

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. 10 OF 14)

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1 about?

2 A Yes, sir.

3 Q Who?

4 A My brother.

5 Q Where?

6 A Right there.

7 Q And the shoes that we were just referring to, do you

8 see them in the photo?

9 A Yes, sir.

10 Q And those are those Air Jordan 5's?

11 A Yes, sir.

12 Q Did he have any other kind of Air Jordans?

13 A Yes, sir.

14 Q DeShawn, I want to go back to inside your house. Do

15 you remember some of the photos I was showing you?

16 A Yes, sir.

17 Q I want to go to Exhibit 220. Do you recognize that

18 room?

19 A Yes, sir.

20 Q I want to zoom-in on a particular area, Exhibit 221.

21 Do you see some items that you're familiar with?

22 A Yes, sir.

23 Q Specifically, I want to ask you about this bag. Do

24 you recognize it?

25 A Yes, sir.

1 Q And so, the bag -- what color is that bag that I'm
2 referring to?
3 A Pink.
4 Q And who used that bag?
5 A Me and my brother.
6 Q Would you both put stuff in there?
7 A Yes, sir.
8 Q Remember how I showed you that surveillance footage
9 just a second ago of your brother?
10 A Yes, sir.
11 Q I want to show you Exhibit 187. Do you -- do you
12 recognize that?
13 A Yes, sir.
14 Q Was he wearing that sweater in that surveillance
15 photo?
16 A Yes, sir.
17 Q And what brand is that?
18 A I don't know.
19 Q Okay. Now, DeShawn, I kind of want to talk about
20 the night in question, okay? Were you with some people other
21 than your brother?
22 A Yes, sir.
23 Q How many?
24 A Two.
25 Q Were you guys in the same car or driving separately?

1 How was that?

2 A We were in the same car.

3 Q Whose car?

4 A My brother's car.

5 Q So the car that we saw the photo of at the

6 surveillance -- or at the convenience store?

7 A Yes, sir.

8 Q Who was in that at that time when you guys pulled

9 into the convenience store? Was it all four people?

10 A Yes, sir.

11 Q After that convenience store, do you go somewhere?

12 A Yeah.

13 Q Where do you go?

14 A Just driving around.

15 Q Do you eventually stop at a house?

16 A Yeah.

17 Q Why do you stop at the house?

18 A Really don't have any clue.

19 Q Did anyone have any plan to do anything at the

20 house? Why did you stop?

21 A I don't remember the -- the conversation in the car,

22 but I remember that we stopped at a house and got out the car.

23 Q When you say "we," are all four people getting out?

24 A Yes, sir.

25 Q Would you recognize that house if I showed you a

1 photo of it?

2 A Yes, sir.

3 Q Showing you State's Exhibit 10. DeShawn, do you

4 recognize that house?

5 A Yes.

6 Q Do you recognize that wall?

7 A Yes.

8 Q Tell me about that wall. Where -- why do you

9 recognize that?

10 A Because that's the wall we were standing behind.

11 Q When you say "we," was it you?

12 A Yes, I was there.

13 Q Was your brother there?

14 A Yes, sir.

15 Q Were the two other individuals there?

16 A Yes, sir.

17 Q Are they the same or different individuals from the

18 two people in the surveillance footage that we just saw?

19 A The same.

20 Q So you guys went from the convenience store to this

21 house?

22 A Yes, sir.

23 Q Do you all get out of the car?

24 A Yes, sir.

25 Q Where did you guys park?

1 A We parked at the edge of this wall, right over here.
2 Q Let me see, DeShawn, if I can get you a map to kind
3 of show us. Showing you Exhibit 3. So if this is that house
4 that we were just looking at, where did you park?
5 A Right over here.
6 Q Behind --
7 A On the main street.
8 Q Say what?
9 A On the main street.
10 Q On the main street?
11 A Yes, sir.
12 Q And you guys all get out; where do you go?
13 A Walked to the corner.
14 Q To the corner?
15 A Yes, sir.
16 Q DeShawn, do you guys have something with you that
17 night?
18 A Yes.
19 Q What did you guys have?
20 A Guns.
21 Q And who had guns?
22 A My brother, and then the other two.
23 Q Your brother and the other two?
24 A Yes, sir.
25 Q How was your brother carrying his gun?

1 A On his hip in a holster.
2 Q In a holster?
3 A Yes, sir.
4 Q And how was -- let's talk about one of the other
5 ones. How was one of the other ones holding it, or --
6 A The same way.
7 Q -- carrying it? Same way?
8 A Yes, sir.
9 Q Like, out in the open, or?
10 A Yes, out in the open.
11 Q Out in the open. And then the other person?
12 A His pocket.
13 Q In his pocket?
14 A Yes, sir.
15 Q Do you know if it was in a jacket pocket or in a
16 pants pocket?
17 A Pants pocket.
18 Q Pants pocket? During the course of that night, had
19 you personally seen the guns that each had?
20 A Yes, sir.
21 Q Had you seen some of the bullets that some of them
22 had?
23 A Yes, sir.
24 Q So -- and had you previously seen your brother's
25 gun?

1 A Yes, sir.
2 Q Had you maybe even held it before?
3 A I don't remember.
4 Q DeShawn, do you think you'd recognize your brother's
5 gun if I showed it to you?
6 A Yes, sir.
7 Q Would you recognize the holster?
8 A Yes, sir.
9 Q Want to show you Exhibit 225. Do you recognize
10 that?
11 A Yes, sir.
12 Q Is that your brother's gun?
13 A Yes.
14 Q And is that his holster?
15 A Yes.
16 Q DeShawn, I want to go back and show you, again, 320,
17 and I'm going to zoom-in. Do you see something in your
18 brother's pocket area?
19 A Yes.
20 Q What was in his pocket?
21 A His gun.
22 Q So was sometimes during the night, it out, and then
23 sometimes in?
24 A I thought it was out the whole night.
25 Q It was out the whole night? And I want to show you

1 -- do you see the person behind him?
2 A Yes.
3 Q And do you see how he's kind of reaching to the
4 right --
5 A Yes.
6 Q -- of his hip? Was he one of the people who was
7 with you?
8 A Yes, sir.
9 Q In Exhibit 324, what was on his right hip?
10 A His gun.
11 Q And had you seen it?
12 A Yes, sir.
13 Q Showing you 321, it's kind of like a zoomed-in
14 version.
15 A Yes, sir.
16 Q Do you recognize the hat he was wearing?
17 A Yes, sir.
18 Q Was he wearing it all night?
19 A Yes.
20 Q Would you recognize a photo if I showed it to you?
21 MR. BROOKS: Permission to approach, Your Honor?
22 THE COURT: You may.
23 MR. SANFT: No objection, Your Honor.
24 MR. RUGGEROLI: No objection.
25 THE COURT: Do you want to offer it?

1 MR. BROOKS: Oh. Exhibit 309, Your Honor.
2 THE COURT: Okay, there being no objection, it's
3 admitted.
4 (State's Exhibit 309 is admitted)
5 MR. SANFT: Thank you, Your Honor.
6 BY MR. BROOKS:
7 Q DeShawn, Exhibit 309, do you recognize that?
8 A Yes.
9 Q What is it?
10 A The hat.
11 Q The hat that that man was wearing with the gun on
12 his hip?
13 A Yes.
14 Q That's not your brother?
15 A No.
16 Q Okay. DeShawn, we kind of talked about some shoes
17 earlier. Are you familiar with what Huaraches are?
18 A Yes.
19 Q A type of Nike shoe?
20 A Yes.
21 Q Would you be able to identify one if you saw it?
22 A Yes.
23 MR. BROOKS: Exhibit 312, Your Honor.
24 THE COURT: Any objection?
25 MR. RUGGEROLI: No, Your Honor.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: No objection, Your Honor.
3 THE COURT: It's admitted, and you may publish.
4 (State's 312 is admitted)
5 BY MR. BROOKS:
6 Q So, DeShawn, before I publish 312, that guy we were
7 just referring to in Exhibit 322, use the mouse to show me the
8 one with the hat that we just talked about. Where is he?
9 A Right here.
10 Q Okay, and where are you?
11 A Right there.
12 Q And where is DJ?
13 A Right there.
14 Q Okay, and where's the other one that we haven't yet
15 discussed?
16 A Right here.
17 Q Okay. Remember how I just asked you about some
18 Huaraches?
19 A Yes.
20 Q All right, I want to show you Exhibit 312. Do you
21 recognize those?
22 A Yes, sir.
23 Q What are they?
24 A Huaraches.
25 Q And what color?

1 A Burgundy.

2 Q Was someone wearing those shoes this night?

3 A Yes, sir.

4 Q Which one? Okay, and that's the same one with the
5 hat that we just looked at?

6 A Yes, sir.

7 Q Okay. At this point in time, on this photo -- so
8 we've talked about your brother having a firearm, and I showed
9 you that?

10 A Yes, sir.

11 Q We've talked about the guy in the hat and the
12 Huaraches having a firearm?

13 A Yes, sir.

14 Q And the guy in the black hoodie, was he the one who
15 had it in the pocket?

16 A Yes, sir.

17 Q Oh, so that was the one you were -- okay. Does he
18 have it on him right now?

19 A I don't know, sir.

20 Q You don't know if he brought it in the store or
21 anything like that?

22 A No, sir.

23 Q Okay, but throughout the night, at some point, did
24 you see it?

25 A Yes, sir.

1 Q Okay. Now, DeShawn, I want to show you Exhibit 11.
2 Why did you guys get out of the car?
3 A Why did we get out the car?
4 Q Why did you get out of the car?
5 A I got out the car because I was following them.
6 Q Why did they get out of the car?
7 MR. RUGGEROLI: Objection to speculation.
8 THE COURT: Overruled. You can answer.
9 THE WITNESS: So, do I answer?
10 MR. BROOKS: Yes.
11 THE COURT: Yes.
12 THE WITNESS: To my knowledge, to rob a house.
13 BY MR. BROOKS:
14 Q And did -- remember when I asked you that question
15 earlier about officers taking your cell phone?
16 A Yes, sir.
17 Q Did you have some communication earlier that day
18 with one of those people?
19 A Yes, sir.
20 Q And was it about robbing a house, like you put it?
21 A Yes, sir.
22 Q Would you recognize that text thread if I showed it
23 to you?
24 A Yes, sir.
25 Q Would you recognize your phone if I showed it to

1 you?
2 A Yes, sir.
3 MR. BROOKS: Your Honor, may I approach?
4 THE COURT: You may.
5 BY MR. BROOKS:
6 Q DeShawn, I want to first show you State's Proposed
7 Exhibit 333. Do you recognize that?
8 A Yes.
9 Q Whose phone was that?
10 A Mine.
11 Q Did the police take that from you?
12 A Yes, sir.
13 MR. BROOKS: Your Honor, State moves for admission
14 of Exhibit 333.
15 MR. SANFT: No objection.
16 MR. RUGGEROLI: No objection as to that.
17 THE COURT: Okay, it's admitted.
18 (State's Exhibit 333 is admitted)
19 MR. BROOKS: Permission to publish that one, Your
20 Honor?
21 THE COURT: You may.
22 BY MR. BROOKS:
23 Q DeShawn, I'm showing you State's Proposed Exhibit
24 334. Do you recognize that?
25 A Yes, sir.

1 Q Is that just the back side --
2 A Yes.
3 Q -- of your phone?
4 A Yes.
5 MR. BROOKS: Your Honor, State moves for admission
6 of Exhibit 334.
7 MR. SANFT: No objection.
8 MR. RUGGEROLI: No objection.
9 THE COURT: It's admitted.
10 (State's Exhibit 334 is admitted)
11 BY MR. BROOKS:
12 Q As for State's Proposed Exhibit 335, do you
13 recognize the screen there?
14 A Yes, sir.
15 Q Whose screen was that?
16 A Mine.
17 Q And does it kind of fairly depict the things -- the
18 apps that were on your screen?
19 A Yes.
20 MR. BROOKS: Your Honor, State moves for admission
21 of Exhibit 335.
22 MR. SANFT: No objection.
23 MR. RUGGEROLI: No objection.
24 THE COURT: It's admitted.
25 (State's Exhibit 335 is admitted)

1 BY MR. BROOKS:
2 Q DeShawn, do you see that?
3 A Yes.
4 Q Now, you didn't turn this on, correct? You didn't
5 turn this on and take this photo, right?
6 A No, sir.
7 Q Officers did when they took your phone?
8 A Yes, sir.
9 Q So -- and have you subsequently been told that
10 they've downloaded information?
11 MR. RUGGEROLI: Judge, I'm going to object to
12 hearsay.
13 MR. BROOKS: I'll rephrase it.
14 THE COURT: Okay.
15 BY MR. BROOKS:
16 Q DeShawn, did you learn that officers got into the
17 phone?
18 A Yes, sir.
19 MR. RUGGEROLI: Judge, I'm going to object to
20 speculation and lack of personal knowledge.
21 THE COURT: Overruled. You can answer.
22 THE WITNESS: Yes, sir.
23 BY MR. BROOKS:
24 Q And you've been told certain things that were found?
25 A Yes.

1 Q And have you been shown certain things that were
2 found in the phone?
3 A Yes.
4 Q So I want to specifically go to this right here. Do
5 you see this app?
6 A Yes, sir.
7 Q What app is that?
8 A Messenger.
9 Q Is it Facebook Messenger?
10 A Yes.
11 Q Is that kind of a common thing that people use to
12 communicate?
13 A Yes.
14 Q Would you use it to communicate, similar to text?
15 A Yes.
16 Q Okay, so you and I could text on that, or text just
17 via our normal messaging?
18 A Yes.
19 Q And which would you use?
20 A What would I use?
21 Q Yeah.
22 A Can you please repeat --
23 Q Did you use both? Did you sometimes use Facebook
24 Messenger?
25 A I used both.

1 Q Did you sometimes text on Facebook Messenger someone
2 named Ray Logan?
3 A Yes.
4 Q And was Ray Logan one of those people in the videos
5 that we just showed, and the photos we just showed?
6 A Yes.
7 Q And was he the one in black that we were discussing?
8 A Yes.
9 Q The one that the -- the gun was in a pocket, not
10 out?
11 MR. SANFT: Your Honor --
12 THE WITNESS: Yes, sir.
13 MR. SANFT: -- I'm going to object to this line of
14 questioning as being leading at this point.
15 THE COURT: Yeah.
16 MR. BROOKS: Okay.
17 THE COURT: The objection's sustained.
18 BY MR. BROOKS:
19 Q Did you receive a message from Ray Logan that day?
20 A Yes.
21 Q I want to show you Exhibit 336. Do you recognize
22 that?
23 A Yes.
24 Q Is that a fair and accurate depiction of the
25 screenshot -- text conversation between you and Ray Logan --

1 A Yes.

2 Q -- on Tuesday, August 8th, 2017?

3 A Yes.

4 MR. BROOKS: Your Honor, at this point in time,

5 State moves for admission of Exhibit 336 and the contents

6 depicted on it.

7 THE COURT: Other than what's already been stated,

8 any further?

9 MR. RUGGEROLI: Judge, may we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MR. RUGGEROLI: I know you probably don't want a

13 speaking objection. I do think, based on my reading of the

14 case on point, I do need to specify, because I did it before

15 for the big overhead in opening.

16 THE COURT: Um-hum.

17 MR. RUGGEROLI: So I can make a record of this out

18 of the presence because I have preserved the issue, but I did

19 want to make sure that I make a record right now of the

20 specifics that I'm objecting to. It's not just a blanket

21 hearsay. So if you don't want the jury to hear it, I

22 understand, I'll do it at the break, but I do want to make a

23 record of the grounds again, even though I stated it

24 previously.

25 THE COURT: You think you need to do it again?

1 MR. RUGGEROLI: I do, because --
2 THE COURT: Okay, go ahead.
3 MR. RUGGEROLI: Okay.
4 THE COURT: Do it right here.
5 MR. RUGGEROLI: Thank you, and I'll be brief.
6 THE COURT: No, just do it right here.
7 MR. RUGGEROLI: Right. I'm objecting additionally
8 -- I didn't say this previously, but I don't think it's been
9 properly authenticated. I'm objecting for hearsay grounds.
10 I'm also objecting because it is a denial of the
11 confrontation --
12 THE COURT: I'm sorry, it's a --
13 MR. RUGGEROLI: Yes, authentication.
14 THE COURT: Okay.
15 MR. RUGGEROLI: Hearsay. It is a denial and
16 violation of the Confrontation Clause, and it is not a
17 statement made in the furtherance or in the course of a
18 conspiracy.
19 MR. PESCI: So, Judge, we've already addressed --
20 THE COURT: Uh-huh.
21 MR. PESCI: -- all those. I wanted to just
22 incorporate by reference our prior arguments, and then
23 specify, right now, I'm talking to the authenticity, because
24 that wasn't really as much fleshed out. There's no better
25 person to authenticate this very text. It's the actual owner

1 of the phone who's talking about an actual conversation that
2 he had. It's so different from all of the cases that talk
3 about concerns of this because it's the actual person.

4 MR. RUGGEROLI: Well, yeah, he received it, but he
5 can't verify who actually wrote that. It's from Ray Logan's
6 phone, but he can't say, I know for a fact Ray Logan wrote
7 that.

8 THE COURT: Well, I mean, you can --

9 MR. PESCI: He testified, in response, that he knows
10 Ray Logan and that --

11 MR. RUGGEROLI: But --

12 MR. PESCI: -- he got a text from Ray Logan.

13 THE COURT: Right.

14 MR. RUGGEROLI: Here's what I'm saying --

15 THE COURT: But if you want to make that argument --

16 MR. RUGGEROLI: He --

17 THE COURT: -- that it was just Ray Logan's phone --

18 MR. RUGGEROLI: Right.

19 THE COURT: -- I mean, that's fine.

20 MR. RUGGEROLI: No, no. I know.

21 THE COURT: I mean, obvious, that's where it came
22 from.

23 MR. RUGGEROLI: That's where it came from.

24 THE COURT: Yeah. But the objection's overruled,
25 and I'm going to allow it in.

1 (End of bench conference)

2 THE COURT: Okay. At this time, 336 is admitted.

3 (State's Exhibit 336 is admitted)

4 BY MR. BROOKS:

5 Q So do you see the picture that comes up next to the

6 messages?

7 A Yes.

8 Q And so, I have a question. We have two different

9 color -- colors on here. One's blue, and then what color is

10 this?

11 A Gray.

12 Q Which one is you, and which one is the other person?

13 A Other person's the gray, and I am the blue.

14 Q So next to the gray, when the gray sends a text,

15 there's a photo to the left of it?

16 A Yes.

17 Q What's that photo? What's that called?

18 A It's a Facebook photo.

19 Q Like a profile picture?

20 A Yes.

21 Q Okay. And did you know who that was?

22 A In the profile picture?

23 Q Yes.

24 A Yes.

25 Q And had you talked to that person before?

1 A Yes.

2 Q Would you recognize the photo if I showed it to you?

3 A Yes.

4 Q I want to show you State's Proposed Exhibit 149. Do
5 you recognize that?

6 A Yes.

7 Q And do you recognize the person depicted there?

8 A Yes.

9 MR. BROOKS: Your Honor, State moves for admission
10 of 149.

11 THE COURT: Any objection?

12 MR. SANFT: Just a matter of clarification with
13 regards to 149, Your Honor. There are two people in that
14 photograph.

15 THE COURT: Okay, why don't you clarify?

16 MR. BROOKS: Sure.

17 BY MR. BROOKS:

18 Q Did you know both of them, or just one of them?

19 A Just one of them.

20 Q Which one?

21 A The one in the back.

22 Q So when you say "back," can you give me a color?

23 A White shirt.

24 Q The white shirt?

25 MR. SANFT: That's fine, Your Honor.

1 MR. RUGGEROLI: I'd like to see it. Thank you.
2 MR. SANFT: No further objection, Your Honor.
3 MR. RUGGEROLI: No objection.
4 THE COURT: Okay, it's admitted.
5 (State's Exhibit 149 is admitted)
6 BY MR. BROOKS:
7 Q So when you say you knew the person in the white
8 shirt, is that the person who you're messaging with; is that
9 his profile picture?
10 A Yes.
11 Q Okay. I want to show you Exhibit 336. DeShawn, the
12 gray part, the text that you received, will you read it to me?
13 A "Ask DJ if he is trying to hit a house tonight; me,
14 and Sace, and him. Him, Sace already said yeah."
15 Q All right, so who's DJ?
16 A My brother.
17 Q And who's "you"?
18 A Ask -- what?
19 Q So when it says, "Me, you, Sace, and him," is "you"
20 you, DeShawn?
21 A Yes.
22 Q Okay. Who's Sace?
23 A Don't know his first name.
24 Q But did you know who Sace was?
25 A Yes.

1 Q Have we seen him in some of the photos today?
2 A Yes, sir.
3 Q Which one was he of the four in the photos?
4 A The one in the red.
5 Q Could you use a different descriptor for me?
6 A The one in the Huaraches.
7 Q The Huaraches?
8 A The red, yes.
9 Q Oh, and the hat? Okay.
10 A Yes. Red Huaraches, yes.
11 Q And then, you respond?
12 A Yes.
13 Q Does this person send you another text?
14 A Yes, sir.
15 Q What does it say?
16 A "Tell him -- tell him, call me."
17 Q And there's a phone number?
18 A Yes.
19 Q Who's "him"? Who's he -- who's this person
20 referring to?
21 A He's referring to my brother.
22 Q So Ray Logan is telling you to have DJ call him?
23 A Yes.
24 Q All right. What's -- what's "HML"?
25 A Hit my line.

1 THE COURT: I'm sorry, what?
2 THE WITNESS: Hit my line.
3 BY MR. BROOKS:
4 Q So, DeShawn, what's the timestamp on that?
5 A Tuesday at 11:40 A.M.
6 Q Was that the morning before you went to this house?
7 A Yes, sir. I -- as I believe, yes, sir.
8 Q So why did everybody get out of the car?
9 A Can you please repeat the question?
10 Q Why did everyone get out of the car and go near this
11 house?
12 A Everybody got out the car to go near the house as
13 for -- to hit the house; to rob the house.
14 Q And what was your job going to be?
15 A My job was supposed to be to go in the house and
16 tell everybody to get on the ground and everything.
17 Q And was there a reason that you were going to be the
18 person who went in?
19 A Because I was the youngest.
20 Q So, showing you Exhibit 133, did you look younger
21 than everyone?
22 A Yes.
23 Q So you were going to enter first?
24 A Yes, I was supposed to.
25 Q Did you have any weapons?

1 A No, sir.
2 Q Did the other three?
3 A Yes, sir.
4 Q Did you guys make it inside the house that night?
5 A No, sir.
6 Q So while you guys are standing near that wall, does
7 somebody pass by?
8 A Yes, sir.
9 Q Who was it, or -- well, tell me about it.
10 A He was jogging. He was just jogging around and --
11 Q And does he just run past you?
12 A Yes, sir.
13 Q Do you recall what he was wearing?
14 A A red shirt, black shorts.
15 Q So after he jogs by, do you guys come into contact
16 with someone else?
17 A Yes.
18 Q Did you -- did any of you guys know that person?
19 A No, sir.
20 Q What did you want from that person?
21 A What did who want?
22 Q The group of you.
23 A I don't know, sir.
24 Q Was he asked for something?
25 A Yes.

1 Q What was said to him?
2 A As I walk up, I hear, "Give me everything you got."
3 Q Do you remember which one of the three said it?
4 A One in the black sweater.
5 Q And is -- he's saying it to this other person?
6 A Yes.
7 Q Do you know -- can you describe the other person for
8 me at all?
9 A He had glasses, white shirt, and black shorts.
10 Q Was he a white kid, a black kid, a Hispanic kid? Do
11 you know?
12 A I don't know the race.
13 Q Okay. After you hear that phrase -- what was that
14 phrase?
15 A "Give me everything you got."
16 Q After you hear that, what happens?
17 A After I hear that, I hear, "Oh, yeah," then that's
18 when -- that's when the man got shot.
19 Q Do you know who shot first?
20 A Yes.
21 Q And who was that?
22 A One in black sweater.
23 Q The one in the black sweater. Do you know where he
24 shot that first shot?
25 A I can't recall where, but shot near the body.

1 Q And then, were there other shots fired?
2 A Yes.
3 Q Do you recall how many?
4 A Several more, but I don't recall the number of them.
5 Q Did some of those other shots hit that person?
6 A Yes.
7 Q Did the person stay standing or did he fall?
8 A He fell.
9 Q So when he falls, what happens next?
10 A Two of them ran off. I stood there in shock. My
11 brother tugged on me, said, "Let's go."
12 Q And where do you guys go?
13 A To the car.
14 Q Is it just you and your brother run to the car, or
15 do all four?
16 A It was two ran to the car, then after that, me and
17 my brother did.
18 Q And do you all get in the car?
19 A Yes.
20 Q Do you drive away? Where do you go?
21 A We drove away.
22 Q Where?
23 A To a convenience store.
24 Q And then where?
25 A Back to the apartments.

