absolute disparity of 7 percent, and a comparative

24 disparity of 58.33 percent.

25 However, the third prong is that the

1 underrepresentation is due to systemic exclusion of the group
2 in jury selection process, and I haven't heard any allegations
3 as to that.

4 MR. RUGGEROLI: Thank you, Judge. Your Honor,
5 Valentine references Evans, which references Duren, D-u-r-e-n,
6 vs. Missouri. That's a United State Supreme Court case. The
7 Duren court explained that, quote, "Systematic exclusion means
8 underrepresentation inherent in the particular jury selection
9 process utilized."

10 Because -- and I greatly appreciate Your Honor doing
11 those numbers and an absolute disparity test. We are good
12 with that 58 percent disparity. The Court has found that
13 anything over 50 percent is a prima facie showing, and because
14 of that, we would argue that that shifts the burden to the
15 State at this point to show that the jury selection process --

16 THE COURT: Okay, but again, in Valentine, they said
17 you get an evidentiary hearing if you set forth specific facts
18 that are not belied by the record, which requires us to expand
19 the record.

20 MR. RUGGEROLI: Agreed. So I think that the burden
21 though has now shifted to the State to establish that the jury
22 selection process is not inherently --

23 THE COURT: Okay. You understand you have to meet
24 the three prongs?

25 MR. RUGGEROLI: Yes.

1 THE COURT: The third prong is that this
2 underrepresentation is due to systematic exclusion of the
3 group in the jury selection process, and I haven't heard any
4 allegations or theories of how that happens in Clark County.

5 MR. RUGGEROLI: But -- and I just want to make sure
6 that we're -- that I'm following the proper line of inquiry
7 based on Valentine.

8 THE COURT: I mean, because clearly, that's where
9 it's going to --

10 MR. RUGGEROLI: Right.

11 THE COURT: -- to lie.

12 MR. RUGGEROLI: I just believe that --

13 THE COURT: I mean, I believe the first two prongs,
14 you have met.

15 MR. RUGGEROLI: Right. And so what I would say is
16 that, in Valentine, it clarifies that, once we establish that
17 prima facie violation, which is Prong 2, then the burden
18 shifts to the government to show that the disparity is
19 justified. And --

20 THE COURT: Okay. Again, I think you have to make
21 allegations. I'm just going to let you call the Jury
22 Commissioner.

23 MR. RUGGEROLI: Okay.

24 THE COURT: And I don't know, Mr. Pesci, did you
25 want to --

1 MR. PESCI: I just want to make a record. I'm not
2 sure if he's done. I'll wait until he's done.

3 MR. RUGGEROLI: If you'd like me to call the Jury
4 Commissioner, then I will follow through with the questioning
5 now.

6 THE COURT: Okay. Mr. Pesci?

7 MR. PESCI: Judge, so thank you very much for doing
8 those numbers. Again, we're objecting, not to you or that
9 calculation, Your Honor; to the concept of doing it a day late
10 and a dollar short, right? Because you just said that you
11 utilized the number 60 --

12 THE COURT: Yeah.

13 MR. PESCI: -- which is where we get these numbers
14 of 7 percent absolute and 58 percent comparative, right? The
15 State's argument -- and I do concede that I don't know of a
16 case on point; but if there isn't, there should be, which is
17 this should be done at the front end. This should be done so
18 that we have a proper number to work with, because we've got a
19 number of 60, because that's the number that originally came
20 in, but actually not, and 17 have been kicked, and there are
21 12 in an "Other" category.

22 THE COURT: Well, actually, it was 59 because I let
23 that one juror go. So I probably -- I probably should have
24 used the number 59 instead of 60.

25 MR. PESCI: I don't think it will skew it below the

1 50 though.

2 THE COURT: Right.

3 MR. PESCI: I agree with you. But that's a perfect
4 example, and I wanted to highlight that, because that
5 individual didn't come into the courtroom, and that individual
6 checked "Other," and then didn't check anything else. We
7 don't know what that person is; African-American, Hispanic.
8 We just don't know. That's the inherent problem; it's got
9 nothing to do with the commissioner. Someone comes in, they
10 can just check nothing, they can check what they identify
11 with, they can check whatever.

12 And so we're making an objection for the record,
13 Your Honor, as far as this being late, because it skews the
14 numbers. There could be numbers that we could dig deeper into
15 when we had everybody here to change that 60, to change that
16 12 percent, to change -- not the 12 percent, but change who
17 actually identifies or who is African-American.

18 Shifting away from that, as you've pointed out, has
19 there been a prima facie showing? You know, when you look at
20 the actual case, which, you know, I understand why the Court
21 does it, but it's also a little maddening, because it says
22 here, "Although this Court has not articulated" -- this is
23 from Valentine.

24 THE COURT: Right.

25 MR. PESCI: "Has not articulated the circumstances

1 in which a district court should hold an evidentiary hearing
2 when presented with a fair cross-section challenge, it has
3 done so in other contexts." So then it talks about these
4 other contexts, and it says that -- and in this particular
5 case, there was a specific allegation in Valentine.

6 THE COURT: Right.

7 MR. PESCI: And the allegation was, as I understand
8 it, that, you know what, there's too many summonses going to
9 places that it shouldn't be.

10 THE COURT: That's correct.

11 MR. PESCI: Like, there should be more in some other
12 location. Now, for the record, I don't think they've met
13 that, not even close. They haven't even alleged that. I'm
14 giving them that from the case itself. There's been no
15 specificity; therefore, they haven't met that burden.

16 But Judge, I don't want to risk it. I don't want to
17 risk it. The Jury Commissioner is here, which is wonderful
18 that she can come so quickly. I'm extremely grateful. I'd
19 rather go forward. But by going forward, the State is not
20 conceding that they've met their burden, because they haven't.

21 THE COURT: Right. I mean, that's my concern. I
22 think there's been general allegations. And again, in the
23 Valentine case, where they said an evidentiary hearing was
24 appropriate, there were two distinctive theories about why we
25 got this underrepresentation of African-Americans in the jury

1 selection process.

2 But I'm going to allow you to call the Jury
3 Commissioner. I'm very, very grateful that she came up here
4 so quickly. So you can call her to the stand.

5 MR. RUGGEROLI: Please. Yes. Thank you, Your
6 Honor.

7 THE CLERK: Can you please raise your right hand?

8 MARIAH WITT, DEFENSE'S WITNESS, SWORN

9 THE CLERK: You may be seated. Please state and
10 spell your first and last name for the record.

11 THE WITNESS: Mariah Witt. M-a-r-i-a-h, W-i-t-t.

12 MR. RUGGEROLI: Thank you, Your Honor.

13 THE COURT: Go ahead.

14 (Testimony outside the presence of the jury panel.)

15 DIRECT EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Good morning, Ms. Witt.

18 A Good morning.

19 Q Could you tell us how you're employed, please?

20 A I'm the Jury Commissioner for the Eighth Judicial
21 District Court.

22 Q Thank you. Is it within your purview to be very
23 familiar with the laws as it relates to jury selection; in
24 particular, regarding African-American individuals from the
25 community?

1 A I don't believe the law specifically addresses race
2 or ethnicity. It states a fair cross-section -- or, excuse
3 me, random selection. I'm sorry. That's what is addressed in
4 the law.

5 Q And so you're familiar with the procedures that the
6 -- your office uses to send out summons to bring people in to
7 serve as jurors?

8 A Yes.

9 Q And could you just briefly describe how that
10 operates, and whether or not -- just explain quickly how the
11 process generally works.

12 A Okay. Well, we summon jurors six weeks in advance,
13 so we don't really know what our schedule's going to look
14 like. So we have come up with kind of a determination, based
15 on our volume, what we -- the number of people we need to
16 summon.

17 So six weeks in advance, I summon jurors. I create
18 a pool for every day of the week, or one of my staff, and it's
19 6,300 jurors a week in advance. And you just simply put in
20 the date; the number required on that given date. And on
21 Mondays, it's 2,000; Tuesdays, 1,500; Wednesdays and Thursdays
22 are 1,000; Fridays are 800. So we do that six weeks in
23 advance every week, so by -- each of those pools are created
24 in advance. And I simply put in the date, and the number
25 required for that date, and create the pool that way.

1 Q How does the selection of where to send the summons
2 to -- how is that process dictated? What formula is used?

3 A Well, it's in the jury management system. The jury
4 management system randomly selects jurors from our master
5 list.

6 Q And is that master list based on population and zip
7 code, or just zip code, or how is the jury list --

8 A It's composed of the four sources that are required
9 under NRS.

10 Q Okay, and what are those?

11 A That would be Nevada DMV, Nevada Energy, voter
12 rolls, and the list from the Department of Employment,
13 Training, and Rehabilitation.

14 Q When you compile the prospective juror list for an
15 individual case like this one --

16 A Um-hum.

17 Q -- your office has started including a Race Report;
18 is that correct?

19 A The Race Report -- yes. We -- that's created after
20 the pool has been created, and on the day that they come in, I
21 create that report.

22 Q So the day for a particular trial?

23 A Yes. On the day that they appear, that's when I run
24 it, because there's nothing in it prior to that, because --

25 Q Do you know -- I apologize for interrupting.

1 A No, that's fine.

2 Q Do you know when your office began utilizing the
3 Race Reports and adding those as a portion of the jury
4 selection lists -- prospective jury lists?

5 A Do you mean the ones that we are now sending with
6 the paperwork --

7 Q Yes.

8 A -- or are you just talking about when we
9 systematically started running these reports?

10 Q First, when you started including the lists for each
11 trial and included that within the prospective panel.

12 A Well, we did it with our new jury management system.
13 In our old jury management system, it didn't really have that
14 capability. So in 2016, March of 2016, those -- we started
15 running those reports by case.

16 Q And it's fair to say that the emphasis -- this was a
17 change. It put an emphasis on race that hadn't previously
18 been there many years ago; is that correct?

19 A It was requested by management at the direction of
20 some of the various parties, so it became something that we
21 added.

22 Q And you're aware that there is an emphasis on having
23 a fair cross-section of the community for the jury pool
24 generally?

25 A I understand. Yes.

1 Q That's accurate though, correct?
2 A Yes.
3 Q What policies or procedures do you have to ensure,
4 for instance -- and let me -- let me step back a second. Is
5 it -- are you familiar with the -- and I'm paying attention,
6 in this particular instance, really to the African-American
7 community.
8 As far as the Eighth Judicial District Court and
9 this jurisdiction, are you familiar with how many African-
10 Americans comprise our general community?
11 A Based on the US Census, approximately 13 percent.
12 Q And that's of today?
13 A No, I think that's as of the last census --
14 Q Okay.
15 A -- which I think the most recent was 2018.
16 Q All right. Do you --
17 THE COURT: And you said 13 percent?
18 THE WITNESS: That was my understanding. I'd have
19 to look at my notes --
20 THE COURT: Okay.
21 THE WITNESS: -- to be sure, but --
22 THE COURT: Right. So you don't know?
23 THE WITNESS: I don't know for certain.
24 THE COURT: Okay.
25 BY MR. RUGGEROLI:

1 Q Do you have any reason to dispute it's at least 12
2 percent?

3 A At least -- I'm sorry?

4 Q Do you have any reason that you would not agree that
5 that percentage is at least 12 percent?

6 A The only thing I can say is that it's possible it
7 could be less, because I know the census includes everyone,
8 including non-citizens and people that are underage. So I
9 couldn't tell you for sure.

10 Q What policies and procedures does your office have
11 in place, if any, to make sure that an average jury pool is
12 comprised of approximately 12 to 13 percent African-Americans?

13 A I use a jury management system that randomly selects
14 jurors.

15 Q And are you familiar with any requirements that you
16 have to meet, other than the Race Report, to -- I mean, have
17 you actually testified in a hearing like this since 2018?

18 A Yes.

19 Q Okay. So you're familiar with the questions at
20 issue?

21 THE COURT: Didn't you see how quick she got up
22 here?

23 MR. RUGGEROLI: Yes.

24 BY MR. RUGGEROLI:

25 Q You're familiar with these questions, and so you've

1 answered a lot of these questions in the past. Do you believe
2 that you've done everything that needs to be done to ensure
3 that a fair cross-section and a representation of the African-
4 American community is present in your jury pool?

5 A Yes. We randomly select jurors, which is what the
6 law requires.

7 Q Okay, but if you're randomly selecting, then there
8 is no safeguard to make sure that at least a certain
9 percentage of African-Americans is present in a particular
10 pool; is that correct?

11 THE COURT: The law doesn't require that.

12 MR. RUGGEROLI: I'm just asking her though.

13 THE WITNESS: That's correct. I mean, if I were to
14 specifically select, that would not be random. If I were to
15 specifically call people in based on race or ethnicity, that
16 would not be random, and that's what the law requires of me.

17 MR. RUGGEROLI: Court's indulgence.

18 BY MR. RUGGEROLI:

19 Q If that standard of randomness is collectively
20 referenced though, isn't it also true that you will
21 potentially have a system as a whole that consistently results
22 in underrepresentation of the African-American community?

23 A No, I don't believe that to be the case.

24 Q And that's based on randomness, or is that based on
25 policy and procedures that you utilize that make sure that a

1 certain percentage are included?

2 A It's based on randomness. There are days that
3 numbers are higher, and days that it's lower, because it's
4 random.

5 MR. RUGGEROLI: Okay. Judge, thank you. I have no
6 other questions.

7 THE COURT: Mr. Sanft, do you have any questions?

8 MR. SANFT: No, Your Honor.

9 THE COURT: Mr. Pesci?

10 MR. PESCI: I apologize.

11 CROSS-EXAMINATION

12 BY MR. PESCI:

13 Q Ma'am, thank you for being here.

14 A You're welcome.

15 Q Few questions. Would you agree with me that the
16 four sources that you've just described is what statute has
17 mandated as far as the pools to grab from?

18 A Yes.

19 Q Okay. Would you agree with me -- and I apologize,
20 ma'am. How long ago did you start this job?

21 A November 2012.

22 Q All right. Do you have some knowledge about the
23 methodology prior to you getting there?

24 A Not -- what they did to --

25 Q Yes.

1 A Not really, not exactly.

2 Q All right. I'm going to ask some questions, and

3 maybe you don't know the answers, but --

4 A Okay.

5 Q -- do -- are you aware or have you ever heard about

6 in the past the jury pool would be pulled from just voter

7 registration?

8 A No.

9 Q Okay. Would you agree with me that it has been

10 expanded as far as where to grab the pool from?

11 A Yes.

12 Q So the DMV is one of those sources, correct?

13 A Correct.

14 Q That was utilized in this case?

15 A Yes.

16 Q And that includes, not just someone who has a

17 license, but someone who has an ID card?

18 A Yes.

19 Q You would agree with me that everyone in Clark

20 County, whether they're a driver or not, should at least have

21 an ID card?

22 A Most likely. I mean, not everybody, but the

23 majority should, yes.

24 Q Okay, but we can be comfortable with the fact that

25 we're getting more in this net -- we're trying to catch all

1 these people in this net -- when we have not just a driver,
2 not just a license-holder, but just an ID card?

3 A Yes.

4 Q And both of those sources are what you pull from?

5 A Yes.

6 Q And I should say, they come from the same thing,
7 DMV, but they --

8 A Right.

9 Q -- utilize those two categories?

10 A Yes.

11 Q Okay. And then, if we shift to NV Energy, you would
12 agree that that's a source where a power bill comes from?

13 A Yes.

14 Q So I don't have to be a homeowner in order to have
15 an NV Energy power bill?

16 A Correct.

17 Q So you would agree that, in this pool, we're
18 reaching out and we're getting people who are not even
19 homeowners; we're trying to get people who could just be
20 renting?

21 A Correct.

22 Q So we're not discriminating against people who have
23 less money, because, I mean, everyone's got power. If you
24 don't have power, you can't live somewhere. So we're getting
25 everybody, not just landowners?

1 A Correct.

2 Q And we're getting everybody from the DMV, not just
3 actual license-holders, but also the ID?

4 A Correct.

5 Q All right. And then, we do actually shift and also
6 include voters; is that correct?

7 A Yes.

8 Q So anybody -- you know, in this political age,
9 there's lots of people motivated to vote, the voter
10 registration's really high, so it's another area where lots
11 and lots of people are pulled from?

12 A Yes.

13 Q Okay. And then, the last section -- and the last
14 time we talked about this, the State of Nevada, as I
15 understood it, hadn't yet provided you -- and I'm going to use
16 the wrong term, but I mean, I would say unemployment data.
17 What's the right term that you said?

18 A The list from the Department of Employment,
19 Training, and Rehabilitation.

20 Q Okay, the Department of Employment, Training, and
21 Rehabilitation. Okay. Does that include people that are
22 seeking unemployment?

23 A Yes.

24 Q Okay. And now -- because before, you were prevented
25 from doing that because the state wasn't giving you the data?

1 A Correct.

2 Q Now, you have the data?

3 A Yes.

4 Q So the pool that we have in this courtroom also
5 includes everybody in Clark County who has sought unemployment
6 benefits?

7 A Correct.

8 Q All right. So would you agree with me that there
9 was nothing systemic in your efforts to exclude anybody?

10 A Yes.

11 Q You're trying to include everyone?

12 A Yes.

13 Q Okay. And then, there's kind of a shift in kind of
14 the logic here, but it will tie back in. Ma'am, how many
15 summons do you send out -- I think you told me you do it six
16 weeks out. Like, a batch of how many do you send out?

17 A Well, we do them weekly, so 6,300 every week.

18 Q Okay.

19 A Yes.

20 Q I'm betting you don't have a number, but I'm still
21 going to ask. I apologize.

22 A Okay.

23 Q If you send out 6,300 for the week, that means 6,300
24 people should show up on Monday?

25 A No.

1 Q Okay, that's what I'm trying to get to. I'm trying
2 to figure out, do you have a number -- do you have an idea,
3 like, for Monday of this week -- was that the 10th? February
4 10th?

5 A Um-hum.

6 Q Okay. February 10th, all the prior summonses that
7 went out, how many people actually showed up on their summons?

8 A For Monday? I don't have the numbers for Monday in
9 front of me.

10 Q Okay.

11 A So I couldn't tell you for sure, but I'd say 2- or
12 300, I think.

13 Q Let's talk in generalities, right?

14 A Okay.

15 Q Do you have a percentage, whatever number that is,
16 where people, they just don't show up?

17 A Yes.

18 Q Okay. And do you have any idea, just generally,
19 kind of systemically, about what a percentage is of
20 non-showers; people who you sent it out and they just don't
21 come?

22 A About 20 percent.

23 Q So about 20 percent of the people just choose not to
24 fulfill their civic duty?

25 A Correct.

1 Q Okay, and there's really nothing you can do about
2 that, is there?

3 A Well, we do re-summon jurors 60 days out.

4 Q All right.

5 A That is the method that the National Center for
6 State Courts recommends is the most effective means of getting
7 jurors in here.

8 Q You beat me to --

9 THE COURT: So when they -- so when they don't show
10 up, then you -- 60 days later, you send them a new one?

11 THE WITNESS: Automatic process. Yes, ma'am.

12 THE COURT: Oh, okay.

13 BY MR. PESCI:

14 Q You beat me to it, right? You're so consistent in
15 trying to get to everybody, when they choose not to come, you
16 send them another summons to say, no, no, no, come on in,
17 you're supposed to do this?

18 A Yes.

19 Q And yet, still, some people don't show?

20 A Correct.

21 Q Okay. Now, not in this case, but in another case,
22 some defendant argued, well, you're really systematically
23 excluding people because you're not going out there and
24 arresting them and bringing them to court. Do you have the
25 capacity to arrest somebody for not showing for their summons?

1 A I do not.

2 Q Right. Does a court, potentially?

3 A Yes.

4 Q All right. Do you have a system or a methodology in
5 place where you try to get the people that no-show to come to
6 court, other than what you just said as far as sending another
7 summons?

8 A No.

9 Q Okay. So by not having that -- and you would agree
10 with me, one of the options would be to bring someone in for a
11 show cause hearing, correct?

12 A Correct.

13 Q And if someone comes in for a show cause hearing, in
14 front of this judge, they have to explain why they didn't
15 come?

16 A Yes.

17 Q Or any judge. And would you agree with me that,
18 potentially, contempt is a sanction that could be imposed?

19 A Yes.

20 Q All right. I don't know, I'm just kind of guessing
21 here. I'm assuming you really don't want to be in the
22 business of holding people in contempt in that process?

23 A Well, it's not my decision. I take my direction
24 from the Court.

25 Q Right, right, and I apologize. What I'm saying is,

1 you don't have a system currently to set up Orders to Show
2 Cause?

3 A Well, we actually do --

4 Q Oh, you do? Okay.

5 A -- if it's requested by the judge in a specific
6 instance.

7 Q Right.

8 A Like, so if somebody doesn't show up from a panel,
9 we'll ask if the judge wishes to do --

10 Q Okay.

11 A -- an Order to Show Cause.

12 Q All right. So do you then give data to the judges
13 on each pool that comes up, saying, hey, look, these ten
14 people didn't show?

15 A No, not the entire pool. We only request it at the
16 panel level. So if the judge has a panel of people that we've
17 been -- that's been assigned to that case, and those people
18 don't show, then we ask if she would like to -- in this case,
19 she -- would like to issue an Order to Show Cause.

20 Q So then a judge could, in theory, order these jurors
21 to come to court after they've previously, at least once, and
22 probably twice, not come to court on a summons?

23 A When I'm saying that, Order to Show Cause for your
24 case, that doesn't necessarily mean they failed to appear
25 before.

1 Q Okay.

2 A That would just mean somebody that was on this case,
3 assigned to this case --

4 Q Right.

5 A -- did not return. Those are the instances in which
6 we deal with Orders to Show Cause.

7 Q Okay, all right. So I mean, you're not -- by not
8 bringing people in after they've refused to come, you're not
9 purposely trying to exclude anybody, are you?

10 A No.

11 Q And do you think, from your position, would it be
12 less inducive to the average citizen to come to jury duty if
13 they thought they could be arrested if they don't?

14 A I don't know.

15 Q Right, yeah. So that's not really a focal point of
16 yours as far as trying to catch the net of people who don't
17 show?

18 A No.

19 Q All right. And by not catching them, you're not
20 trying to exclude certain people?

21 A No.

22 Q Those people have been invited once, twice, and
23 maybe even more than that?

24 A Yes.

25 Q Okay. Now, shifting gears, right? Then if we go

1 back to the system, as I understood it, the system sends out
2 this randomly based on these four sources, right? Do you have
3 any idea how many people of a specific ethnicity live in a
4 specific zip code?

5 A No.

6 Q Is there a source that you know of that could
7 possibly give you that information?

8 A Not specifically that I know of.

9 Q Right. So how on earth could you be held to a
10 standard of having to figure that out when you don't even know
11 of a system that exists to give you that information?

12 A I couldn't.

13 Q Right. And if there were one, right, would you
14 utilize it?

15 A I would follow the direction of the court, whatever
16 they ask me to do.

17 Q You wouldn't be trying to specifically and
18 systematically exclude people?

19 A No.

20 Q Would you agree with me that members of the
21 community -- in this particular case, the allegation is
22 African-Americans -- live everywhere in the Valley?

23 A Yes.

24 Q In fact, one of these defendants lives in Spring
25 Valley. Were summonses sent to Spring Valley?

1 A I couldn't tell you without -- I mean, I don't know.
2 Q Okay.
3 A Without looking at the pool, and looking at the
4 individual records, I don't know --
5 Q But --
6 A -- if that particular pool had people from that zip
7 code.
8 Q Some have argued -- nobody here. Some have argued
9 that, you know, there should be even more summonses sent to,
10 let's say the northeast or North Las Vegas, right? You would
11 agree with me, however, that there are members of every
12 different ethnicity all over this Valley?
13 A Yes.
14 Q And so, by sending the summons to every zip code,
15 you're not trying to systematically exclude anyone?
16 A Well, it doesn't necessarily go to every zip code
17 every time.
18 Q Okay.
19 A But we do -- but all zip codes are included in the
20 master list.
21 Q And there's nothing you programmed into the system
22 saying, hey, system, make sure you don't send it to North Las
23 Vegas or the northeast part of town?
24 A No.
25 Q And there's nothing that you're doing to try to

1 exclude, in this particular case, African-Americans from
2 serving on this jury?