1 Q Whose apartments? Is it yours or someone else's?
2 A Someone else's.
3 Q Do you drop someone off? What do you do?
4 A Stay in the apartments for a minute. Then, the one
5 that was in -- that lived in the apartments, he went home.
6 Then --
7 Q Had you ever been inside those apartments before?
8 A Like inside actually, like inside of a house, or
9 inside of the apartments?
10 Q Yeah. Have you ever been inside that -- so, yeah,
11 let me ask that better. So the person that you drop off, have
12 you ever been inside his apartment?
13 A No, sir.
14 Q Have you been to the outside of his apartment?
15 A Yes, sir.
16 Q Was that apartment complex near this area, or was it
17 really, really far?
18 A It was near the area.
19 Q Would you recognize a photo if I showed you the
20 outside of it?
21 A Yes, sir.
22 MR. BROOKS: Permission to approach, Your Honor?
23 THE COURT: You may.
24 BY MR. BROOKS:
25 Q Showing you State's Proposed Exhibit 235, do you

1 recognize that?

2 A Yes, sir.

3 Q And is it the outside of the apartment that you're

4 discussing right now?

5 A Yes, sir.

6 MR. BROOKS: Your Honor, State moves for admission

7 of 235.

8 MR. SANFT: No objection, Your Honor.

9 MR. RUGGEROLI: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit 235 is admitted)

12 BY MR. BROOKS:

13 Q So, DeShawn, which one of the four of you gets

14 dropped off at this apartment complex?

15 A Do I have to say the name, or describe him?

16 Q Need you to say the name.

17 A Ray Logan.

18 Q And he gets out of the car?

19 A Yes, sir.

20 Q And this is 6647?

21 A Yes, sir.

22 Q Okay. How many are still left in the car now?

23 A Me, my brother, and the other guy that was with us.

24 Q Do you refer to the other guy by a different name

25 than his name?

1 A Yes.

2 Q What do you call him?

3 A Sace.

4 Q Why do you call him that?

5 A I have no clue. It was his -- his nickname.

6 Q It was his nickname? You know how we kind of talked

7 about Ray Logan? Is Ray Logan a nickname, or is that his

8 name?

9 A It's a nickname.

10 Q Did everyone call this person Sace, or did just some

11 people?

12 A Everyone that I knew that knew him, and that was my

13 brother, called him Sace.

14 Q As far as you know, did any of those four people

15 know that kid or anyone who lived at the house?

16 A The kid that was shot?

17 Q Yeah.

18 A No, not to my knowledge.

19 Q After he was shot, did anyone attempt to go inside

20 his house and take anything?

21 A No, sir.

22 Q Why not?

23 A I have no clue.

24 Q Do you guys just immediately run, or do you stay and

25 talk for a while?

1 A I stood there in shock, so we immediately ran right
2 after.
3 Q And DeShawn, you don't want to be here today, do
4 you?
5 A No, sir.
6 MR. BROOKS: Permission to approach, Your Honor?
7 THE COURT: You may.
8 BY MR. BROOKS:
9 Q Showing you State's Proposed Exhibit 337, do you
10 recognize that?
11 A Yes, sir.
12 Q Is that your name?
13 A Yes.
14 Q Is this a Guilty Plea Agreement, pursuant to Alford,
15 that you signed?
16 A Yes, sir.
17 Q And did you plead guilty to two offenses?
18 A Yes.
19 Q Could you read Count 1 for me?
20 A Count 1, conspiracy to commit robbery.
21 Q And Count 2?
22 A Attempted robbery with use of a deadly weapon.
23 MR. BROOKS: Your Honor, at this point in time,
24 State moves for admission of Proposed Exhibit 337.
25 THE COURT: Any objection?

1 MR. SANFT: No objection, Your Honor.
2 MR. RUGGEROLI: Judge, could I just review it,
3 please? Can we approach, Judge?
4 THE COURT: Sure.
5 (Bench conference)
6 MR. RUGGEROLI: I just want to make sure before I
7 stipulate that this doesn't change anything, and that nothing
8 needed to be redacted. I know you would have done it, but
9 this one --
10 THE COURT: No, it's in the Agreement to Testify.
11 MR. RUGGEROLI: -- everything is just fine; it's in
12 the Agreement to Testify. I just --
13 MR. PESCI: Which is -- which is attached.
14 MR. RUGGEROLI: Okay.
15 MR. PESCI: So there's the Guilty Plea Agreement.
16 MR. RUGGEROLI: Right.
17 MR. PESCI: At the end of that is the information
18 showing what it is he's pleading to.
19 MR. RUGGEROLI: Okay.
20 MR. PESCI: And here's the Agreement to Testify.
21 MR. RUGGEROLI: So does that have the portion
22 included --
23 MR. PESCI: No, it takes out -- pursuant to the case
24 law, I must take out the --
25 MR. RUGGEROLI: So we're going to file it

1 separately?

2 MR. PESCI: If you want to do that, you can do that.
3 I'm not doing that.

4 MR. RUGGEROLI: Okay, I thought we --

5 THE COURT: Okay, I understand, I understand. I
6 mean, the case law is as Mr. Pesci says, but I understood -- I
7 understood differently. So you want it submitted pursuant to
8 the statute in Sessions?

9 MR. PESCI: Right, because he hasn't crossed it yet.
10 He hasn't --

11 THE COURT: And you know what, that's a good point,
12 because Sessions says, you know, unless --

13 MR. RUGGEROLI: Um-hum.

14 THE COURT: -- on cross-examination, then it can
15 come in.

16 MR. RUGGEROLI: Okay.

17 THE COURT: So --

18 MR. RUGGEROLI: I expect that --

19 THE COURT: And this is probably the best way to do
20 it.

21 MR. RUGGEROLI: Okay, but I don't have access to the
22 document to generate it myself to have it included, but --

23 MR. PESCI: You have the original; we gave you the
24 original.

25 MR. RUGGEROLI: But it's not the --

1 THE COURT: Okay, well, here's the deal.
2 MR. RUGGEROLI: Uh-huh.
3 THE COURT: Once on cross-examination, if you attack
4 his credibility and truthfulness, then the State can move to
5 admit the Agreement to Testify --
6 MR. RUGGEROLI: Okay.
7 THE COURT: -- in its entirety --
8 MR. RUGGEROLI: I --
9 THE COURT: -- absent that --
10 MR. RUGGEROLI: But nobody -- the State's not going
11 to do that; is that right?
12 MR. PESCI: I'm not taking out that part.
13 MR. RUGGEROLI: So I misunderstood. I thought the
14 reason why you hadn't ruled is because Mr. Pesci was going to
15 have that taken out.
16 MR. PESCI: What I'm saying is there's no way on
17 God's green earth I can do that by the time you're going to
18 cross this kid.
19 THE COURT: Right.
20 MR. RUGGEROLI: So --
21 THE COURT: Yeah.
22 MR. RUGGEROLI: So the --
23 THE COURT: I mean, what will happen is, is that
24 you'll have to modify this at lunch or whatever, and then --
25 MR. RUGGEROLI: Okay, but --

1 THE COURT: -- bring it in.
2 MR. RUGGEROLI: I can't do that. I mean, I can --
3 MR. PESCI: Why can't you?
4 MR. RUGGEROLI: -- white it out. What?
5 MR. PESCI: Okay.
6 MR. RUGGEROLI: You're okay with me whitening it out,
7 but not you?
8 MR. PESCI: That's up to you guys.
9 MR. RUGGEROLI: See, I just had a different
10 understanding. I thought the State was working on it.
11 MR. PESCI: No, I said very clearly, I'm not going
12 to do that.
13 THE COURT: He said repeatedly he's not going to do
14 it.
15 MR. RUGGEROLI: Okay, well, then I object to this
16 because it's a mis -- I mean, I wanted --
17 THE COURT: Oh my gosh. Okay, here's the deal.
18 MR. RUGGEROLI: Yeah.
19 THE COURT: Let's do this. I mean, this is what the
20 statute and the case law says, that it absolutely has to be
21 like this.
22 MR. RUGGEROLI: Yeah, but we --
23 THE COURT: Okay?
24 MR. RUGGEROLI: -- went through a waiver on it.
25 THE COURT: I understand that.

1 MR. RUGGEROLI: You -- you canvassed --
2 THE COURT: I understand that. I'm going to admit
3 the Agreement to Testify --
4 MR. RUGGEROLI: Okay.
5 THE COURT: -- in its entirety.
6 MR. RUGGEROLI: Okay.
7 THE COURT: However, before I can do that, you've
8 got to fix -- somebody, I don't know who it's going to be, has
9 got to fix it.
10 MR. PESCI: And I said --
11 THE COURT: Okay?
12 MR. PESCI: -- specifically when this was discussed
13 that, you know, before it actually goes to the jury, we have
14 between now --
15 THE COURT: Yes.
16 MR. PESCI: -- and then to get a doctored up version
17 of it, but --
18 THE COURT: Yes.
19 MR. PESCI: And it's impossible for me, in court
20 now, to doctor this document in order to comply based on what
21 the defense does.
22 THE COURT: And that's why we asked you --
23 MR. RUGGEROLI: Yes.
24 THE COURT: -- you're not going to want to actually
25 show it, are you?

1 MR. RUGGEROLI: I'm not.
2 THE COURT: Okay.
3 MR. RUGGEROLI: I just am responding to -- you're
4 not going to do that in the future either though?
5 MR. PESCI: No, I'm not.
6 MR. RUGGEROLI: So --
7 THE COURT: Okay.
8 MR. RUGGEROLI: I mean, I just -- I didn't --
9 MR. PESCI: You can do it between now and --
10 MR. RUGGEROLI: I know.
11 MR. PESCI: -- when we give it to the jury.
12 MR. RUGGEROLI: I didn't think they were admitting
13 this, so -- because it doesn't include the complete portion.
14 Nobody's going to reference this anyway, correct? Like,
15 publish it?
16 THE COURT: I don't know.
17 MR. PESCI: State's not publishing it. It's an
18 exhibit that's going to go back to the jury.
19 THE COURT: This is going to go back to the jury.
20 MR. RUGGEROLI: Right.
21 THE COURT: Okay.
22 MR. RUGGEROLI: And that's why I -- that's why I'll
23 object, is I'm objecting because it does not contain the
24 portion that will be triggered after the cross-examination.
25 MR. PESCI: And you can cross him --

1 THE COURT: It's not triggered yet.
2 MR. RUGGEROLI: I know.
3 THE COURT: Okay.
4 MR. PESCI: I apologize.
5 MR. RUGGEROLI: Perhaps you don't --
6 THE COURT: So the objection is overruled. It's
7 going to be admitted.
8 MR. RUGGEROLI: Or -- okay.
9 THE COURT: Okay?
10 MR. RUGGEROLI: Or we could --
11 THE COURT: Clearly, that's going to come in if you
12 challenge it --
13 MR. RUGGEROLI: Okay.
14 THE COURT: -- on cross-examination.
15 MR. PESCI: And in the interim, you can take the
16 unredacted version I gave to you weeks, and weeks, and months
17 ago, and you can cross him with it without publishing it, and
18 you can reference it. You can show it to him and say, look
19 right here, it says X, Y, and Z.
20 THE COURT: Yes.
21 MR. RUGGEROLI: Yes.
22 MR. PESCI: You could even -- you could even put in
23 a door and cover up that spot with a piece of paper.
24 MR. RUGGEROLI: Okay. I'm just getting to the --
25 THE COURT: And then we'll make sure that the

1 exhibit gets admitted.

2 MR. RUGGEROLI: I am the one that has to do the one
3 that actually gets admitted?

4 MR. PESCI: Yes.

5 MR. RUGGEROLI: Okay.

6 MR. PESCI: The State of Nevada is not doing it
7 because it's your actions that would create the necessity to
8 do it.

9 MR. RUGGEROLI: Okay.

10 THE COURT: Okay? All right.

11 MR. RUGGEROLI: Thank you.

12 (End of bench conference)

13 THE COURT: Okay, it's admitted.

14 (State's Exhibit 337 is admitted)

15 MR. BROOKS: May I proceed?

16 THE COURT: Go ahead.

17 BY MR. BROOKS:

18 Q So this was your Guilty Plea Agreement?

19 A Yes, sir.

20 Q And with this Guilty Plea Agreement, did you also
21 enter into an Agreement to Testify here today?

22 A Yes, sir.

23 Q And that's your name?

24 A Yes.

25 THE CLERK: (Indiscernible). It's admitted?

1 THE COURT: It's already been admitted.
2 THE CLERK: Okay.
3 THE COURT: Um-hum.
4 MR. RUGGEROLI: Could we have the number of that,
5 please?
6 THE COURT: 337.
7 MR. RUGGEROLI: Thank you.
8 BY MR. BROOKS:
9 Q So going back to 3 -- Exhibit 323, DeShawn. We've
10 been talking about Ray Logan. Which one's Ray Logan? And
11 then, which one's DJ? Which one's you? What's the other
12 person's name?
13 A Sace.
14 Q Point him out for me. When you guys were in the
15 car, was there talk about guns and bullets?
16 A Before or after?
17 Q At any point.
18 A Yes, sir.
19 Q Okay. Now, specifically, before, was there talk
20 about the different guns and different bullets?
21 A Yes.
22 Q What was the discussion around bullets?
23 A What type of bullets they were.
24 Q Did people have different type caliber guns in the
25 car?

1 A I don't -- I don't -- I don't know.

2 Q Did anyone take bullets out of the magazine and show
3 each other?

4 A Yes.

5 Q Did anyone exchange bullets?

6 A Yes.

7 Q And was that what the discussion was?

8 A Yes.

9 Q DeShawn, I want to show you this photo. Are you
10 familiar with the gun box your brother had?

11 A Yes.

12 Q Showing you State's Exhibit 177. Do you recognize
13 that?

14 A Yes.

15 Q Were you familiar with some of the ammunition he
16 had?

17 A No, I wasn't.

18 Q Okay. DeShawn, I want to show you a map, State's
19 Exhibit 3. Is that the house that we were just talking about?

20 A Yes, sir.

21 Q From this night?

22 A Yes, sir.

23 Q Can you take the mouse for me? And the guy who was
24 shot, where was he standing or sitting? What was he doing?

25 A He was standing right here.

1 Q Could you make a mark for me? Let me -- sorry, hold
2 on. Let me do this. All right, now, make a mark. Just a
3 line. Okay. When he was shot, where were you standing?
4 Could you do a circle for me?

5 A I believe --

6 Q Okay. Where was DJ? Where was Sace? Where was Ray
7 Logan?

8 A In front of me.

9 Q So -- okay, so just -- and it's my fault because I
10 had you do that. So Ray Logan's a little bit in front of you?

11 A Yes, sir.

12 Q And is Ray Logan in between you and the victim -- or
13 the guy who's shot? I'm sorry.

14 A Was he between?

15 Q Yeah, so tell me -- because we can't see, tell me
16 where you, where the guy who was shot, and where Ray Logan is.

17 A The guy --

18 Q With words. Sorry, with words.

19 A The guy that was shot was in the middle.

20 Q In the middle?

21 A And Ray was like in front of him right here, and I
22 was behind him right here.

23 Q So when you say "in the middle," do you mean in the
24 middle of you and Ray Logan, or do you mean the middle of the
25 group?

1 A The middle of the group.
2 Q Okay. DeShawn, do you see Sace in court today?
3 A Yes.
4 Q Could you tell me an article of clothing he's
5 wearing?
6 A Can I -- he's wearing a blue shirt.
7 Q Which side of the room?
8 A Light blue shirt.
9 Q A what?
10 A A light blue shirt.
11 Q Which side of the room is he on.
12 A Right.
13 Q On your right?
14 A Yes, sir.
15 Q Could you use your hand and kind of point to that
16 area?
17 MR. BROOKS: Your Honor, let record -- let the
18 record reflect identification of the defendant, Davontae
19 Wheeler.
20 THE COURT: So reflected.
21 BY MR. BROOKS:
22 Q DeShawn, do you see Ray Logan here in court today?
23 A Yes.
24 Q What's he wearing?
25 A A dark blue shirt.

1 Q Could you point to his area?
2 MR. BROOKS: Your Honor, let the record reflect
3 identification of Defendant Raekwon Robertson.
4 THE COURT: So reflected.
5 BY MR. BROOKS:
6 Q Sorry, DeShawn, I need to clear this really quickly.
7 So -- or during this time frame, DeShawn, when you're all
8 right here, was the guy who was shot, was he touched ever?
9 A Yes.
10 Q By who?
11 A My brother and Sace.
12 Q How was he touched?
13 A Tugged on. Like, pulled.
14 Q And so you're like grabbing at your clothing?
15 A Yeah, like how he was grabbed.
16 Q So he was grabbed by -- when?
17 A When?
18 Q Yeah.
19 A He -- I just know he was grabbed, like tugged on
20 by --
21 Q So I guess my question is, had he been shot yet?
22 A No.
23 Q So how long in between when DJ and Sace are grabbing
24 him to when he's shot?
25 A Like -- like a couple seconds after.

1 Q And did your brother fire shots?
2 A That's what I was told.
3 Q By him?
4 A Yes.
5 MR. BROOKS: Your Honor, pass the witness.
6 THE COURT: Mr. Sanft, cross-examination?
7 MR. SANFT: Yes, Your Honor.
8 CROSS-EXAMINATION
9 BY MR. SANFT:
10 Q DeShawn, my name's Michael Sanft. I represent Mr.
11 Robertson that's stand -- or sitting here next to me to my
12 left, okay? How many times have you testified in court
13 outside of today?
14 A This is my first time.
15 Q First time you've been sitting up on a stand and
16 being asked questions --
17 A Yes, sir.
18 Q -- by the defense attorney, right?
19 A Yes.
20 Q Okay. Now, you have talked to people about what you
21 say happened on this particular night before, right? You've
22 talked to other people about it?
23 A Yes.
24 Q Meaning, you've talked to detectives?
25 A Yes.

1 Q And then, you've had conversations with the district
2 attorney's office, right?

3 A Yes.

4 Q You've been in court before on this, right?

5 A Yes.

6 Q But not once have you been asked questions by
7 myself, my investigator, somebody from my office, right?

8 A No.

9 Q Okay. I -- I don't want to -- I want to make sure
10 you're not confused. So is there any confusion at all with my
11 question? I want to make sure that we're clear.

12 A Yes, we're clear.

13 Q Now, when I -- when I say my investigator, my guess
14 is you've probably been talked to by other investigators --

15 A Yes.

16 Q -- with regards to this case, right?

17 A Yes, sir.

18 Q Okay. And you're currently in the juvenile
19 detention center, right?

20 A Yes, Summit View. Summit View.

21 Q Where's that?

22 A I don't know where it's located, but it's located in
23 Vegas.

24 Q Okay. And that's with other juveniles, right?

25 A Yes.

1 Q Okay. Now, you do understand that you've pled
2 guilty to a crime that requires you to be in adult prison,
3 right?
4 A Yes.
5 Q But as of right now, you're not in adult custody;
6 you're in juvenile custody --
7 A Yes.
8 Q -- fair? Okay. And you've never been in adult
9 custody before, right?
10 A Yes, I have.
11 Q Oh, you have?
12 A Yes, sir.
13 Q Okay. So you understand the difference then between
14 adult custody and juvenile custody?
15 A Yes, sir.
16 Q All right. Fair to say that being in juvenile
17 custody is a little easier than being in adult custody, right?
18 A Yes, sir.
19 Q Okay. Now, when you've had opportunity to talk
20 about what you said that you saw, the first time you did so
21 was with detectives; is that fair?
22 A Yes.
23 Q Okay. And you met with detectives after this event
24 had occurred, right?
25 A Yes.

1 Q Now, when you talked to the detectives, fair to say
2 that you didn't call detectives and say, hey, I need to talk
3 to you, I have some information; you didn't call police; you
4 didn't do any of those things, right?

5 A No, sir.

6 Q Okay. You were arrested, and then, while you were
7 in custody, you were asked questions by a detective?

8 A Yes, sir.

9 Q All right. Now, when you were talking to the
10 detectives, did you tell them that you were going to tell them
11 the truth?

12 A Yeah, I did.

13 Q Okay. And as you were talking with these
14 detectives, did you at any point ever tell the detectives,
15 hey, you know what, that's not the truth; here's the real
16 truth?

17 A No, I think -- yeah -- well, have I talked to them
18 and said, here's the truth? No, not really. Well, I don't
19 recall.

20 Q That's fine.

21 A I don't know if you're talking about before I have
22 got -- before I was in custody, or after I was in custody.

23 Q All right. And when I say in custody, what I'm
24 talking about specifically is, the day you get arrested --

25 A Um-hum.

1 Q -- sometime after, you're sitting in a room --
2 A Yes.
3 Q -- with two detectives?
4 A Um-hum.
5 Q Is that a yes?
6 THE COURT: Is that a yes?
7 THE WITNESS: Yes.
8 BY MR. SANFT:
9 Q Okay, and you're having conversations with those two
10 detectives, and you're answering questions they're asking you?
11 A Yes.
12 Q Okay. And while you're there, fair to say, once
13 again, you basically were telling them that this is what the
14 truth is, right?
15 A Yeah.
16 Q Okay. And as you're being asked these questions,
17 there's no one else in the room besides you and the two
18 detectives, right?
19 A No.
20 Q There's not a defense attorney; there's not your
21 parents?
22 A No, sir.
23 Q There's not your grandmother?
24 A No.
25 Q Okay. But there were people in the vicinity that

1 were your family, right, that were in the same building?
2 A Yes.
3 Q Your brother?
4 A Yes.
5 Q Okay. And that's not the brother that we're talking
6 about involved in this situation, right?
7 A No.
8 Q Another brother?
9 A Yes.
10 Q Okay. Now, during the time that you were talking to
11 the detectives, do you recall that you had a -- that you had
12 informed them that you went to the store?
13 A Yes.
14 Q And the store that we're talking about is the one
15 you saw the picture of earlier, right?
16 A Um-hum.
17 Q Is that a yes?
18 A I apologize. Yes.
19 Q That's okay, and I'll keep making sure that we're
20 clear.
21 A Yes, sir.
22 Q But you told the detectives that you -- when you
23 were there, that you had gone to the store, and then at some
24 point as you're in the store, you decide to leave, but you
25 travel to your girlfriend's house?

1 A Yes, it was a lie.

2 Q Okay, thank you for getting to the point. So when
3 you told detectives that you were going to Lamb and Bonanza to
4 get dropped off at your girlfriend's house, that was a lie?

5 A Yes.

6 Q Okay. You also told detectives at that point that
7 you didn't know, outside of who your brother was, who the
8 other two individuals were?

9 A Yes, that was a lie.

10 Q Okay, that was a lie, too?

11 A Yes.

12 Q Okay. And once again, you're telling these
13 detectives this because you just want to tell them what they
14 think -- you think they want to hear, right?

15 A Yes, I was scared.

16 Q Okay, and you were scared. Why were you scared?

17 A Because I had never been really sat down like that
18 and talked to. Like, I'd never been -- I -- I can't -- I'd
19 never been investigated before.

20 Q Investigated before, meaning no one's ever sat you
21 down and asked you questions like that before?

22 A No.

23 Q Okay, so that was your first time?

24 A Yes.

25 Q And when you were sat down, you were scared. Would

1 that be fair to say that you were intimidated? Would that be
2 a good way to describe that?

3 A Can you describe intimidated to me?

4 Q Meaning that you're scared --

5 A Yeah.

6 Q -- of somebody or something that's in front of you?

7 A Yeah.

8 Q Okay. Would that be a fair way -- I don't want to
9 put words in your mouth.

10 A Yes.

11 Q Okay. Now, the -- your -- when you're talking with
12 the detectives, at some point, you do mention the fact that
13 you know that you were present potentially during something
14 that happened?

15 A Yes.

16 Q And you tell detectives, hey, you know, actually,
17 the story's different; there was something that went down,
18 right?

19 A Yes.

20 Q Now, you tell detectives that you actually went and
21 picked up another individual; a fifth person. Do you recall
22 telling the detectives that?

23 A No, sir.

24 Q Okay. I have in front of me the -- a transcript of
25 your discussion. If I give you this transcript to have you

1 read it, would that help refresh your recollection as to what
2 you told detectives?

3 A Yes, sir.

4 Q Okay.

5 MR. SANFT: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. SANFT:

8 Q Okay, I'm going to show you this real quick here.
9 This is page 39. I just want you to read to yourself from
10 here, all the way down to the end.

11 A Yes, sir.

12 Q Now, I've shown you page 39 of your Voluntary
13 Statement. Did you have any problems reading that? Do you
14 understand what was -- what was shown to you?

15 A Yes.

16 Q Okay. And do you recall that in your conversation
17 with detectives on that night, that you had a discussion about
18 this person you had picked up, and you were wondering, "Why
19 are we picking up another person," right?