3 A No.

4 MR. PESCI: I'll pass the witness. Thank you.

5 THE COURT: Any redirect?

6 MR. RUGGEROLI: I just want to clarify very quickly.

7 REDIRECT EXAMINATION

8 BY MR. RUGGEROLI:

9 Q Your requirements and the four sources are contained
10 -- are you familiar -- I just want to make sure. It's NRS
11 6.045; does that sound right?

12 A Yes, um-hum.

13 Q Okay. Also, pursuant to Section 5, part of the
14 requirement is that you do keep a record of the name,
15 occupation, address, and race of the trial juror selected. So
16 race is a specific aspect that you are to note and have a
17 record of; is that correct?

18 A Yes.

19 MR. RUGGEROLI: Judge, I have nothing further.

20 Thank you.

21 THE COURT: Okay, but I just want to make sure I'm
22 clear. But that record is made from the juror themselves?
23 You don't -- you don't determine what someone's race is,
24 correct?

25 THE WITNESS: That's correct, ma'am, it's

1 self-reported.

2 THE COURT: Right. And they're asked -- I think
3 when they first call in to do jury duty --

4 THE WITNESS: Yes, or online.

5 THE COURT: -- they're asked that? Okay.

6 THE WITNESS: Yeah, on the phone or online. It's
7 self-reported.

8 THE COURT: Anything else?

9 MR. RUGGEROLI: No, Judge, thank you.

10 THE COURT: Anything else?

11 MR. PESCI: Yes, I apologize. In that regard -- may
12 I approach the witness?

13 THE COURT: You may.

14 MR. PESCI: Okay.

15 RECROSS-EXAMINATION

16 BY MR. PESCI:

17 Q So in the data that we received from you, ma'am --

18 A Yes.

19 Q -- would you agree -- let's see. Badge number 533,
20 Miles Ealy, under "Race" -- because you have two categories.
21 You have "Race" and "Ethnicity," right?

22 A Yes, yes.

23 Q "Race," wrote, "Other race," correct?

24 A Um-hum.

25 Q "Ethnicity: Not Hispanic or Latino"?

1 A Yes.

2 Q So we know nothing about this person, do we, as far
3 as race or ethnicity?

4 A We just know they're not Hispanic.

5 Q Yeah, well-said.

6 A Right.

7 Q And this is self-reporting? There's nothing you can
8 do about this; this is just if someone chooses to fill it in?

9 A Correct.

10 Q And people can choose just literally not to fill it
11 in?

12 A Correct, but the system's designed -- excuse me --
13 to force them to answer it.

14 Q Can they finish if they don't answer it?

15 A It is possible, but we do have it set up so that
16 they have to answer that information in order to complete the
17 process of confirming that they'll be coming in.

18 Q Okay. And ostensibly, that's so that you could
19 probably be able to say, hey, we've got a good representation
20 of everybody because we're figuring out exactly who's coming
21 in?

22 A Yes, to assist in the selection process.

23 Q Not to systematically exclude, but to actually try
24 to bring even more people in of all races and all ethnicities?

25 A Yes.

1 MR. PESCI: Court's indulgence. Pass the witness.

2 THE COURT: I just want to make --

3 MR. RUGGEROLI: Okay, just one follow up.

4 THE COURT: You bet, you bet.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. RUGGEROLI:

7 Q The Race Report that is included that has those
8 percentage that Mr. Pesci just had you review, why are those
9 even included?

10 A I'm -- I'm not sure I'm following you.

11 Q You were just shown the Race Report for this
12 particular case.

13 A I was shown the Bio Form, sir.

14 Q Okay. You're familiar with the Race Report as well?

15 A Yes.

16 Q And why are those even included?

17 A Because management asked me to start including them
18 with the paperwork when I -- when I run them, because we've --
19 we have had these challenges before, so we're just providing
20 them --

21 Q And you would --

22 A -- now in criminal cases.

23 Q You would agree that, in this particular case, that
24 -- you mentioned that Clark County percentage of African-
25 Americans is approximately 12 to 13 percent; you would agree

1 with that?

2 A Yes.

3 Q And in this particular case, if it's 7 percent, then
4 the African-American community in this case is
5 underrepresented, generally speaking?

6 A Yes.

7 MR. RUGGEROLI: Thank you. Nothing further.

8 THE COURT: Okay. Anything else?

9 MR. PESCI: No, thank you, Your Honor.

10 THE COURT: Okay. Thank you very much --

11 THE WITNESS: You're welcome.

12 THE COURT: -- for your testimony, and thank you for
13 always coming up so quickly.

14 THE WITNESS: You're welcome.

15 THE COURT: I really do appreciate it. Have a good
16 day.

17 THE WITNESS: You, too.

18 THE COURT: Okay. Mr. Ruggeroli, I'll hear from
19 you.

20 MR. RUGGEROLI: Judge, I'll address the timeliness
21 issue first. Judge, I --

22 THE COURT: Well, clearly, I gave you a hearing.

23 MR. RUGGEROLI: Oh, yes, absolutely, but I of course
24 have to answer this. So number one, I think the State
25 concedes that they don't have authority on a timeliness

1 requirement. It obviously makes sense; however, a lot of
2 these issues get brought up on post-conviction, and so what
3 we're not doing is having this, you know, remanded in that
4 context and coming back.

5 I did not delay this for any undue purposes. This
6 was brought to my attention yesterday. We're given the lists
7 as the prospective venire is brought in, and as Your Honor
8 knows, there's an awful lot going on in those moments, and
9 race and the racial component of the venire is a factor, but
10 it's not the only thing that a defense attorney is thinking
11 about at the time.

12 Given the totality of everything that developed
13 yesterday, at the end of the day -- and it's really one
14 half-a-day. We started at 1:00 o'clock yesterday, broke at
15 approximately 5:00, and this is the first issue I'm raising
16 the next morning. I brought it to the Court's attention
17 without any purpose for undue delay, and I am making a record
18 because this is an important right. Our society is evolving,
19 we're becoming more sensitive to racial issues.

20 When our foundational documents indicate that an
21 individual -- every individual has a right to a jury trial by
22 their peers, and a client is African-American, and they're
23 looking at a panel that has 2 out of 60, it needs to be
24 addressed. And I greatly appreciate Your Honor giving us this
25 opportunity, because it is important, and you gave us the

1 evidentiary hearing --
2 THE COURT: Three.
3 MR. RUGGEROLI: -- to do that.
4 THE COURT: I mean, you know, the Race Report says
5 three. I know --
6 MR. RUGGEROLI: I -- I --
7 THE COURT: -- you keep saying two.
8 MR. RUGGEROLI: Right. I believe that one of the
9 females did not appear, but I'll just say that, going based on
10 the Race Report, it is -- it does say 3 out of 60. That is
11 still significant enough that I think that we needed to make
12 this record in good faith to challenge the panel as --
13 THE COURT: Well, I do -- I think you met the first
14 two prongs.
15 MR. RUGGEROLI: Thank you.
16 THE COURT: My issue is with the third prong, that
17 this underrepresentation is due to systematic exclusion of the
18 group in the jury selection process.
19 MR. RUGGEROLI: And a lot of these issues that have
20 come up in Morgan and Valentine, there was an awful lot of
21 research that was capable of being done, so I can't piggyback
22 on those actual issues. I would just say that more needs to
23 be done in order to eliminate this issue systematically. The
24 State brought up an alternative. Maybe it is something that
25 should be considered, because we need to have people that are

1 present.

2 If somebody is trying to avoid being on a jury
3 panel, I know that courts are generally not impressed when
4 they raise issues that are obviously designed to just try and
5 get them out of their service. Now, those are for people that
6 just show up. So people that don't even show up, I'd say that
7 the State, and the Jury Commissioner's office in particular,
8 the courts, they need to have a better policy in place.

9 Right now, I would just argue that the systematic
10 nature is that, collectively, African-Americans are
11 underrepresented. And relying on randomness, which is what I
12 gather is her policy, we follow the statute --

13 THE COURT: No, it is the law.

14 MR. RUGGEROLI: We follow the statute; we rely on
15 randomness to come up with these numbers. I would just argue
16 that it's not enough. And for this Court's ruling, I think I
17 know how you would likely rule. But for the future, perhaps
18 higher courts or the legislature will decide that something
19 drastically more needs to be done to make sure that we don't
20 have systematic underrepresentation of this community.

21 THE COURT: Okay. Mr. Pesci?

22 MR. PESCI: Thank you.

23 THE COURT: I don't know if you want to respond.

24 MR. PESCI: The State did not propose an
25 alternative. It was one of the two arguments in Valentine.

1 THE COURT: Right.

2 MR. PESCI: The State was trying to, with the Jury
3 Commissioner, from the State's perspective, point out how
4 ridiculous that is. It's not to this defense attorney; it was
5 done in the other one, right?

6 So if I'm to understand this correctly, we should be
7 bringing people in with contempt charges, potentially a fine,
8 and/or jail time. In the day and age of criminal justice
9 reform, when we're saying that certain crimes, actual crimes
10 shouldn't be pursued, or we should give them to some sort of a
11 diversionary court, or we should definitely go with probation,
12 we're going to now hook people up and potentially arrest them?
13 We should systemically do that?

14 What do you think would be the reaction of
15 individuals in different groups when they see people that may
16 fit into this particular group, African-Americans, being
17 arrested or potentially held in contempt because they didn't
18 show up, right? That's just how foolish that argument is,
19 again, not by this defense counsel, but which was alleged in
20 this other case. But I just want to point that out, the
21 underlying foolishness of that concept, right?

22 But it would be interesting. And I want to say
23 this, because it needs to be, and we'll probably have to deal
24 with this later. What do we know as far as those people who
25 no-show, how that would change the numbers? How interesting

1 would that be, right? If the people who no-show actually
2 showed, would the numbers be different? Automatically, they
3 would be, one way or the other, but we don't know if they're
4 African-American, if they're Hispanic, if they're Caucasian,
5 which is my point, to say these numbers are so problematic,
6 because it's a moving target, and it's a target that's not
7 even definite.

8 You've pointed out to defense counsel that he keeps
9 referring to it as two African-Americans, but the data we
10 received from the Jury Commissioner who just testified is
11 three. Why are we just defaulting to two? Because -- and
12 respectfully, I'm saying this. I think he looked at the pool
13 and said, I think I see two African-Americans, right? So
14 we've got some Caucasian people saying, I think this person's
15 African-American or I think this person's not.

16 See the foolishness in this? This is why this has
17 become so crazy, right? And people can identify as one thing
18 or another thing. And if they choose not to identify, the
19 Jury Commissioner herself said they can still get through the
20 questionnaire, her questionnaire, without doing that.

21 So we're making suppositions on people, one, that
22 don't even come; and two, when they come, we're not exactly
23 sure, because a third person identified as African-American.
24 Defense counsel's opinion is he only sees two. Right? That's
25 why this is so dangerous. That's why there's such a flaw to

1 the whole Batson analysis, because of this concept of being
2 able to say who is or isn't, and I think that's extremely
3 problematic.

4 Shifting away from that, we have evidence, and it's
5 updated evidence. We don't have to rely on a transcript,
6 which the Valentine court said don't do.

7 THE COURT: Right.

8 MR. PESCI: She testified all four forms: the DMV,
9 the Energy, voter registration, and unemployment. What other
10 source is there? I mean, honestly, where on earth are we
11 supposed to get some other source?

12 And specifically, the allegation that was at least
13 made prima facie per Valentine, which was not here, was this
14 concept of using a system that would send summons to certain
15 zip codes that have certain percentages of certain
16 ethnicities.

17 THE COURT: Well, I think the allegations were that
18 our Jury Commissioner was sending the same amount to every zip
19 code without considering the ethnic makeup of the zip codes.

20 MR. PESCI: Right.

21 THE COURT: I mean, that --

22 MR. PESCI: And how --

23 THE COURT: -- appeared to be what the allegation
24 was.

25 MR. PESCI: In the case, yes.

1 THE COURT: Right.

2 MR. PESCI: And my question to her, and to you, and
3 to -- you know, really, to the Supreme Court, is, how are we
4 going to do that? What database exists to do that?

5 THE COURT: Well, we know it's not true based on her
6 testimony today.

7 MR. PESCI: Right. That just shows how this is
8 craziness. There is no effort by this woman or by the jury
9 commission system to systematically exclude individuals, which
10 is why this motion should be denied.

11 THE COURT: Anything else? Mr. Sanft, do you want
12 to add anything?

13 MR. SANFT: No, Your Honor.

14 THE COURT: Mr. Ruggeroli, anything else?

15 MR. RUGGEROLI: No, Your Honor. Thank you.

16 THE COURT: Okay. All right. At this time, the
17 Court's going to deny the Motion to Strike the jury venire. I
18 do believe that there was a showing as to the first two
19 prongs; however, as to the third prong, there's been no
20 evidence that this underrepresentation is due to systematic
21 exclusion of the group in the jury selection process.

22 So anything else before we bring them in?

23 MR. PESCI: Not from the State.

24 MR. SANFT: No, Your Honor.

25 MR. RUGGEROLI: No, Your Honor.

1 THE COURT: Okay, we can bring them in. Hopefully,
2 we didn't lose them.

3 (Pause in the proceedings)

4 MR. RUGGEROLI: Judge, there is something that's
5 very quick.

6 THE COURT: Yeah, go ahead.

7 MR. RUGGEROLI: Can we have the jurors to the left
8 side of the panel stand? I know it's a little inconvenient,
9 but we can't see who's talking when there are questions to the
10 left side because the lectern's in the way. Is that something
11 that can be accommodated with the questioning?

12 THE COURT: Okay, I'm sorry. The lectern's getting
13 in your way of seeing?

14 MR. RUGGEROLI: I can't see any of the jurors from a
15 certain portion on, so I'm not -- Mr. Pesci is very good about
16 having them read their --

17 THE COURT: Well, you want to get up, and, I mean --

18 MR. RUGGEROLI: Okay.

19 THE COURT: Position yourself where you can see. I
20 mean, you're entitled to see them.

21 MR. RUGGEROLI: Thank you, Judge.

22 THE COURT: But I mean, do you want me to have them
23 move the lectern? Is that --

24 MR. RUGGEROLI: No, no, I was just going to see if
25 perhaps they could stand when they're answering questions.

1 THE COURT: Oh, you want me to --
2 MR. PESCI: Is it this one?
3 THE COURT: I can have them stand.
4 MR. RUGGEROLI: It's both.
5 THE COURT: Yeah, I can have the jurors stand.
6 MR. RUGGEROLI: Would that be all right?
7 MR. PESCI: I'd submit it to the Court.
8 THE COURT: No problem. I can have them stand.
9 MR. RUGGEROLI: Thank you very much, Judge.
10 THE COURT: Um-hum.
11 THE MARSHAL: All rise for the entering jury,
12 please. Jurors.
13 (Within the presence of the prospective jurors)
14 THE MARSHAL: Thank you, everyone. Please be
15 seated.
16 THE COURT: Does the State stipulate to the presence
17 of the panel?
18 MR. PESCI: Yes, Your Honor.
19 THE COURT: Mr. Sanft?
20 MR. SANFT: Yes, Your Honor. Thank you.
21 THE COURT: Mr. Ruggeroli?
22 MR. RUGGEROLI: Yes, Your Honor.
23 THE COURT: Okay. Good morning, ladies and
24 gentlemen. Welcome back. Thank you very much for coming
25 back. I do apologize for the delay, and I do appreciate your

1 courtesy in waiting for us. Mr. Pesci?
2 MR. PESCI: Thank you, Your Honor.
3 THE COURT: You may address the panel.
4 MR. PESCI: Yes. Microphone. So can we hand it
5 down to Ms. Hernandez in Seat 7, who I believe would be Badge
6 430?
7 PROSPECTIVE JUROR NO. 430: Yes.
8 MR. PESCI: Okay. Are you picking me up?
9 THE COURT RECORDER: I am.
10 MR. PESCI: Okay. Thank you, everybody, for coming
11 back today. Appreciate you being here. Just want to kind of
12 follow up on some specific questions, and then some group
13 questions again.
14 Ma'am, I wanted to ask you, you said that you worked
15 as a host. What -- was that The Cosmo?
16 PROSPECTIVE JUROR NO. 430: Yes.
17 MR. PESCI: Okay, and what specifically do you do
18 there?
19 PROSPECTIVE JUROR NO. 430: I work front desk. I
20 sell tables for guests and bottle service.
21 MR. PESCI: Okay, and how long have you been doing
22 that?
23 PROSPECTIVE JUROR NO. 430: I've been doing that for
24 a year.
25 MR. PESCI: For a year? Okay.

1 PROSPECTIVE JUROR NO. 430: Um-hum.

2 MR. PESCI: Did you have a different line of work
3 before that?

4 PROSPECTIVE JUROR NO. 430: I worked events inside
5 the Springs Preserve with the Water District.

6 MR. PESCI: Okay. I want to ask you a question, and
7 then we'll kind of push it out to everybody else. Do you have
8 any difficulty or problem if -- when we present this testimony
9 in this case, if it comes a little bit out of order in the
10 sense that, you know, the crime -- the alleged crime starts
11 here, and the information kind of proceeds? Sometimes,
12 because of witnesses' schedules, we have to take people out of
13 order. Do you have any problem with kind of tracking the
14 information, even if it's somewhat out of order?

15 PROSPECTIVE JUROR NO. 430: No, I think I'm really
16 good at following up.

17 MR. PESCI: All right, awesome. Kind of pushing
18 that out to everybody else. Would anybody have any difficulty
19 kind of tracking the evidence if we have to call people out of
20 order because of their schedules and different things in their
21 schedules? No answer from anyone, for the record. All right.

22 A specific question to you, and then we'll kind of
23 push it out to the whole group. In this particular case,
24 there's an individual who was charged who's entered into a
25 negotiation and is going to testify. That's what we expect to

1 happen. So one defendant's going to testify against other
2 defendants. What are your thoughts or feelings about that
3 kind of a situation?

4 PROSPECTIVE JUROR NO. 430: This is new for me, this
5 is my first time being here, so I really don't -- I've never
6 been in a situation like this. And I -- since I don't have
7 any details, I can't really give my opinion yet.

8 MR. PESCI: Okay, and that's fine. And we can't get
9 into too many details, but I believe, from both sides, this is
10 a question of interest for the panel -- for the parties, is
11 this concept. Some people feel really strongly one way or the
12 other.

13 And the real big question is, would it affect your
14 ability to be fair and impartial -- this is to everybody now
15 -- if you hear from a defendant who's testifying against other
16 defendants?

17 We've got a hand. Going to pass it forward. Thank
18 you very much. So, Laurie? Is that how --

19 PROSPECTIVE JUROR NO. 513: Yeah, Laurie.

20 MR. PESCI: And your badge number?

21 PROSPECTIVE JUROR NO. 513: 513.

22 MR. PESCI: 513. All right.

23 PROSPECTIVE JUROR NO. 513: I suppose if there is
24 some type of deal involved, that I would have problems
25 listening to that person, yeah.

1 MR. PESCI: Okay. And when you say problems, the
2 deal, as you mentioned, would be something that you would know
3 about, right? You would get specific information about what
4 the deal is, based on the negotiation that was struck.

5 The problems that you would have, would that make it
6 such that you could not be fair and impartial?

7 PROSPECTIVE JUROR NO. 513: Yes.

8 MR. PESCI: All right. And how would it make you
9 that you could not be fair and impartial?

10 PROSPECTIVE JUROR NO. 513: I feel that the witness
11 would be saying certain things because of the deal that was
12 involved.

13 MR. PESCI: Gotcha. In fact, you'll get information
14 about that. In fact, the Court's going to instruct about how
15 to consider a co-defendant's testimony, and how you consider
16 it differently from other individuals.

17 So considering that, that the Court would give you
18 some instructions on that, do you think that you could
19 consider it, or is it something you'd just say, I just won't
20 listen to it; it won't be a part of my process?

21 PROSPECTIVE JUROR NO. 513: I would have to listen
22 to the full information of the deal that was offered.

23 MR. PESCI: Perfect. And you know, to have some
24 degree of suspicion is totally fine, right?

25 PROSPECTIVE JUROR NO. 513: Um-hum, yeah.

1 MR. PESCI: It's understandable.
2 PROSPECTIVE JUROR NO. 513: Of course.
3 MR. PESCI: And what we're trying to figure out is
4 will you disregard everything else just because of that? Or
5 are you willing to, with that suspicion, look at all the other
6 evidence, and say, well, let's see how it fits into the whole
7 story?
8 PROSPECTIVE JUROR NO. 513: The second one, yeah.
9 I'm willing to listen to the evidence.
10 MR. PESCI: Okay.
11 PROSPECTIVE JUROR NO. 513: Yeah.
12 MR. PESCI: But it's appropriate, as you're saying,
13 is that it gives you pause?
14 PROSPECTIVE JUROR NO. 513: I am very highly
15 suspicious, yeah.
16 MR. PESCI: Understood, understood. Anybody else
17 feel that way? Is there any more that you wanted to say? I
18 apologize. All right.
19 There's a gentleman in the -- so, Judge, I think
20 we're turning to Mr. Randall. And Mr. Randall, I apologize,
21 your badge number?
22 PROSPECTIVE JUROR NO. 557: It's 557.
23 MR. PESCI: 557?
24 THE COURT: Do you mind -- if you don't mind
25 standing up.

1 PROSPECTIVE JUROR NO. 557: Sure.

2 THE COURT: In fact, if all of you will stand up
3 when you're responding, that may be helpful so everyone can
4 see you and hear you.

5 MR. PESCI: Sorry.

6 PROSPECTIVE JUROR NO. 557: No problem. Yeah, I
7 mean, it was just similar. It just gives me pause a little
8 bit to hear that there's, you know, somebody that's being a
9 witness that's being offered a deal. But I mean, I think what
10 you said to the other gentleman makes sense to me, that once
11 we understand what the deal is and kind of see the whole
12 picture, I think that's fine with me.

13 MR. PESCI: Okay, so you're willing to listen?

14 PROSPECTIVE JUROR NO. 557: Yeah.

15 MR. PESCI: Okay. Do you think you can be fair to
16 both sides?

17 PROSPECTIVE JUROR NO. 557: I do.

18 MR. PESCI: Wonderful. Thank you very much.

19 Anybody else wanted to answer anything about that? Judge, I
20 think we're going to Mr. McGinty, Badge number --

21 PROSPECTIVE JUROR NO. 410: 410.

22 MR. PESCI: -- 410.

23 PROSPECTIVE JUROR NO. 410: McGinty. Yes, thank
24 you. With my experience with both expert witnesses and a
25 co-defendant that may be testifying against, I have some

1 problems with the validity of it. And so it gives pause to --
2 from my perspective. And what -- when I've worked with other
3 attorneys and expert witnesses, kind of knowing the
4 backgrounds, yeah, I've got a certain amount of problem with
5 the validity.

6 MR. PESCI: Okay. So when you say "problem," are
7 you saying that you are closed completely from ascertaining
8 and assessing that information, or are you willing to look at
9 -- even with a suspect eye, look at it and assess it?

10 PROSPECTIVE JUROR NO. 410: I'll look at it, but
11 I'll always know that there's an ends to the means of why
12 they're in that seat.

13 MR. PESCI: Okay, appreciate that. Anybody else
14 have any comments on that, that particular issue? Okay.
15 Could you pass it down to your right?

16 Ms. Hernandez, are you okay if we move on? All
17 right.

18 Ms. Amoroso, what is your badge number, ma'am?

19 PROSPECTIVE JUROR NO. 437: It's 03 -- 0437.

20 MR. PESCI: Okay, and I apologize. Unfortunately --
21 could you stand?

22 PROSPECTIVE JUROR NO. 437: Okay.

23 MR. PESCI: I think the Court's asking us -- okay.

24 PROSPECTIVE JUROR NO. 437: 0437.

25 MR. PESCI: Okay. And then, you're working as a

1 busser, correct, ma'am?

2 PROSPECTIVE JUROR NO. 437: Yes.

3 MR. PESCI: Where is that?

4 PROSPECTIVE JUROR NO. 437: In Golden Nugget.

5 MR. PESCI: Okay. And then, in the Golden Nugget,

6 do you have any interactions with police officers often in

7 your job?

8 PROSPECTIVE JUROR NO. 437: No.

9 MR. PESCI: Okay. So you don't have any kind of

10 feelings one way or the other for the police based on your job

11 experience?