20 A Yeah.

21 Q "There's already four people in the car"; that's
22 what you told detectives, right?

23 A No. We -- at first, it was three, then we picked up
24 somebody else, and that makes it four.

25 Q Oh, okay. So before you -- or after you leave the

1 convenience store, there was three people in the car, and then
2 you pick up a fourth?

3 A Yes.

4 Q Okay. And that person wasn't in the convenience
5 store?

6 A Was that person? Not in that convenience store
7 right there.

8 Q I'm sorry, in --

9 A Not in the convenience store that's in the pictures
10 right there.

11 Q Right. And showing you once again -- I want to make
12 sure we're clear for the record and for the jury -- State's
13 Exhibit number 320. We're talking about this convenience
14 store, right?

15 A Oh, that convenience store. That's after; after we
16 picked up the fourth person.

17 Q Oh, okay. So when -- the discussion is between you
18 and the police officers. When you tell police officers -- you
19 say, "I'm like, why are you trying to pick somebody else up?
20 There's already four people in the car," you weren't saying
21 that? That's not correct?

22 A That's not -- well, that's correct what I said, but
23 I intentionally lied.

24 Q You intentionally lied?

25 A Yes, lied about what -- what happened.

1 Q Okay. Now, in addition to that, your -- your
2 statements, when you were talking to these detectives, you had
3 said that there was some discussion about -- and it's in this
4 particular page again -- about "Robbing some Mexican dude or
5 whatever." Do you recall telling detectives that?
6 A Yes.
7 Q Okay. And so then there was some discussion about
8 you pulling into the apartments on Tropicana and Jones to pick
9 up this dude. Is that the fifth dude that you lied about?
10 A Yes.
11 Q So you lied about the fact that you were trying to
12 rob a Mexican dude, and then you lied about the fact that
13 there was five people that were present, not four?
14 A Yes.
15 Q Okay. Now, at some point, as you're describing what
16 happened to the detectives, you said at some point that you
17 were there, you're present when it's happening, and then you
18 turn around, and you don't see anything else. Do you recall
19 telling detectives that?
20 A Yes.
21 Q And you told detectives, "I just heard, boom, boom,
22 boom, boom, boom," right?
23 A Yes.
24 Q Okay. Was that a lie?
25 A Yes.

1 Q Okay. In addition to that, you had said -- and I
2 want to make sure we're clear. Your brother is DeMario,
3 right?
4 A Yes.
5 Q Okay, and he was present when all this was
6 happening?
7 A Yes.
8 Q And throughout the time that you were spending with
9 the detectives, you don't ever really say he shoots a gun,
10 right?
11 A No, sir.
12 Q Okay.
13 A (Indiscernible).
14 Q In fact, today, you even tell the jury, you know, I
15 don't know. You said -- and I want to make sure that we're
16 clear about what you wrote down. You said something along the
17 lines of, well -- when the question was asked of you, "Did
18 your brother fire shots?" And you said something like,
19 "That's what I was told."
20 A Yes.
21 Q So you're telling this jury that, even now, even
22 though you said you watched everything, you don't know if your
23 brother fired shots; you were told he fired shots, correct?
24 A Yes.
25 Q Okay. And in addition to that, when you were going

1 through your statement with the detectives, you had said that
2 at some point -- the discussion as to when that was going to
3 happen. You ever tell them when that was going to happen, in
4 terms of --

5 A Tell them what was going to happen?

6 Q That the -- this idea that you guys were going to
7 hit a house. Did you ever tell detectives exactly when you
8 made that decision that this was going to happen this way?

9 A No.

10 Q And would it be fair to say that what you're trying
11 to tell detectives is, like, I was just along for the ride, I
12 don't really know what was going on, right?

13 A Yes.

14 Q Okay. Now, you get arrested, and you don't tell
15 police officers until you are speaking with them, right?

16 A Tell them what?

17 Q To -- what happened. You don't talk to anybody
18 about that until such time as you get arrested, right?

19 A Yes.

20 Q Now, at some time in the future, you have an
21 opportunity to potentially negotiate something other than what
22 you are charged in initially, right?

23 A Yes.

24 Q Meaning, in the very beginning, you were actually
25 charged with murder?

1 A Yes.

2 Q Attempt robbery with use of deadly weapon?

3 A Yes.

4 Q And conspiracy to commit robbery, right?

5 A Yes.

6 Q Okay. And you understand that, for instance -- and

7 you could -- if you need a break, you just let me know, okay?

8 A Yes.

9 Q But you understand that there is a certain amount of

10 penalty that goes along with each of those charges, right?

11 A Yes.

12 Q And you do understand that murder would have a

13 bigger penalty than conspiracy to commit robbery and robbery

14 with use or attempt robbery with use?

15 A Yes.

16 Q Okay, you were told that?

17 A Yes.

18 Q And you understand the difference?

19 A Yes.

20 Q Okay. So, in this case, you decided that you were

21 going to take a negotiation, right?

22 A Yes.

23 Q Did you speak to detectives again prior to taking a

24 negotiation in this case?

25 A Yes.

1 Q So you had another conversation with detectives
2 after this first conversation?
3 A Yes.
4 Q But before you entered into a plea?
5 A Yes.
6 Q Okay. And do you recall who the detectives were
7 that you spoke to?
8 A No, sir.
9 Q And where did that conversation take place?
10 A Where did that conversation take place?
11 Q Um-hum, yes.
12 A It was down here, down -- down in the jail.
13 Q Okay, so you're in custody in the jail?
14 A Yes.
15 Q In Clark County Detention?
16 A Yes, sir.
17 Q The adult jail?
18 A Yes, sir.
19 Q And you're having a conversation with a couple
20 detectives?
21 A Yes.
22 Q Or were they the same detectives as were in the
23 first time that you interviewed with detectives?
24 A They were the detectives that talked to my brother.
25 Q They were the same detectives that talked to your

1 brother?

2 A Yes.

3 Q But did they talk to you specifically as well?

4 A Yes.

5 Q Was your -- was your attorney present for that

6 conversation?

7 A Yes.

8 Q And by that point, did you already agree that, hey,

9 I'm going to negotiate my case, try to get something out of

10 it?

11 A No.

12 Q So let me make sure we're clear. Are you telling

13 the jury now that, I just wanted to have a conversation with

14 detectives without any type of agreement?

15 A I wanted to tell the truth.

16 Q I see, okay. And with regards to that conversation

17 -- and with regard to this conversation, do you recall if the

18 detectives took notes?

19 A Yes.

20 Q Did they at any point ever inform you that they had

21 audiotaped that conversation?

22 A When I first got arrested?

23 Q No, we're talking about the conversation that you

24 said that you wanted to come forward and tell the truth. That

25 conversation.

1 A No.

2 Q Okay. So they were there, they took notes, that was
3 it, as far as you know?

4 A I believe so.

5 Q Okay. Now, at the entry of plea, you had an
6 opportunity to review your Guilty Plea Agreement; that's the
7 same thing that you were shown earlier today?

8 A Yes.

9 Q You read it?

10 A Yes.

11 Q You understood it?

12 A A little bit, yes.

13 Q A little bit, meaning what?

14 A Like, I understand most of it.

15 Q Okay. Was your attorney there to help you
16 understand what that --

17 A Yes.

18 Q -- document was?

19 A Um-hum.

20 THE COURT: Is that a yes?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. SANFT:

24 Q And when you had an opportunity, you signed that
25 document, right?

1 A Yes.

2 Q Indicating that you agreed to the terms of that
3 agreement?

4 A Yes.

5 Q And then, you got in here, into a courtroom?

6 A Yes.

7 Q And in that courtroom, you were asked by the judge
8 specifically as to your understanding of what you signed,
9 right?

10 A Yes.

11 Q And what you are pleading guilty to?

12 A Yes.

13 Q Okay. Now, with regards to what you agreed that you
14 had pled guilty to in this case, you understood that, at that
15 point, you weren't even pleading to murder, right?

16 A Yes.

17 Q You were just pleading to conspiracy to commit
18 robbery, and attempt robbery with use of deadly weapon, right?

19 A Yes.

20 Q Okay. Once again, the murder's taken off the table?

21 A Yes.

22 Q Now, you're telling this jury, right, that because
23 you felt like, I needed to come forward and say -- get this
24 off my chest, that somehow in the process you are no longer
25 charged with the murder, right? That's what you're telling

1 the jury?

2 A Yes.

3 Q Okay. Now, at some point though, fair to say that
4 you did sign an Agreement to testify truthfully -- to testify
5 under oath and testify truthfully in this case, right?

6 A Yes.

7 Q Okay. Now, when you had an opportunity to be before
8 the judge, you didn't tell the judge the facts in this case as
9 to why you're pleading guilty to it, right?

10 A Did I? No.

11 Q You had somebody else do that? Somebody else told
12 the judge what they believed was going to be the evidence that
13 would prove you guilty of these crimes, right?

14 A Can you please repeat?

15 Q Meaning, as you're sitting here today, this is the
16 very first time you're talking about this case in front of
17 people, right?

18 A Yes.

19 Q When you entered in your plea, you didn't have to do
20 this, right?

21 A No.

22 Q You didn't have to say, hey, this is what I did, and
23 this is what went down; you had somebody else do that, right?

24 A Yes.

25 Q Somebody else did that, not you. You didn't tell

1 the judge, this is what I did, right?

2 A No, sir.

3 Q Okay. That was the State of Nevada who said, here's

4 what the evidence will show if we were to proceed to trial

5 against you, right?

6 A Yes.

7 Q Okay. Now, in addition to that, when you had --

8 when you had a moment, you had an opportunity to speak again

9 to the State prior to your testimony here today, right?

10 A No.

11 Q Did you ever speak to them after your entry of plea

12 in this case?

13 A Yes.

14 Q Okay. When was that?

15 A Say about a week before today.

16 Q Okay. About a week before today, right?

17 A Yes.

18 Q Okay. And you sat down with them, right?

19 A Yes.

20 Q I wasn't present?

21 A No.

22 Q Mr. Ruggeroli wasn't present?

23 A No.

24 Q Just you, your attorney?

25 A Yes.

1 Q I'm just guessing. Was that -- your attorney
2 present as well?
3 A Yes.
4 Q And then the State of Nevada, right?
5 A Yes.
6 Q They were able to ask you questions and talk to you
7 about this case, right?
8 A Yes.
9 Q Did they show you these photographs that we see here
10 today?
11 A Yes.
12 Q So you had an opportunity to review these
13 photographs before you testified before these people here
14 today, right?
15 A Yes.
16 Q Okay. Now, in addition to that, you -- when you
17 entered in your plea, were you sentenced at the time you
18 entered in your plea?
19 A Was I?
20 Q Yeah.
21 A No.
22 Q You entered in your plea -- and I want to make sure
23 we're clear here -- October 22nd, 2018?
24 A Yes.
25 Q That was a year and some months ago?

1 A Yes.

2 Q And you still have not been sentenced on this case,
3 right?

4 A No.

5 Q So the understanding is, after you testify here
6 today, you will be sentenced at some point in the future?

7 A Yes.

8 Q Right? Okay. Now, to be fair, in your Guilty Plea
9 Agreement, you understand that no one can promise you a
10 sentence, right?

11 A Yeah.

12 Q So there's no promise here as to what a judge can do
13 in terms of how you get sentenced on the case, right?

14 A Yes.

15 Q That would be up to the judge at the time of
16 sentencing?

17 A Yes.

18 Q Okay. And then your attorney would be able to talk
19 about you, right?

20 A Yes.

21 Q And the State of Nevada can talk about you as well,
22 right?

23 A Yes.

24 Q Okay. And finally, just to make sure, when you were
25 first arrested and you were scared, you told detectives you

1 didn't want to go to prison, right?

2 A Yes.

3 Q In fact, you told them that you had health problems,
4 and that's -- that you just didn't want to go to prison?

5 A Yes.

6 Q And as you sit here today, would it be fair, you
7 don't want to go to prison today, too, right?

8 A No, sir.

9 Q You don't -- and you don't voluntarily sign up to go
10 to prison, right?

11 A True. Yes, sir.

12 Q And as you sit here right now, technically, you're
13 not? You're not in an adult prison somewhere, are you?

14 A No.

15 Q Okay. That's something for the future, right?

16 A Yes.

17 MR. SANFT: No further questions, Your Honor.

18 THE COURT: Thank you. Mr. Ruggeroli?

19 MR. RUGGEROLI: Approach?

20 THE COURT: Yeah, okay.

21 MR. RUGGEROLI: For -- just for the Clerk.

22 THE COURT: Oh, okay.

23 MR. RUGGEROLI: Thank you, Judge. Can I have the
24 Court's indulgence for just one moment?

25 THE COURT: Of course.

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CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Mr. Robinson?

A Yes.

Q You spoke to the detectives the night -- or the day after the shooting?

A Yes.

Q And that was August 9th, 2017?

A Yes.

Q You've admitted to this jury that there were a number of things that you lied to them about?

A Yes.

Q When they met with you at that time, they asked you specifically to tell them about your brothers and your family; do you remember that?

A Yes.

Q You told them about Anthony Robinson. Who's that?

A My older brother.

Q And then you told them about DeMario Lofton-Robinson?

A Yes.

Q Who's that?

A My older brother.

Q You told them about -- is it DeAndra?

A Yes.

1 Q Who's that?
2 A My sister.
3 Q And you told them about John?
4 A Yes.
5 Q And who's John?
6 A My sister's boyfriend.
7 Q And his full name, is it Johnquiel Brown?
8 A Yes.
9 Q Those are the individuals during that interview on
10 August 9th, 2017 that you told them about, correct?
11 A Yes.
12 Q Now, you've had a number of years in school,
13 correct?
14 A Yes.
15 Q You have needed tutors; is that right?
16 A Yes.
17 Q You've had some difficulty with concentration and
18 attention?
19 A Yes.
20 Q You've been medicated. Are you on any medications
21 today?
22 A Yes.
23 Q Do those medications impair your ability to
24 understand, or do they enhance it?
25 A Both.

1 Q You have had an extensive history, not recently, but
2 of drug abuse?

3 A Yes.

4 Q Now, in this case, you were asked a number of
5 questions, and I do need to go back over some things, because
6 I only represent Mr. Wheeler, okay?

7 A Yes.

8 Q You were charged as an adult, correct?

9 A Yes.

10 Q And today, you were asked by Mr. Sanft, why did you
11 tell the detectives -- and this is after the first interview
12 in 2017, okay? So let me direct your attention.

13 A Yes.

14 Q By the way, you've looked around the court a couple
15 of times. Is -- people are present here for you?

16 A Yes.

17 Q Your lawyer?

18 A Yes.

19 Q So you had an interview after you were charged in
20 this related case, correct?

21 A Yes.

22 Q And you wanted to provide information that would
23 lead to a possible negotiation; is that correct?

24 A Yes.

25 Q Now, you said that you wanted to tell the truth?

1 A Yeah.

2 Q And now I'm talking about, not when you lied in 2017
3 to the detectives, but when you were trying to get a deal back
4 in 2018, okay?

5 A Okay.

6 Q So you gave them an explanation of what happened; is
7 that right?

8 A Yes.

9 Q And then, later, in 2018, you entered a plea,
10 correct?

11 A Yes.

12 Q Now, your desire to tell the truth, was it the same
13 when you entered that plea?

14 A Can you please tell me again?

15 Q When you entered your plea, you actually entered a
16 plea pursuant to the Alford decision?

17 A Yes.

18 Q You understand that that's not a regular type of a
19 plea, right?

20 A Yes.

21 Q And so, you had indicated that you wanted to tell
22 the detectives the truth, right?

23 A Yeah.

24 Q And that you wanted to probably tell the prosecutors
25 the truth, correct?

1 A Yes.
2 Q And that's prior to the plea, correct?
3 A Yes.
4 Q After you spoke to them, then you got an offer to
5 plead?
6 A Yes.
7 Q And when you took that plea, and you stood in court
8 to accept it, correct?
9 A Yes.
10 Q You did not admit that you were a part of any
11 conspiracy?
12 A True.
13 Q You did not admit that you were a part of any
14 robbery or attempt robbery?
15 A True.
16 Q So was that a lie?
17 A Was it a lie?
18 Q Yes.
19 A Yes.
20 Q Okay, so you also lied in court when you took your
21 plea?
22 A In -- back in 2018?
23 THE COURT: You know what, can I have the lawyers
24 approach a minute?
25 (Bench conference)

1 THE COURT: That is absolutely not true. I never
2 asked him, so you're -- he's -- you're telling him that he
3 lied to me --
4 MR. RUGGEROLI: Well --
5 THE COURT: -- but he didn't, because I never asked
6 him.
7 MR. RUGGEROLI: I'm talking about him saying he
8 wanted to tell the truth. So he didn't tell the truth when he
9 took the plea, because he didn't --
10 THE COURT: That's not -- that's -- that's not true.
11 MR. RUGGEROLI: But he didn't admit to --
12 THE COURT: Because I didn't ask him. You can ask
13 him --
14 MR. RUGGEROLI: Okay.
15 THE COURT: -- did you -- you know, "Did you admit
16 to it," but you can't say, "You lied to the Court," because --
17 MR. RUGGEROLI: No, no.
18 THE COURT: -- I never asked him.
19 MR. RUGGEROLI: I'm not saying he lied to the Court.
20 I'm saying he lied about wanting to tell the truth because he
21 didn't admit that he was part of a conspiracy.
22 MR. PESCI: Judge, the last question was, "Did you
23 lie in court?" His answer --
24 THE COURT: Yeah.
25 MR. PESCI: -- was yes. We're asking it to be

1 stricken; we're going to ask for you to give some sort of a
2 curative instruction to this jury.

3 THE COURT: That's just not true.

4 MR. RUGGEROLI: Okay, well, I --

5 THE COURT: It's just absolutely not true, and I
6 never asked him.

7 MR. RUGGEROLI: No, you didn't.

8 THE COURT: Because he entered an Alford plea.

9 MR. RUGGEROLI: Okay. I'm focused on him saying,
10 before he took the plea, that he wanted to tell the truth.
11 Today, he's saying that the truth is that he was a part of a
12 conspiracy. He didn't admit to that. So what I'm saying is,
13 the lie is that he didn't admit.

14 MR. PESCI: But it's not a lie.

15 THE COURT: That's not a lie.

16 MR. PESCI: It's not a lie.

17 THE COURT: That's not a lie. I allowed him to
18 enter into this Alford plea.

19 MR. RUGGEROLI: Yes.

20 THE COURT: So I'm not going to let you represent --

21 MR. RUGGEROLI: Okay.

22 THE COURT: -- to this jury that he lied to the
23 Court when he didn't.

24 MR. RUGGEROLI: Okay. Well, how about I withdraw
25 the question, and I will --

1 THE COURT: Well, I'm going to strike it --
2 MR. RUGGEROLI: Okay.
3 THE COURT: -- on the record.
4 MR. PESCI: The question and the -- the question and
5 the answer, right, Your Honor?
6 THE COURT: Yeah. I mean, if he -- he said to you
7 that he lied, and he didn't. I never asked him.
8 MR. RUGGEROLI: I understand that; I'm not
9 suggesting that you did though.
10 MR. PESCI: You just said --
11 MR. RUGGEROLI: No.
12 MR. PESCI: -- "Did you lie in court?"
13 THE COURT: I'm going to tell you, that's --
14 MR. RUGGEROLI: I --
15 THE COURT: You asked him --
16 MR. RUGGEROLI: That's not what --
17 THE COURT: -- "So you lied in court?"
18 MR. RUGGEROLI: Yeah, but that's not, "What the
19 judge said." So I'll -- you'll make the motion -- you'll
20 grant the --
21 THE COURT: What do you mean, that's not what the
22 judge said? I was the judge who took his plea.
23 MR. RUGGEROLI: I was asking him what he said
24 though; I didn't ask him if you were asking him.
25 THE COURT: Right, because you know what he did? He

1 answered my questions, and I never asked him that question. I
2 never said, "What did you do?"

3 MR. RUGGEROLI: I agree, but --

4 THE COURT: Okay, then I think that is --

5 MR. RUGGEROLI: Okay.

6 THE COURT: -- a misrepresentation right now,
7 because --

8 MR. RUGGEROLI: Okay, but what I'm saying --

9 THE COURT: -- I know he didn't lie during his plea.

10 MR. RUGGEROLI: Here's my point. You said that you
11 wanted to tell the truth when you talked to the detectives.

12 THE COURT: Okay.

13 MR. RUGGEROLI: Okay, and that would have been a
14 conspiracy, but then you didn't admit that you --

15 THE COURT: Nor was he required to.

16 MR. RUGGEROLI: Yes, but I didn't say, "The judge
17 asked you." So if you want to strike it, that's fine. My
18 point is, I -- I can clarify that, "You didn't admit that you
19 were part of a conspiracy."

20 THE COURT: Okay. You can ask him -- I just want
21 the record to reflect that Mr. Evans is present at the bench
22 now --

23 MR. RUGGEROLI: Okay.

24 THE COURT: -- Mr. Robinson's attorney. I mean, you
25 can ask him, were you required to admit; did you have to --

1 MR. RUGGEROLI: Okay.

2 THE COURT: -- admit to the Court? But I mean --

3 and again, we're talking to a 17-year-old that was 14 at the

4 time, who has obviously some learning issues.

5 MR. RUGGEROLI: Yes.

6 MR. PESCI: So, Judge, I would ask -- and I would

7 have to confer with Mr. Evans, obviously, who doesn't have to

8 commit to anything -- is that, potentially, he's going to need

9 to testify and explain what an Alford plea is, because right

10 now --

11 MR. RUGGEROLI: Who's going to need to testify?

12 MR. PESCI: Mr. Evans, to be able to explain --

13 MR. RUGGEROLI: Well, then he shouldn't be here.

14 MR. EVANS: I apologize --

15 MR. PESCI: There was misrepresentations put in the

16 record.

17 MR. EVANS: -- to everybody here. I did not want to

18 come up and get involved in it. I'm concerned now. You know,

19 I'm still representing the kid. He hasn't been sentenced yet.

20 THE COURT: I understand, and we have him on the

21 record --

22 MR. EVANS: Well, I don't know --

23 THE COURT RECORDER: Judge, can he get closer?

24 THE COURT: Yeah, you're going to have to get

25 closer. And will you state your name, too, so the Court

1 Recorder --

2 MR. EVANS: I'm sorry. JD Evans, Bar number 2267,
3 representing DeShawn Robinson.

4 THE COURT: I'm going to strike the question and his
5 -- and his answer to the last question.

6 MR. RUGGEROLI: Okay.

7 MR. EVANS: Okay.

8 THE COURT: Okay? I'll allow you to rephrase it.

9 MR. RUGGEROLI: Okay.

10 THE COURT: You can ask him, you know, was he
11 required to admit it; was he required to do this?

12 MR. RUGGEROLI: Um-hum. Okay.

13 THE COURT: Okay? But --

14 MR. EVANS: And if any of you guys, I don't care,
15 want me to go outside and talk to him about the Alford plea
16 and all that -- I did not discuss all that stuff with him.
17 You see what I'm saying? I did not (indiscernible). I'm
18 offering anyone here, if the Judge feels it's appropriate, I
19 will take Mr. Robinson outside and go over Alford plea, and
20 what he entered his plea into, and everything else. I did not
21 prep him along those lines, but I'm offering it, if you want
22 it, while -- I don't even --

23 THE COURT: I don't think we need to do that at this
24 point.

25 MR. EVANS: Okay.

1 MR. PESCI: And Judge, just for the record, I think
2 he's referring to for today's testimony, right? He obviously
3 went through that when he did the plea, but it's like --

4 THE COURT: Of course.

5 MR. PESCI: It was -- it was not at the time of him
6 getting ready to testify, because there was no understanding
7 that he was going to be asked the legal consequences or --

8 THE COURT: Right, and that's my --

9 MR. EVANS: Correct.

10 MR. PESCI: -- intricacies of an Alford, because
11 there's --

12 THE COURT: Yeah, and I would prefer that you not do
13 that because I don't think it's appropriate. I don't think
14 it's appropriate to ask anybody that unless they're a lawyer.

15 MR. RUGGEROLI: Okay. I'll --

16 THE COURT: Yeah. The intricacies of an Alford
17 decision, and the difference between an Alford decision and a
18 Guilty Plea Agreement --

19 MR. RUGGEROLI: The main thing that I'm concerned --

20 THE COURT: -- that's not known to regular people.

21 MR. RUGGEROLI: -- he's not admitting that he was a
22 part of a conspiracy.

23 THE COURT: You can say --

24 MR. RUGGEROLI: Yeah.

25 THE COURT: You can ask him if he entered into a

1 plea when he was not required to admit. That's fine.

2 MR. RUGGEROLI: Okay.

3 (End of bench conference)

4 THE COURT: Okay. Ladies and gentlemen of the jury,
5 that last question and response from the witness is stricken
6 from the record, and you are not to consider it for any
7 purpose. You may proceed.