12 PROSPECTIVE JUROR NO. 437: No.

13 MR. PESCI: Okay. All right, thank you very much,

14 ma'am. If you could pass the mic just one over.

15 Ms. Graham?

16 PROSPECTIVE JUROR NO. 451: Yes.

17 MR. PESCI: Badge number --

18 PROSPECTIVE JUROR NO. 451: 45 --

19 MR. PESCI: -- 451?

20 PROSPECTIVE JUROR NO. 451: Yes, 451.

21 MR. PESCI: Thank you for standing. So, ma'am,

22 you're a fourth grade school teacher; is that correct?

23 PROSPECTIVE JUROR NO. 451: Yes.

24 MR. PESCI: All right. And then, how long have you

25 done that?

1 PROSPECTIVE JUROR NO. 451: A long time. 16 years
2 or more.

3 MR. PESCI: Fourth grade the whole time, or?

4 PROSPECTIVE JUROR NO. 451: No, I've done first,
5 second, third, special education. Just most recently, been in
6 fourth grade about six years.

7 MR. PESCI: Okay. And kind of a similar question
8 that I asked Mr. Casucci. Do you have situations with kids
9 where sometimes they're each alleging something different?

10 PROSPECTIVE JUROR NO. 451: All the time.

11 MR. PESCI: Right. I would assume that that would
12 happen on a daily basis?

13 PROSPECTIVE JUROR NO. 451: Daily basis.

14 MR. PESCI: Do you have to sometimes kind of make a
15 decision, even though you have conflicting information?

16 PROSPECTIVE JUROR NO. 451: Yes.

17 MR. PESCI: Are you comfortable with making a
18 decision that way?

19 PROSPECTIVE JUROR NO. 451: Yes.

20 MR. PESCI: What is it that makes you feel
21 comfortable? How do you approach it?

22 PROSPECTIVE JUROR NO. 451: Well, experience, having
23 done it so many times. It's different because it's kids, you
24 know? I kind of know the psychology of children, and I can
25 kind of, just from my experience, tell. Each side has got an

1 element of truth, and we kind of meet in the middle. And
2 then, as the adult in the room, I have to make the decision
3 which way we're going to go, just so that conflict doesn't
4 keep happening, and we can put an end to it, and everybody
5 moves on.

6 MR. PESCI: And are you comfortable doing that, even
7 though you might not have every bit of information out there
8 in the universe?

9 PROSPECTIVE JUROR NO. 451: I think so. Does it
10 make me right? I don't know, but I'm comfortable doing it.

11 MR. PESCI: As far as making that decision?

12 PROSPECTIVE JUROR NO. 451: Yeah.

13 MR. PESCI: Okay. Real quick, before you sit down.

14 PROSPECTIVE JUROR NO. 451: Sure.

15 MR. PESCI: You served as a foreperson on a jury?

16 PROSPECTIVE JUROR NO. 451: Yes, civil.

17 MR. PESCI: Civil?

18 PROSPECTIVE JUROR NO. 451: Um-hum.

19 MR. PESCI: Do you recall if it was here in this
20 building?

21 PROSPECTIVE JUROR NO. 451: It was, just a couple
22 doors down.

23 MR. PESCI: How long ago?

24 PROSPECTIVE JUROR NO. 451: Over two years ago.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 451: Maybe two-and-a-half.
2 MR. PESCI: And since it went to a verdict, you were
3 given instructions about the standard of proof for that civil
4 case, right?
5 PROSPECTIVE JUROR NO. 451: Yes.
6 MR. PESCI: All right. So in a criminal case, it's
7 a different standard.
8 PROSPECTIVE JUROR NO. 451: Right.
9 MR. PESCI: So it's proof beyond a reasonable doubt.
10 And the Judge is going to instruct us exactly what that is,
11 but would you be able to follow that standard as opposed to
12 what you did in the civil case?
13 PROSPECTIVE JUROR NO. 451: Oh, yeah, because I
14 don't even remember what that was.
15 MR. PESCI: That's perfect. All right.
16 PROSPECTIVE JUROR NO. 451: Yes.
17 MR. PESCI: Thank you very much, ma'am. Could you
18 hand the microphone over just one?
19 Ma'am, how are you?
20 PROSPECTIVE JUROR NO. 461: I'm great, thanks.
21 MR. PESCI: Ms. Quinn, 461?
22 PROSPECTIVE JUROR NO. 461: 461.
23 MR. PESCI: All right, thank you. Now, I was trying
24 to remember, was it you were the travel agent, or was it your
25 spouse?

1 PROSPECTIVE JUROR NO. 461: Me.
2 MR. PESCI: Okay, you?
3 PROSPECTIVE JUROR NO. 461: Corporate travel agent,
4 yes.
5 MR. PESCI: All right. And how much are you being
6 affected by being here as far as the travel and the work?
7 PROSPECTIVE JUROR NO. 461: Oh, I'm covered. I'm
8 good.
9 MR. PESCI: Okay. All right, so someone else was
10 able to cover that?
11 PROSPECTIVE JUROR NO. 461: Yes, absolutely.
12 MR. PESCI: Okay.
13 PROSPECTIVE JUROR NO. 461: Um-hum.
14 MR. PESCI: A question kind of to you, and then
15 we'll push it out to everybody else, as I've done earlier.
16 You know, there are rules, very specific rules in
17 the courtroom of what we can and can't do. Right now is one
18 of the rare times we can speak to you. When we're not in this
19 phase, we -- we, all the attorneys -- we literally can't speak
20 to you, right? It's a rule. We might seem like total jerks
21 because we don't open the door for you. You ask us what
22 time's court starting, and we're not talking to you because
23 the Court has said we cannot do that. Are you okay with that
24 concept?
25 PROSPECTIVE JUROR NO. 461: Um-hum. Yes,

1 absolutely.

2 MR. PESCI: How about everybody else?

3 MEMBERS OF THE PROSPECTIVE JURY PANEL: Yes.

4 MR. PESCI: All right. So please, if you want the
5 door open and you're expecting it, or you're just like, "What
6 time," we can't talk to you at all. And if you do, we kind of
7 have to report it, and then all that goes from there. But
8 some people are uncomfortable with that, right? Because it's
9 kind of antisocial, but it's just we're trying to follow the
10 rules that we have to do. Is that okay with everybody?

11 PROSPECTIVE JUROR NO. 461: Yes.

12 MR. PESCI: All right. Thank you very much, ma'am.
13 If you could pass the microphone over one.

14 Ms. Estrella, how are you?

15 PROSPECTIVE JUROR NO. 462: Good, how are you?

16 MR. PESCI: Good, thank you. 462 is your badge
17 number?

18 PROSPECTIVE JUROR NO. 462: Yes.

19 MR. PESCI: All right, thank you. Can you see with
20 everybody standing?

21 MR. RUGGEROLI: Yes, thank you.

22 MR. PESCI: Okay. So, ma'am, you are a student with
23 CSN, but you're not currently enrolled?

24 PROSPECTIVE JUROR NO. 462: I am currently enrolled.

25 MR. PESCI: Okay, I misunderstood. I apologize. I

1 thought you were not in -- you're not full-time right now?
2 PROSPECTIVE JUROR NO. 462: Yes.
3 MR. PESCI: Okay.
4 PROSPECTIVE JUROR NO. 462: I'm not full-time, but I
5 am enrolled (indiscernible).
6 MR. PESCI: Are you missing class this week?
7 PROSPECTIVE JUROR NO. 462: I have school today.
8 MR. PESCI: Right.
9 PROSPECTIVE JUROR NO. 462: Yeah, but --
10 MR. PESCI: Okay, that's what I was trying to get
11 to. I think we've got another student here as well. You had
12 an exam today, right, ma'am? All right, we're going to get to
13 you in just a second. So is your schoolwork being affected by
14 this?
15 PROSPECTIVE JUROR NO. 462: No, I can balance my
16 schoolwork and between here, too.
17 MR. PESCI: All right. What days are class?
18 PROSPECTIVE JUROR NO. 462: It's Monday and
19 Wednesday.
20 MR. PESCI: Monday and Wednesday. What hours?
21 PROSPECTIVE JUROR NO. 462: 6:00 to 10:30.
22 MR. PESCI: So 6:00 P.M. --
23 PROSPECTIVE JUROR NO. 462: Yes.
24 MR. PESCI: -- to 10:30? Okay, all right.
25 PROSPECTIVE JUROR NO. 462: Yeah.

1 MR. PESCI: So if you come here during the day,
2 you're not going to miss any classes?
3 PROSPECTIVE JUROR NO. 462: Yes.
4 MR. PESCI: All right, but you're missing a class
5 today, you said?
6 PROSPECTIVE JUROR NO. 462: No, I -- I can go right
7 after the court and --
8 MR. PESCI: Are you good time-wise if we end at 5:00
9 -- because normally, the Court will have us end at 5:00 -- to
10 make it to school on time?
11 PROSPECTIVE JUROR NO. 462: Yes, I can make it to
12 school by 6:00.
13 MR. PESCI: Okay, perfect. What are you studying?
14 PROSPECTIVE JUROR NO. 462: I am studying bachelor's
15 of medical lab scientist.
16 MR. PESCI: What do you want to do with that?
17 PROSPECTIVE JUROR NO. 462: I want to, like, be in
18 the lab and examine the blood, because I also took phlebotomy,
19 so I already have like a little bit experience in that, too.
20 MR. PESCI: All right, wonderful. Thank you so
21 much. Could you pass the microphone up? And then we're going
22 to send it down the row, all the way over.
23 And actually, Mr. -- hold on. Mr. O'Brien, we
24 pretty much spoke to you yesterday. Do you have anything you
25 wanted to add? Kind of, you're the gunsmith, and all those

1 things?

2 PROSPECTIVE JUROR NO. 464: Not if you don't.

3 MR. PESCI: Okay. All right, perfect. Could you

4 hand it over one?

5 All right. Ms. Newell, Badge number 468?

6 PROSPECTIVE JUROR NO. 468: 468.

7 MR. PESCI: Okay, thank you, ma'am. So if I heard

8 correctly, you have a test today?

9 PROSPECTIVE JUROR NO. 468: Yes.

10 MR. PESCI: Okay. What's going on with that?

11 PROSPECTIVE JUROR NO. 468: I don't know. My

12 professor didn't e-mail me back, but I'm pretty sure she'll

13 excuse it, and I'll just make it up in office hours.

14 MR. PESCI: Okay. Do you think you will be able to

15 do that?

16 PROSPECTIVE JUROR NO. 468: Um-hum.

17 MR. PESCI: Okay. Is that a yes?

18 PROSPECTIVE JUROR NO. 468: That's a yes.

19 MR. PESCI: Yeah, I apologize. That's that silly

20 thing we have to do on the record. It's not really silly, but

21 it's uncomfortable sometimes. So the test is today?

22 PROSPECTIVE JUROR NO. 468: The test is today.

23 MR. PESCI: Okay. And you haven't heard back yet

24 from the professor if she or he will let you make it up?

25 PROSPECTIVE JUROR NO. 468: No.

1 MR. PESCI: Okay. What days of the week are you in
2 class?
3 PROSPECTIVE JUROR NO. 468: Monday and Wednesday.
4 MR. PESCI: And are you full-time right now?
5 PROSPECTIVE JUROR NO. 468: Um-hum.
6 MR. PESCI: And that's a yes?
7 PROSPECTIVE JUROR NO. 468: Yes.
8 MR. PESCI: Sorry.
9 PROSPECTIVE JUROR NO. 468: Sorry, yes.
10 MR. PESCI: No, no, sorry. So Monday and Wednesday,
11 what are your hours?
12 PROSPECTIVE JUROR NO. 468: 11:30 to 12:45.
13 MR. PESCI: Okay.
14 PROSPECTIVE JUROR NO. 468: And then the rest of my
15 classes are online.
16 MR. PESCI: Are online?
17 PROSPECTIVE JUROR NO. 468: Um-hum.
18 MR. PESCI: All right. But as far as Mondays and
19 Wednesdays, when we're in trial, you're going to be missing
20 class?
21 PROSPECTIVE JUROR NO. 468: Yeah.
22 MR. PESCI: Okay. Do you have any other tests on
23 the short horizon?
24 PROSPECTIVE JUROR NO. 468: No, not until February
25 23rd.