8 MR. RUGGEROLI: Thank you, Your Honor.

9 BY MR. RUGGEROLI:

10 Q Mr. Robinson, you were asked some questions; you
11 were not asked specifically other questions when you entered
12 the plea, correct?

13 A Yes.

14 MR. RUGGEROLI: And Judge, I would just like to make
15 a record that there is an actual transcript of that colloquy,
16 the canvass between the Court and Mr. Robinson, which has been
17 admitted as Defense Exhibit A1, so that's actually in
18 evidence. And so I'd like to move a little bit beyond,
19 because it is provided for --

20 THE COURT: Okay.

21 MR. RUGGEROLI: -- and the actual questions and
22 answers are within this exhibit.

23 MR. PESCI: I'm really sorry to interrupt. I
24 apologize, Mr. Ruggeroli. Has it actually been moved into
25 admission?

1 MR. RUGGEROLI: It was.
2 THE CLERK: She did admit it earlier.
3 MR. PESCI: Thank you.
4 BY MR. RUGGEROLI:
5 Q Today, you're saying to this jury that you were a
6 part of a conspiracy; is that right, or am I not understanding
7 that?
8 A I'm not understanding. I'm -- I'm confused.
9 Q Okay. Are you telling the jury that you showed up
10 at the Dewey address and didn't do anything wrong; you didn't
11 know why you were there?
12 A Yes.
13 Q All right. So you say that you want to tell the
14 truth, correct?
15 A Yeah.
16 Q And by giving certain information, you were able to
17 obtain an agreement where your charges were reduced? You were
18 asked that by Mr. Sanft; remember that?
19 A Yes.
20 Q You are obligated to testify in order to get the
21 benefit of that agreement, correct?
22 A Yes.
23 Q And you haven't been sentenced yet?
24 A True.
25 Q And so what you say today could have an impact on

1 what happens in the future with your sentencing?

2 A True.

3 Q Okay. Now, your brother DJ owns a .45 caliber --

4 owned a .45 caliber firearm on August 8th, August 9th, 2017?

5 A Yes.

6 Q Now, are you telling the jury that you've never

7 handled that firearm?

8 A Yes.

9 Q You have admitted today that you were actually

10 present at the scene of a murder?

11 A Yes, sir.

12 Q How does this jury know that you didn't pull the

13 trigger?

14 A How does the jury know I didn't pull the trigger?

15 Q Yes.

16 A I don't -- I don't know.

17 Q When you were arrested, did they put bags over your

18 hands?

19 A Was I arrested when I -- yes.

20 Q They put bags over your hands?

21 A No, not actual bags.

22 Q Okay. I'm asking you, when you were arrested, did

23 they put actual bags over your hands?

24 A I'm -- I'm confused.

25 Q It's okay.

1 A I'm confused.
2 Q Let's go back to August 9th, early morning hours.
3 A Yes.
4 Q You and some other individuals --
5 A Yes.
6 Q -- go to a location in a neighborhood, correct?
7 A Yes, sir.
8 Q You say that you parked the car, yes?
9 A Yes.
10 Q Get out of the car, yes?
11 A Yes.
12 Q You come up on an individual, correct?
13 A Yes.
14 Q You're admitting that you're right there?
15 A Yes.
16 Q And that individual gets shot and killed, correct?
17 A Yes.
18 Q What I asked you was, how do we know that you didn't
19 shoot that individual?
20 A Because I'm telling you I didn't do it.
21 Q Okay. You've admitted to lying a number of times,
22 including --
23 A Yes.
24 Q -- including to the detectives the very next day?
25 A Yes.

1 Q And the very next day, what I'm asking you is, the
2 detectives had a lot of questions about the convenience store
3 and about -- I'm going to just show you 320, really focusing
4 on the individual in the back. They had a lot of questions
5 about the individual that was open carry, correct?

6 A Yes.

7 Q But your brother DJ had a .45?

8 A Yes.

9 Q And you were right there at the time of the killing,
10 yes?

11 A Yes.

12 Q And what I'm saying is, did the detectives the very
13 next day bag up your hands to do any testing?

14 A No.

15 Q Okay. Did you have any testing on your hands?

16 A I believe so, yes.

17 Q Are you sure, or you just don't know?

18 A They took my fingerprints.

19 Q Fingerprints? Okay, other than that though?

20 A No.

21 Q All right. Now, you're saying that you just want to
22 be truthful?

23 A Yes.

24 Q And the jury basically has to take you at your word,
25 correct?

1 A I don't -- I don't know.

2 Q Well, you didn't have a video; you didn't videotape
3 this incident, correct?

4 A True.

5 Q And so anything in terms of physical evidence of
6 what you're saying actually happened, you don't have any
7 physical evidence, correct?

8 A True.

9 Q No photographs, correct?

10 A Yes.

11 Q You didn't video record it on your phone?

12 A No.

13 Q Okay, so we have your word, right?

14 A I'm confused, sir.

15 Q Okay. You do remember an individual that bought a
16 cigarillo at the Speedy Mart (sic)?

17 A Yes.

18 Q All right. He went in and he actually bought it.
19 Was that for you?

20 A Yeah, it was for people that was in the car, yes.

21 Q All right, but you guys couldn't buy it, and so you
22 had to get another guy to go in the store to buy it?

23 A Yes.

24 Q And that actually happened?

25 A Yes.

1 Q He's an African American?

2 A Yes.

3 Q All right. Now, you've gone back and forth a number
4 of times as to when you were dropped off and picked up that
5 night, correct?

6 A Yes.

7 Q Mr. Sanft specifically asked you about a portion of
8 your statement to the police the next day about a fifth
9 person. Remember that questioning?

10 A Yes.

11 Q Now, do you recall that right before that
12 questioning, the detectives had got to a point where they
13 basically told you, "This is the moment of truth"?

14 MR. PESCI: Judge, I apologize.

15 THE WITNESS: Yes.

16 MR. PESCI: I'd ask for a page for a reference to
17 the statement.

18 MR. RUGGEROLI: Oh, I'm sorry. 38 of his statement.

19 MR. PESCI: Okay, thank you.

20 MR. RUGGEROLI: All right.

21 BY MR. RUGGEROLI:

22 Q So the detectives got to the point where they said,
23 "Now is the moment of truth"?

24 A Yes.

25 Q All right. And then -- and now I'm on page 39. You

1 say, "Here's the truth"?
2 A Yes.
3 Q "Here's what happened. They was talking about
4 robbing a Mexican dude." Remember that?
5 A Yeah.
6 Q And then you talk about, "We pulled up right on the
7 apartments of Tropicana and Jones," correct?
8 A Yeah.
9 Q Now, that's where Ray would have been, right?
10 A Yeah.
11 Q Then you go on to say -- and I'm skipping ahead --
12 "He was picking up somebody else," and this is what Mr. Sanft
13 specifically read to you. You said, "I'm like," quote, "why
14 are you trying to pick up somebody else? There's already four
15 people in the car." Remember that?
16 A Yeah.
17 Q Correct, right?
18 A Lie.
19 Q Lie?
20 A I lied.
21 Q Why would you lie?
22 A Because I was scared.
23 Q No, but how does that help you in any way?
24 A I don't -- that's a good question, but I was scared.
25 Q Right. Well, maybe you were trying to protect

1 somebody.

2 A Protect who?

3 Q Who's Adrian?

4 A That's my older brother.

5 Q You didn't tell these detectives that you had an

6 older brother named Adrian when they questioned you.

7 A Because they didn't ask about him; they asked for

8 the people who was there in that -- in the investigation.

9 Q That's what you thought?

10 A That's -- yeah.

11 Q You don't remember them specifically asking you,

12 "Tell me about your brothers"?

13 A Yeah, I did. I thought he was talking about the

14 ones that was there.

15 Q Let me slow you down.

16 MR. PESCI: Judge, I apologize for the interruption.

17 I'd ask that the witness be able to finish before the next

18 question comes.

19 THE COURT: Right. And if at any time you don't

20 understand the question, just let me know, and I'll have the

21 attorney rephrase it, okay?

22 THE WITNESS: Yes, ma'am.

23 MR. RUGGEROLI: Okay.

24 BY MR. RUGGEROLI:

25 Q The next day, the detectives questioned you,

1 remember?

2 A Yes.

3 Q I'm sorry, I don't want to interrupt you. They

4 asked you specifically, "Tell me about your brothers,"

5 correct?

6 A Yes.

7 Q Now, today you talked about Adrian?

8 A Actually, no, I didn't. I talked about Anthony.

9 Q I wrote down Adrian.

10 MR. RUGGEROLI: Let me just have a moment, Your

11 Honor. Okay.

12 BY MR. RUGGEROLI:

13 Q You were asked on direct examination of being in

14 handcuffs; do you remember that?

15 A Yes.

16 Q You were 14-years-old in 2017; remember that?

17 A Yes.

18 Q You have a brother named DeMario Lofton-Robinson;

19 remember that?

20 A Yes.

21 Q You were asked about your family, and DeMario goes

22 by DJ; do you remember that?

23 A Yes.

24 Q You indicated that you lived with grandma?

25 A Yes.

1 Q Then you brought up Adrian?
2 A Brought up Anthony.
3 Q Okay. Well, we'll leave it to the jury, but my
4 notes were Adrian. So you did not say Adrian today?
5 A I apologize, I must have got mixed up. My brother
6 Adrian does not live with my grandma.
7 Q Okay, but you have a brother named Adrian?
8 A Yes, sir.
9 Q And August 9th, 2017, detectives asked you about
10 your brothers --
11 A Yes.
12 Q -- brothers, plural, correct? Yes?
13 A Yes.
14 Q And you didn't tell them about Adrian?
15 A No, sir.
16 Q If you have four people in the car, and you pick up
17 one more, that's five, correct?
18 A Yes.
19 MR. RUGGEROLI: I have nothing further.
20 THE COURT: Any redirect?
21 MR. BROOKS: No, Your Honor.
22 THE COURT: Okay, so we're done with this witness?
23 MR. BROOKS: Yes, Your Honor.
24 THE COURT: Okay. We're going to take a recess.
25 During this recess, you're admonished not to talk or

1 converse amongst yourselves or with anyone else on any subject
2 connected with this trial, or read, watch, or listen to any
3 report of or commentary on the trial, or any person connected
4 with this trial, by any medium of information, including,
5 without limitation, newspapers, television, the internet, or
6 radio, or form or express any opinion on any subject connected
7 with this trial until the case is finally submitted to you.
8 We'll be in recess until 1:45. Thank you.
9 MR. PESCI: Judge --
10 THE MARSHAL: Thank you. All rise for the exiting
11 jury, please. Jurors.
12 MR. PESCI: Before they leave --
13 THE COURT: Before they leave?
14 MR. PESCI: We pushed the witnesses back until 2:00
15 because of the length of this.
16 THE COURT: Okay, 2:00 o'clock?
17 MR. PESCI: Yes, I'm sorry.
18 THE COURT: Okay, 2:00 o'clock. Sorry, 2:00
19 o'clock.
20 THE MARSHAL: Thank you. Sorry.
21 THE COURT: That's okay, thanks. We're in recess
22 until 2:00.
23 (Outside the presence of the jurors at 12:38 p.m.)
24 THE COURT: Okay, and Mr. Robinson can be excused?
25 Yes?

1 MR. BROOKS: Yes, Your Honor. Yes.

2 THE COURT: Okay, Mr. Robinson can be excused. And
3 the record will reflect that the hearing is taking place
4 outside the presence of the jury panel.

5 I just want to make sure that we're clear on the
6 Guilty Plea Agreement and the Agreement to Testify. The
7 Sessions case indicates that truthfulness conditions have to
8 be taken out of the Plea Agreements. They're not admissible
9 to rebut prior impeachment, so the State of Nevada could not
10 introduce those truthfulness provisions.

11 Why don't we wait until they get Mr. Robinson out.
12 Thank you, everybody. Thank you. Thank you, Mr. Robinson.

13 THE WITNESS: You're welcome.

14 MR. EVANS: Thank you, Judge.

15 THE COURT: Thank you.

16 MR. EVANS: I'll see you later.

17 THE COURT: Thanks. Okay, because there seemed to
18 be some kind of confusion at the bench. So the Guilty Plea --
19 what exhibit is it? The Guilty Plea Agreement and the --

20 MR. BROOKS: 337, if I remember.

21 THE COURT: That's what I thought. Was admitted
22 pursuant to the Sessions decision, correct?

23 MR. PESCI: Yes, Your Honor. The State --

24 THE COURT: Okay. The State is not permitted to
25 admit their Guilty Plea Agreement with those truthfulness

1 provisions in there in anticipation of impeachment. They
2 can't come up unless there's some type of impeachment, so
3 that's why 337 was admitted as-is. And I'm assuming you felt
4 like you were able to question him, you know, about any
5 ability to tell the truth or what that meant?

6 MR. RUGGEROLI: Yes. I believe that Sessions and
7 the statute are really designed not to protect the State, but
8 to protect a defendant. And so when you --

9 THE COURT: I agree.

10 MR. RUGGEROLI: -- have a defendant that's willing
11 to waive that provision for strategic purposes -- and in
12 particular, Judge, in the portion that was taken out, at
13 approximately line 22 on page 2, it would have read, "It is
14 further understood that this entire agreement shall become
15 null and void, and DeShawn Robinson shall lose the benefits of
16 this agreement for any deviation from the truth; for failure
17 to answer any question that is the subject matter of this
18 investigation." It does go on for a while, so I'll stop the
19 sentence there.

20 My point is that, strategically, Mr. Wheeler had
21 represented to Your Honor that he would waive any of his
22 protections pursuant to the statute and case law that would
23 protect him by taking that provision out, so that we could
24 have it, not just for cross-examination, but in an exhibit
25 that is actually the exhibit that is the original that would

1 have the authentic signatures.

2 And so my request is that we have the ability to
3 have another exhibit because of the waiver. And I chose to
4 move on because, you know, during the course of a
5 cross-examination, there's a lot of uncertainty, and you don't
6 know where certain things are going to go.

7 THE COURT: Sure.

8 MR. RUGGEROLI: But I specifically referenced the
9 notion of, "You're obligated," and that's taken from the --

10 THE COURT: Of course.

11 MR. RUGGEROLI: -- portion that's been withdrawn.
12 "You're obligated, and things are kind of in limbo since you
13 haven't been sentenced."

14 THE COURT: Um-hum.

15 MR. RUGGEROLI: The State -- and I think this is why
16 we have this provision and it's taken out initially. The
17 notion of truth, it would bolster potentially the witness's
18 credibility by --

19 THE COURT: Vouching.

20 MR. RUGGEROLI: Exactly. So, by waiving, I don't
21 think we should be harmed by not letting the jury know,
22 because we're saying, hey, that's okay. They can know about
23 the notion of truth because we think it's more important that
24 they're advised that he might lose the benefit if he doesn't
25 testify, quote, unquote, "truthfully." And then, at closing,

1 we can argue about what the truth is, because our position is
2 the truth is what got him the deal; not what actually happened
3 that night. So I would ask --

4 THE COURT: Okay, so --

5 MR. RUGGEROLI: I would ask --

6 THE COURT: So you want another exhibit --

7 MR. RUGGEROLI: I do.

8 THE COURT: -- that has those -- that has the
9 truthfulness provisions in it?

10 MR. RUGGEROLI: Yes, and then I -- my understanding
11 is I would need to redact the portion that applies to Mr.
12 Robertson's other charge. And so, if you decide to do this,
13 if I could just respectfully request to get a file-stamped
14 copy, and I will scan it, and I will get on Adobe, and I will
15 remove -- I'm not going to make it look perfect, but it's
16 going to have them removed, and there won't be any mention of
17 the other case.

18 MR. PESCI: So let's just play this out, Judge.
19 Let's assume that that's admitted, right? And I agree with
20 everything he's just said, right?

21 THE COURT: Uh-huh.

22 MR. PESCI: Because the whole concept is to avoid
23 witness vouching. But if he's going to say that he lied, if
24 this portion comes in, I'm going to say, I don't think he did,
25 and I'm not moving to withdraw the guilty plea, so you can

1 know, ladies and gentlemen of the jury, that I think he was
2 truthful. That's the implication, right? That's the concern.
3 But that's going to be completely relevant -- if he puts this
4 language in and he says, "Oh, he wasn't truthful," what I can
5 do under that portion is say, "I think he was, because I'm not
6 moving to withdraw his plea."

7 MR. RUGGEROLI: Well --

8 MR. PESCI: That's -- that's the problem. That's
9 where we're going to go with this. I'm telling you now,
10 that's how I'm going to argue this.

11 MR. RUGGEROLI: They can't withdraw the plea in this
12 context. They can't withdraw it at closing argument. If they
13 were going to do that, they could do it in the future. That
14 won't be evidence. Of course the State thinks he was
15 truthful, because they're saying that there was a conspiracy,
16 and they're saying that DJ shot from the .45, and they're
17 alleging that Mr. Robertson shot with the .22, and that there
18 was this conspiracy.

19 They had -- I think it's Exhibit 336, what they
20 claim establishes a conspiracy, so they're already going to
21 say that it's true. I'm saying that it's not, and I'm saying
22 that if he didn't testify to what he kind of testified to
23 today, that he may lose in a separate proceeding, and we can't
24 have evidence of what's going to happen in the future because
25 we don't know.

1 MR. PESCI: And what I'm saying is, what that
2 provision provides is an outlet for the State of Nevada to
3 exit the negotiation. If in fact DeShawn Robinson told us in
4 a proffer X, and then came to court and said Y, I could back
5 out. So under this scenario, I'm going to tell this jury, he
6 said X before, he said X again, and he said X to you now.
7 That could be perceived as witness vouching, that he was
8 consistent the whole way through. I intend to follow through
9 this open door in that fashion.

10 MR. RUGGEROLI: Judge, if Mr. Pesci is going to
11 testify in that manner, then he's making himself a witness.
12 We have no documentation on what was said during that hearing.
13 If there's a detective that would be called to testify, that's
14 a different story, but the evidence that he's alluding to on
15 closing would have to be what's brought out during the trial
16 and that's admissible. If they're going to have one of the
17 detectives --

18 THE COURT: Okay, so let me ask you this. Why do
19 you need to have the Agreement in that has the truthfulness
20 provisions in it?

21 MR. RUGGEROLI: The --

22 THE COURT: I mean, you can argue to this jury that
23 the testimony he presented today is going to be the basis of
24 what happens to him in the future, okay? And you can argue
25 that if he wasn't truthful, he could lose the benefit of his

1 bargain. I'm not -- I'm trying to figure out why you need to
2 admit that in.

3 MR. SANFT: Your Honor, I guess the issue we have
4 with that question from the Court is that that may delve into
5 issues of strategy. We can explain to the Court, but I think
6 we would like to ask for the State to be not present if we're
7 disclosing to you what the strategy would be and the reason
8 why Mr. Ruggeroli believes this is important.

9 MR. PESCI: While I respect that, I really do, I
10 can't respond to it if it's not done until closings by
11 reopening the case, Judge. And so that's the quandary that
12 we're in.

13 And just to go back a moment ago, what he said about
14 being a witness, I cannot put the detective on the stand who
15 was at the proffer because he was not in court to witness this
16 witness's testimony. So Detective Dosch or Jaeger wasn't here
17 today to be able to ascertain whether he was consistent. I
18 was at the proffer, I was at the second time we talked to him
19 just a week ago, and I was here in court.

20 THE COURT: Yeah, but you cannot testify or make
21 representations in front of this jury about stuff that was not
22 in front of this jury.

23 MR. PESCI: Agreed.

24 THE COURT: His proffer was not evidence.

25 MR. PESCI: That's the problem with this. I don't

1 disagree that he can get this in. It's his strategic decision
2 to open this up and do that. I agree with that. But if he's
3 going to stand up in closing and tell this jury that he lied,
4 the evidence is to the contrary, based on my experience.

5 THE COURT: Well, I'm not going to let him say he's
6 a liar. He can talk about the credibility of a witness, but
7 I'm not going to let either side say someone is a liar. So
8 both sides can talk about the credibility of a witness, but
9 neither side can call a witness a liar.

10 You can talk about inconsistencies, you can talk
11 about whether they should be believed or not, but I'm not
12 going to allow either side to get up and say, he told the
13 truth or he lied. You know, you can talk about their
14 credibility and about the evidence, but I think both sides
15 know you can't do that; you can't refer to witnesses as liars.

16 MR. RUGGEROLI: What we have right now though is
17 Exhibit 336. Because of the waiver and our desire to get into
18 the --

19 THE CLERK: (Indiscernible).

20 THE COURT: What's 336?

21 MR. RUGGEROLI: Oh, is it --

22 MR. SANFT: 337.

23 MR. RUGGEROLI: 337 is the --

24 THE COURT: Okay, the Guilty Plea.

25 MR. SANFT: The Plea.

1 MR. RUGGEROLI: The Plea.
2 MR. SANFT: Yeah.
3 THE COURT: Right.
4 MR. RUGGEROLI: Thank you. What we have right now
5 is an incomplete representation of his agreement in its full.
6 That is done to protect a defendant's right.
7 MR. PESCI: State's not objecting to that portion
8 coming in.
9 THE COURT: Right.
10 MR. PESCI: If defense is requesting that --
11 THE COURT: You want that in --
12 MR. PESCI: -- I'm not objecting it.
13 THE COURT: -- then you can have that in.
14 MR. RUGGEROLI: What I'm saying is that it's not
15 complete, which is, in this particular context, going to work
16 to the detriment of my client, because I want the jury to know
17 what's not included --
18 THE COURT: Okay.
19 MR. RUGGEROLI: -- includes a specific --
20 THE COURT: Then what you're going to do is you're
21 going to provide --
22 MR. RUGGEROLI: Okay.
23 THE COURT: -- an exhibit with the Agreement to
24 Testify with those portions on page 1 and 2 that we've
25 indicated can't come in.

1 MR. RUGGEROLI: Yes.
2 THE COURT: And then it will be admitted.
3 MR. RUGGEROLI: Okay.
4 THE COURT: With those things redacted.
5 MR. RUGGEROLI: Yes. Thank you, Your Honor.
6 THE COURT: Okay. All right, 2:00 o'clock.
7 MR. PESCI: All right.
8 MR. SANFT: Thank you, Your Honor.
9 MR. PESCI: Thank you.
10 (Court recessed at 12:49 P.M. until 2:13 P.M.)
11 (Outside the presence of the jurors)
12 THE MARSHAL: Please come to order.
13 THE COURT: Okay. The record will reflect that the
14 hearing is continuing to take place outside the presence of
15 the jury panel, and both defendants are present.
16 Apparently, there is an objection to some of these
17 autopsy photos.
18 MR. RUGGEROLI: Yes, Your Honor.
19 THE COURT: So what's the objection to 96 and 97?
20 MR. RUGGEROLI: Judge, those, if I recall, are the
21 head shots --
22 THE COURT: Yeah.
23 MR. RUGGEROLI: -- and it shows a duplicative photo
24 of the injury that is quite graphic in nature. And so my
25 argument is that it's not necessary; there's no dispute about

1 the manner of death. It would be potentially prejudicial. We
2 have one juror that was excused that specifically noted that
3 when he saw -- and what he saw was very, very tame compared
4 to, specifically, 96 and 97. My concern is --

5 THE COURT: Your objection is to both, or that they
6 should only use one?

7 MR. RUGGEROLI: Well, I think that both of those
8 show more of an enlarged hole.

9 THE COURT: Right. They show -- I don't know if
10 that's the entrance or exit.

11 MR. RUGGEROLI: Right. So, yes, I am objecting to
12 both. I really think they only need one; not either of those.
13 The one that is -- yeah.

14 THE COURT: I don't know if the State has a reason
15 for wanting to admit both of these. They do appear to depict
16 the same injury.

17 MR. PESCI: So let me get next to a microphone. So,
18 Judge, the situation that we have in this case is that Lary
19 Simms was the doctor who performed the autopsy. He has since
20 retired.

21 THE COURT: Okay.

22 MR. PESCI: So Dr. Jennifer Corneal is filling in
23 for him. She has to review the photos to make her own
24 independent --

25 THE COURT: Okay.

1 MR. PESCI: -- assessment and determination, and so
2 the thing that is uniquely independent are the photos
3 themselves. So she relies on his report, looks at his report,
4 reads his report, but then goes to the photos. And so, in
5 order for her, having not been in the room, to do the autopsy,
6 we have these photos to try to show it all so she can make her
7 own independent decision.

8 THE COURT: Okay, but she's done all that, correct?

9 MR. PESCI: She has.

10 THE COURT: Okay. Well, I'll allow the State to use
11 one or the other.

12 MR. PESCI: I believe there was a 98 objection as
13 well. Is there --

14 THE COURT: There is.

15 MR. PESCI: 98 is a head shot as well, or no?

16 THE COURT: No.

17 MR. PESCI: So --

18 THE COURT: 98, it appears to be -- I mean, I'm not
19 sure what the objection is, because it appears to be -- I
20 don't know what it is, but there appears to be an injury.