1 MR. PESCI: Okay. Is it going to affect your
2 schooling, in essence, by missing potentially the next two
3 weeks of school?
4 PROSPECTIVE JUROR NO. 468: No.
5 MR. PESCI: Okay. And then, if I heard correctly,
6 you said you're doing criminal justice?
7 PROSPECTIVE JUROR NO. 468: Yeah.
8 MR. PESCI: All right. Tell us, what is it you're
9 studying, and what do you want to do?
10 PROSPECTIVE JUROR NO. 468: I want to be a criminal
11 justice attorney.
12 MR. PESCI: Okay. And is there a specific type of
13 attorney, like the prosecution or the defense?
14 PROSPECTIVE JUROR NO. 468: Defense.
15 MR. PESCI: The defense? Okay. And then, so do you
16 want to, from here, go on to law school?
17 PROSPECTIVE JUROR NO. 468: Yeah.
18 MR. PESCI: Okay. Have you looked at different law
19 schools?
20 PROSPECTIVE JUROR NO. 468: Yeah, I'm looking at
21 William Boyd, or if -- I want to move to Atlanta, but I'm not
22 sure.
23 MR. PESCI: Okay. Have you spoken to any attorneys
24 about it?
25 PROSPECTIVE JUROR NO. 468: No, not yet.

1 MR. PESCI: Most of us say, don't go.
2 PROSPECTIVE JUROR NO. 468: Okay.
3 MR. PESCI: Just kidding. So you would like to
4 maybe go here or in Atlanta?
5 PROSPECTIVE JUROR NO. 468: Um-hum, yes.
6 MR. PESCI: All right, and how far off are you from
7 applying to law school?
8 PROSPECTIVE JUROR NO. 468: This is my third year at
9 UNLV, so a year-and-a-half, about.
10 MR. PESCI: All right. Have you looked into the
11 LSAT yet, the test to take it?
12 PROSPECTIVE JUROR NO. 468: No, not yet.
13 MR. PESCI: (Indiscernible). Not really.
14 Okay. Ma'am, anything that we discussed about
15 witnesses coming out of order, or a co-defendant testifying,
16 or anything like that would affect your ability to be fair and
17 impartial?
18 PROSPECTIVE JUROR NO. 468: No.
19 MR. PESCI: All right, thank you very much, ma'am.
20 If you could pass it over.
21 Mr. Rodriguez?
22 PROSPECTIVE JUROR NO. 475: 475.
23 MR. PESCI: Thank you. Sir, you served in the Navy,
24 correct?
25 PROSPECTIVE JUROR NO. 475: Yes, sir.

1 MR. PESCI: Did you ever have to do anything with a
2 court-martial?
3 PROSPECTIVE JUROR NO. 475: No.
4 MR. PESCI: Okay. And then, you talked about how
5 sometimes it might be hard to kind of follow and connect the
6 dots; is that correct?
7 PROSPECTIVE JUROR NO. 475: Yes.
8 MR. PESCI: All right. How's it been going so far;
9 yesterday, today?
10 PROSPECTIVE JUROR NO. 475: I'm okay.
11 MR. PESCI: Okay.
12 PROSPECTIVE JUROR NO. 475: It's pretty simple
13 stuff.
14 MR. PESCI: All right. You've been able to kind of
15 track what we're asking and following us?
16 PROSPECTIVE JUROR NO. 475: Yeah.
17 MR. PESCI: All right. It will be a little bit more
18 entertaining once we get started, right? There will be
19 witnesses; it won't be just us talking. If you have any
20 difficulty in following along, will you let us know?
21 PROSPECTIVE JUROR NO. 475: Sure.
22 MR. PESCI: Will you alert the court or the Marshal
23 and let us know so that we can try to address it?
24 PROSPECTIVE JUROR NO. 475: Um-hum.
25 MR. PESCI: And is that a yes?

1 PROSPECTIVE JUROR NO. 475: Yes.
2 MR. PESCI: All right. Any problem with that?
3 PROSPECTIVE JUROR NO. 475: No.
4 MR. PESCI: Okay, thank you very much, sir. If you
5 could pass it over.
6 Mr. -- I pronounce it Bandics?
7 PROSPECTIVE JUROR NO. 477: Yeah, that's right.
8 MR. PESCI: Okay.
9 PROSPECTIVE JUROR NO. 477: 477.
10 MR. PESCI: Thank you very much. Now, you talked
11 about how you're a service technician with Door and Glass?
12 PROSPECTIVE JUROR NO. 477: Yes, that's right.
13 MR. PESCI: Okay. So do you respond to people's
14 homes?
15 PROSPECTIVE JUROR NO. 477: No, it's all -- it's
16 mostly stores.
17 MR. PESCI: Stores?
18 PROSPECTIVE JUROR NO. 477: Yeah.
19 MR. PESCI: Are you involved in like the installing?
20 PROSPECTIVE JUROR NO. 477: Installing and repairs.
21 MR. PESCI: Okay, and how long have you been doing
22 that?
23 PROSPECTIVE JUROR NO. 477: For about four or five
24 months, but I've been with this company for about -- almost a
25 year, so a year in April.

1 MR. PESCI: What did you do before this portion of
2 the work of installing?

3 PROSPECTIVE JUROR NO. 477: Glazing, which is
4 installing glass in storefronts for stores.

5 MR. PESCI: Are you on a team of people, or are you
6 by yourself when you're doing these jobs?

7 PROSPECTIVE JUROR NO. 477: It depends. For the
8 glazing, you're usually with two to three other guys. Just
9 depends on the job. And then, for the door side, usually have
10 a partner with you. But I'm pretty new, so once I get up
11 there, they'll start sending me out by myself.

12 MR. PESCI: Okay. And so, working with others,
13 you're able to do that? If you're on a jury, you'll be
14 working with others in your deliberation process. Any
15 problems --

16 PROSPECTIVE JUROR NO. 477: Yeah.

17 MR. PESCI: -- with that?

18 PROSPECTIVE JUROR NO. 477: No, no problems.

19 MR. PESCI: All right, thank you very much, sir.

20 If you could pass the microphone over one to Mr.
21 Salazar.

22 PROSPECTIVE JUROR NO. 482: 482.

23 MR. PESCI: Thank you, Mr. Salazar. Okay, so you
24 are an armed guard driver with Loomis; is that correct?

25 PROSPECTIVE JUROR NO. 482: Correct.

1 MR. PESCI: And how long have you been doing that?
2 PROSPECTIVE JUROR NO. 482: A few months.
3 MR. PESCI: Did you have to go to any special
4 training for that?
5 PROSPECTIVE JUROR NO. 482: Just the -- like the
6 armed guard class. That was it.
7 MR. PESCI: Okay. Is it training about firearms?
8 PROSPECTIVE JUROR NO. 482: Yeah.
9 MR. PESCI: Okay. Did you have a firearm before
10 that job?
11 PROSPECTIVE JUROR NO. 482: Yes.
12 MR. PESCI: Okay. And in that training, did you
13 deal or interact with the police at all?
14 PROSPECTIVE JUROR NO. 482: No.
15 MR. PESCI: And then, setting aside training, but
16 the actual job, do you have much interaction with the police?
17 PROSPECTIVE JUROR NO. 482: I wave "hi" sometimes.
18 That's it.
19 MR. PESCI: All right. So you haven't had any
20 situations where the police have responded to a scene --
21 PROSPECTIVE JUROR NO. 482: No.
22 MR. PESCI: -- that you were on, or something of
23 that nature?
24 PROSPECTIVE JUROR NO. 482: No, not at all.
25 MR. PESCI: All right. So there wouldn't be

1 anything about police officers that you're going to treat them
2 better or worse based on any life experience?
3 PROSPECTIVE JUROR NO. 482: No.
4 MR. PESCI: Okay, thank you very much. If you could
5 pass the microphone.
6 Okay, Ms. Cook?
7 PROSPECTIVE JUROR NO. 483: Yes, 483.
8 MR. PESCI: Yes, thank you very much. So, ma'am,
9 teacher in the fifth grade?
10 PROSPECTIVE JUROR NO. 483: Yes.
11 MR. PESCI: How long have you been doing that?
12 PROSPECTIVE JUROR NO. 483: Just for a little over a
13 year.
14 MR. PESCI: A little over a year?
15 PROSPECTIVE JUROR NO. 483: Yeah.
16 MR. PESCI: Did you do -- or did you teach before
17 that, or were you doing a different profession?
18 PROSPECTIVE JUROR NO. 483: I was just a substitute
19 teacher prior to that.
20 MR. PESCI: Okay.
21 PROSPECTIVE JUROR NO. 483: And then, yeah, I
22 finished my student teaching last year, so.
23 MR. PESCI: All right, wonderful.
24 Similar to the questions to the other teachers, do
25 you ever have to resolve conflict between students?

1 PROSPECTIVE JUROR NO. 483: Yes. Like she said,
2 daily.
3 MR. PESCI: And sometimes, do they have just
4 completely different versions of the events?
5 PROSPECTIVE JUROR NO. 483: Correct.
6 MR. PESCI: And are you able to kind of assess that
7 and make a determination what you think occurred based on all
8 the information?
9 PROSPECTIVE JUROR NO. 483: Yes.
10 MR. PESCI: Any problems doing that?
11 PROSPECTIVE JUROR NO. 483: No.
12 MR. PESCI: Okay. And you served on a jury before,
13 correct?
14 PROSPECTIVE JUROR NO. 483: Yeah. Like I said, it
15 was civil, and it was settled --
16 MR. PESCI: Civil, and it settled?
17 PROSPECTIVE JUROR NO. 483: -- almost immediately.
18 MR. PESCI: So the question I wanted to get to is
19 did -- did you say almost immediately?
20 PROSPECTIVE JUROR NO. 483: Yeah, like by the time
21 we returned the next day.
22 MR. PESCI: Okay. So did any witnesses get on the
23 stand?
24 PROSPECTIVE JUROR NO. 483: No.
25 MR. PESCI: All right, that's where I was trying to

1 go, to figure out if you actually heard or assessed people's
2 testimony.

3 PROSPECTIVE JUROR NO. 483: No.

4 MR. PESCI: Okay. Do you have any problems doing
5 that, having witnesses come in and making assessments based on
6 their testimony, their evidence?

7 PROSPECTIVE JUROR NO. 483: No.

8 MR. PESCI: Do you think you could be fair to both
9 sides?

10 PROSPECTIVE JUROR NO. 483: I can.

11 MR. PESCI: All right, thank you very much, ma'am.

12 PROSPECTIVE JUROR NO. 483: Thank you.

13 MR. PESCI: If you could pass the microphone over.
14 Ms. Young, you got grilled yesterday, right? Anything you
15 want to add?

16 PROSPECTIVE JUROR NO. 485: No.

17 MR. PESCI: Okay, if you want to pass the mic. All
18 right. I mean, if you want to talk, we can.

19 PROSPECTIVE JUROR NO. 485: No.

20 MR. PESCI: All right. Mr. -- do I pronounce it
21 Deperio?

22 PROSPECTIVE JUROR NO. 488: Yes, 488.

23 MR. PESCI: Thank you very much. We're asking this
24 of all the people on juries before. Yours was a criminal
25 case?

1 PROSPECTIVE JUROR NO. 488: Yes.
2 MR. PESCI: And when was it?
3 PROSPECTIVE JUROR NO. 488: I don't exactly remember
4 the --
5 MR. PESCI: It's okay.
6 PROSPECTIVE JUROR NO. 488: -- the year. It's been
7 a while.
8 MR. PESCI: Was it here?
9 PROSPECTIVE JUROR NO. 488: Yes.
10 MR. PESCI: All right. Do you remember if it was
11 the District Attorney's Office, or the City Attorney's Office?
12 PROSPECTIVE JUROR NO. 488: I don't remember.
13 MR. PESCI: Okay, that's all right. Don't tell us
14 what the verdict was, but you came to a verdict?
15 PROSPECTIVE JUROR NO. 488: Yes.
16 MR. PESCI: So you want back in the deliberation
17 room and talked it out with your fellow jurors?
18 PROSPECTIVE JUROR NO. 488: Yes.
19 MR. PESCI: How did you like that experience?
20 PROSPECTIVE JUROR NO. 488: I didn't really like it
21 because -- this is just me. You know, I'm a very quiet
22 person, so I didn't really get to engage with the other jurors
23 as far as like conversing, or talking about what just
24 happened, or the testimony, or whatnot.
25 MR. PESCI: Okay. So did you feel you didn't get to

1 say what you wanted to say?