21 MR. RUGGEROLI: Yes, my objection is --

22 THE COURT: So what would be the objection?

23 MR. RUGGEROLI: The objection is that the torso is
24 -- the photo goes so low that it goes well below the belt
25 line, and because of the nature of the exposure, I just think

1 it's rather demeaning to the decedent. And because of that, I
2 don't see that it's a medically necessary photograph. And --

3 THE COURT: It appears to depict an injury.

4 MR. RUGGEROLI: I agree. That's -- that portion
5 does, but I'm trying to prevent anything that might further
6 inflame other jurors' passions related to the photos of the
7 decedent.

8 MR. PESCI: So, Judge, if I could --

9 THE COURT: I mean, I'm assuming that's an injury on
10 his stomach.

11 MR. PESCI: Correct, Your Honor. What you're seeing
12 is the hole that's the entrance wound of the small caliber
13 bullet.

14 THE COURT: Okay.

15 MR. PESCI: We have in fact picked a photo that does
16 not show his groin --

17 THE COURT: Okay.

18 MR. PESCI: -- or his genitalia, and so that's why
19 we had this one. As far as between 96 and 97, the State would
20 request 97 as opposed to 96, if you're going --

21 THE COURT: Okay.

22 MR. PESCI: -- to strike one of them. I believe
23 that was your ruling.

24 THE COURT: Okay. So 96, the objection is
25 sustained; and 97, the State will be permitted to admit; and

1 98, the objection is overruled.

2 And then, there is an objection as to -- let me find
3 it -- 112. Yeah, and I kind of agree. What is this?

4 MR. PESCI: So, Judge, there are -- in response, in
5 112 --

6 THE COURT: Oh, okay.

7 MR. PESCI: -- there are injuries to his -- the
8 bullet --

9 THE COURT: His ankles.

10 MR. PESCI: -- goes in his ankles. So it goes in
11 one, out, and then goes in the other. And so, again,
12 especially for the doctor who did not perform the autopsy and
13 was not in the room where it happened, she needs to be able to
14 review the photos to be able to make that determination.

15 THE COURT: What's --

16 MR. RUGGEROLI: Same argument.

17 THE COURT: So the objection is overruled, and 1 --

18 THE CLERK: I'm sorry, Judge, what number?

19 THE COURT: 112 will be permitted. Now, 114, I have
20 no idea what that was supposed to depict.

21 MR. PESCI: So we are showing that, in fact, the
22 bullet that went into the stomach -- earlier, when you said
23 you believed that there was a hole in the stomach --

24 THE COURT: Uh-huh.

25 MR. PESCI: -- this shows that there's no exit.

1 We're trying to tell --

2 THE COURT: Oh.

3 MR. PESCI: -- the jury that there is no exit
4 associated with that particular bullet. And so State's 114
5 establishes that, because there is no exit on his body,
6 whereas the head shot had an entrance and an exit wound.

7 MR. RUGGEROLI: Same argument.

8 THE COURT: Okay, the objection as to 114 is
9 overruled. So, 122. Okay, so there was an objection to 122
10 and 123. They appear -- they're x-rays of the skull. Does
11 the State need both?

12 MR. PESCI: I think it's to help to try to show --
13 because if you look at the front shot, you can't see where the
14 placement is in the head. So it was to try to show the
15 orientation, because in 123, we understand that it is the left
16 side of the head.

17 THE COURT: Okay.

18 MR. PESCI: When you look at 122, you can't tell for
19 sure where the --

20 THE COURT: Oh, (indiscernible).

21 MR. PESCI: -- where the defect is in the head. And
22 so, with the two of them combined, we can show it. And I've
23 never had an objection to an x-ray before.

24 MR. RUGGEROLI: Well, it's going to the extent of
25 that injury, which it shows a completely crumbled skull, and I

1 think that it's not necessary. It's relevant, but its
2 relevance is overwhelmed by the potential prejudice. And like
3 I said, I'm reiterating it, but we already had one juror say,
4 because of viewing those types of photos, injuries, which are
5 not even that graphic, it just had that prejudicial impact.

6 MR. PESCI: So, Judge, in response, there are two
7 different caliber firearms utilized in the murder of this
8 victim; a .45 caliber and a .22. And so what you're holding
9 in your hand, State's 122 and 123, is evidence that we can
10 utilize to argue that the shot to the head is a .45 because it
11 does massive injury, as opposed to a .22, which makes a small
12 hole in his stomach. And so it's for us to be able to prove
13 our case.

14 THE COURT: Okay, so the objection as to 122 and 123
15 is overruled. And then, I think that's it.

16 MR. PESCI: I think so.

17 THE COURT: Is that it as to the objections on the
18 autopsy?

19 MR. RUGGEROLI: Yes, Your Honor. Thank you.

20 THE COURT: I'll give these all back.

21 (Pause in the proceedings)

22 THE COURT: Okay. Now, our next witness is going to
23 be?

24 MR. PESCI: The coroner. That's why we're going
25 over this.

1 THE COURT: Oh, okay. When are we going to do the
2 one on the video?
3 MR. PESCI: Not until after 3:00.
4 THE COURT: Okay.
5 MR. PESCI: She's not available until, at the
6 earliest, 3:00.
7 THE COURT: Okay. Can we bring them in?
8 MR. PESCI: Yes.
9 THE COURT: Okay.
10 MR. PESCI: Wait, I -- sorry, really fast.
11 THE CLERK: Judge, are they going to be stipulating
12 to the rest of these?
13 THE COURT: Yeah, you know, are you going to be
14 stipulating to them, other than the objections that have
15 already been noted?
16 MR. SANFT: Yes, Your Honor.
17 MR. RUGGEROLI: Yes, Your Honor.
18 THE COURT: Okay.
19 THE CLERK: So, 97 is the only one that's not coming
20 in? That's what I have. Everything else, you overruled?
21 THE COURT: Right.
22 THE CLERK: Okay.
23 THE COURT: 96, the objection is sustained, so it
24 doesn't come in. 97 is coming in. You said the opposite.
25 You said 97 instead of 96.

1 THE CLERK: I have it written that way. Okay.
2 THE COURT: Well, let me just make sure. Hand me 96
3 and 97 so I just -- because I told the State you could have --
4 THE CLERK: I have you saying 96 is in; 97 is not.
5 MR. PESCI: That's -- that's my fault. I was asking
6 for 97, because that's 97, correct?
7 THE CLERK: Okay.
8 THE COURT: Okay.
9 THE CLERK: So, 97 is in?
10 THE COURT: You want 97?
11 MR. PESCI: Yes, please.
12 THE COURT: Okay, so --
13 MR. PESCI: That's my fault.
14 THE CLERK: Everything is in except for 96?
15 THE COURT: Right.
16 MR. PESCI: That's my understanding.
17 THE CLERK: Correct?
18 THE COURT: That's correct.
19 THE CLERK: Okay.
20 THE COURT: And there's a stipulation to everything
21 else?
22 MR. SANFT: Yes, Your Honor.
23 MR. RUGGEROLI: Other than the objections, yes.
24 THE CLERK: Yes, I'll note the objections on the
25 sheet.

1 THE COURT: Okay. All right. Oh, you want the
2 noise on?

3
4 (Off-record bench conference)

5 THE COURT: Okay, we can bring them in.

6 THE CLERK: Judge, you don't have 96 up there with
7 you, do you?

8 THE COURT: No. Did you take 96?

9 MR. PESCI: No, Your Honor, but I'll look.

10 THE COURT: I didn't think you did.

11 THE MARSHAL: All rise for the entering jury,
12 please. Jurors.

13 (Within the presence of the jurors at 2:24 p.m.)

14 THE COURT: Does the State stipulate to the presence
15 of the jury panel?

16 THE MARSHAL: Thank you, everyone.

17 MR. PESCI: Yes, Your Honor.

18 THE MARSHAL: Please be seated.

19 THE COURT: And the defense?

20 MR. SANFT: Yes, Your Honor.

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay. The State of Nevada may call
23 their next witness.

24 MR. PESCI: State calls Dr. Jennifer Corneal.

25 THE MARSHAL: If you'll please remain standing,

1 raise your right hand, and face the Clerk.

2 DR. JENNIFER CORNEAL, STATE'S WITNESS, SWORN

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

5 THE WITNESS: Jennifer Corneal. J-e-n-n-i-f-e-r,
6 C-o-r-n-e-a-l.

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

8 THE COURT: You may.

9 MR. PESCI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PESCI:

12 Q Ma'am, what do you do for a living?

13 A I'm a medical examiner.

14 Q Where do you work?

15 A I work at the Clark County Office of the
16 Coroner/Medical Examiner.

17 Q And how long have you been working there?

18 A Since July 2015.

19 Q And what is your training and experience that brings
20 you to that job?

21 A I am a doctor; I completed medical school. I then
22 completed four years of pathology residency training, and I'm
23 a board-certified anatomic pathologist. I subsequently
24 completed a year of forensic pathology sub-specialty training,
25 and I'm a board-certified forensic pathologist as well.

1 Q What is a forensic pathologist?

2 A A forensic pathologist is a doctor who performs
3 autopsies and external examinations on deceased individuals,
4 and interprets toxicology, and sometimes histology, which are
5 slides, in order to determine cause and manner of death.

6 Q Okay. And now, you're speaking of an autopsy. What
7 is an autopsy?

8 A An autopsy is just the name of a procedure where you
9 look at a deceased individual, document hair color, eye color,
10 scars, anything externally, any injuries. And then you open
11 the body and you look internally at the organs for natural
12 disease processes, and again, for injuries, looking for cause
13 and manner of death.

14 Q So after looking externally and internally, do you
15 form an opinion as to a cause and manner of death?

16 A Yes.

17 Q Let's break that down. What is a cause of death,
18 and then we'll move onto what a manner is.

19 A A cause of death is just the reason somebody died,
20 the underlying reason, be it a heart attack, a gunshot wound,
21 blunt force trauma from a car accident.

22 Q Okay, and then what does manner of death mean?

23 A A manner of death is just the classification system.
24 There are five manners: natural, accident, homicide, suicide,
25 and undetermined when they don't fit into any of the other

1 four.

2 Q Okay. Now, in a situation where it's homicide, is
3 that a legal conclusion or a medical conclusion?

4 A That is a medical conclusion. It just means the
5 death at the hands of another person.

6 Q Now, do you work with other doctors at the coroner's
7 office?

8 A I do.

9 Q How many doctors?

10 A Right now, there are three full-time doctors besides
11 myself.

12 Q Are you understaffed right now?

13 A We are.

14 Q Okay. Did you have to -- were you on-call this
15 morning?

16 A I was.

17 Q Okay.

18 A On-call until midnight, actually.

19 Q All right, so what does that mean if you're on-call?
20 What happens?

21 A Being on-call, we take any phone calls from midnight
22 to midnight, answer any questions from our investigators,
23 determine anything for the NDN, Nevada Donor Network,
24 procurement issues, determine which cases are ours sometimes.
25 And then, when we come in that morning, we are the one who

1 assigns the cases, and we take the more complicated cases; the
2 homicides, child death cases. Anything that's going to take
3 more time, the on-call doctor usually assigns that to
4 themselves, and then gives the other doctors the other cases.

5 Q Okay. And now, based on the fact that you're
6 understaffed, have there been doctors who've worked there
7 before that have retired or otherwise moved on?

8 A Yes.

9 Q Are you familiar with an individual by the name of
10 Dr. Lary Simms?

11 A I am.

12 Q Did he work there previously?

13 A He did.

14 Q And is he the individual that performed the autopsy
15 under your Coroner's Office Number 17-08259?

16 A He did.

17 Q All right. Are you, in essence, filling in for him
18 as he's retired?

19 A I am.

20 Q Okay. Now, speaking about that unique case number,
21 what is that?

22 A Every person who comes into our office is designated
23 a unique identifying number. The first two digits are the
24 year, so 17 would refer to 2017. And then, they come in
25 sequentially, so his case was 8259 for the year.

1 Q Now, did he perform this specific autopsy?
2 A Dr. Simms?
3 Q Yes.
4 A Yes.
5 Q All right. So when you were describing autopsies
6 previously, the methodology of doing it, in this particular
7 case, you didn't perform it on this body?
8 A Correct.
9 Q All right. However, when you are performing your
10 own autopsy, do you dictate or take notes as you're doing it?
11 A I do.
12 Q And is that for the purposes of generating a report?
13 A It is.
14 Q In fact, is your office tasked with generating
15 reports in contexts with deaths like this?
16 A Yes.
17 Q Okay. And then, after, is a report generated, and
18 does it have that unique number associated with it?
19 A It does.
20 Q Based on that unique number, were you able to get a
21 copy of the Autopsy Report authored by Dr. Lary Simms?
22 A I was.
23 Q And have you been able to review it in anticipation
24 of your testimony?
25 A I did.

1 Q Okay. Does it notate what his findings were inside
2 the body and outside the body?

3 A It does.

4 Q All right. Now, in addition to this report, while
5 you're performing your own autopsy, are there technicians that
6 work in the coroner's office in the autopsy room with you
7 while you're performing it?

8 A There are.

9 Q What do they do?

10 A The technicians help with the actual autopsy;
11 cutting organs out of the body. They also take photographs.
12 They help us collect the samples for toxicology.

13 Q Now, if there is a thought that it could potentially
14 be a homicide, are there also sometimes individuals from the
15 Metropolitan Police Department present during parts of the
16 autopsy?

17 A Yes.

18 Q You've spoken of people that work for the coroner's
19 office taking photographs. Are there individuals that work
20 for Metro that also take photographs?

21 A Yes.

22 Q Does that happen concurrently or at the same time at
23 times?

24 A Usually.

25 Q Okay. So photographs taken by crime scene analysts,

1 and there's photographs taken by a technician from the
2 coroner's office?

3 A Yes.

4 Q Now, do you in your office maintain the photographs
5 that are unique to each individual autopsy?

6 A We do.

7 Q So in addition to reviewing Dr. Simms's report, did
8 you also review the photographs from his autopsy?

9 A I did.

10 Q All right. Based on the fact that you weren't there
11 when this was done, were you able to see what was going on
12 with the body based on those photographs?

13 A I was.

14 Q Okay. Now, based on the review of the report, and
15 based on the photographs, were you able to come to your own
16 independent conclusions?

17 A Yes.

18 Q Okay. Let's talk first about what you noted as far
19 as injuries on this body. Did you note any gunshot wounds?

20 A Yes.

21 Q Where were they?

22 A There was a gunshot wound of the head, a gunshot
23 wound of the left lower chest, a gunshot wound of the right
24 ankle, and a gunshot wound of the left ankle.

25 Q And then, in the course of this autopsy, were there

1 any pieces of firearms-related evidence that was recovered?

2 A There were.

3 Q And were you able to see that in photographs?

4 A Yes.

5 Q In the process of the photographing of the body, are

6 there also x-rays that are done?

7 A There are.

8 Q Do you do that so you can try to see inside the body

9 before you actually cut inside the body?

10 A Yes.

11 Q Okay. Were you able to review some x-rays in this

12 particular case?

13 A I did.

14 MR. PESCI: May I approach the witness?

15 THE COURT: You may. And will you, just for the

16 record, identify all the exhibits?

17 MR. PESCI: I will, Your Honor.

18 THE COURT: Yeah. Well, can you do it now?

19 MR. PESCI: I will.

20 THE COURT: Because the Clerk didn't -- we didn't

21 get it down before you --

22 MR. PESCI: Okay.

23 THE COURT: -- took the exhibits. Does that make

24 sense?

25 MR. PESCI: Sure.

1 THE CLERK: Just --
2 MR. PESCI: 93 to 129 --
3 THE CLERK: With the --
4 MR. PESCI: -- with the exception of 96.
5 THE CLERK: Yes.
6 THE COURT: Any objection?
7 MR. SANFT: No objection, Your Honor.
8 MR. RUGGEROLI: Subject to my previous objection,
9 nothing further.
10 THE COURT: Absolutely. They're admitted.
11 (State's Exhibits 93, 94, 95, and 97 through 129 are admitted)
12 MR. PESCI: Thank you very much. All right.
13 They're admitted, so I'm going to publish them, and it will
14 show up on your screen to the right. Is that okay, Your
15 Honor?
16 THE COURT: Yes.
17 BY MR. PESCI:
18 Q Showing you State's 93. A moment ago, we talked
19 about a unique number that's associated with this autopsy.
20 What is that -- or do you see that number here?
21 A Yes.
22 Q Where is that?
23 A The number is on this gray placard, as well as on
24 the identification tag that's attached to the body bag.
25 Q Now, the body bag seems to still be sealed at this

1 point, correct?

2 A Correct.

3 Q And now, that identification number on the body bag
4 and on that placard lets you know it's the body associated
5 with this particular autopsy?

6 A Correct.

7 Q And there's even the name of the decedent, correct?

8 A Yes.

9 Q Okay. Now, you talked about some different gunshot
10 wounds. There was a gunshot wound of -- to the head, you
11 said, correct?

12 A Yes.

13 Q Showing you State's 94, what is that?

14 A This is the entrance gunshot wound on the right side
15 of the head.

16 Q I want to focus in -- looking at State's 95, how is
17 it that looking at this can let you know it's an entrance
18 wound versus an exit wound?

19 A Entrance wounds typically are more of a punched out
20 injury where you cannot re-approximate or put the skin back
21 together. Other things you note on entrance wounds that are
22 -- show you that they are entrance wounds is an abrasion rim.
23 This one's slightly eccentric, or off-center, but it is there.
24 On skull -- in gunshot wounds of the skull, you can also see
25 beveling internally. Other things you look for are stippling,

1 which are not present here, but --

2 Q What is stippling?

3 A Stippling is punctate abrasions caused by unburnt
4 gunpowder striking the skin. It usually makes it so we can
5 say that a gunshot wound is intermediate range, inches to feet
6 away from the body.

7 Q Okay. So if you were to shoot me right now, would
8 you expect to have that evidence on a wound on my body?

9 A Possibly.

10 Q Okay, and the distance from the person would dictate
11 that?

12 A The distance, and then, also, the ammunition used.

13 Q Okay. You described this as eccentric; did I hear
14 that correctly?

15 A Yes.

16 Q What does that mean?

17 A Just off-center. So the abrasion ring, instead of
18 being all the way around the wound, is only on -- only on this
19 side here.

20 Q Is that indicative of the bullet coming in at an
21 angle?

22 A Yes.

23 Q Okay. And then, the trajectory, do you in autopsies
24 try to track the travel of the bullet through the head and
25 give a trajectory?

1 A Yes, we do trajectory through the body only.

2 Q Okay, but you spoke earlier about how entrance

3 wounds are normally more like something punched out, correct?

4 A Correct.

5 Q Now, exit wounds -- looking at State's 97, what kind

6 of a wound is that?

7 A This is an exit wound. This wound can actually be

8 -- the skin can be re-approximated. There are very large

9 lacerations from the exit, but it is an exit wound on the left

10 side of the forehead.

11 Q Okay, and is that in line with the entrance on the

12 right side?

13 A Yes.

14 Q Okay. So that's the exit to the entrance we saw

15 earlier?

16 A Correct.

17 Q Okay. Now, you talked about how there was another

18 gunshot wound. I want to show you State's 98. Do you

19 recognize that?

20 A Yes, this is a photograph of Mr. Valenzuela's left

21 side.

22 Q Is that wound -- showing you, up-close, State's 99.

23 How is this one different from the earlier entrance wound we

24 saw on the right back side of the head of the victim?

25 A This one, you can see that it has the abrasion ring

1 circumferentially or all around the wound.

2 Q And is that more indicative of the bullet entering
3 straight on as opposed to an angle?

4 A Yes.

5 Q And is this wound, as far as the entrance, a smaller
6 wound than the other one? As far as the entrance; the size of
7 it?

8 A Slightly, yes.

9 Q Okay. And then you talked about, in addition to the
10 head and the stomach area, there were also injuries to the
11 ankles?

12 A Yes.

13 Q Looking at State's 100, do you notate any injuries
14 there?

15 A Yes, the entrance wound on the outer right ankle is
16 here.

17 Q You know, and you just said the outer right ankle.
18 So everyone knows, when you are speaking of right and left on
19 the individual that's having the autopsy, is it unique to that
20 person, so their right hand or their right leg?

21 A Yes.

22 Q Okay. And that's -- on the right outside ankle,
23 that's an entrance wound?

24 A Yes.

25 Q Showing you State's 101, is that a close-up of that?

1 A Yes.

2 Q Okay. And again, does that have more of that

3 collar, or how would you describe that?

4 A Yes, it has the abrasion collar that we were

5 discussing earlier.

6 Q Okay. And then, showing you 102, is that still the

7 right leg?

8 A It is.

9 Q Okay, and then what are we looking at there?

10 A The exit wound on the inner right ankle.

11 Q Okay. And then, are there also sometimes DNA

12 samples or swabbing that would be done on victims' hands or

13 other parts of their bodies?

14 A Yes.

15 Q Okay. In State's 103, is there -- is this a picture

16 of the fingernails or the hand of the decedent?

17 A Yes.

18 Q And that is his left side?

19 A Yes.

20 MR. PESCI: Court's indulgence.

21 BY MR. PESCI:

22 Q Now, we spoke of x-rays a moment ago; is that

23 correct?

24 A Yes.

25 Q And then, we were looking at the left and right

1 legs, correct?

2 A We just looked at the right leg; we haven't looked
3 at the left yet.

4 Q All right. I'm going to show you State's --

5 MR. PESCI: Well, move for the admission of State's
6 122, 123, 126, and 127, if they're not in that --

7 THE COURT: Yeah.

8 MR. PESCI: -- list I already asked for.

9 THE COURT: They've already been admitted.

10 MR. PESCI: Okay, thank you, Your Honor.

11 BY MR. PESCI:

12 Q Looking at State's 126. You said we were talking
13 about the right leg, correct?

14 A Yes.

15 Q All right. Is there evidence of injury to the bones
16 of the decedent manifested in this x-ray?

17 A Yes.

18 Q Could you show the ladies and gentlemen of the jury?

19 A There are fractures of the tibia and fibula in the
20 area of the ankles, so the two bones in your lower leg near
21 your ankle.

22 Q Okay. So is that caused by the bullet passing
23 through those bones?

24 A Yes.

25 Q Are those important bones for your legs?

1 A Yes.

2 Q Is it -- are you really able to move around if you
3 have that -- a break like that?

4 A It would be painful.

5 Q Okay, let's say this. If we also add in State's
6 127, which is the left leg, are there -- is there evidence of
7 injuries also to the bones in that?

8 A Yes.

9 Q Okay. If both -- well, what are the injuries there?

10 A The same two bones, but in the left ankle, are
11 fractured here.

12 Q Okay. So, in both legs, you said the tibia and
13 the --

14 A Fibula.

15 Q -- fibula -- fibula are broken?

16 A Yes.

17 Q All right. Would that impede someone from moving?

18 A Yes.

19 Q Okay. Now, we also seem to see something almost
20 floating in air in that exhibit. What is that?

21 A This is a bullet that was recovered from the left
22 leg on the outer side of the calf area.

23 Q Okay. Showing you State's 104, was there evidence
24 that the bullet was recovered during the autopsy?

25 A Yes.

1 Q And in fact, State's 105, is that a photograph with
2 that unique placard, showing the bullet's condition after
3 coming out of the body?
4 A Yes.
5 Q And then, in State's 106, is there also a photo
6 showing a different angle?
7 A Yes.
8 Q Okay. Now, sometimes during an autopsy, can pieces
9 of a bullet be recovered?
10 A Yes.
11 Q What we've just looked at is the entirety of a
12 projectile, correct?
13 A Yes.
14 Q Looking at State's Exhibit 122, do you recognize
15 that?
16 A Yes.
17 Q What is this?
18 A This is an x-ray, what we call a lateral head. It's
19 from the side of the head.
20 Q And what does it show?
21 A It shows multiple skull fractures here, and then
22 small pieces of metal that, when recovered, were pieces of
23 projectile and jacket.
24 Q Okay. And transitioning to State's 123, what is
25 that in contrast to the prior photo?

1 A This is an x-ray of the head from the front. So
2 it's just another angle looking at the head, showing the same
3 thing.
4 Q Okay. And in 123, do you see some pieces of the
5 fragments?
6 A Yes.
7 Q However, in 122, can you see more of them because
8 it's the -- what was the angle you said?
9 A Lateral.
10 Q The lateral? Can you see more in that x-ray?
11 A Yes.
12 Q Okay. Now, in State's 109, were those pieces that
13 are seen in the x-ray recovered during the autopsy?
14 A Three of them, yes.
15 Q Okay. And then, does -- is the head opened normally
16 during an autopsy?
17 A Yes.
18 Q And especially if there's an injury to the head?
19 A Yes.
20 Q All right. Is that how you all can get to where
21 those pieces of a bullet could be?
22 A Correct.
23 Q All right. Speaking of a bullet, was there a bullet
24 recovered from the stomach area?
25 A Yes, the left lower back.

1 MR. PESCI: Court's indulgence.

2 BY MR. PESCI:

3 Q Showing you State's 118, what is -- oops, spin it
4 around. What is that?

5 A This is the abdominal x-ray of Mr. Valenzuela,
6 showing the small projectile that was recovered from the left
7 lower back.

8 Q Okay. And earlier, looking at State's 98, we had an
9 entry wound. Where would you describe that on the body?

10 A The left lower chest.

11 Q Okay. And then, when we line that up with 118, is
12 that bullet beyond the hole inside of the body?

13 A Yes.

14 Q Okay. And then, in State's 117, is that -- is
15 "lateral" the right term?

16 A Yes.

17 Q All right. Is that a lateral view?

18 A It is.

19 Q And then, can we see where it ended up?

20 A Yes. So it's in the back -- I believe -- yeah.
21 Just looking. Right behind the first lumbar vertebra.

22 Q Okay. Even though you weren't there, having
23 reviewed the photos and knowing anatomy from your experience
24 and training from actually opening up bodies, what's in the
25 body between where the hole was and where the bullet ended?

1 A The diaphragm, the spleen, the left kidney, possibly
2 left adrenal gland, possibly the stomach.

3 Q Okay. So this injury to the body, is that also
4 something that could cause death?

5 A Yes.

6 Q I should have asked this earlier, but the shot to
7 the head, is that something that can cause death?

8 A Yes.

9 Q Okay. Now, this bullet that we're looking at in
10 State's 117, that was recovered, correct?

11 A It was.

12 Q State's 107, does that have that unique placard
13 number associated with this autopsy?

14 A It does.

15 Q Now, when bullets go through bodies -- and you just
16 described a bunch of different objects between where that hole
17 started in the stomach and where it ended -- can they be
18 deformed from hitting things inside the body?

19 A They can.

20 Q Showing you State's 108, is that the same bullet in
21 State's 107, just rotated?

22 A It is.

23 Q Does it have evidence of deformation to it?

24 A It does.

25 Q Okay. In your experience in autopsies you've done

1 on your own, have you seen that happen before?

2 A Yes.

3 Q Okay. So, reviewing all of those photographs and

4 the report, did you come to your own independent conclusion as

5 far as what the cause of death was?

6 A Yes.

7 Q What was that?

8 A Multiple gunshot wounds.

9 Q And then, as far as the manner of death, what was

10 that?

11 A Homicide.

12 Q Okay. Now, during the course of an autopsy, are

13 there different pieces -- I don't know if I should say pieces.

14 Are there things taken from the body to try to assess the

15 toxicology of the individual?

16 A Yes.

17 Q What is a toxicology?

18 A A toxicology is where we take samples of blood,

19 sometimes tissue, and sometimes fluid from the eyes, and send

20 it to a lab to look for medications, drugs of abuse, alcohol

21 levels to see what was in their body at the time of death, and

22 sometimes whether or not that contributes to death.

23 Q And in this particular case, was there a toxicology

24 done on the decedent?

25 A It -- there was.

1 Q And you -- you have reviewed those results?
2 A I have.
3 Q And what were the results of the toxicology?
4 A There were no drugs, or alcohol, or medications in
5 his system that were tested for.
6 MR. PESCI: Thank you very much. I'll pass the
7 witness.
8 THE COURT: Cross-examination?
9 MR. SANFT: No cross, Your Honor.
10 THE COURT: Mr. Ruggeroli?
11 MR. RUGGEROLI: No questions. Thank you.
12 THE COURT: Okay. Thank you very much for your
13 testimony here today. You may step down, and you are excused
14 from your subpoena.
15 THE WITNESS: Thank you.
16 THE COURT: You may call your next witness.
17 MR. PESCI: State calls Jeff Scott.
18 THE WITNESS: If you'll please remain standing,
19 raise your right hand, and face the Clerk.
20 JEFFREY SCOTT, STATE'S WITNESS, SWORN
21 THE CLERK: You may be seated. Please state and
22 spell your first and last name for the record.
23 THE WITNESS: Jeffrey Scott. J-e-f-f-r-e-y,
24 S-c-o-t-t.
25 MR. PESCI: May I proceed, Your Honor?

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. PESCI:

4 Q Sir, what do you do for a living?

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

7 Q How long have you been doing that?

8 A Over 13 years.

9 Q Back in August of 2017, specifically on August 9th
10 of 2017, did you attend the autopsy of Gabriel Valenzuela?

11 A Yes, I did.

12 Q Were you there with some detectives from the
13 Homicide Detail?

14 A I believe so.

15 Q Okay. And then, were you there when the autopsy was
16 performed by Dr. Lary Simms?

17 A I was in the building; I wasn't in the room with
18 him.

19 Q Okay.

20 A I was in the adjacent room.

21 Q I apologize. Are you aware that he was the doctor
22 that performed the autopsy?

23 A Yes.

24 Q And then, were you in the room at a point with the
25 body so that you could photograph it?

1 A Yes.

2 Q Okay. Showing you what's marked as State's 110 to
3 129, do you recognize those? They've already been admitted.

4 A Yes.

5 Q When you were at this autopsy, were you present when
6 the body first came in and was still in the body bag?

7 A Yes, I was.

8 Q Showing you State's 110, did you take this
9 photograph?

10 A Yes, I did.

11 Q Does it show that the seal was still intact when it
12 arrived at the autopsy, having been brought from the hospital?

13 A Yes.

14 Q Okay. And then, did you notate the body with
15 certain photographs?

16 A Yes, I did.

17 Q When the body first comes to the autopsy, do you
18 take some photographs as-is when it first gets there?

19 A Yes. I take photographs of the body while it's
20 still in the bag before we open it, and then after we open the
21 bag, and then as we remove the sheets and clothing, and as we
22 -- after we clean the body. We take photos at every stage.

23 Q Okay, you just mentioned after you clean the body.
24 So I want to show you State's 111. Do you photograph the body
25 before it's cleaned?

1 A Yes.

2 Q And then, also, after it's cleaned?

3 A That's correct.

4 Q Okay. So looking at State's 113, do you have some

5 photographs also after it's been cleaned to show kind of the

6 margins and the edges of those wounds?

7 A That's correct.

8 Q Okay. Now, in the course of this autopsy, did you

9 take a picture of the decedent's back?

10 A Yes, I did.

11 Q Is that the normal course to try to show photographs

12 of the entire body?

13 A Yes.

14 Q All right. And were there any injuries or exits, I

15 should say, that you saw on the back?

16 A Not that I'm aware of.

17 Q All right. And then, when the body comes to you,

18 sometimes does it have its clothes on it still?

19 A Yes, sometimes.

20 Q Sometimes, is -- are the clothes in a -- in a bag

21 that you receive?

22 A Yes.

23 Q Are you tasked with taking photographs of those

24 pieces of clothing?

25 A Yes, I am.

1 Q Showing you State's 116, did you take a photograph
2 of this particular item?

3 A Yes, I did.

4 Q And is that a shirt?

5 A Yes, it is.

6 Q Okay. And then, also, did you have a picture of the
7 decedent's shorts in State's 121?

8 A Yes.

9 Q Okay. During the course of an autopsy, if there are
10 projectiles recovered, are they then given to you as the crime
11 scene analyst?

12 A Yes, they are.

13 Q Do you impound that item?

14 A Yes, I do.

15 Q What does it mean to impound something? How does
16 that work?

17 A I take the items, and in the case of bullets or
18 bullet fragments, we place them usually in a vial, and label
19 each vial with the item number and information such as the
20 event number, the date, and my initials and P number. Then,
21 the vials are placed inside packaging, which is sealed with
22 evidence tape. The tape is marked with the date that it's
23 sealed, along with my P number and initials. And then a label
24 is affixed to the front of the package that has a list of the
25 contents of the package, along with all the identifying

1 information.

2 Q And speaking of that labeling and the identifying
3 information, will you also notate where it is that the item
4 came from from the body?

5 A Yes.

6 Q Looking at State's 125, you spoke a moment ago about
7 your P number. Are we seeing that here on the left of that
8 item?

9 A Yes, it is. That's my initials and my P number.

10 Q So those items that are impounded under 9618 have
11 been impounded by you?

12 A Yes.

13 Q Okay, and we're looking at some items that you in
14 fact did impound?

15 A That's correct.

16 Q All right, and did you notate which part of the body
17 these things came from?

18 A Yes, I did.

19 Q And specifically, Items 12, did you take pictures
20 rotating those fragments around to see both sides?

21 A That's correct.

22 Q And did Items 12 come from the hand of the doctor to
23 you, or to someone else that got it to you?

24 A Yes. The doctor removes them from the body, then
25 turns them over to me.

1 Q All right. And the doctor took Items 12 from the
2 head of the victim?
3 A Yes.
4 Q All right. Showing you State's 119, were there
5 other -- another fragment or bullet that was recovered?
6 A Yes. There was also a fragment, which you're
7 showing there, and also a bullet.
8 Q All right. Showing you State's 13 -- oh, no, that's
9 not 13, sorry. 120. Is that the bullet rotated?
10 A That's a fragment, yes.
11 Q Okay, and was that the one recovered from the left
12 back?
13 A Yes, it was.
14 Q All right. Showing you State's 128, did you also
15 recover and impound that item?
16 A Yes, I did.
17 Q And did that come from the left leg?
18 A Yes, it did.
19 Q In your experience as a crime scene analyst, do you
20 have some experience recovering different caliber -- calibers
21 of bullets?
22 A Yes, I do.
23 Q Do you have experience firing firearms?
24 A Yes, I do.
25 Q Are you familiar with different calibers?

1 A Yes, I am.

2 Q All right. Looking at State's 128, is that a larger
3 caliber than State's 120?

4 A Yes, it is.

5 Q Okay. And then, in State's 129, did you rotate that
6 same bullet that you notated as coming from the left leg of
7 the decedent?

8 A Yes, I did.

9 Q Okay. In addition to items of physical evidence
10 that are recovered, do you often take what's referred to maybe
11 as a buccal swab or a DNA sample?

12 A Yes, I do.

13 Q In this particular case, did you take a buccal swab
14 -- buccal swab from the victim?

15 A Yes, I did.

16 Q How do you do that, and where is it from?

17 A The buccal swab kit consists of a package containing
18 items for the buccal swab. The items include two swabs,
19 similar to a Q tip, but with just a swab on one end. And each
20 one of those swabs is rubbed on the inside of each cheek in
21 order to collect DNA cells. The swabs are then placed in a
22 small cardboard package, and that comes with the kit. And the
23 information is filled out on the package, and then it's placed
24 inside an envelope, and impounded.

25 Q So when you impounded that particular package, did

1 you label it as Package number 2?

2 A Yes.

3 Q And then, the item inside the buccal swab kit, was
4 that Item number 2?

5 A Yes, it was.

6 Q All right, so that when DNA analysts are referring
7 later on to a package numbered with P number 9618, and Package
8 2, Item 2, that's this item?

9 A That's correct.

10 Q Okay. In addition to the buccal swab, did you take
11 some swabs of possible DNA from the fingernails of the
12 decedent's right hand?

13 A Yes, I --

14 Q Sorry.

15 A Yes, I did.

16 Q And then the left hand?

17 A Yes.

18 Q Okay. Same procedure?

19 A There's not a kit for it, but we have sterile swabs
20 that we use. We add a little bit of distilled water to the
21 tip of the swab, and then we use that to rub any possible DNA
22 off of the tips of the fingers and the fingernails.

23 Q And did you impound that as a Package number 3 and
24 Items 5 and 6?

25 A Yes.

1 Q Okay.

2 MR. PESCI: Court's indulgence. Pass the witness.

3 THE COURT: Cross-examination?

4 MR. SANFT: No cross, Your Honor.

5 MR. RUGGEROLI: No questions. Thank you.

6 THE COURT: Okay. Thank you very much for your

7 testimony here today. You may step down. You are excused

8 from your subpoena.

9 MR. PESCI: Judge, can we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MR. PESCI: So we're almost at 3:00.

13 THE COURT: Okay.

14 MR. PESCI: So I don't know if we want to take a

15 break to try to get it set up as far as this internet witness.

16 THE COURT: Okay. All right, okay.

17 MR. PESCI: And then, I don't know if you want to

18 say anything as far as -- Parker's going to probably leave now

19 so he can get there on time.

20 THE COURT: Okay. Yeah, that's a good idea that I

21 let them know. Okay.

22 (End of bench conference)

23 THE COURT: All right. At this time, ladies and

24 gentlemen, we're going to take a short recess because we need

25 to get ready for the next witness.

1 During this recess, you're admonished not to talk or
2 converse amongst yourselves or with anyone else on any subject
3 connected with this trial, or read, watch, or listen to any
4 report of or commentary on the trial, or any person connected
5 with this trial, by any medium of information, including,
6 without limitation, newspapers, television, the internet, or
7 radio, or form or express any opinion on any subject connected
8 with this trial until the case is finally submitted to you.

9 It will probably be a short recess. Officer Hawkes
10 will let you know when we're ready.

11 Also, Mr. Brooks is going to leave. He is being
12 excused with the permission of the Court. Thank you very
13 much.

14 THE MARSHAL: Thank you. All rise for the exiting
15 jury, please.

16 (Outside the presence of the jurors)

17 THE MARSHAL: Thank you, everyone. Be seated.
18 Thank you.

19 (Court recessed at 2:59 P.M. until 3:09 P.M.)

20 (Outside the presence of the jurors)

21 MR. PESCI: Are you seeing us?

22 THE CLERK: She might have her mute on.

23 THE COURT: Can she see us?

24 THE CLERK: She should be able to see us.

25 THE COURT: Can you see us and hear us? Yes? Well,

1 we can't hear --

2 THE WITNESS: I can see and hear you, yes.

3 MR. PESCI: Awesome.

4 THE COURT: Perfect. Yeah.

5 THE WITNESS: Yes.

6 THE COURT: Let's bring them in.

7 (Pause in the proceedings)

8 THE CLERK: Mr. Pesci, do you have 300 over there?

9 MR. PESCI: I have 277 through 319 in consecutive

10 order.

11 THE CLERK: I'm just making sure I'm not withholding

12 anything. I've got some of your exhibits that you'll need to

13 come up and grab them. These two I think belong in there.

14 MR. PESCI: Yeah, thank you.

15 THE CLERK: You're welcome.

16 MR. PESCI: Not that I'm going to be able to show

17 her, but we're going to wing it.

18 THE MARSHAL: All rise for the entering jury,

19 please.

20 (Within the presence of the jurors at 3:12 p.m.)

21 THE MARSHAL: Thank you, everyone. Please be

22 seated.

23 THE COURT: Does the State stipulate to the presence

24 of the panel?

25 MR. PESCI: Yes, Your Honor.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: Yes, Your Honor.
3 MR. RUGGEROLI: Yes, Your Honor.
4 THE COURT: Mr. Ruggeroli? Thank you very much.
5 The State may call their next witness.
6 MR. PESCI: State calls Noreen Charlton.
7 THE CLERK: Can you please raise your right hand?
8 NOREEN CHARLTON, STATE'S WITNESS, SWORN
9 THE CLERK: Can you please state and spell your
10 first and last name for the record?
11 THE WITNESS: Noreen Charlton. N-o-r-e-e-n,
12 C-h-a-r-l-t-o-n.
13 THE COURT: Are you okay, Mr. Sanft?
14 MR. SANFT: Your Honor, if we could just move the
15 mouse off of her eyes.
16 THE COURT: Apparently, we can't.
17 MR. SANFT: Oh, we cannot? Okay.
18 THE COURT: Right. So, sorry.
19 MR. SANFT: No, it's okay.
20 THE COURT: Now -- yes, it would be easier.
21 MR. PESCI: Yeah. If you move a little to the left
22 or the right, that works. You can move your chair if you
23 want.
24 THE WITNESS: All right, we good?
25 THE COURT: Yeah.

1 MR. SANFT: I'm sorry. Yes, thank you. Appreciate
2 it.

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

4 THE COURT: You may.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Ma'am, where are you now?

8 A I am currently in Cleveland, Ohio.

9 Q And are you meeting with us via some sort of a
10 Skype-type system?

11 A Yes, I am.

12 Q Okay, and do you live now outside of Nevada?

13 A Yes, I do.

14 Q Back in 2017, specifically in August, did you work
15 for the Metropolitan Police Department?

16 A Yes, I did.

17 Q What did you do?

18 A I was a senior crime scene analyst.

19 Q And on August the 15th of 2017, did you respond to
20 3300 Civic Center Drive?

21 A Yes, I did.

22 Q Specifically, Unit 2F as in Frank?

23 A That's correct.

24 Q And when you went there, were there other crime
25 scene analysts with you?

1 A No, I was the only one there.

2 Q Even though you were the only crime scene analyst,
3 were there other members of the Metropolitan Police
4 Department?

5 A Yes, there were.

6 Q Specifically, were there other detectives; a Darren
7 Cook, A Detective Merrick, and Detective Cody, and a Detective
8 Sonny Bogatay?

9 A Yes, that's correct.

10 Q Typically, will you work in conjunction with the
11 detectives when you are documenting a particular scene?

12 A Yes.

13 Q And in this particular case, one of those forms of
14 documentation was photography; was it not?

15 A That's correct.

16 Q Okay.

17 MR. PESCI: We have marked here in court Exhibits
18 277 through 319. I believe there's a stipulation to their
19 admissibility.

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

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay, they're admitted.

23 (State's Exhibits 277 through 319 are admitted)

24 BY MR. PESCI:

25 Q So, unfortunately, we can't really show it to you.

1 If I hold it up like this, can you see much?

2 A I -- I can sort of see it.

3 Q Okay. Does it look familiar?

4 A Yes, it does.

5 Q Okay. So we know these are the photographs that you

6 took of that particular location?

7 A Correct.

8 Q Okay. And you took photographs from throughout the

9 apartment; is that correct?

10 A Yes, I did.

11 Q Do you take kind of overall photographs at first,

12 where everything's still in the position as you first came

13 upon it?

14 A Yeah. So, upon entry, I did all of my overall

15 photography before any searching was conducted.

16 Q All right. Now, when the searching was done, the

17 detectives had a search warrant, and they were telling you

18 things of interest to them?

19 A That's correct.

20 Q And were those items pointed out to you so that you

21 could document them via photography or potentially impounding

22 some items?

23 A Yes, they were.

24 Q Okay. And then, do you make a report or do you

25 generate a report listing out what you did there and the items

1 that you impounded?

2 A Yes, I did.

3 Q In anticipation of your testimony, did we email you
4 those reports for your review?

5 A Yes, you did.

6 Q And were you able to review those?

7 A I was.

8 Q And are you familiar with the items that you
9 impounded and the scene based on reviewing these documents?

10 A Yes.

11 Q Okay. To kind of shortchange the photography, we'll
12 go to kind of some of the items specifically that you
13 impounded. Did you impound items here?

14 A Yes, I did; impounded several items.

15 Q Okay. Was there a semiautomatic Taurus handgun?

16 A Yes, there was.

17 Q And there was -- specifically, was it a Millennium
18 PT145 Pro .45 caliber ACP?

19 A Yes, it was.

20 Q And was the serial number NCY05584?

21 A That's correct.

22 Q Do you recall where you found that?

23 A Yes. So as soon as you walked in the front door,
24 there was a red chair, and it was wedged between the armrest
25 and the couch -- the chair cushion.

1 Q And in your report, do you notate that?
2 A Yes, I did.
3 Q Okay. And then, did you do anything to that firearm
4 to try to preserve any evidence?
5 A Yes. So the firearm was swabbed for possible DNA,
6 and then it was chemically processed for possible latent
7 prints.
8 Q Did you swab first?
9 A Yes, I did.
10 Q And then, you said you processed for latent prints.
11 Were -- what were the results of your processing the prints?
12 A There were negative results on the firearm.
13 Q What does that mean?
14 A That means that I did not find any latent prints of
15 value.
16 Q Okay. "Of value," does that mean that there wasn't
17 sufficient individual ridge detail or specifics that you could
18 make a comparison with?
19 A Correct.
20 Q Okay. Now, the firearm itself, did it contain a
21 magazine?
22 A Yes, it did.
23 Q What did you do with that?
24 A The magazine was removed from the firearm, and it
25 was also swabbed for possible DNA, and then chemically

1 processed as well for latent prints.

2 Q Was the -- what was the result of that?

3 A The -- the results on the magazine were positive.

4 Q Okay, so was there a print on the magazine?

5 A There was sufficient ridge detail for it to be

6 photographed and submitted to the Latent Print Detail.

7 Q Did you take a photograph of that fingerprint?

8 A Yes, I did.

9 Q All right. Is there something that you do with the

10 camera to try to expose that or make that come out?

11 A Yes. So in this case, I used a chemical, which

12 required the laser for viewing the print, so it was

13 photographed with the use of the laser.

14 Q All right. Does that enhance the ability to see the

15 print?

16 A Yes, it does.

17 Q Okay. Now, speaking of this magazine, was there any

18 ammunition in the magazine?

19 A Yes, there were.

20 Q Do you recall how much and what it was?

21 A There were ten cartridges, and they were RP45 Auto.

22 Q So when we say a cartridge, what does that mean to

23 you?

24 A A cartridge is a unit of ammunition, so that's all

25 one piece together that contains the cartridge case, the gun

1 powder, and the bullet.

2 Q So is that -- sometimes, people might refer to it as
3 an unfired bullet?

4 A Correct.

5 Q Okay. And then, you said there were ten of them?

6 A Yes.

7 Q And you said they were RP45 Auto. What does that
8 mean?

9 A So that's just the brand and the caliber of the
10 cartridge.

11 Q Okay. So are there different manufacturers or
12 brands of .45 caliber ammunition?

13 A Yes -- yes, several.

14 Q And where is that on the cartridge so you know which
15 type it is?

16 A It is on the headstamp.

17 Q Is that where the firing pin would strike?

18 A That's correct, yeah.

19 Q Okay. Separate from this firearm, were there shoes
20 that you took into evidence or you noted?

21 A Yes.

22 Q What did you find?

23 A They were red and white Nike shoes, and they were at
24 the south wall of the kitchen.

25 Q And did you notate their size?

1 A Yes, they were size 11.

2 Q Okay. So that's -- speaking of some shoes, were
3 there other pieces of clothing that were pointed out by the
4 detectives of interest?

5 A Yes, there were.

6 Q Was there a hat?

7 A Yes.

8 Q Can you describe that?

9 A It was gray and black, and it had a Chicago
10 Blackhawks logo on the front of it.

11 Q Do you recall, did it have a sticker still on the
12 brim?

13 A I don't recall specifically.

14 Q Okay, but you photographed it?

15 A Yes, I did.

16 Q Okay. Was there also a hooded sweatshirt that you
17 found there?

18 A Yes.

19 Q What color was it?

20 A It was black.

21 Q And did you impound that item?

22 A Yes, I did.

23 Q Okay. Were there other articles of clothing that
24 you came across there?

25 A Correct.

1 Q Okay. Did you in fact also find some other item of
2 firearms-related nature?
3 A Yes, I did.
4 Q What was that?
5 A There were a total of three other RP45 Auto
6 cartridges, and they were on the floor in a bedroom -- or, I'm
7 sorry, on the floor in a bedroom on the second floor, and then
8 there was another cartridge in the pocket of a pair of jeans.
9 Q Okay.
10 A Or, I'm sorry, jean shorts, I believe they were.
11 Jean shorts.
12 Q All right. So in your packaging, did you have that
13 as your Package 6?
14 A Yes, I did.
15 Q And Items 11 and 12?
16 A That's correct.
17 Q Specifically, as to Item 11, even though you refer
18 to it as one item, was that corresponding to two pieces of
19 evidence?
20 A Yes, it was.
21 Q And were those the two cartridges found on the
22 floor?
23 A Correct.
24 Q What was the headstamp on those?
25 A RP45 Auto.

1 Q All right. So, separate from those two on the
2 floor, you found one, if I understood correctly, from a pocket
3 on some shorts?
4 A That's correct.
5 Q All right. And then, the firearm, you spoke of
6 earlier how you swabbed it. Did you impound those swabs?
7 A Yes, I did.
8 Q And did you take one swab from the trigger, slide,
9 and grips of that particular firearm?
10 A Yes, I did.
11 Q And did you take a second swab from the bottom and
12 the feeding area of that item?
13 A That was from the bottom and the feeding area of the
14 magazine.
15 Q The magazine, I'm sorry. Thank you. And now, you
16 impounded all of these items under your unique personnel
17 number?
18 A Yes, I did.
19 Q And do you recall what that was when you still
20 worked with Metro?
21 A 13572.
22 Q Okay. And all that evidence was impounded in the
23 vault so that later on, DNA analysts or fingerprint analysts
24 could review it?
25 A That's correct.