2 PROSPECTIVE JUROR NO. 488: I mean, I did come up
3 with, you know, my own opinion, like, my conclusion.

4 MR. PESCI: Uh-huh.

5 PROSPECTIVE JUROR NO. 488: But -- and everybody
6 else basically did, you know, have the same conclusion on the
7 case.

8 MR. PESCI: Okay. Do you feel that you would have
9 like the personality such, if you were to be chosen, to be
10 able to make your opinion known to your other jurors?

11 PROSPECTIVE JUROR NO. 488: I can try.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 488: It will be difficult
14 though. I just --

15 MR. PESCI: You're saying because of just your
16 nature?

17 PROSPECTIVE JUROR NO. 488: I'm just a quiet person,
18 yeah.

19 MR. PESCI: Okay. It wasn't that the jurors told
20 you, we don't want to hear from you?

21 PROSPECTIVE JUROR NO. 488: No, no, no, it's not
22 that.

23 MR. PESCI: Okay. So you're saying that you're not
24 as talkative maybe as some other people?

25 PROSPECTIVE JUROR NO. 488: Right, yeah.

1 MR. PESCI: Okay. But anything about that
2 experience that would affect your ability to be fair and
3 impartial?
4 PROSPECTIVE JUROR NO. 488: No.
5 MR. PESCI: All right, thank you very much.
6 Mr. Castro, how are you?
7 PROSPECTIVE JUROR NO. 490: I'm good, how are you?
8 MR. PESCI: Good, thank you. 490?
9 PROSPECTIVE JUROR NO. 490: 490.
10 MR. PESCI: 490. And I'm going to see if I'm
11 blocking anybody.
12 MR. RUGGEROLI: I can see. Thank you.
13 MR. PESCI: Okay. We just all want to be able to
14 see.
15 So when you said you're a software engineer, what
16 exactly do you do?
17 PROSPECTIVE JUROR NO. 490: I troubleshoot -- we
18 troubleshoot applications and fix when you find --
19 MR. PESCI: For a particular product, or for a
20 certain company?
21 PROSPECTIVE JUROR NO. 490: For the company.
22 MR. PESCI: Okay, so the company that you work for?
23 PROSPECTIVE JUROR NO. 490: Yes.
24 MR. PESCI: All right, kind of like IT for the
25 company?

1 PROSPECTIVE JUROR NO. 490: Yes.

2 MR. PESCI: All right, all right. I understand that
3 a little bit better now. I apologize. Any reason that you
4 could not sit in judgment of another human being?

5 PROSPECTIVE JUROR NO. 490: No reason.

6 MR. PESCI: Could you follow the law, even if you
7 don't necessarily agree with it?

8 PROSPECTIVE JUROR NO. 490: Yes.

9 MR. PESCI: Thank you very much, sir. If we could
10 pass it forward, and then we'll go all the way down.
11 I think we're going to Ms. Segura?

12 PROSPECTIVE JUROR NO. 496: Yes.

13 MR. PESCI: Correct? And she's Badge, I believe,
14 496.

15 PROSPECTIVE JUROR NO. 496: That's correct.

16 MR. PESCI: All right, thank you, ma'am. You work
17 at Valley Hospital?

18 PROSPECTIVE JUROR NO. 496: I do.

19 MR. PESCI: And then, the Court talked to you.
20 You've been able to find out that you're okay to be here as
21 far as work goes?

22 PROSPECTIVE JUROR NO. 496: Yes, I am.

23 MR. PESCI: Okay. And in Valley Hospital, are you
24 in like the emergency room area, or where is it that you are?

25 PROSPECTIVE JUROR NO. 496: I'm on a med-surg floor,

1 so it's 3 Tower, but people who get admitted into the hospital
2 from the emergency room come to us first unless they're
3 critical.

4 MR. PESCI: Okay, and that's what I was trying to
5 figure out, because if you're like in the emergency room, you
6 might deal with police officers bringing somebody in or the
7 paramedics bringing somebody in.

8 PROSPECTIVE JUROR NO. 496: No, we don't deal with
9 that.

10 MR. PESCI: So you get -- your part in the process
11 is after they've come up, and they've been sent to a surgery?

12 PROSPECTIVE JUROR NO. 496: That's correct.

13 MR. PESCI: Okay. You may hear some medical
14 testimony in this case from a coroner. You're able to bring
15 your common sense and your own experience to the courtroom,
16 but the evidence has to be from the actual witness stand. Are
17 you okay with that concept?

18 PROSPECTIVE JUROR NO. 496: Yes.

19 MR. PESCI: You can use your common sense, your own
20 training and experience, but it's based off of what you'll
21 hear from the witness stand. Is that okay with you?

22 PROSPECTIVE JUROR NO. 496: Yes.

23 MR. PESCI: Any problems with that?

24 PROSPECTIVE JUROR NO. 496: No.

25 MR. PESCI: All right. Any of the other questions

1 that we spoke of that you wanted to share some thoughts or
2 feelings?

3 PROSPECTIVE JUROR NO. 496: No.

4 MR. PESCI: Are you happy to pass the mic?

5 PROSPECTIVE JUROR NO. 496: Yep.

6 MR. PESCI: All right, pass it on. Mr. Laurie?

7 PROSPECTIVE JUROR NO. 513: Yeah.

8 MR. PESCI: We talked yesterday and today. So how's
9 the travel from Mesquite? How's that --

10 PROSPECTIVE JUROR NO. 513: Long.

11 MR. PESCI: Laughlin or Mesquite? I --

12 PROSPECTIVE JUROR NO. 513: Mesquite.

13 MR. PESCI: Mesquite?

14 PROSPECTIVE JUROR NO. 513: Yeah.

15 MR. PESCI: Have you been able to work that out?

16 PROSPECTIVE JUROR NO. 513: I think so. I'll be
17 able to handle it.

18 MR. PESCI: Okay. One thing I wanted to ask you,
19 there's a statement that you made yesterday. You said you
20 made an assumption about the case. Is that based on our
21 conversations here, or from something outside of the
22 courtroom?

23 PROSPECTIVE JUROR NO. 513: Something outside of the
24 courtroom.

25 MR. PESCI: Okay. Hold on one second.

1 PROSPECTIVE JUROR NO. 513: Sure, I understand.
2 MR. PESCI: Can we approach, Your Honor?
3 THE COURT: Sure.
4 (Bench conference)
5 MR. PESCI: I don't know what that's based on, and I
6 don't want to ask in front of everybody. Should we bring him
7 up here?
8 THE COURT: We can bring him up here.
9 MR. PESCI: How do you want to do that?
10 THE COURT: We can --
11 MR. SANFT: Yeah.
12 MR. PESCI: Okay.
13 THE COURT: -- just tell him to come up here.
14 (End of bench conference)
15 THE COURT: Okay. Do you mind just coming up here?
16 If you can leave the microphone on the chair.
17 (Bench conference)
18 (Prospective Juror No. 513 is present at Bench Conference.)
19 THE COURT: Okay. The record will reflect that Mr.
20 Laurie is present at the bench with all four lawyers. What
21 was that assumption based on?
22 PROSPECTIVE JUROR NO. 513: I have -- I have some
23 females at my work that are very into social media.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 513: And the only reason I

1 remember it is because I have a doctor that's named Mr.
2 Wheeler --
3 THE COURT: Okay.
4 PROSPECTIVE JUROR NO. 513: -- and I remember them
5 bringing this up, and I made a connection.
6 THE COURT: So you made an assumption, or a
7 connection between --
8 PROSPECTIVE JUROR NO. 513: A connection.
9 THE COURT: Okay, between something the women at
10 your work talked about?
11 PROSPECTIVE JUROR NO. 513: Correct.
12 THE COURT: That they got off of social media?
13 PROSPECTIVE JUROR NO. 513: Correct.
14 THE COURT: Okay. And you know what I'm going to
15 ask you, right? Will you be able to set that aside and judge
16 this case based solely on the evidence that you see and hear
17 in the courtroom, and not what the ladies at work talked
18 about?
19 PROSPECTIVE JUROR NO. 513: Solely on the evidence
20 here in this courtroom? I think it would -- I think it would
21 be difficult to -- to separate from what I've heard and read.
22 THE COURT: And what have you heard?
23 PROSPECTIVE JUROR NO. 513: They -- am I allowed to
24 talk freely?
25 MR. PESCI: Yeah, you're doing great.

1 PROSPECTIVE JUROR NO. 513: Am I allowed to talk --
2 okay.
3 THE COURT: Yeah, of course.
4 PROSPECTIVE JUROR NO. 513: It was --
5 MR. PESCI: You did nothing wrong.
6 PROSPECTIVE JUROR NO. 513: It was -- sure.
7 MR. PESCI: We're just -- we just wanted you to tell
8 us --
9 THE COURT: Yeah, you're fine.
10 PROSPECTIVE JUROR NO. 513: I know about the
11 Facebook posts that were made from -- they know about the
12 newspaper and the connection between that and Facebook.
13 They're on social media a lot, and they brought it up to me.
14 THE COURT: Okay, the women at work?
15 PROSPECTIVE JUROR NO. 513: Yes.
16 THE COURT: Okay. What did they say?
17 PROSPECTIVE JUROR NO. 513: About these kids that
18 have committed the crime. And I'm trying not to -- they
19 committed a crime in Las Vegas, they talked about, because we
20 work at a Dollar General --
21 THE COURT: Uh-huh.
22 PROSPECTIVE JUROR NO. 513: -- and I guess it was
23 linked. We're always concerned.
24 THE COURT: I'm sorry, guess it was what?
25 PROSPECTIVE JUROR NO. 513: It was linked to a

1 convenience store robbery, I guess, so we're always concerned
2 about robberies in the area. I'm always looking on
3 newspapers. So they -- we know about that -- she knew about
4 it.

5 THE COURT: Okay. And when did you have this
6 conversation with the people at work?

7 PROSPECTIVE JUROR NO. 513: I -- just a little while
8 back, maybe a couple weeks ago.

9 THE COURT: Oh, just a couple weeks ago?

10 PROSPECTIVE JUROR NO. 513: Yeah.

11 THE COURT: All right. Have you told us everything
12 that you learned?

13 PROSPECTIVE JUROR NO. 513: Pretty much. No, I've
14 read the newspaper and the Las Vegas Times after they brought
15 that to my attention.

16 THE COURT: Las Vegas Times? What's that?

17 PROSPECTIVE JUROR NO. 513: Yes, it's in Las --
18 what's -- I don't know, it's the --

19 THE COURT: Is that a newspaper?

20 PROSPECTIVE JUROR NO. 513: -- local newspaper here
21 in town.

22 THE COURT: Well, called Las Vegas Times?

23 PROSPECTIVE JUROR NO. 513: I don't know, it's just
24 Las Vegas Something, right?

25 THE COURT: Okay, well, Review Journal?

1 PROSPECTIVE JUROR NO. 513: Sure.
2 THE COURT: Is that what you meant?
3 PROSPECTIVE JUROR NO. 513: Yeah.
4 THE COURT: Okay, all right. And again, I'm going
5 to ask you, will you be able to set aside anything that you've
6 heard at work or read in the newspaper, and judge this case
7 based solely on the evidence that you hear in the courtroom?
8 PROSPECTIVE JUROR NO. 513: Yes, I could do that,
9 sure.
10 THE COURT: Okay, because you understand how it
11 would be unfair --
12 PROSPECTIVE JUROR NO. 513: Yeah, immediately, yeah.
13 THE COURT: -- to have jurors relying on what --
14 first of all, you can't rely on what you hear in the media.
15 PROSPECTIVE JUROR NO. 513: Sure. Oh, no, I
16 understand.
17 THE COURT: I mean, can we agree on that?
18 PROSPECTIVE JUROR NO. 513: Yeah.
19 THE COURT: I mean, it's not always correct.
20 PROSPECTIVE JUROR NO. 513: Sure, yeah.
21 THE COURT: Okay. We want you to rely on the
22 evidence as it comes out in the courtroom. Do you --
23 PROSPECTIVE JUROR NO. 513: Of course.
24 THE COURT: -- understand that? And you also
25 understand that you can't talk about this case with anyone,

1 including --

2 PROSPECTIVE JUROR NO. 513: Of course, I haven't.

3 THE COURT: -- the women at your work, unless and

4 until you are discharged as a juror?