1 Q And all the photographs that we've spoken of,
2 they're uploaded to where they can be analyzed by others
3 later?

4 A Yes.

5 Q Okay. And have you moved out-of-state for work?

6 A For family and work, yes.

7 Q Okay, so that's why you're not here now?

8 A That's correct.

9 MR. PESCI: All right, thank you very much. Pass
10 the witness.

11 THE COURT: Cross-examination?

12 MR. SANFT: No cross, Your Honor.

13 MR. RUGGEROLI: Court's indulgence.

14 THE COURT: You bet.

15 MR. RUGGEROLI: Can I see the photos? Thank you,
16 Your Honor. I have no questions.

17 THE COURT: Okay. Thank you very much for your
18 testimony here today, and thank you for doing it this way, and
19 you're excused.

20 THE WITNESS: Okay, thank you very much.

21 THE COURT: State may call their next witness.

22 MR. PESCI: Judge, that's all the witnesses that we
23 have for today. I apologize.

24 THE COURT: You're not kidding, are you?

25 MR. PESCI: I'm not, because we were trying to gauge

1 how long thing were going to go, so I'm sorry.

2 THE COURT: Okay. Well, looks like we're done for
3 the day.

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

13 Before you go, can I just have the attorneys
14 approach so we can make sure everyone's okay?

15 (Bench conference)

16 THE COURT: Okay. I have a hearing on Monday, so we
17 can't start until 1:00 o'clock.

18 MR. RUGGEROLI: Tuesday?

19 THE COURT: Oh my gosh, it's a --

20 THE CLERK: Oh, yes, Tuesday. I'm sorry, yes.

21 THE COURT: Oh my gosh, that's right. It's a
22 three-day weekend.

23 MR. RUGGEROLI: I tried to have witnesses here on
24 Monday, and that's not going to work either, so.

25 THE COURT: Okay, so 1:00 o'clock. I just want to

1 make sure.

2 MR. RUGGEROLI: On Tuesday?

3 THE COURT: Yes.

4 MR. RUGGEROLI: Thank you.

5 THE COURT: On Tuesday. Okay.

6 (End of bench conference)

7 THE COURT: Ladies and gentlemen, I do want to

8 remind you that Monday is a holiday, so the courthouse will be

9 closed, so we will resume again on Tuesday afternoon at 1:00

10 o'clock. Thank you very much, and have a good weekend.

11 THE MARSHAL: Thank you. All rise for the exiting

12 jury, please. Jurors.

13 (Outside the presence of the jurors at 3:25 p.m.)

14 THE MARSHAL: Thank you, everyone. Please be

15 seated.

16 THE COURT: Okay, have a good weekend, everyone.

17 MR. RUGGEROLI: Thank you, Your Honor.

18 MR. SANFT: Thank you, Your Honor.

19 MR. PESCI: Okay, thank you.

20 DEFENDANT WHEELER: Thank you.

21 (Court recessed at 3:26 P.M., until Tuesday,

22 February 18, 2020, at 1:04 P.M.)

23 * * * * *

24

25

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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, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

EXHIBIT(S) LIST

Case No.: C328587-2&3

Hearing / Trial Date: 02/11/20

Dept. No.: XII

Judge: MICHELLE LEAVITT

Court Clerk: HALY PANNULLO

Plaintiff: STATE OF NEVADA

Recorder / Reporter: SARA RICHARDSON

Counsel for Plaintiff: GIANCARLO PESCI &

vs.

PARKER BROOKS

Defendant: RAEKWON ROBERTSON &

Counsel for Defendant: MICHAEL SANFT
(ROBERTSON)

DAVONTAE (wheeler)

JAMES RUGGEROLI (WHEELER)

HEARING / TRIAL BEFORE THE COURT

DEFENDANT'S (wheeler) EXHIBITS (A)

[illegible]

2385

2-14-20

STATE OF NEVADA
VS.
RAEKWON ROBERTSON
&
DAVONTAE WHEELER

2386

Courts Exhibit
#11
(328587)
01/14/20

Robert Mason Goes on a Jog





2388

AUGUST 9, 2017
(Tuesday Night into Wednesday Morning)

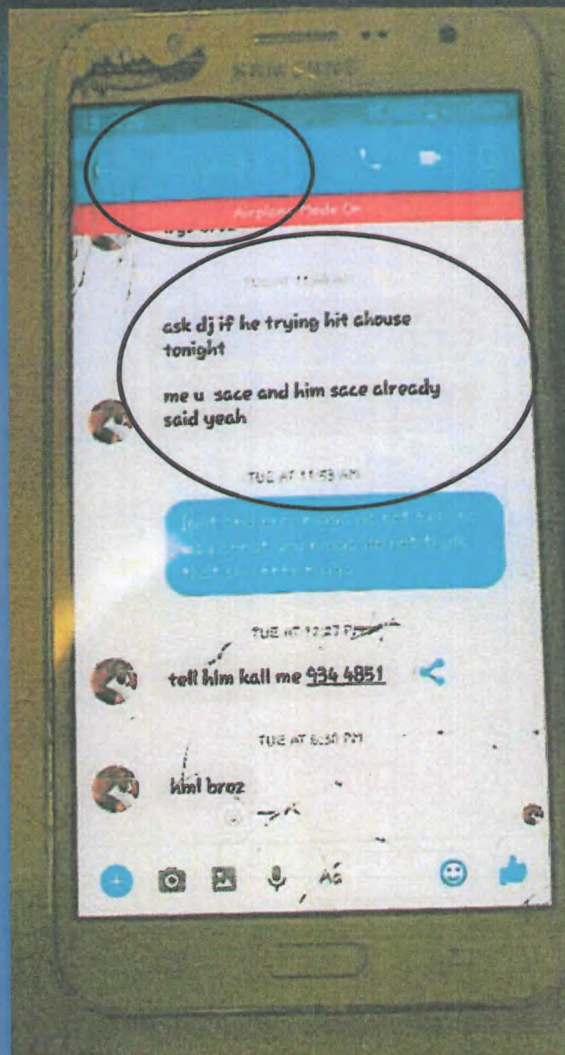
Around 12:10 am

- Demario Lofton-Robinson ("DJ")
- DeShawn Robinson (DJ's younger brother)
- Raekwon Robertson ("Ray" & "Ray Logan")
- Davontae Wheeler ("sace")

Defendant
Raekwon
Robertson's
Phone

to

Deshawn
Robinson's Phone



ask dj if he trying hit ahouse
tonight

me u sace and him sace already
said yeah

NV 473-YZB



2391

AUGUST 9, 2017

Around 12:10 am

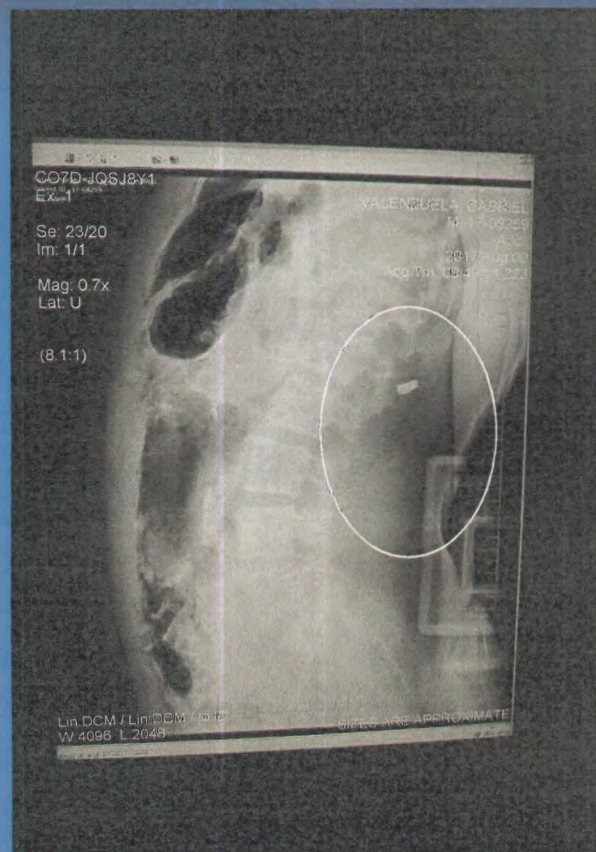
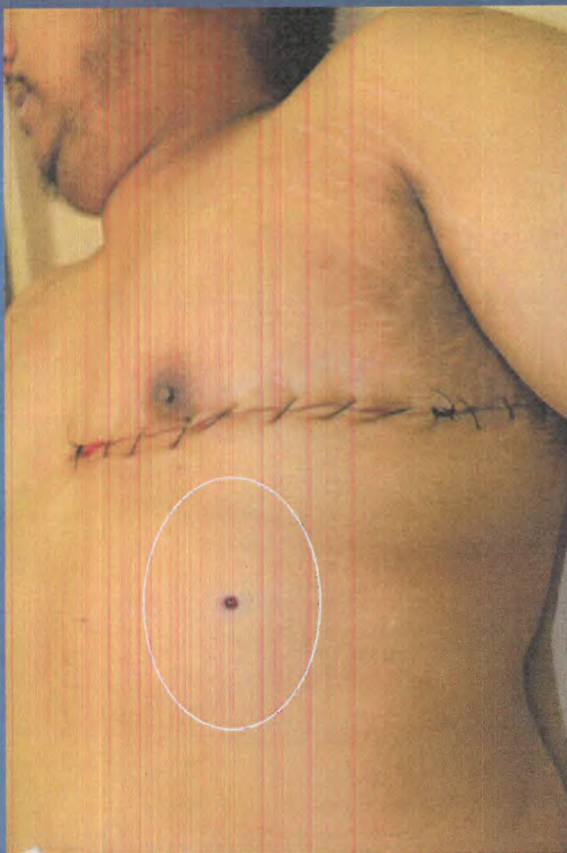
- 24-year-old Gabriel Valenzuela ("Kevin")
- Drove home
- Got the Family's mail
- Was headed into his house



5536 West Dewey Drive

2393

Smaller Caliber to the Abdomen

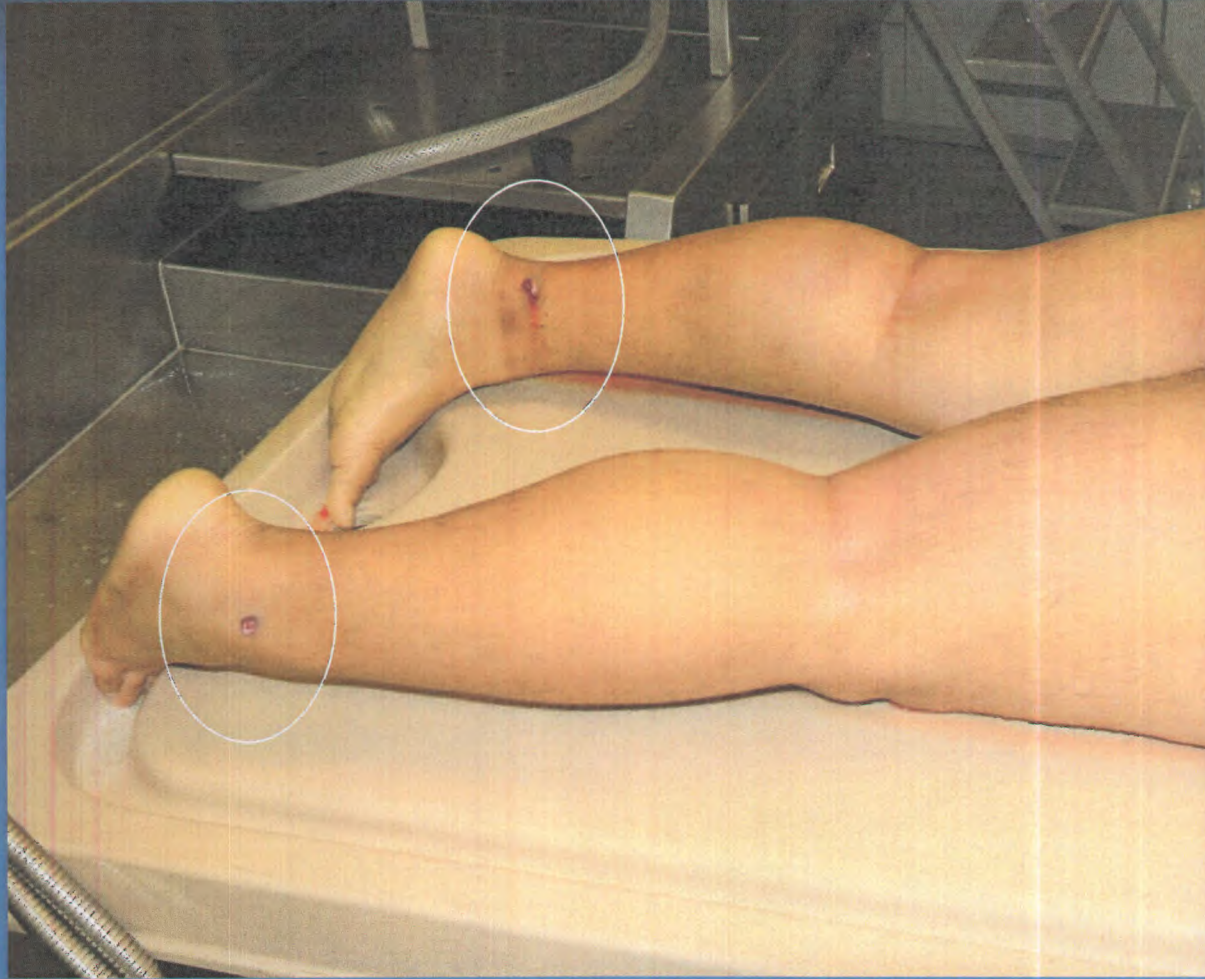


Gunshot Entry Wound

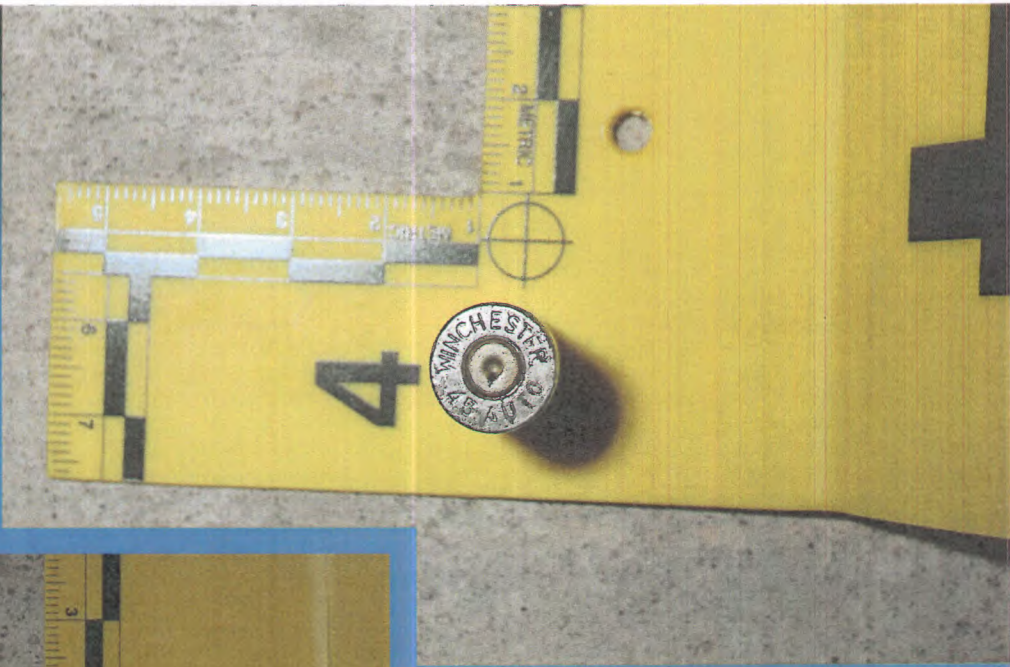


2395

Bullet Found in the Left Leg



2396



2397



2398



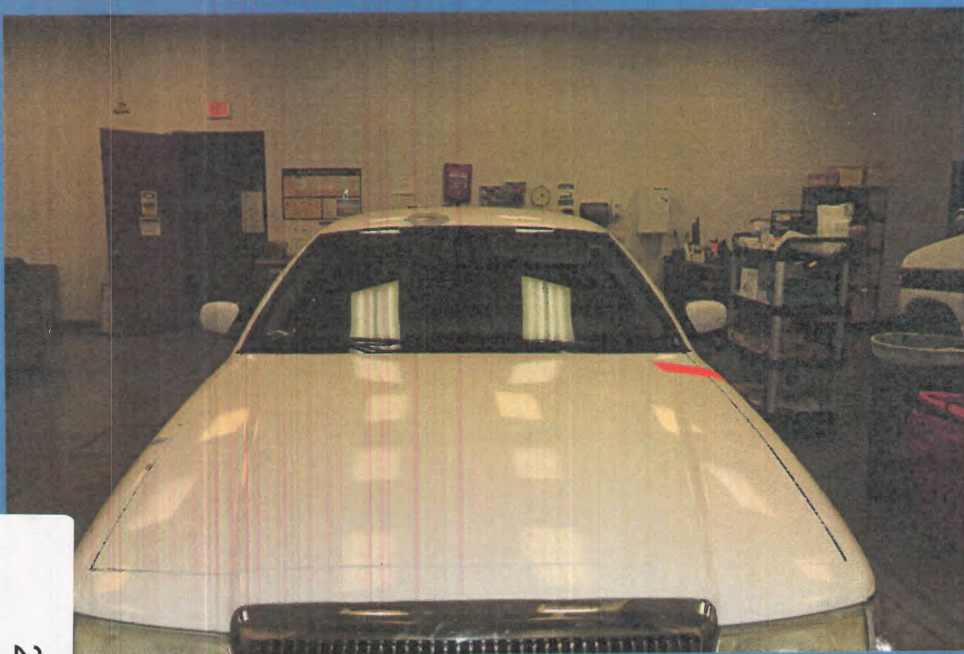
2399

**Earlier
that
night,
around
11:27 pm**



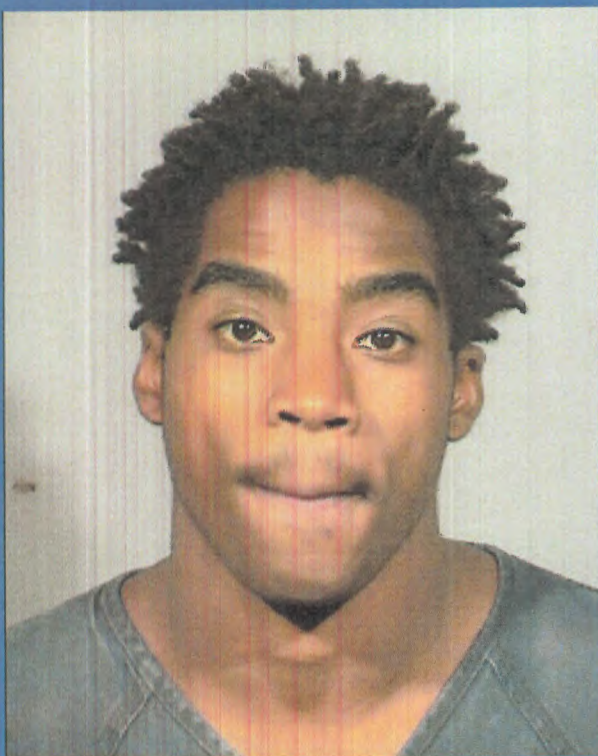


2401

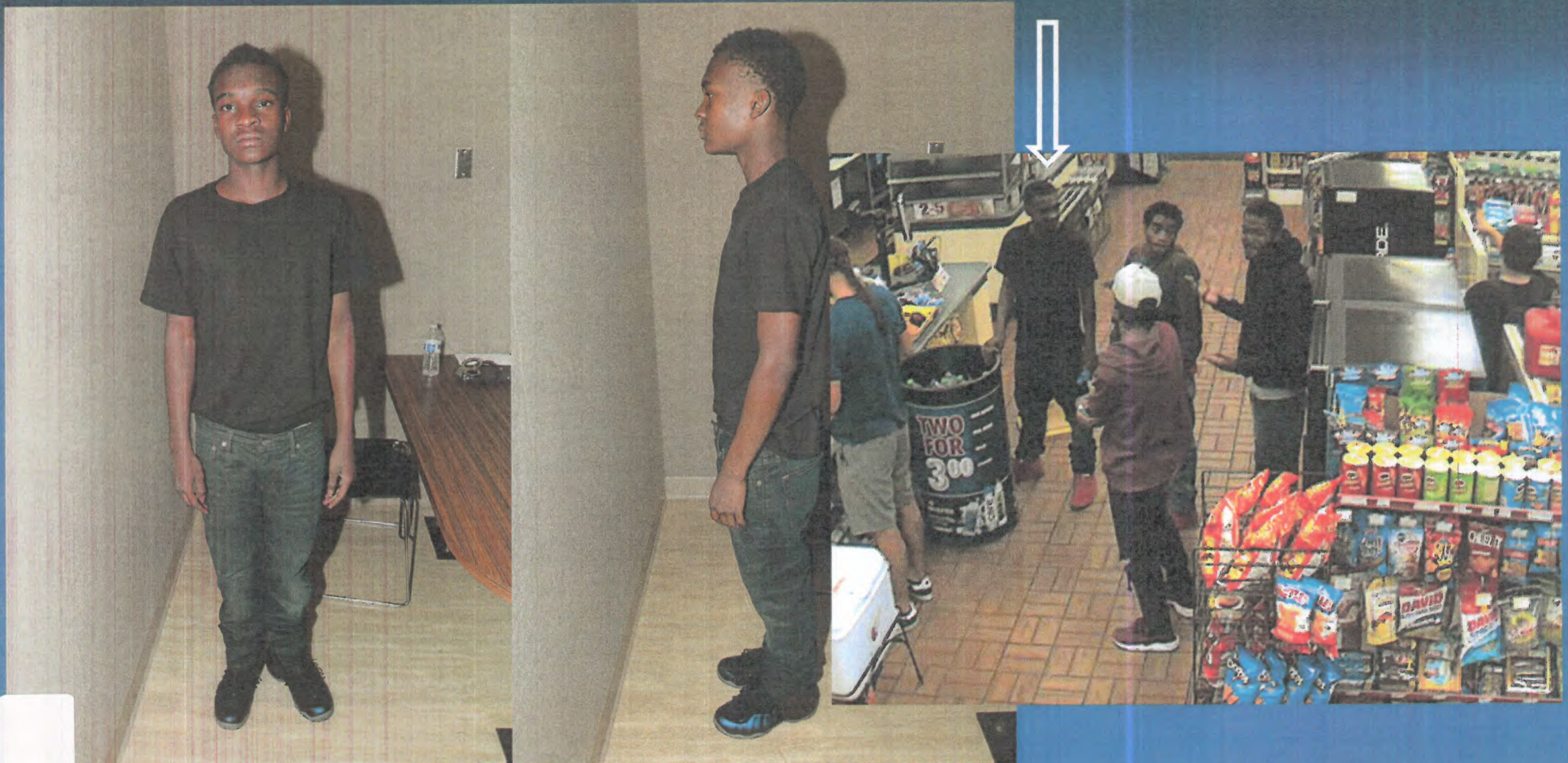


2402

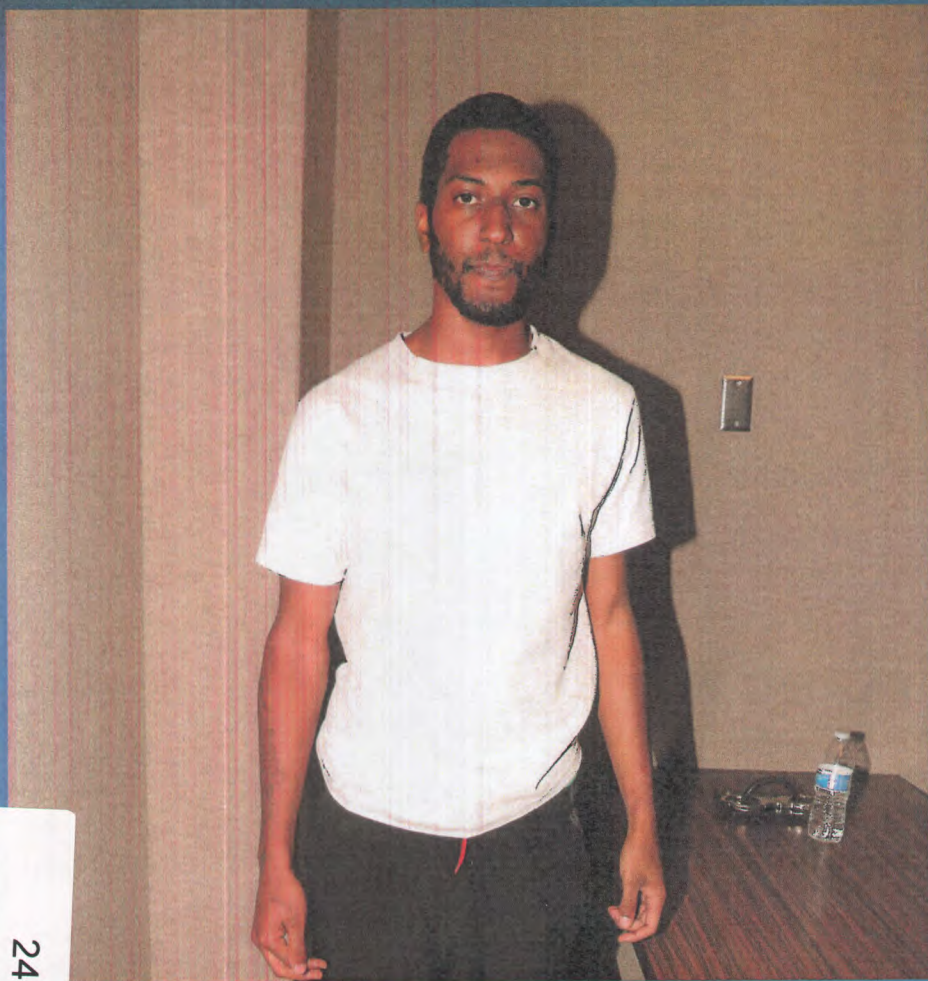
Demario Lofton-Robinson



Deshawn Robinson



Raekwon Robertson

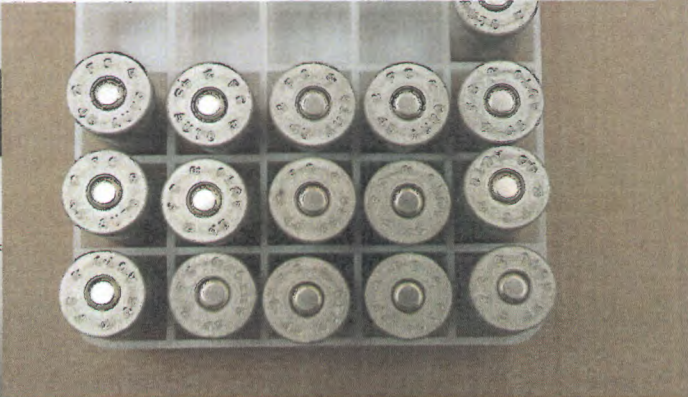
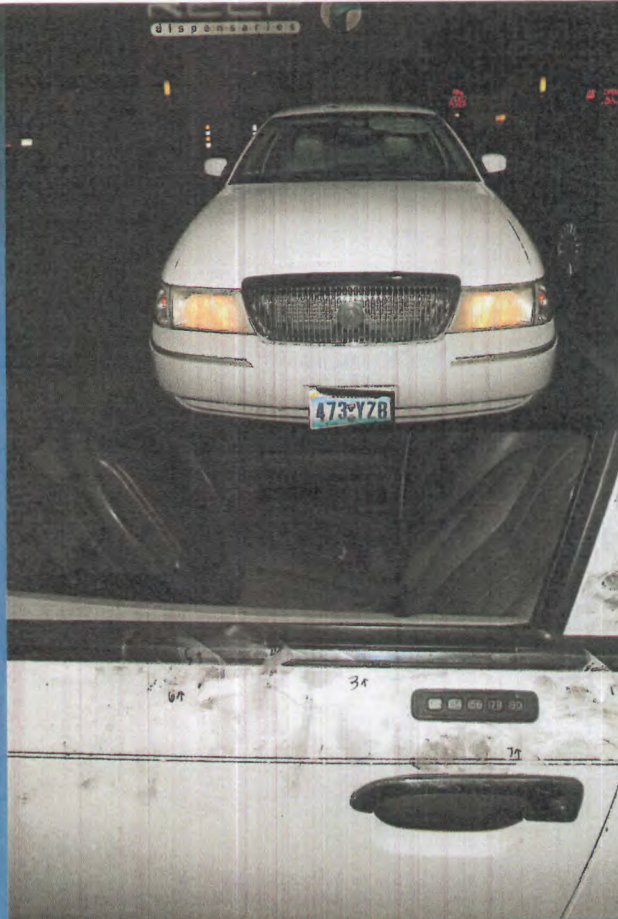


2405

Davontae Wheeler



2406

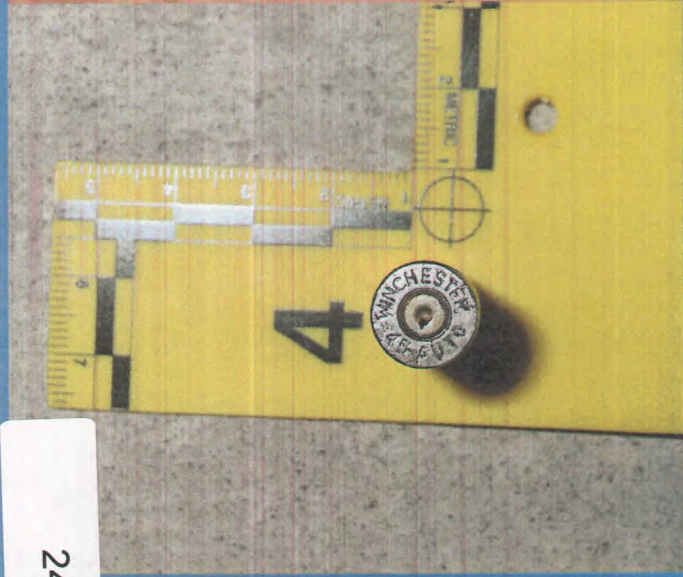


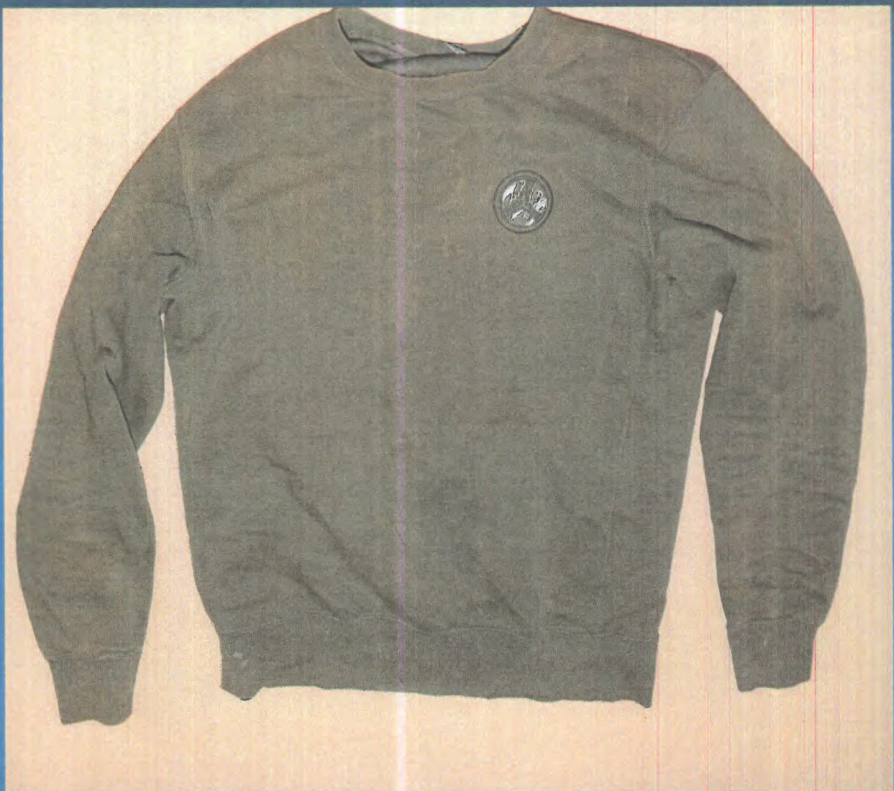
Vehicle is located – 8/9/17 @6:49pm

919 Bagpipe on 8/9/17



2408

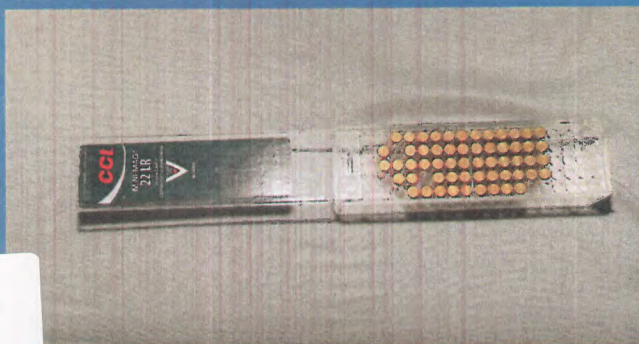
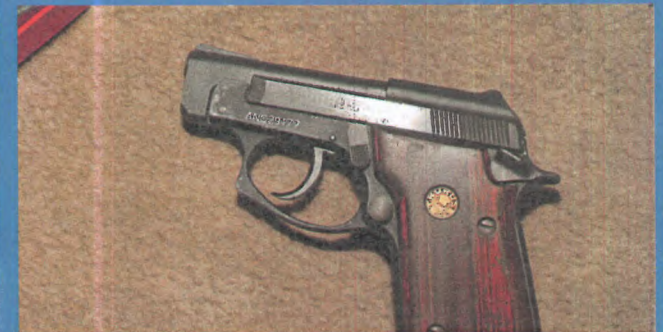




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2411



**6647 West Tropicana on
8/15/17**







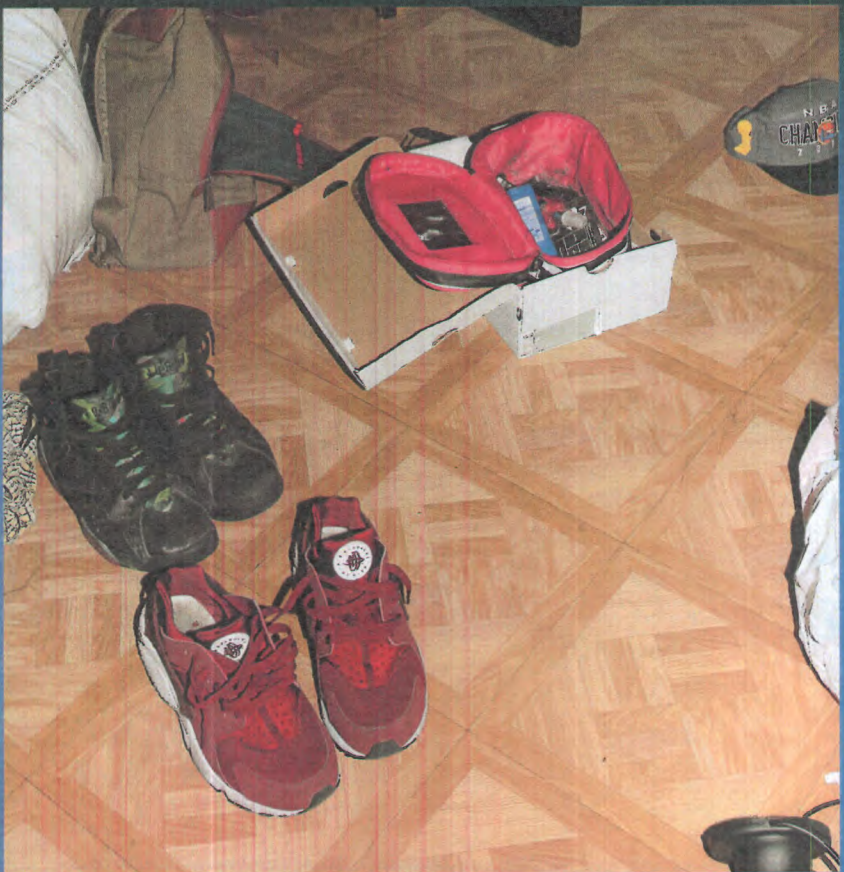
3300 Civic Center
on 8/15/17

2415

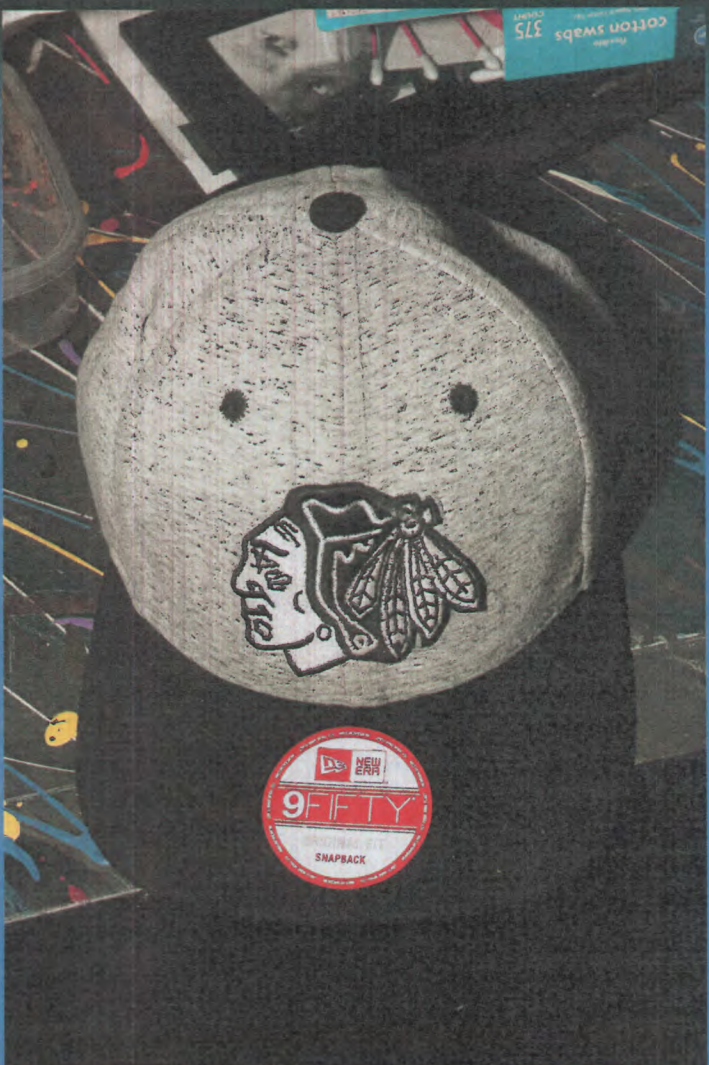




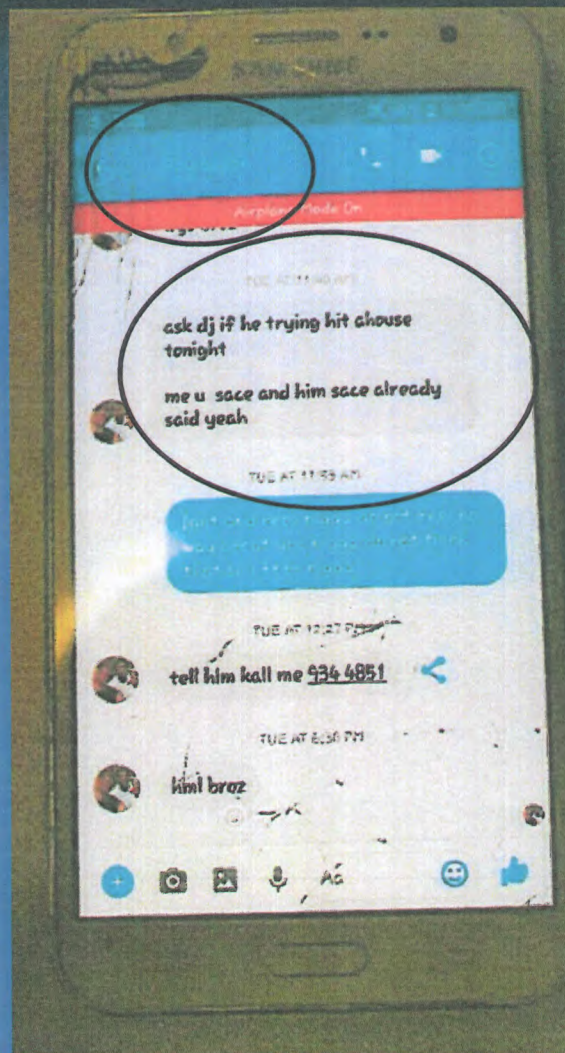
2417



2418



They went to hit
a house that
night, but
instead...



ask dj if he trying hit chouse
tonight

me u sace and him sace already
said yeah

They saw an opportunity to hit Gabriel Valenzuela



2421



CLARK COUNTY CORONER CASE # 17-8259

NAME: Valenzuela, Gabriel (TENT)

Date of Death: 8/9/17 Time of Death: 0055

R-S-A: H.M. 24 CASE TYPE: LUMPH-9ab-

HT: 70 WT: 215 TIME IN: 0355

CCCCO Investigator: [Signature]

EMPL# 144

545813



MARK

EXHIBIT

CASE NO.



2423

M

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CA



D EXHIBIT



MAP # CAS STATE'S EXHIBIT
95
0328587 2-14-20



2425

MARKED PROPOSED EXHIBIT

96
CASE NO.

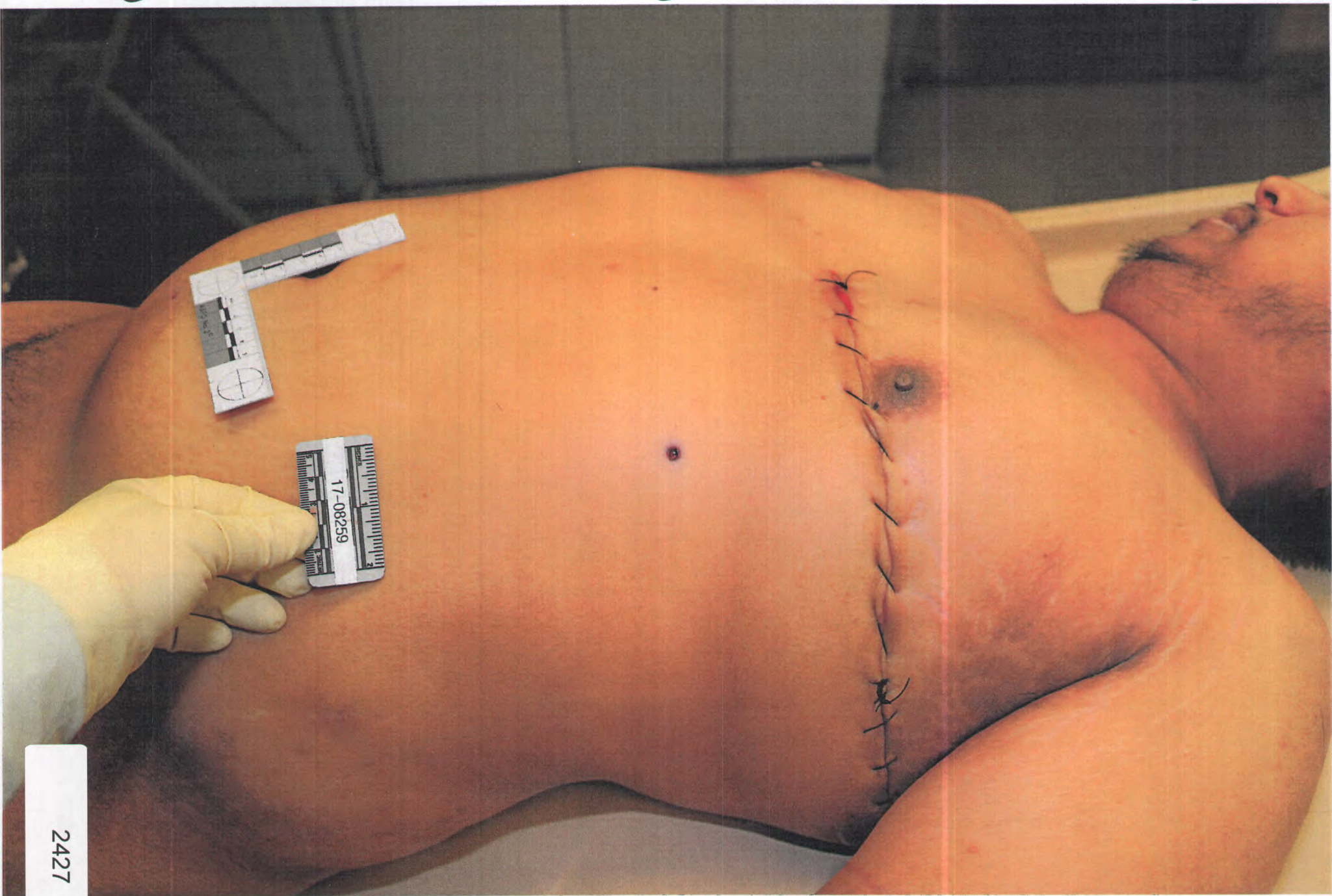
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MAILED EXHIBIT

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2427

MARK

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CASE



HIBIT

2428

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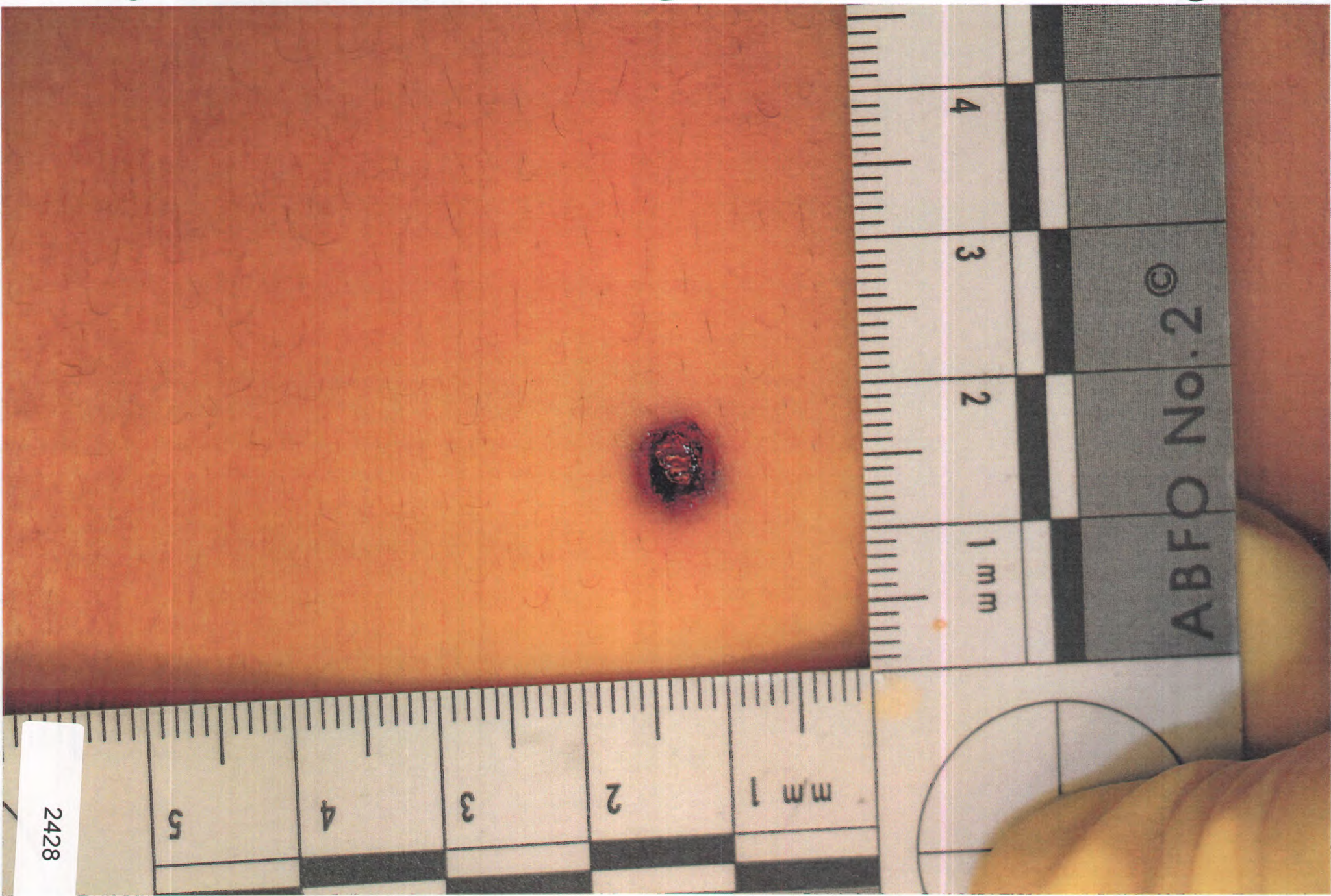
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ABFO No. 2[©]



MARK # CASE

STATE'S EXHIBIT
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328587
2-14-70



2429

MARKED

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CASE NO



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2430



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CASE



EXHIBIT

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MA

CA



D EXHIBIT

2432



MAF PROPOSED EXHIBIT

#

CAS

PENBAD 800-631-6889	STATE'S EXHIBIT 103	7-14-70
6328587		

2433

17-08259



MA # CA

STATE'S
EXHIBIT
104
1328587 2.14.20

EXHIBIT

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