5 PROSPECTIVE JUROR NO. 513: Sure, yeah.

6 THE COURT: Then you can talk about it.

7 PROSPECTIVE JUROR NO. 513: I understand.

8 THE COURT: You can tell them you're a juror in a

9 criminal case; I don't even want you to tell them what

10 criminal case it is.

11 PROSPECTIVE JUROR NO. 513: No, yeah --

12 THE COURT: Do you understand that?

13 PROSPECTIVE JUROR NO. 513: Yeah, I even told my

14 mother, and --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 513: So, yeah.

17 THE COURT: And you'll comply with that?

18 PROSPECTIVE JUROR NO. 513: Sure.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 513: Yes.

21 THE COURT: At some point, you can talk about the

22 case if you want to, but not until you are discharged as a

23 juror. Do you understand that?

24 PROSPECTIVE JUROR NO. 513: Like I said, the only

25 reason I made the assumption is because my doctor was named

1 Wheeler --
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 513: -- and I remember
4 reading in the newspaper article about the Wheeler.
5 THE COURT: Okay, so you just made a connection --
6 PROSPECTIVE JUROR NO. 513: I did immediately, yes.
7 THE COURT: -- that this is the case the women at --
8 PROSPECTIVE JUROR NO. 513: Correct.
9 THE COURT: -- work must have been talking about?
10 PROSPECTIVE JUROR NO. 513: Yes.
11 THE COURT: Okay, and just a couple weeks ago?
12 PROSPECTIVE JUROR NO. 513: I'm not sure.
13 THE COURT: Why were they talking about it a couple
14 weeks ago?
15 PROSPECTIVE JUROR NO. 513: I don't know. It was
16 something on Facebook that she read.
17 THE COURT: Okay. All right, anything else from the
18 State?
19 MR. PESCI: No from the State.
20 MR. RUGGEROLI: Did you --
21 THE COURT: Mr. Ruggeroli? Mr. Sanft?
22 MR. RUGGEROLI: Did you happen to speak with any of
23 the other prospective jurors about any of that at all?
24 PROSPECTIVE JUROR NO. 513: No, not at all, no.
25 Because I knew immediately what was -- it was -- yeah.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: No questions, Your Honor.
3 THE COURT: Okay. Thank you for coming up here --
4 PROSPECTIVE JUROR NO. 513: Sure.
5 THE COURT: -- and answering our questions. Thank
6 you.
7 MR. PESCI: Thank you, Your Honor.
8 THE COURT: Thank you.
9 (End of bench conference)
10 THE COURT: Okay, you may proceed.
11 MR. PESCI: All right. Thank you very much, sir.
12 Appreciate it. Would you mind handing the microphone over
13 one? Ms. Moreno?
14 PROSPECTIVE JUROR NO. 520: Yes, 520.
15 MR. PESCI: Thank you. How are you?
16 PROSPECTIVE JUROR NO. 520: I'm good.
17 MR. PESCI: And you work in payroll?
18 PROSPECTIVE JUROR NO. 520: Yes, I've been working
19 in payroll since 2013.
20 MR. PESCI: Okay. Any problems with your work as
21 far as you being here to serve on the jury?
22 PROSPECTIVE JUROR NO. 520: No.
23 MR. PESCI: So you won't have any issues with work
24 that way?
25 PROSPECTIVE JUROR NO. 520: No.

1 MR. PESCI: Okay. Some of the questions that we've
2 asked as far as taking witnesses out of order, or maybe,
3 somebody that's not here, but a co-defendant testifying, would
4 that affect your ability to be fair or impartial in this case?
5 PROSPECTIVE JUROR NO. 520: No.
6 MR. PESCI: Okay. And could you apply the law, even
7 if you don't necessarily agree with all of it?
8 PROSPECTIVE JUROR NO. 520: Yes.
9 MR. PESCI: All right, thank you very much, ma'am.
10 Pass the microphone.
11 Ms. Perez-Haywood?
12 PROSPECTIVE JUROR NO. 521: Yes.
13 MR. PESCI: Okay, and Badge 521?
14 PROSPECTIVE JUROR NO. 521: 521.
15 MR. PESCI: All right, thank you. Middle school
16 teacher. I've got to ask all the teachers, right? How long
17 have you been doing that?
18 PROSPECTIVE JUROR NO. 521: About eight years.
19 MR. PESCI: Okay. And middle school -- I mean,
20 maybe I'm wrong. At least my kids have been going through
21 middle school; that's like the hardest.
22 PROSPECTIVE JUROR NO. 521: Yes, it's challenging.
23 MR. PESCI: There's a lot of butting heads among
24 students.
25 PROSPECTIVE JUROR NO. 521: Yeah, it's challenging.

1 Yeah.

2 MR. PESCI: Okay. How do you deal with that

3 challenge?

4 PROSPECTIVE JUROR NO. 521: I love my job.

5 MR. PESCI: Okay.

6 PROSPECTIVE JUROR NO. 521: Yeah. I like working

7 with people and the students, passing the knowledge. I like

8 it.

9 MR. PESCI: Well, good. Are you able to kind of

10 resolve conflicts when they sometimes have them?

11 PROSPECTIVE JUROR NO. 521: Yes, sometimes. Yes.

12 MR. PESCI: And do you think that you could do that

13 in this kind of a case? So listen to the evidence; if there

14 maybe is a conflict, then kind of assess what you think

15 occurred?

16 PROSPECTIVE JUROR NO. 521: Yes.

17 MR. PESCI: All right. Do you think you can be fair

18 to both sides?

19 PROSPECTIVE JUROR NO. 521: Definitely.

20 MR. PESCI: All right, thank you very much, ma'am.

21 All right. Ms. Mendoza, you are Badge number --

22 PROSPECTIVE JUROR NO. 524: 524.

23 MR. PESCI: 524. All right, thank you very much.

24 You've been in Vegas, you said, for ten years, correct?

25 PROSPECTIVE JUROR NO. 524: Yes.

1 MR. PESCI: Where were you before that?

2 PROSPECTIVE JUROR NO. 524: Kind of back and forth

3 between California and New Mexico for a couple years, and

4 then, 2009, we settled here.

5 MR. PESCI: Okay. And then, if I've understood

6 correctly, you're going to school, but not right now?

7 PROSPECTIVE JUROR NO. 524: Yeah.

8 MR. PESCI: Okay. What were you studying?

9 PROSPECTIVE JUROR NO. 524: Education.

10 MR. PESCI: What would you like to do with that?

11 PROSPECTIVE JUROR NO. 524: I'd like to teach

12 history.

13 MR. PESCI: Okay, even with what you're hearing from

14 the other teachers?

15 PROSPECTIVE JUROR NO. 524: Yes.

16 MR. PESCI: All right. Any reason why you couldn't

17 be fair and impartial --

18 PROSPECTIVE JUROR NO. 524: No.

19 MR. PESCI: -- to both sides?

20 PROSPECTIVE JUROR NO. 524: No.

21 MR. PESCI: All right, thank you very much. If we

22 could pass the mic. Mr. -- how do I pronounce it?

23 PROSPECTIVE JUROR NO. 561: Alex. Alex -- Alex

24 Keang.

25 MR. PESCI: Keang? Okay, thank you. And then,

1 you're Badge number 5 --
2 PROSPECTIVE JUROR NO. 561: 561.
3 MR. PESCI: 561, okay. And then, you came here from
4 Vegas quite some time ago. You moved here, what, in '91?
5 PROSPECTIVE JUROR NO. 561: Yeah, I came here in
6 1991. Yeah.
7 MR. PESCI: Where did you come from?
8 PROSPECTIVE JUROR NO. 561: I come from California.
9 MR. PESCI: Okay. And then, you're working as a
10 dealer where? Which casino?
11 PROSPECTIVE JUROR NO. 561: I work as a dealer at
12 New York-New York.
13 MR. PESCI: The New York-New York?
14 PROSPECTIVE JUROR NO. 561: Yeah.
15 MR. PESCI: How long have you been there?
16 PROSPECTIVE JUROR NO. 561: I've been there since
17 2005.
18 MR. PESCI: 2005? Okay. Have you ever had an
19 occasion while you were at work to have to interact with the
20 police? Have they been called out to an issue while you were
21 working?
22 PROSPECTIVE JUROR NO. 561: I saw -- we have a lot
23 of security at -- in the casino. So when something problem,
24 you know, the casino -- the security just take care of that,
25 or the floorman, you know, they take care of that, but not a

1 dealer. We have to stay on the table; we cannot move
2 anywhere.

3 MR. PESCI: So there are kind of rules about how
4 you're supposed to handle it based on New York-New York's
5 policies?

6 PROSPECTIVE JUROR NO. 561: Yes.

7 MR. PESCI: Okay, and then the hotel security
8 normally deals with it?

9 PROSPECTIVE JUROR NO. 561: Yeah, the hotel
10 security, they would (indiscernible) that problem, yeah.

11 MR. PESCI: Okay. Any interactions with Metro, the
12 police department?

13 PROSPECTIVE JUROR NO. 561: They have Metro, they
14 have security, and they have police, too. Everything, yeah.

15 MR. PESCI: Okay. Any reason that experience with
16 Metro would affect your ability to be fair and impartial to
17 either side?

18 PROSPECTIVE JUROR NO. 561: No.

19 MR. PESCI: Thank you very much, sir.

20 If you could pass the microphone over.

21 Widdison, correct?

22 PROSPECTIVE JUROR NO. 540: It's Staci McCarthy.

23 MR. PESCI: Oh, gosh. I just moved over one. I
24 apologize. Ms. McCarthy, I apologize. And your badge number?

25 PROSPECTIVE JUROR NO. 540: 540.

1 MR. PESCI: All right, and your son, he's cut loose,
2 right?
3 PROSPECTIVE JUROR NO. 540: He's not here today, no.
4 MR. PESCI: So there's no more mom and dad time?
5 PROSPECTIVE JUROR NO. 540: Right.
6 MR. PESCI: I mean, I'm sorry, son and mom?
7 PROSPECTIVE JUROR NO. 540: No.
8 MR. PESCI: Okay. Is he back to work?
9 PROSPECTIVE JUROR NO. 540: Yes.
10 MR. PESCI: Okay. You have a master's in education,
11 but you retired from teaching, correct?
12 PROSPECTIVE JUROR NO. 540: Yes.
13 MR. PESCI: All right, and how long did you teach?
14 PROSPECTIVE JUROR NO. 540: 27 years.
15 MR. PESCI: 27 years. And then, what ages or what
16 levels?
17 PROSPECTIVE JUROR NO. 540: Mostly middle school,
18 but I taught elementary for 12 years, and then middle school
19 for 15.
20 MR. PESCI: All right. Resolving conflicts with
21 students, how did you go about that?
22 PROSPECTIVE JUROR NO. 540: Same thing. Listen to
23 both sides, hear their side to the story, talk to them, talk
24 it out.
25 MR. PESCI: Okay. Do you feel you're skilled at

1 that?

2 PROSPECTIVE JUROR NO. 540: Yes.

3 MR. PESCI: Could you apply those skills here?

4 PROSPECTIVE JUROR NO. 540: Yes.

5 MR. PESCI: All right. Kind of want to shift to

6 your grand jury time. I apologize, I'm going to stand in the

7 middle here. That was a full year?

8 PROSPECTIVE JUROR NO. 540: Yes.

9 MR. PESCI: Okay, and was that the federal grand

10 jury here in Las Vegas?

11 PROSPECTIVE JUROR NO. 540: Right.

12 MR. PESCI: Okay. There's a different standard of

13 proof that needs to be put forth for a grand jury versus a

14 trial. Are you okay with that concept?

15 PROSPECTIVE JUROR NO. 540: Yes.

16 MR. PESCI: You would agree with me that the

17 standard for a grand jury is a lower standard?

18 PROSPECTIVE JUROR NO. 540: Right.

19 MR. PESCI: All right. And the Court's going to

20 give you a very specific explanation of proof beyond a

21 reasonable doubt, but are you okay to hold the State of Nevada

22 to that burden --

23 PROSPECTIVE JUROR NO. 540: Yes.

24 MR. PESCI: -- which is different than what you did

25 for that year? Okay. Anything about that experience that